WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85201

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DEVELOPMENT AGREEMENT

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

REDALE LLC,
a Delaware limited liability company

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___________________, 2021

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made as of the ____ day of ______________, 2021, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("**City**"); and Redale LLC, a Delaware limited liability company ("**Company**"). City and Company are sometimes referred to herein collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Company owns approximately 396 acres of unimproved real property located in the City of Mesa, Maricopa County (the "**County**"), Arizona, as legally described in Exhibit A attached to this Agreement (the "**Property**").

B. Company intends to develop on the Property a multi-year, large-scale project that may include development of up to 3,000,000 square feet of Building Gross Area for data center Buildings and other facilities for the operation, maintenance and replacement, from time to time, of computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and related improvements such as equipment used for distribution and management of electricity, internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as accessory uses or buildings reasonably related to data center(s), all in accordance with the Zoning. All improvements on the Property are collectively referred to herein (both as initially developed and when fully built out and completed) as the "**Project**."

C. The Property is zoned Planned Community District and is governed by the Mesa Proving Grounds Community Plan, also known as the Eastmark Community Plan (as amended, the "**Community Plan**"), which was originally adopted by the City Council as Ordinance No. 4893, on November 3, 2008.

D. City believes the development of the Property will generate substantial monetary and non-monetary benefits for City, including by, among other things: (i) providing for planned and orderly development of the Property consistent with the General Plan and Zoning; (ii) increasing tax revenues to City arising from or relating to the Project to be constructed on the Property; and (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City.

E. As a condition of, and concurrent with, its development of the Property, and subject to and in accordance with the provisions and requirements of this Agreement, Company intends, and has the ability, to finance, construct and complete the Project and the Public Improvements, and to otherwise accomplish all of the Company Undertakings.

F. City also acknowledges its intention and ability to provide the City Undertakings subject to and in accordance with the provisions and requirements of this Agreement.

G. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement will constitute covenants running with the Property as more fully described herein.

H. City is entering into this Agreement to implement and to facilitate development of the Property consistent with the policies of City reflected in the General Plan and the Zoning.

I. The Property is subject to that certain Pre-Annexation and Development Agreement (Mesa Proving Grounds), between DMB Mesa Proving Grounds LLC ("**MPG**") and City, recorded as Document No. 2008-0974930, in the Official Records of County, Arizona. Said agreement was initially amended by that certain First Amendment to Pre-Annexation and Development Agreement (Mesa Proving Grounds), between MPG and City, recorded as Document No. 2011-0456474, in the Official Records of County, Arizona, and subsequently amended by that certain Second Amendment to Pre-Annexation and Development Agreement (Mesa Proving Grounds), between MPG and City, recorded as Document No. 2013-1005620, in the Official Records of County, Arizona, and by that certain Third Amendment to Pre-Annexation and Development Agreement (Mesa Proving Grounds), between MPG and City, recorded as Document No. 2016-0940133, in the Official Records of County, Arizona, and by that certain Fourth Amendment to Pre-Annexation and Development Agreement (Mesa Proving Grounds), between MPG and City, recorded as Document No. 2018-0657828, in the Official Records of County, Arizona. Said agreement, as amended by the foregoing amendments is referred to herein as the "**PADA**."

AGREEMENT

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 (including the Recitals), unless a different meaning clearly appears from the context:

(a) "**Additional Building**" means as defined in Section 4.1(b).

(b) "**Affiliate**," as applied to any Person, 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 purposes of this definition "**Control**" (including with correlative meaning, the terms "**Controlling**," "**Controlled by**" and "**under common Control with**") 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.

(c) “**Agreement**” means this Agreement, as amended and restated or supplemented in writing by the Parties from time to time and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through I, inclusive, are incorporated into this Agreement by reference, and form a part of this Agreement.

(d) “**Applicable Laws**” means the federal, State, County and City statutes, codes (including the City Charter), ordinances, rules, regulations, permit requirements, judgments, orders, decrees, and other official written requirements and policies, any requirements or rules of common law and any judicial or administrative interpretations thereof, which affect the subject matter of this Agreement or apply to the development of the Property, all as they may be amended from time to time.

(e) “**Approved Master Reports**” means as defined in Section 4.2(a).

(f) “**Approved Plans**” means as defined in Section 3.1(c).

(g) “**A.R.S.**” means the Arizona Revised Statutes as amended from time to time.

(h) “**Building**” means as defined in Section 4.1(a).

(i) “**Building Gross Area**” means the total of all the horizontal floor areas (as viewed on a floor plan) of all floors of a Building contained within the Building exterior walls (or exterior and fire walls), measured in square feet.

(j) “**City**” means the Party designated as City on the first page of this Agreement.

(k) “**City Code**” means the Code of the City of Mesa, Arizona, as amended from time to time.

(l) “**City Council**” means the City Council of City.

(m) “**City Indemnified Person**” or “**City Indemnified Persons**” means as defined in Section 12.1.

(n) “**City Representative**” means as defined in Section 11.1.

(o) “**City Undertakings**” means as defined in Section 5.

(p) “**Claim**” or “**Claims**” means as defined in Section 12.1.

(q) “**Commencement of Construction**” or “**Commences Construction**” means both (i) the obtaining of permits by Company that are required to begin the construction of vertical improvements on the Property, and (ii) the actual commencement

of physical construction operations on the Property in a manner necessary to achieve Completion of Construction.

(r) "**Community Plan**" means as defined in Recital C.

(s) "**Company**" means Redale LLC, and its permitted successors and assigns.

(t) "**Company Representative**" means as defined in Section 11.1.

(u) **"Company Undertakings"** means as defined in Section 4.

(v) "**Completion of Construction**" or "**Completes Construction**" means the first date on which a temporary or final certificate of occupancy has been issued by City for a Building (or Buildings).

(w) **"County"** means Maricopa County, Arizona, a political subdivision of the State of Arizona.

(x) **"Date of First Operation"** the date upon which all of the following have occurred: Completion of Construction of at least one Building, all City utility accounts for the Project have been established, all other applicable utility accounts have been established, and Company has constructed or caused to be constructed all Public Improvements.

(y) "**Dedicated Property**" means as defined in Section 4.3.

(z) "**Default**" or "**Event of Default**" means one or more of the events described in Section 10.1 or Section 10.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods and cure periods provided for in this Agreement and that in any event the available remedies will be limited to those expressly set forth in Section 10.

(aa) "**Designated Lenders**" means as set forth in Section 12.25.

(bb) "**Development Unit Plan**" or "**Development Unit Plans**" means as described in the Zoning.

(cc) "**Effective Date**" means the date on which all the following events have occurred: this Agreement has been adopted and approved by the City Council, executed by duly authorized representatives of City and Company, and recorded in the office of the Recorder of the County.

(dd) **"Financing"** means the incurrence of any indebtedness for borrowed money by Company in an arm's length, bona fide lending transaction that is secured by a lien on or security interest in Company's right, title, and interest in all or any portion of the Property and the Project (and this Agreement), whether by mortgage, deed of trust,

collateral assignment, security agreement, or otherwise, including any Transfer by judicial or non-judicial foreclosure or conveyance or assignment in-lieu-of-foreclosure of all or any portion of the Property (and this Agreement).

(ee) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan*, as adopted and previously amended by the City of Mesa, Arizona.

(ff) "**Groundwater Code**" means Title 45, Chapter 2 of the Arizona Revised Statutes now or hereafter enacted or amended.

(gg) "**Indemnify**" means as defined in Section 12.1.

(hh) "**Initial Phase**" means as defined in Section 4.1(a).

(ii) "**KGal**" means one thousand (1,000) gallons.

(jj) "**Lender**" or "**Lenders**" means as defined in Section 12.25.

(kk) "**Metering Equipment**" means as defined in Section 4.9.

(ll) "**MLM Customer**" means as defined in the Sustainable Service Agreement.

(mm) "**MPG**" means as defined in Recital I.

