WHEN RECORDED RETURN TO:

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

08-AD72

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

(MESA PROVING GROUNDS)

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

DMB MESA PROVING GROUNDS LLC,
a Delaware limited liability company

November 3, 2008

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT
(MESA PROVING GROUNDS)

THIS PRE-ANNEXATION AND DEVELOPMENT AGREEMENT (MESA PROVING GROUNDS) (the "**Agreement**") is entered into by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"), and DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company (the "**Developer**").

RECITALS

A. The Developer owns that certain real property located in Maricopa County, Arizona consisting of approximately three thousand one hundred fifty-four (3,154) acres, legally described on **Exhibit A** and depicted on **Exhibit B**, both attached hereto (the "**Property**").

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

C. The annexation and development of the Property pursuant to this Agreement and the Community Plan dated November 3, 2008 and on file with the City Clerk (the "**Community Plan**") is acknowledged by the Parties to be consistent with the Mesa 2025 General Plan (the "**General Plan**"), and the draft vision, goals and objectives of the Mesa Gateway Strategic Development Plan discussed and accepted by the City Council on September 4, 2008, and to operate to the benefit of the City, the Developer and the general public.

D. The Developer and the City believe that development of the Property pursuant to the Community Plan will enhance the viability and expansion potential of the Phoenix-Mesa Gateway Airport and will maximize the potential opportunities for job growth in the region.

E. It is envisioned that development of the Property will serve as a catalyst for the Phoenix-Mesa Gateway Airport and the area in becoming a center of regional importance. The Developer envisions an urban and dynamic mixed-used development that will create jobs for the area thus contributing to the job creation goals of the City of Mesa.

F. The Developer and the City are entering into this Agreement pursuant to the provisions of A.R.S.§ 9-500.05 in order to facilitate the annexation, proper municipal zoning designation and development of the Property by providing for, among other things: (i) conditions, terms, restrictions and requirements for the annexation of the Property by the City; (ii) conditions, terms, restrictions and requirements for the construction, installation, and funding/financing of public services/infrastructure improvements; (iii) the permitted uses for the Property; and (iv) other matters related to the development of the Property.

G. The City agrees that the Planned Community District zoning designation is an acceptable zoning designation for the Property pursuant to the General Plan. The Developer has filed a request for approval of a Planned Community District zoning designation, and has submitted the Community Plan, and Developer's requests have been assigned Case No. Z08-56, which, if approved, shall be approved by ordinance (the "**PCD**"). In connection with the

Community Plan, the Developer also has submitted a project narrative and requested, pursuant to the applicable provisions of the City Code, amendments to certain standards contained in Title 9, Chapters 5, 6, and 8 of the Mesa City Code. The PCD, once approved, along with this Agreement and the Rules, enables the Developer to implement the Community Plan, which is designed, among other things, to establish proper and beneficial land use designations and regulations, densities, provisions for public facilities, design regulations, procedures for administration and implementation and other matters related to the development of the Property. Prior to its execution of this Agreement, the City has held public hearings and received public comment and has otherwise duly considered the PCD.

H. The Developer and the City acknowledge that the ultimate development of the Property within the City is a project of such size, scope, and quality that Developer requires assurances from the City that Developer has the right to complete the development of the Property pursuant to the Regulations and Rules before it will expend substantial efforts and costs in the development of the Property, and the City requires assurances from the Developer that development of the Property will be in accordance with the Regulations and Rules.

I. Among other things, development of the Property in accordance with the Regulations and Rules will result in the planning, design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements that will support development of the Property. The public services/infrastructure improvements to be provided by the Developer, while necessary to serve development within the Property, also are needed in certain instances to facilitate and support the ultimate development of a larger land area that includes the Property. Given the regional significance of such public services/infrastructure improvements and development of the Property, the City is willing to use good faith efforts to facilitate the utilization of various public and/or quasi-public financing methods as may be provided in future amendments to this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the Parties state, confirm, and agree as follows:

AGREEMENT

I. DEFINITIONS. In this Agreement, unless a different meaning clearly appears from the context:

1.1 "Accelerated Project List" means as defined in Section 4.1.

1.2 "Accelerated Public Improvements" means as defined in Section 4.1.

1.3 "Agreement" means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and recitals hereto. References to Paragraphs or Exhibits are to this Agreement unless otherwise qualified.

1.4 "Additional Property" means as defined in Section 2.6.

1.5 "Annexation Ordinance" means as defined in Section 2.1.

1.6 "Annexation Petition" means as defined in Section 2.1.

1.7 "Applicable Wastewater Laws" means federal, state, county, city and local water laws, water quality laws, and other applicable laws (statutory and common law), ordinances, rules, regulations, permit requirements, including but not limited to requirements and regulations from Maricopa County, the Arizona Department of Water Resources ("ADWR") and the Arizona Department of Environmental Quality ("ADEQ") and the City of Mesa.

1.8 "Applicable Water Laws" means federal, state, county, city and local water laws, water quality laws, and other applicable laws (statutory and common law), ordinances, rules, regulations, permit requirements, including but not limited to requirements and regulations from Maricopa County, the ADWR and the ADEQ, and the Arizona Revised Statutes, Title 45, Chapter 1, Article 3 (pertaining to regulation of bodies of water) and Chapter 2 (Groundwater Code).

1.9 "A.R.S." means Arizona Revised Statutes.

1.10 "Arterial Median Landscaping" means as defined in Section 3.6, paragraph (c).

1.11 "CAP" means Central Arizona Project.