(nn) "**PADA**" means as defined in Recital I.

(oo) "**Party**" or "**Parties**" means as designated on the first page of this Agreement.

(pp) "**Person**" means and includes natural persons, corporations (including municipal), limited partnerships, general partnerships, joint stock companies, joint venture associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(qq) "**Project**" means as defined in Recital B.

(rr) "**Property**" means as defined in Recital A.

(ss) "**Protected Plan**" means as defined in Section 3.3.

(tt) "**Public Improvements**" means the water, waste water, drainage, roadway and other infrastructure improvements that Company is required to construct in connection with development of the Project as set forth in the Approved Master Reports and Exhibit C to this Agreement (as further described in Section 4.2 and as may be amended as provided in Section 4.2(c)).

(uu) "**Recorded Plat**" means as defined in Section 3.3.

(vv) "**Release Parcel**" means as defined in Section 2.3(a).

(ww) "**Revised Master Reports**" means as defined in Section 4.2(a).

(xx) "**Row Landscaping**" means as defined in Section 4.5(a).

(yy) "**Specialty Features and Materials**" means as defined in Section 4.5(b).

(zz) "**Specific Plan**" means as defined in Section 3.1(b).

(aaa) "**State**" means the State of Arizona.

(bbb) "**Sustainable Service Agreement**" or "**SSA**" means that certain Sustainable Water Service Agreement between City and Company that is on the same Council agenda as this Agreement.

(ccc) "**Term**" means as defined in Section 2.3.

(ddd) "**Terms and Conditions**" means the City's Terms and Conditions for the Sale of Utilities, now or hereafter enacted or amended.

(eee) "**Third Party**" means any Person other than a Party.

(fff) "**Transfer**" means as defined in Section 12.7(a).

(ggg) "**Water Shortage Management Plan**" means the City plan, as adopted and amended from time to time by City, which authorizes water restrictions, reductions, prohibitions, conservation, and other measures based on limitations in the availability of water resources due to conditions such as, but not limited to, reductions in the supply of Central Arizona Project water, Salt/Verde system water, limitations on the availability of suitable groundwater, and loss or closure of transmission capacity by either the Salt River Project or Central Arizona Water Conservation District, to be implemented and imposed broadly or on similarly situated customer classes.

(hhh) "**Zoning**" means the City of Mesa Zoning Ordinance as modified by the Community Plan.

2. PARTIES, PURPOSE AND TERM OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this Agreement are City and Company.

(a) The City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State, duly organized and validly existing under the laws of the State, exercising its governmental functions and powers.

(b) The Company. Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware.

2.2 Purpose. The purpose of this Agreement is to provide for and accommodate: (i) development of the Property in accordance with the General Plan and the Zoning; (ii) Company Undertakings including the design and construction of the Public Improvements; (iii) City Undertakings including implementation of a customized review schedule for the Project; (iv) provision of utility services to the Property and the Project; and (v) other matters related to the Company's development and operation of the Property and the Project, including Company's status as an MLM Customer pursuant to the Sustainable Service Agreement.

2.3 Term. Notwithstanding anything in this Agreement to the contrary, the term of this Agreement ("**Term**") will begin on the Effective Date and shall terminate on the earlier of: (i) thirty (30) years from the Effective Date or (ii) twenty (20) years from the Date of First Operation; unless this Agreement is terminated sooner pursuant to any earlier termination provision of this Agreement. Additionally, City may extend the Term to coincide with the term of the SSA, provided Company transfers additional Long-Term Storage Credits (as that term is defined in the SSA) pursuant to the SSA.

(a) Partial Termination Upon Sale or Transfer of the Release Parcel. The Parties acknowledge and agree that Company may elect to sell or transfer all or a portion of that part of the Property (anticipated to be comprised of approximately 15-acres) as depicted on Exhibit B attached to this Agreement (the "**Release Parcel**"). If Company conveys or transfers all or a portion of the Release Parcel then this Agreement shall automatically terminate and be of no further force or effect as to the Release Parcel or transferred portion thereof. This Agreement, however, shall remain in full force and effect as to the balance of the Property, excluding only the Release Parcel or transferred portion thereof.

2.4 Survival of Certain Provisions. Notwithstanding the termination of this Agreement as set forth in Section 2.3 (but not as set forth in Section 2.3(a):

(a) The indemnity, duty to defend, and hold harmless obligations in Section 12.1 and Section 4.3(b) in this Agreement will survive the expiration of this Agreement for a period of two (2) years.

(b) The provisions of Section 12.26 will survive the expiration or termination of this Agreement.

2.5 Termination of the PADA. Company and City intend that the development and operation of the Property shall be governed by the Zoning and this Agreement without reference to or application of the PADA. As of the Effective Date, the Parties agree that the

PADA shall automatically terminate without the execution or recordation of any further document or instrument as to the Property and the Property shall be released from and no longer subject to the provisions or obligations in the PADA. Provided further, upon request of Company, City will execute a separate instrument with MPG confirming the foregoing termination of the PADA as to the Property and will cause such instrument to be recorded in the Official Records of County. The provisions of this Section 2.5 shall not affect, and the Property (including the Release Parcel) will remain subject to, any applicable Development, Financing Participation, Waiver and Intergovernmental Agreement for the Eastmark Community Facilities District that is recorded on the Property. Notwithstanding the foregoing, the PADA shall remain in full force and effect as to the Release Parcel in the event Company conveys the Release Parcel as provided in Section 2.3(a). The provisions of this Section 2.5 shall survive any termination or expiration of this Agreement.

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

(a) Development Unit Plan Approvals. To develop the Project on the Property, Company has obtained approval of a Development Unit Plan for Development Unit 1 of the Community Plan and an amendment to Development Unit 2 of the Community Plan.

(b) Site Plan and Design Review Approvals. The Community Plan classifies site plans as major or minor. Major site plans require approval by the Planning and Zoning Board, and minor site plans require approval by the Planning Director. The City Manager, acting under the authority granted under the Community Plan, has determined that development of the Project can and shall be processed consistent with the procedures for a minor site plan. For each phase of development within the Property, and before City will issue a building permit for that phase of the Project, Company must submit to the City of Mesa Planning Director for approval, site plans, elevations, and landscape plans (collectively referred to herein as a "**Specific Plan**"). All Specific Plans must be submitted according to Section 6 of the Community Plan and in compliance with the Zoning. When possible, the Planning Director will consider site plans and building design concurrently. Company acknowledges that each Specific Plan must meet the requirements in the Community Plan including but not limited to the design requirements, and such approvals may be subject to review by the design review board established under the Community Plan.

(c) Approved Plans. Development of the Property will be in accordance with one or more sets of plans and specifications prepared and submitted by Company (which plans and specifications may be amended from time-to-time) and approved by City, which plans and specifications must comply with the General Plan and the Zoning, and will set forth the basic land uses, phasing of the Project (if applicable), and all other matters relevant to the development of the Property in accordance with this Agreement (the "**Approved Plans**"), subject to the following:

(i) Approval Process. City will cooperate reasonably in processing the approval or issuance of the development permits, plans, specifications, maps of

dedication, plats, and other development approvals requested by Company in connection with development of the Project.

(ii) Cooperation in the Implementation of the Approved Plans. Company and City will work together throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

3.2 Development Regulation.

(a) Applicable Laws. Company will comply with all Applicable Laws in developing the Property and operating the Project including but not limited to Zoning and General Plan.

(b) Permit and Other Fees. Building permit, inspection, impact, development and other applicable fees for the development of the Property will be those in effect at the time of any application or submission.

3.3 Protected Development Rights. Company has the right to undertake and complete the development and use of the Property in accordance with the Zoning and this Agreement. Provided further, Company may establish a protected development right under A.R.S. § 9-1201 *et seq,* if, within five years of the Effective Date: (i) Company submits a Specific Plan and a Final Plat for the Initial Phase or any additional phase(s) of the Project; (ii) City approves the Specific Plan and Final Plat; and (iii) the Final Plat is duly recorded in the Official Records of County (the "**Recorded Plat**"). Upon completion of the foregoing requirements, the Specific Plan along with the Recorded Plat shall be a protected development right plan (the "**Protected Plan**") with protected development rights under A.R.S. § 9-1201; and Company shall have the right to undertake and complete the phase of development in compliance with the Protected Plan and Zoning (and any associated terms and conditions), this Agreement and any Applicable Laws, including A.R.S. § 9-1201 *et seq*. The protected development right applies only to the specific components of the development identified on the Protected Plan and is valid for five years from the date the Final Plat is recorded in the official records of the County. A protected development right does not extend the timeframe for utilization of City permits (e.g., building permits) or other City approval(s). If a City permit or approval expires, Company will be required to resubmit its application and such application will be reviewed by City in accordance with City's regular and customary procedures that are in effect at the time of such application or submission.

4. COMPANY UNDERTAKINGS. Company hereby agrees to the following (collectively, the "**Company Undertakings**"):

4.1. Project Improvements.

(a) Initial Phase of the Project. Company, at Company's sole cost and expense, and in compliance with Section 3 of this Agreement, may construct or cause to be constructed one or more buildings on the Property (each a "**Building**" and collectively,

"**Buildings**") with an expected cumulative total of 970,000 square feet of Building Gross Area comprising the first phase of development (the "**Initial Phase**").

(b) Additional Development. Company may elect to construct additional Buildings within the Project (each an "**Additional Building**" and collectively, "**Additional Buildings**"), and each Additional Building will be subject to, and must comply with, the SSA. Provided further, if Company submits to City a Specific Plan for the Property and City determines the proposed uses on the Specific Plan will generate more water or wastewater demand or require greater water or wastewater system capacity than is identified in the Approved Master Reports, then City may require Company, if necessary, to update the applicable Approved Master Reports, and to construct, at Company's sole cost and expense, the additional water or wastewater improvements, or both, necessary to develop the Property in accordance with that Specific Plan.

(c) Sustainable Service Agreement. Concurrently with its execution and delivery to City of this Agreement Company will execute and deliver to City the Sustainable Service Agreement and memorandum of the SSA.

4.2 Public Improvements.

(a) Master Reports. The Zoning requires that the infrastructure master reports for the Community Plan be updated to include the water, wastewater, drainage, and roadway improvements necessary for development of the Initial Phase and any Additional Buildings (the "**Revised Master Reports**"). The Revised Master Reports have been submitted to City and City is reviewing the Revised Master Reports in accordance with the City's normal and customary process. Upon City's acceptance of the Revised Master Reports (the "**Approved Master Reports**") development of the Project will be required to comply with the Approved Master Reports.

(b) Completion and Phasing of Required Public Improvements. Company agrees that prior to the issuance of a certificate of occupancy for the first Building constructed on the Property it must design, construct (or cause to be constructed) and install, at Company's sole cost and expense, and to applicable City standards, the Public Improvements. Construction of the Public Improvements may be eligible for phasing based on the phasing of the Project. To be eligible for phasing of the Public Improvements, Company must submit, for review and consideration by City, a phasing plan and schedule with the first pre-submittal of construction plans for the Project. If City and Company agree to a phasing plan and schedule, the Parties will enter into an amendment to this Agreement (or such other agreement or documentation for the phasing plan and schedule as agreed to between the Parties) that sets forth the agreed upon phasing plan and schedule.

(c) Final Determination of Public Improvements. The Public Improvements in Exhibit C generally describes the Public Improvements Company is required to construct in connection with development of the Project. Because the Project, including the Revised Master Reports and the Approved Plans, is still in the design and engineering phase, the Public Improvements may be modified, in compliance with Applicable Laws, as part of the

City's normal and customary permit and review process. The final Public Improvements will be those public improvements shown on the Approved Master Reports and the Approved Plans for the Project (all phases of the Project including the Initial Phase and any Additional Buildings); and Exhibit C will be deemed to conform with the Approved Master Reports and the Approved Plans (to the extent they add specificity to the Approved Master Reports).

4.3 Dedication of Public Improvements. In accordance with this Agreement and City policies, and upon completion of any portion, segment or phase of the Public Improvements to be offered for dedication by Company and accepted by City, Company will dedicate and grant to City the Public Improvements and any associated real property or real property interests owned or retained by Company provided such real property or real property interests (i) constitute a part of the Property; (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property; and (iii) will not, as a result of such dedication, materially interfere with the development of the Project (the "**Dedicated Property**"). Company will make such dedications and grants of the Dedicated Property (a) upon such additional terms and conditions required by City in connection with dedications of similar public improvements and real property interests, (b) using City's standard forms with such changes requested by Company as may be approved by City in its sole discretion, (c) without the payment of any additional consideration by City, and (d) free and clear of all monetary liens, except current taxes and assessments.

(a) With respect to such dedicated Public Improvements, at the time title to each Public Improvement is transferred to City by dedication, deed, plat recordation, or otherwise, Company will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work, and Company will, to the extent allowed by law, assign to City any unexpired warranties relating to the design, construction and/or composition of such Public Improvements. Notwithstanding the preceding, acceptance of the Public Improvements will be conditioned on City's receipt of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to City, provided however that such warranty or warranties may be provided by Company's contractor or contractors directly to City and are not required from Company, and that any such warranties will commence on the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

(b) Company will dedicate all Public Improvements and Dedicated Property to City before City is obligated to issue a certificate of occupancy for any Building. Upon acceptance by City (which acceptance shall not be unreasonably withheld, delayed, or conditioned, but may include, among other reasonable conditions, a warranty as set forth in Section 4.3(a), the Public Improvements will become public facilities and property of City, and City thereafter will be solely responsible, at City's sole cost and expense, for all subsequent maintenance, replacement, or repairs of the Public Improvements. Company assumes the risk of any and all loss, damage or claims to all Public Improvements unless and until such Public Improvements are accepted by City at which point such risk of loss, damage or claims shall transfer to City. With respect to any Claims arising prior to acceptance of the Public

Improvements by City, Company will bear all risk of, and will Indemnify City and the City Indemnified Persons against any Claim arising prior to City's acceptance of the Public Improvements from any bodily injury or property damage to any Person, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of City and City Indemnified Persons. Company's indemnification obligations under this Section 4.3 shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

4.4 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Company will obtain and provide to or cause to be obtained and provided to City certificates of insurance showing that Company or any entity engaged by Company to construct the Public Improvements is carrying, or causing its contractor(s) to carry, builder's risk insurance, commercial general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit D. 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 any such liability policies.

4.5 Landscaping and Specialty Features.

(a) Right-of-Way Landscaping. Company shall install and maintain or cause to be installed and maintained the landscaping both within and adjacent to the right-of-way in accordance with Applicable Laws (including but not limited to the Zoning), and applicable Development Unit Plans and Specific Plans for the Project (the "**ROW Landscaping**"). Thereafter, Company, at its sole cost and expense, shall obtain right-of-way permits (on an annual basis) and maintain the ROW Landscaping.

(b) Specialty Features and Materials. Company may design and install (or cause to be designed and installed) in public streets on the Property specialty poles for traffic control and street name signs, specialty street and sidewalk lighting, specialty street signage, and specialty paving materials (the "**Specialty Features and Materials**") in compliance with Applicable Laws and subject to Company and City, each in their sole discretion, entering into a maintenance agreement for the maintenance of the Specialty Features and Materials which must include, at a minimum, provisions for the Company to provide City with (i) extra quantities of Specialty Features and Materials, in amounts as determined by the City's Traffic Engineer, in his or her sole discretion, for use in City maintenance, repair and replacement on the public streets, (ii) funds, on an annual basis, to offset the City's costs to perform maintenance of, or repairs to, the Specialty Features and Materials in the public streets; and (iii) the annual adjustment of the funds Company provides to the City for the City's costs to maintain, repair, and replace the Specialty Features and Materials in the public streets.

(c) Satisfying the Maintenance Obligations in the Existing Community Maintenance Agreement. A portion of the property in the PADA is governed in part by a community maintenance agreement among DMB Mesa Proving Grounds LLC, a Delaware limited liability company, Eastmark Community Alliance, Inc., an Arizona nonprofit

corporation, and City, as amended (the "**Community Maintenance Agreement**"). The Property under this Agreement is not covered under the current Community Maintenance Agreement. Company, however, may satisfy its obligations in this Section 4.5, if, and to the extent, Company's obligations as to the Property are included in the Community Maintenance Agreement by future amendment.

4.6 Company Features. Company must prominently display and maintain monumentation, landscaping and other distinctive features on the Property at locations along Elliot Road and Ellsworth Road, providing unique and recognizable association with the development.

4.7 Quality. Company, at Company's sole cost and expense, will design and construct the Project in compliance with the design guidelines in the Community Plan, any applicable Development Unit Plans, and the City's Quality Development Design Guidelines.

4.8 Water Storage, Conservation and Efficiency.

(a) Company will design, engineer, construct, operate, and maintain improvements that provide for water storage on the Property, sufficient to accommodate the estimated 48-hour peak day demand, and which otherwise accommodates the demands of the Project and mitigates possible damage in the event the water supply is temporarily interrupted.

(b) Company acknowledges that water usage at the Property is subject to the Groundwater Code.

(c) Company will design and install water-efficient landscaping and irrigation systems on the Property. Company must xeriscape all landscaped areas on the Property unless alternative landscaping is approved by City.

4.9 Private Wastewater System. Company must design and install wastewater discharge metering equipment (the "**Metering Equipment**"), subject to prior approval by City, which will not be unreasonably withheld, conditioned or delayed). The Metering Equipment must be located within an easement (or right-of-way) on the Property that is accessible to City and that accurately measures the level and rate of wastewater discharged. Due to the evaporative nature of the operations, only industrial wastewater discharge will be metered. Company is solely responsible, at its sole cost and expense, for compliance with all wastewater permitting and discharge requirements under Applicable Laws, including but not limited to Title 8, Chapter 4 of the City Code and all pretreatment requirements adopted thereunder, as applicable at the time of discharge. As of the Effective Date City does not have specific numeric discharge limitations for total dissolved solids but may adopt such limitations (as well as other general and specific prohibitions, categorical standards and local limits) in the future, which will be applicable to Company, provided however, City shall not adopt any such pretreatment requirements that do not apply equally to similarly situated wastewater user classes of City, nor enforce pretreatment requirements against Company in a manner different from similarly situated wastewater user classes of City.

5. CITY UNDERTAKINGS. City hereby agrees to the following (collectively, the "**City Undertakings**"):

5.1 Customized Review Schedule. City will review and approve (if they comply with Applicable Laws) all construction plans, applications, and other submissions by or on behalf of Company according to the customized review schedule developed by City and Company in accordance with Exhibit E. The standard permit fees will be charged to the Project consistent with City's adopted fee schedule. City will not require Company to pay an additional fee for expediting the processing and approval of Company's submittals through the customized review schedule.

5.2 Acceptance and Maintenance of Public Improvements. City will accept title to, and will maintain, the Public Improvements in accordance with Section 4.3.

5.3 Federal Foreign Trade Subzone. Upon the request of Company, the City, at Company's cost and expense and subject to the approval of the City Council acting in its sole discretion, will enter into the required operation agreement and provide support and assistance with other necessary steps in obtaining and activating Federal Foreign Trade designation for the Property or Buildings within Foreign Trade Zone #221.

6. UTILITY SERVICE. All utility service provided by City to the Property shall be subject to the following:

6.1 Municipal Utility Services Generally. All utility service to the Property and the Project (i.e., all permitted uses on the Property) will be provided in the manner provided to other similarly situated customers of City (e.g., Commercial and Industrial Large Water Service customers, schedule W31.1). Company agrees and acknowledges that City utility service is governed by, and subject to the terms and limitations of, the Terms and Conditions, the City Code, the Water Shortage Management Plan, and all other Applicable Laws. Any Applicable Laws adopted by the City regarding utility services must be implemented with reasonable uniformity as to similarly situated customer classes and in a manner that is not unduly discriminatory to Company. Utility service will be provided subject to Company's payment of the then-applicable rates, fees and charges and Company's compliance with the SSA, Terms and Conditions, the City Code, the Water Shortage Management Plan, and all other Applicable Laws. The City shall not create any special classification, rate, fee or charge that is unduly discriminatory against Company; provided, however, the foregoing provision shall not preclude the City's adoption of rates or rate components that are based, in whole or in part, on customer peak demands.

6.2 Water and Wastewater Utility Service. All water utility service to the Property and the Project (i.e., all permitted uses on the Property) is subject to the SSA in which Company, by (among other obligations) acquiring and transferring to City Long-Term Storage Credits (as that term is defined in the SSA), is established as an MLM Customer. Company acknowledges and agrees that if it fails to establish MLM Customer status, or if its status as an MLM Customer is otherwise rescinded or revoked (after such notice and opportunity to cure as is set forth in the SSA is provided to Company), then water utility service shall be that provided

by City to non-MLM customers. Wastewater service shall be provided to the Property and the Project subject to Section 4.9 of this Agreement.

6.3 Water and Wastewater Improvements. The City has, and will have, as part of its normal water treatment and distribution system, capacity capable of delivering a peak hour demand of up to 265 KGal for all water service to the Property and the Project (i.e., all permitted uses on the Property). Water metering and associated backflow and other equipment installed for the Property (all of which must be installed and maintained at Company's sole cost and expense) will also be consistent with, but not in excess of, 265 KGal of peak hour demand (with reasonable redundancy to avoid a single point of failure), subject to Company's status as an MLM Customer. The City's water system is generally operated at pressures between 40 and 100 PSI. The City has, and will have, as part of its normal wastewater collection and treatment system, capacity capable of receiving peak wastewater flows up to i) 2,200 gallons per minute, ii) 135 KGal per hour, and (iii) 2 million gallons per day from the Property and the Project (i.e., all permitted uses on the Property) subject to Company's compliance with Section 4.9. The existence and description of current and intended future system capacity and operational practices during normal operations (as described in this Section 6.3 and this Agreement) is not, and shall not be construed to be, a warranty or guarantee by City to deliver water or receive wastewater in any particular volume or at any particular pressure, and nothing in this Agreement constitutes a transfer or conveyance of ownership of any water rights by City to Company.

6.4 Moratorium. Subject to Company's compliance with this Agreement and the SSA, for any moratorium adopted pursuant to A.R.S. § 9-463.06, Company, during the Term, is entitled to a waiver under A.R.S. § 9-463.06(D) to develop the Property and use any Long-Term Storage Credits (as transferred by Company to City pursuant to the SSA) that remain unused prior to such moratorium's adoption, which unused Long-Term Storage Credits shall be considered and deemed to be the water resources committed to the development of the Project and the Property under A.R.S. § 9-463.06.

6.5 Utility Buy-In Program. Company may participate in the City's utility buy-in program under Mesa City Code 9-6-2(D)(4), if available, to seek proportionate reimbursement of the shared costs from subsequent users for any regional water and sewer Public Improvements.

7. EASTMARK PARKWAY. The Parties acknowledge and agree that the alignment and location of the Eastmark Parkway (formerly "Spine East") will be as depicted on Exhibit B; however, if Company fails to Commence Construction of the Initial Phase within two (2) years from the Effective Date, City, in its sole discretion, may realign, relocate, or both, the Eastmark Parkway.

8. CITY REPRESENTATIONS. City represents and warrants to Company that:

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

8.2 All consents and approvals necessary to City's execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with City's execution, delivery and performance of this Agreement.

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

8.4 As of the Effective Date of this Agreement, City has no knowledge that the execution, delivery and performance of this Agreement by City is prohibited by, or conflicts with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

8.5 City has not accepted and shall not accept any bribe nor committed and shall not commit fraud or any other corrupt or criminal act in connection with negotiation or performance of this Agreement.

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

8.7 As of the Effective Date of this Agreement, to the actual knowledge of City, MPG and City are not in default in the performance of its obligations under the PADA. The term "actual knowledge" as used in this Section 8.7 means the actual knowledge of JD Beatty, Senior Project Manager, Office of Economic Development. Mr. Beatty is not a Party to this Agreement, and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or the City's representations, warranties, or both, herein being or becoming untrue, inaccurate or incomplete in any respect.

9. COMPANY REPRESENTATIONS. Company represents and warrants to City that:

9.1 Company has the full right, power and authority to enter into this Agreement and perform each of the obligations and undertakings of Company under this Agreement, and Company's execution, delivery and performance of this Agreement has been duly authorized and agreed to in compliance with the Company's organizational documents.

9.2 All consents and approvals necessary to Company's execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with Company's execution, delivery and performance of this Agreement.

9.3 As of the Effective Date of this Agreement, Company knows of no litigation, proceeding or investigation pending or threatened in writing against or affecting Company contesting the validity or enforceability of this Agreement or Company's performance under this Agreement.

9.4 As of the Effective Date of this Agreement, Company has no knowledge that the execution, delivery and performance of this Agreement by Company is prohibited by, or conflicts with, Company's organizational documents or any other agreements, instruments, judgments or decrees to which Company is a party or to which Company is otherwise subject.

9.5 Company 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.

9.6 Company has not accepted and shall not accept any bribe nor committed and shall not commit fraud or any other corrupt or criminal act in connection with negotiation or performance of this Agreement.

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

10. EVENTS OF DEFAULT; REMEDIES.

10.1 Events of Default by Company. "**Default**" or an "**Event of Default**" by Company under this Agreement will mean one or more of the following (subject to notice and cure in Section 10.3):

(a) Any representation or warranty made in this Agreement by Company was both material and materially inaccurate when made;

(b) Company transfers or attempts to transfer or assign this Agreement in violation of Section 12.7; or

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

10.2 Events of Default by City. Default or an Event of Default by City under this Agreement will mean one or more of the following (subject to notice and cure in Section 10.3):

(a) Any representation or warranty made in this Agreement by City was both material and materially inaccurate when made;

(b) City fails to observe or perform any obligation under Section 6.3 or Section 6.4; or

(c) City fails to observe or perform any covenant, obligation or agreement required of it under this Agreement not listed in Sections 10.2(a) or (b).

10.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written notice from the other Party, proceed promptly

to cure or remedy such Default and, in any event, such Default must be cured within thirty (30) days after receipt of such notice; or, if such Default is of a nature that, with reasonable diligence, is not capable of being cured within thirty (30) days, the cure must be commenced within such period and diligently pursued to completion within a reasonable period of time.

10.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 10.3 of this Agreement, the other Party may take the following actions:

(a) Remedies of City. City's exclusive remedies for an Event of Default by Company will consist of, and will be limited to, the following:

(i) For any Event of Default under Section 10.1(a), or Section 10.1(c), actual damages or special action or other similar relief (whether characterized as mandamus, injunction, specific performance, or otherwise), requiring Company to undertake and to fully perform its obligations under this Agreement.

(ii) For any Event of Default under Section 10.1(b), terminate this Agreement as to the portion of the Property that Company transferred or assigned in violation of Section 12.7.

(iii) The above limitations on City's remedies will not apply to Company's obligations to Indemnify under this Agreement.

(b) Remedies of Company. Company's exclusive remedies for an Event of Default by City will consist of, and will be limited to, the following:

(i) As to any Event of Default under Section 10.2(a), termination of this Agreement.

(ii) As to any Event of Default under Section 10.2(b), injunction, injunctive relief, specific performance, declaratory action, special action or other similar relief (whether characterized as mandamus, injunctive relief, specific performance, or otherwise) declaring and requiring City to recognize the rights obtained by Company pursuant to this Agreement for the Project and the Property under A.R.S. § 9-463.06; and to require City to provide service consistent with the service standards set forth in Mesa City Code 8-10-6, as amended from time to time (and any similar or replacement Mesa City Code provision or ordinance).

(iii) As to any Event of Default under Section 10.2(c), injunction, injunctive relief, specific performance, declaratory action, special action or other similar relief (whether characterized as mandamus, injunctive relief, specific performance, or otherwise) requiring City to undertake and fully perform or observe and comply with such obligations, as applicable.

(iv) Notwithstanding any of the foregoing language in Section 10.4(b)(ii) through Section 10.4(b)(iii), in no event shall City be liable for any damages

whatsoever as a result of a Default under this Agreement by City, whether such damages are actual, direct, indirect, consequential, punitive or of any other nature; and further, injunction, injunctive relief, specific performance, declaratory action, special action or other similar relief (whether characterized as mandamus, injunctive relief, specific performance, or otherwise) will not be available in a manner which requires the City to: provide a specific level of service at any given time, to acquire water supplies, to drill any well, to construct, expand, or modify a water or wastewater treatment plant, or to construct, expand, or modify any other part of the water or wastewater utility system, including but not limited to, any transmission or distribution lines, pipes, valves, lift stations, pumps or other equipment. In no event shall City be liable to Company for any damages whatsoever as a result of an Event of Default by City, whether such damages are actual, direct, indirect, consequential, punitive or of any other nature.

10.5 Consequential Damages. Neither Party shall be liable to the other Party for exemplary, consequential, indirect, incidental, punitive, special, or any other similar damages. Notwithstanding the preceding, any limitations of liability will not apply to obligations to Indemnify under this Agreement.

10.6 Unrelated Remedies of City and Company. Nothing in this Agreement shall alter the penalties for violation of any Applicable Laws, nor shall it otherwise alter applicable penalties for nonpayment of the then applicable utility rates, fees and charges. Nothing in this Agreement waives the City's obligations as a municipality with respect to its municipal services and municipal utilities to the Property in accordance with Applicable Laws, including but not limited to the Terms and Conditions.

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

10.8 Rights and Remedies Cumulative. Except where exclusive remedies, sole remedies, or both are expressly provided herein, the rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10.9 Informal Resolution and Mediation.

(a) If there is a dispute under this Agreement, the Parties agree that the City Representative and Company Representative shall promptly meet (not more than five (5) business days after notice) to resolve the dispute. If these representatives are unable to resolve

the dispute, Company shall designate a person that has final authority to resolve the dispute and this person shall meet with the City's City Manager to seek resolution of the dispute.

(b) Nothing in this Section 10.9 alters the obligation of Company to observe the requirements (including, but not limited to, times for filing) regarding notices of claims against City; and further nothing in this Section 10.9 suspends or tolls any applicable statute of limitations.

11. DESIGNATED REPRESENTATIVES AND COOPERATION.

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

11.2 Continued Cooperation. City and Company agree they will maintain an ongoing relationship and use good faith and reasonable efforts to coordinate development of the Property and the Project and methods to mitigate any potential impacts on each other's operations.

12. MISCELLANEOUS PROVISIONS.

12.1 Indemnity of City by Company. Company will pay, defend, indemnify and hold harmless (collectively, "**Indemnify**") City and its City Council members, officers, officials, agents, volunteers and employees (each, a "**City Indemnified Person**," and, collectively, "**City Indemnified Persons**") 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 Persons by Third Parties ("**Claims**," or, individually, a "**Claim**") to the extent such Claims arise from or relate in any way, in whole or in part, to any Default or Event of Default by Company. Subject to the following paragraph, such obligation to Indemnify shall extend to and encompass all costs incurred by the City Indemnified Person in defending against the Claims, including but not limited to attorney, witness and expert fees, and any other litigation-related expenses. The obligations of Company under this Section 12.1 shall survive the expiration or earlier termination of this Agreement for a period of two (2) years.

Promptly after City receives written notice or obtains actual knowledge of any pending or threatened Claim against City that may be subject to Company's obligations to Indemnify under this Agreement, City will deliver written notice thereof to Company, and City will tender sole control of the indemnified portion of the legal proceeding to Company (provided that Company accepts such tender), but City shall have the right to approve counsel, which approval shall not be unreasonably withheld, conditioned, or delayed. City's failure to deliver

written notice to Company within a reasonable time after Company receives notice of any such Claim shall relieve Company of any liability to the City under this indemnity only if and to the extent that such failure is prejudicial to Company's ability to defend such action. Upon Company's acceptance of a tender from City without a reservation of right, City may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Company's right to defend the Claim.

12.2 Defense of Agreement. 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 City or Company as a party or which challenges the authority of the Parties to enter into or perform any of its obligations hereunder, the Parties may jointly cooperate to defend such challenge. In the event either Party does not desire to jointly participate in such defense, such Party shall cooperate in a commercially reasonable manner in the event the other Party desires to undertake such a defense. Provided further, the Party that chooses to undertake such defense shall do so at its sole cost and expense. So long as one Party is actively defending, the remaining Party will not terminate this Agreement (except for a termination pursuant to Section 12.3).

12.3 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, 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 City and Company 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 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), City shall be entitled to terminate this Agreement, except if Company 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, City may terminate this Agreement and the Parties shall have no further rights, interests, or obligations in this Agreement or claims against the other Party for a breach or Default under this Agreement.

12.4 Non-Appropriations. Pursuant to A.R.S. § 42-17106 and Applicable Laws, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. The City intends to perform its obligations set forth in this Agreement to the extent funds required to perform such obligations are legally appropriated in accordance with Applicable Laws. The City staff will actively request funding for future fiscal periods in order to satisfy its obligations set forth in this Agreement; however, if the City Council does not appropriate sufficient money to meet the City's obligations under this Agreement, City and Company will negotiate in good faith to modify this Agreement so City is in compliance with its obligations based on the appropriated funding; and provided further that if City and Company are not able (after good faith attempt) to so modify this Agreement, City will have the right on the last day of the fiscal period for which funds were legally available to

terminate its obligations under this Agreement to the extent reasonably necessary based on the non-appropriation.

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

12.6 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the United States District Court for the District of Arizona (or, as may be appropriate, in the Justice Courts of the County, or in the Superior Court of the State in and for the County , if, but only if, the District Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 12.6 for reason of diversity or other reason. The waiver by Company of its right to seek transfer or removal of any action commenced under this Agreement to any other court or any other jurisdiction constitutes material consideration to the City for its entering into this Agreement, and without which City would not have entered into this Agreement with Company.

12.7 Assignment and Transfer.

(a) Restriction on Transfers. Company acknowledges and agrees that City has entered into this Agreement, and has offered the benefits of this Agreement to Company on the assumption, and with the expectation, that Company will continue to operate the Project during the Term. Accordingly, Company agrees that no assignment or similar transfer of Company's interest in this Agreement, or in the current ownership or control of Company (each, a "**Transfer**") shall occur without the prior written consent of City, which consent may be given or withheld in City's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to Transfers to an Affiliate of Company, so long as Company provides notice of such assignment to City and certifies to City that the control of the Affiliate transferee is materially the same as the control of Company as of the Effective Date. No Transfer shall release or discharge Company from any of its obligations arising in or under this Agreement prior to the Transfer, including but not limited to the obligations to Indemnify set forth in Section 12.1, unless upon any Transfer, the transferee shall have fully and unconditionally assumed in writing all obligations of Company arising in or under this Agreement, including but not limited to all obligations to Indemnify set forth in Section 12.1.

(b) Notwithstanding anything in Section 12.7(a) to the contrary, after ten (10) years from Completion of Construction by Company of a minimum of two million seven hundred thousand (2,700,000) square feet of Building Gross Area, the foregoing restrictions on Transfers in Section 12.7(a) shall no longer apply; and Company may Transfer Company's interest in the Property (or a portion thereof) or this Agreement, in whole or in part, without prior written consent of City; provided, however, that transferee owns the portion of the Property that is the subject of the Transfer and the associated improvements on the Property, and fully and unconditionally assumes in writing all obligations of Company

arising in or under this Agreement from and after the effective date of such Transfer to the extent applicable to the portion of the Property acquired by the transferee, including but not limited to all obligations to Indemnify set forth in Section 12.1.

(c) No voluntary or involuntary successor in interest to Company shall acquire any rights or powers under this Agreement, except as expressly set forth herein, and any Transfer in violation of this Agreement shall be void, and not voidable.

(d) Assignment by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable without the prior express written consent of Company, which consent may be given or withheld in Company's sole and unfettered description.

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

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

12.10 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement will be in writing and will be given by (i) personal delivery, or (ii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

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

Mesa, Arizona 85201

and: City of Mesa
Attn: Economic Development Director
20 East Main Street
Mesa, Arizona 85201

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

<u>If to Company</u>: Redale LLC
c/o Quarles & Brady LLP
Attn: Derek Sorenson
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391

(b) <u>Effective Date of Notices</u>. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice will be given as herein provided. Any notices permitted hereunder may be given by a Party's legal counsel.

12.11 <u>Time of Essence</u>. Time is of the essence of this Agreement and each provision hereof.

12.12 <u>Section Headings</u>. The section headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

12.13 <u>Attorneys' Fees and Costs</u>. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, each Party shall bear its own cost for any such dispute and will not be entitled, and hereby waives any right, to reimbursement of any attorney's fees or any costs or fees.

12.14 <u>Waiver</u>. Without limiting the provisions of <u>Section 10.7</u> of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right,

remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

12.15 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for: (i) transferees that comply with Section 12.7 or Lenders under Section 12.25 to the extent that they assume or succeed to the rights or obligations, or both, of Company under this Agreement, and (ii) City Indemnified Persons referred to in the indemnification provisions of Section 12.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

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

12.17 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.

12.18 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. The Parties will take all actions necessary to implement, evidence, and enforce this Agreement.

12.19 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 falls on a Friday, Saturday, Sunday, a legal holiday, or a day on which national banking associations are not open for general banking business, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Friday, Saturday, Sunday, a legal holiday, or a day on which national banking associations are not open for general banking business.

12.20 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 will be given or denied by such Party in its reasonable discretion, not in an unreasonable manner to be conditioned or delayed, unless this Agreement expressly provides otherwise. Any consent or approval required by this Agreement may be provided by the City Manager (or designee), unless otherwise specified or required by Applicable Laws. In addition, the City Manager (or designee) is expressly authorized to execute and deliver all amendments to

this Agreement and other transaction documents required by, contemplated under or authorized in this Agreement.

12.21 Covenants Running With Land; Inurement. The covenants, conditions, terms, and provisions of this Agreement, including but not limited to the limitations and restrictions on utilities and use of the Property, will run with the Property and will be binding upon, and will 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 will include any such Party's permitted successors and assigns.

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

12.23 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Company. Within ten (10) days after any amendment to this Agreement has been signed by the Parties, such amendment will be recorded in the Official Records of the County. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" will mean this Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

12.24 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.

12.25 Rights of Lenders.

(a) City is aware that Company may obtain financing or refinancing for acquisition, development and/or construction of the real property and the Project 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**").

(b) Company shall have the right at any time, and as often as it desires, to finance or refinance the acquisition, development and/or construction of the real property and Project to be constructed on the Property, in whole or in part, and to secure such financing with a lien or liens against the Property.

(c) Notwithstanding any other provision of this Agreement, Company may collaterally assign all or part of its rights and duties under this Agreement as security to any

Lender without such Lender assuming the obligations of Company under this Agreement, but without releasing Company from its obligations under this Agreement.

(d) In the event of an Event of Default by Company, City will provide notice of such Event of Default, at the same time notice is provided to Company, to not more than two (2) of such Lenders as previously designated by Company to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to City in accordance with Section 12.10. City will give Company copies of any such notice provided to such Designated Lenders and, unless Company notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) City of Mesa business days after Company receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Company may provide notices to other Lenders. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Company's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Company under this Agreement. City will, at any time upon reasonable request by Company, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect, (ii) no Event of Default by Company exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default), and (iii) such other matters as institution lenders typically require in financings similar to the Financing. Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in such form requested by Lender that is acceptable to City in its sole discretion and that does not provide for the subordination by City of its rights and interest in this Agreement or for any changes to any of the terms and conditions of this Agreement.

12.26 Nonliability of City Employees, Officials, Etc., and of Employees, Shareholders, Members and Partners, Etc. of Company. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Company under this Agreement will be limited solely to the assets of Company and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of Company or any of its constituent equity owners; (ii) the shareholders, members or managers or constituent equity owners of Company; or (iii) officers of Company.

12.27 No Boycott of Israel. To the extent enforceable under Applicable Laws, Company 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.

12.28 Proposition 207 Waiver. By executing this Agreement, Company, on behalf of itself and all successors-in-interest to all or any portion of the Property hereby fully, completely and unconditionally waives any right to claim diminution in value or claim for just

compensation for diminution in value under A.R.S. § 12-1134, et seq. arising out of any City action permitted to be taken by City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims and causes of action that may arise or may be asserted under A.R.S. § 12-1134, *et seq*. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property respecting any City actions permitted to be taken by City pursuant to this Agreement.

12.29 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS EVIDENCE OF SUCH WAIVER.

(SIGNATURES ON THE FOLLOWING PAGES)

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

CITY:

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: ________________________________

Name: ______________________________

Title: ________________________________

ATTEST:

By: ____________________________
City Clerk

APPROVED AS TO FORM:

By: ____________________________
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _______________, 2021, by ______________________________________ the ___________________ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing Development Agreement on behalf of City.

____
Notary Public

My commission expires:

____

COMPANY:

REDALE LLC, a Delaware limited
liability company

By: ______________________________

Name: ____________________________

Title: ______________________________

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _______________, 2021, by _________________, the __________________ of Redale LLC, a Delaware limited liability company, the Company named in the foregoing Development Agreement, who acknowledged that he/she signed the foregoing Development Agreement on behalf of Company.

____
Notary Public

EXHIBIT A TO DEVELOPMENT AGREEMENT

Legal Description of the Property

THAT PORTION OF SECTION 15, TOWNSHIP 1 SOUTH, RANGE 7 EAST, GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 15 FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 15 BEARS NORTH 0°42'08" WEST, A DISTANCE OF 2638.00 FEET;

THENCE ALONG THE WEST LINE OF SAID SECTION 15, NORTH 0°42'08" WEST, A DISTANCE OF 46.49 FEET;

THENCE NORTH 89°17'52" EAST, A DISTANCE OF 65.00 FEET TO THE EAST LINE OF THE WEST 65.00 FEET OF SAID SECTION 15 AND ALSO BEING THE POINT OF BEGINNING;

THENCE ALONG SAID EAST LINE NORTH 0°42'08" WEST, A DISTANCE OF 2591.44 FEET;

THENCE CONTINUING ALONG SAID EAST LINE NORTH 0°35'07" WEST, A DISTANCE OF 2057.13 FEET;

THENCE NORTH 89°24'53" EAST, A DISTANCE OF 10.00 FEET TO THE EAST LINE OF THE WEST 75.00 FEET OF SAID SECTION 15;

THENCE ALONG SAID EAST LINE NORTH 0°35'07" WEST, A DISTANCE OF 484.72 FEET;

THENCE NORTH 44°53'57" EAST, A DISTANCE OF 21.03 FEET TO THE SOUTH LINE OF THE NORTH 65 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 15;

THENCE ALONG SAID SOUTH LINE SOUTH 89°36'59" EAST, A DISTANCE OF 2549.12 FEET;

THENCE ALONG THE SOUTH LINE OF OF THE NORTH 65 FEET OF THE NORTHEAST QUARTER OF SAID SECTION 15, SOUTH 89°38'13" EAST A DISTANCE OF 1366.43 FEET;

THENCE DEPARTING SAID SOUTH LINE, SOUTH 0°43'30" EAST A DISTANCE OF 2431.88 FEET;

THENCE NORTH 89°45'48" WEST A DISTANCE OF 1254.12 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 3859.50 FEET, A CENTRAL ANGLE OF 02°18'33" AND A CHORD THAT BEARS SOUTH 15°05'49" EAST, 155.54 FEET;

THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 155.55 FEET;

THENCE SOUTH 73°44'54" WEST A DISTANCE OF 81.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 00°55'59" AND A CHORD THAT BEARS SOUTH 16°43'05" EAST, 64.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 64.17 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°00'06" AND A CHORD THAT BEARS SOUTH 27°18'58" WEST, 28.04 FEET;

THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 31.07 FEET;

THENCE SOUTH 71°49'01" WEST A DISTANCE OF 19.43 FEET;

THENCE SOUTH 18°10'59" EAST A DISTANCE OF 24.00 FEET;

THENCE NORTH 71°49'01" EAST A DISTANCE OF 18.83 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 90°04'21" AND A CHORD THAT BEARS SOUTH 63°08'48" EAST, 28.30 FEET;

THENCE ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 31.44 FEET TO THE EASTERLY LINE OF TRACT Q ACCORDING TO SAID MINOR LAND DIVISION RECORDED IN BOOK 1542, PAGE 44 AND TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 00°04'20" AND A CHORD THAT BEARS SOUTH 18°08'48" EAST 4.97 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 4.97 FEET TO THE MOST NORTHERLY CORNER OF PARCEL 2 ACCORDING TO SAID MINOR LAND DIVISION RECORDED IN BOOK 1542, PAGE 44, OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 2, SOUTH 71°49'01" WEST, A DISTANCE OF 169.00 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2 AND TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING

A RADIUS OF 4109.50 FEET, A CENTRAL ANGLE OF 02°10'52" AND A CHORD THAT BEARS SOUTH 19°16'24" EAST 156.43 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID PARCEL 2 AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 156.44 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, NORTH 69°38'10" EAST, A DISTANCE OF 169.00 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2 AND THE EASTERLY LINE OF TRACT Q ACCORDING TO SAID MINOR LAND DIVISION AND TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 11°42'22" AND A CHORD THAT BEARS SOUTH 26°13'01" EAST 803.68 FEET;

THENCE ALONG SAID EASTERLY LINE OF SAID TRACT Q AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 805.08 FEET TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°32'39" AND A CHORD THAT BEARS SOUTH 12°42'08" WEST 28.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 31.26 FEET;

THENCE SOUTH 57°28'28" WEST, A DISTANCE OF 19.11 FEET;

THENCE SOUTH 32°31'32" EAST, A DISTANCE OF 23.00 FEET;

THENCE NORTH 57°28'28" EAST, A DISTANCE OF 19.11 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°32'39" AND A CHORD THAT BEARS SOUTH 77°45'12" EAST, A DISTANCE OF 28.17 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 31.26 FEET TO THE EASTERLY LINE OF SAID TRACT Q AND TO A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 3940.50 FEET, A CENTRAL ANGLE OF 07°46'24" AND A CHORD THAT BEARS SOUTH 36°52'05" EAST 534.19 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 534.60 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q, SOUTH 40°45'16" EAST, A DISTANCE OF 4.23 FEET;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT Q, SOUTH 04°14'44" WEST, A DISTANCE OF 28.28 FEET TO THE NORTH LINE OF EAST WARNER ROAD ACCORDING TO THAT CERTAIN FINAL PLAT OF EASTMARK DEVELOPMENT UNITS 3/4 INFRASTRUCTURE FOR COMMERCIAL PARCEL AND

RECORDED IN BOOK 1462, PAGE 27 OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG SAID NORTH LINE OF WARNER ROAD THE FOLLOWING EIGHT (8) COURSES TO WIT:

THENCE SOUTH 49°14'44" WEST, A DISTANCE OF 293.67 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 3468.00 FEET, A CENTRAL ANGLE OF 28°51'21" AND A CHORD THAT BEARS SOUTH 63°40'24" WEST, A DISTANCE OF 1728.19 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 1746.59 FEET;

THENCE NORTH 56°14'04" WEST, A DISTANCE OF 28.04 FEET;

THENCE NORTH 10°44'08" WEST, A DISTANCE OF 12.13 FEET;

THENCE SOUTH 79°15'52" WEST, A DISTANCE OF 81.00 FEET;

THENCE SOUTH 10°44'08" EAST, A DISTANCE OF 12.36 FEET;

THENCE SOUTH 34°35'59" WEST, A DISTANCE OF 28.12 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 3468.00 FEET, A CENTRAL ANGLE OF 08°56'40" AND A CHORD THAT BEARS SOUTH 84°34'22" WEST 540.85 FEET;

THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 541.40 FEET TO THE EAST LINE OF PARCEL 2 ACCORDING TO THAT CERTAIN MINOR LAND DIVISION RECORDED IN BOOK 1542, PAGE 46 OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG THE EAST LINE OF SAID PARCEL 2, NORTH 0°57'17" WEST, A DISTANCE OF 167.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2 AND TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 3301.00 FEET, A CENTRAL ANGLE OF 0°42'05" AND A CHORD THAT BEARS SOUTH 89°23'45" WEST 40.41 FEET;

THENCE ALONG THE NORTH LINE OF SAID PARCEL 2 AND ALONG THE ARC OF SAID CURVE A DISTANCE OF 40.41 FEET;

THENCE CONTINUING ALONG SAID NORTH LINE SOUTH 89°44'47" WEST, A DISTANCE OF 109.60 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2;

THENCE ALONG THE WEST LINE OF SAID PARCEL 2, SOUTH 0°15'13" EAST, A DISTANCE OF 167.00 FEET TO THE SOUTH LINE OF TRACT N ACCORDING TO

SAID MINOR LAND DIVISION RECORDED IN SAID BOOK 1542, PAGE 46 OF THE OFFICIAL RECORDS OF MARICOPA COUNTY;

THENCE ALONG SAID SOUTH LINE SOUTH 89°44'47" WEST, A DISTANCE OF 523.87 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 87°26'50" WEST, A DISTANCE OF 51.06 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE SOUTH 89°44'47" WEST, A DISTANCE OF 252.52 FEET;

THENCE CONTINUING ALONG SAID SOUTH LINE NORTH 45°28'40" WEST, A DISTANCE OF 17.75 FEET TO THE POINT OF BEGINNING.

CONTAINS 17,239,477 SQUARE FEET OR 395.7639 ACRES, MORE OR LESS.

E. ELLIOT ROAD

END EASTMARK PARKWAY ROW

EASTMARK PARCEL

17' PUFE

17' PUFE

PUFE TO EASTMARK PARCEL
27,187.407 SQ. FT.
0.62 AC.

PROPOSED PROPERTY PARCEL 1
16,289,174.885 SQ. FT.(NET)
373.95 AC.(NET)

S. ELLSWORTH ROAD

PROPOSED EASTMARK PARKWAY ROW
270,655.704 SQ. FT.
6.21 AC.

EDGECORE

81' R/W

17' PUFE

RELEASE PARCEL
652,441.680 SQ. FT.
14.98 AC.

BEGIN EASTMARK PARKWAY ROW

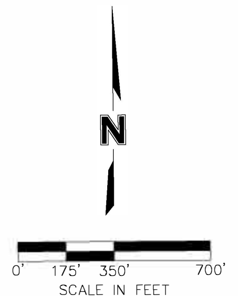
EXISTING EASTMARK PARKWAY

WARNER ROAD

SITE AREA TABLE

	PARCEL 1 =	373.95 AC.
	RELEASE PARCEL =	14.98 AC.
	EASTMARK PARKWAY ROW =	6.21 AC.
	PUFE LAND AREA TO EASTMARK PARCEL =	0.62 AC.

TOTAL SITE AREA (PER ALTA SURVEY) = 395.76 AC.



PROJECT NO: 020-1829	EXHIBIT B DEPICTION OF RELEASE PARCEL AND EASTMARK PARKWAY	olsson	7878 North 16th Street Suite 105 Phoenix, AZ 85020-5282 TEL 602.748.1000 FAX 602.748.1001	EXHIBIT
DRAWN BY: JLW				B
DATE: 05/11/2021				

EXHIBIT C TO DEVELOPMENT AGREEMENT

Description of the Public Improvements

EXHIBIT D TO DEVELOPMENT AGREEMENT

Insurance Requirements

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

A. Property. During the period of any construction involving the Public Improvements, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the period of any construction involving the Public Improvements, insurance covering the Company 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, each of the general or other contractors with which the Company 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, the Company's architect will be required to provide architect's or engineer's professional liability insurance with a limit of $1,000,000.00 per claim. 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. In connection with any construction involving the Public Improvements, the Company'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 claim. 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. CPI Adjustments. The minimum coverage limits set forth above will be adjusted every five (5) years by rounding each limit up to the million-dollar amount which is nearest the percentage of change in the Consumer Price Index (the "**CPI**") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, will be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Company'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 Company and will not contribute to it.

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

I. Waiver of Subrogation. All policies will contain a waiver of subrogation against City, its officers, officials, agents, and employees.

J. Notice of Cancellation. Company will use reasonable and good faith efforts to cause each insurance policy to 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 12.11 of the Agreement.

K. 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 Company from potential insurer insolvency.

L. Endorsements and Verification of Coverage. Company 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. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration 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 D at any time.

M. Approval. Any modification or variation from the insurance requirements in this Exhibit D 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.

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

<u>EXHIBIT E</u> TO DEVELOPMENT AGREEMENT

Customized Review Schedule

The City and Company have agreed to a Customized Review Schedule. The implementation of the Customized Review Schedule will follow periodic Project review discussions between the City's review staff and the City's development/Project team during the preparation of the project plans and documents. The City shall provide all plan review and permitting services at standard rates. Plan permit fees will be required by the City prior to issuance of construction permits. The City and Company will both provide a single point of contact during the entire plan review process.

<u>Preliminary Project Review Meetings</u>:
Preliminary project review meetings are offered by City and shall be provided at Company's request. Preliminary meetings include:

1. Initial Code assumption discussion
2. Plan Review Comment Review Session

<u>100% Construction Drawing Submittal Process:</u>

Submittal of plans for the Project will be through the DIMES system except if otherwise agreed to by City and Company. As requested, City staff will assist Company in plan submittal.

<u>Custom Plan Review Schedule</u>

A Custom Plan Review Schedule that is agreeable to the City and Company's development/Project team will be created during the preliminary Project review phase. Company's selected single point of contact must notify City point of contact prior to each Plan submittal to receive a Custom Review Schedule for that Plan submittal. Following the completion of any review, should there be only minor unresolved plan review comments that need to be addressed prior to the issuance of a building permit, the City has the option to extend the review period to allow the development/Project team time to address such minor comments without an additional review.

The Custom Plan Review Schedule applies only to Plans associated with the initial construction of onsite improvements, offsite improvements, Buildings and Additional Buildings. The Custom Plan Review Schedule does not apply to plans for future additional onsite or offsite improvements, tenant improvements, and deferred submittals.

<u>FEES:</u>

Standard permit fees will be charged to the Project consistent with the City's fee schedule, as amended from time to time. Additional fees will not be charged for the Customized Review Schedule.