1.12 "CFD" means a community facilities district formed pursuant to A.R.S. §§48-701 *et seq.*

1.13 "City" means the City of Mesa, an Arizona municipal corporation (and any successor public body or officer hereafter designated by or pursuant to law).

1.14 "City Representative" means as defined in Section 6.1.

1.15 **"City Road"** means as defined in Section 3.6, paragraph (f).

1.16 "Community Plan" means as defined in Recital C.

1.17 "Component" means a discrete type of Infrastructure, and includes, by way of example only, water lines and appurtenances, sewer lines and appurtenances, roadways, street lights, landscape/hardscape improvements, and drainage improvements.

1.18 **"County Road"** means as defined in Section 3.6, paragraph (f).

1.19 "Cure Period" means as defined in Section 6.3.

1.20 "Developer" means DMB Mesa Proving Grounds LLC, a Delaware limited liability company, or its successors and assignees.

1.21 "Developer Representative" means as defined in Section 6.1.

1.22 "Development Unit Plan(s)" means a more detailed plan for a Development Unit (as defined in the Community Plan) or a portion thereof that is prepared in accordance with the requirements of the Community Plan.

1.23 "Districts" means as defined in Section 3.17.

1.24 "Effective Date" means as defined in Section 9.6, paragraph (b).

1.25 "Exchange Effluent" means as defined in Section 3.8, paragraph (c)(i).

1.26 "FCDMC" means the Flood Control District of Maricopa County.

1.27 "First Permanent Fire Station Site" means as defined in Section 3.12, paragraph (b)(i).

1.28 "Gaylord" means as defined in Section 9.6, paragraph (d).

1.29 "Gaylord Entitlements DA" means as defined in Section 9.6, paragraph (d).

1.30 "Gaylord Property" means as defined in Section 9.6, paragraph (d).

1.31 "General Plan" means as defined in Recital C.

1.32 "Great Park" means as defined in Section 3.14, paragraph (a).

1.33 "Great Park Master Plan" means as defined in Section 3.14, paragraph (a).

1.34 "Impact Fees" means as defined in Section 3.18.

1.35 "Impasse" means as defined in Section 6.2.

1.36 "Incomplete Roads" means as defined in Section 3.5, paragraph (c).

1.37 "Infrastructure" means as defined in Section 3.1.

1.38 "Infrastructure Plan" means as defined in Section 3.1.

1.39 "Inspection Services" means as defined in Section 6.4, paragraph (b).

1.40 "Library Site" means as defined in Section 3.15.

1.41 "Master Developer" means as defined in Section 6.4.

1.42 "Master Reports" means as defined in Section 3.1.

1.43 "Maximum City Cost" means as defined in Section 4.1.

1.44 "Mortgage" means as defined in Section 9.17, paragraph (a).

1.45 "Park Improvements" means as defined in Section 3.14, paragraph (b).

1.46 "Parties" means the City and the Developer collectively.

1.47 "Party" means each of the City and the Developer.

1.48 "PCD" means as described in Recital G.

1.49 "Police Substation Site" means as defined in Section 3.13, paragraph (a).

1.50 "Private Streets" means as defined in Section 3.6, paragraph (d).

1.51 "Property" means as defined in Recital A.

1.52 "Providing Party" means as defined in Section 9.16.

1.53 "Public Infrastructure" means as defined in Section 3.5.

1.54 "Recovered Effluent" means as defined in Section 3.8, paragraph (c)(i).

1.55 "Recreational Facility Site" means as defined in Section 3.14, paragraph (a).

1.56 "Regulations" means as defined in Section 2.3.

1.57 "Requesting Party" means as defined in Section 9.16.

1.58 "Requirements" means as defined in Section 2.9.

1.59 "Rules" means as defined in Section 2.3.

1.60 "Second Permanent Fire Station Site" means as defined in Section 3.12, paragraph (b)(ii).

1.61 "Segment" means a specific length or area of Infrastructure.

1.62 "Select Service Hotel(s)" means as defined in Section 2.10.

1.63 "Specialty Features and Materials" means as defined in Section 3.6, paragraph (b).

1.64 "Status Statement" means as defined in Section 9.16.

1.65 "Submitted Materials" means as defined in Section 6.4, paragraph (b).

1.66 "Superceded Regulations" means as defined in Section 2.3.

1.67 "Term" means as defined in Section 9.6, paragraph (b).

1.68 "Terms and Conditions" means those provisions adopted and amended by the City by ordinance from time to time as the terms and conditions for the sale of utilities.

1.69 "Utility Rates" means the schedules adopted and made effective from time to time via ordinance setting forth the charges, rates, surcharges, adjustments, fees, and other monies to be collected by the City for City owned utilities.

II. ANNEXATION AND DEVELOPMENT PLANS.

2.1 **Annexation Petition**. As soon as reasonably possible after execution of this Agreement by the City and the Developer, the Developer shall deliver to the City an appropriate Petition for Annexation duly executed by all necessary property owners (the "**Annexation Petition**"). Upon receipt of the Annexation Petition, the City agrees to proceed with the annexation procedures established in the provisions of A.R.S. § 9-471 *et seq.* and, if determined to be in the best interest of the City, adopt the final ordinance annexing the Property into the corporate limits of the City (the "**Annexation Ordinance**").

2.2 **Planned Community District**. The City has reviewed the Community Plan and has determined that the Community Plan is consistent with the General Plan and in conformance with the types of land uses desired by the City for the Property. Upon the approval of the PCD, the Developer shall be authorized to implement the Community Plan, and will be accorded all appropriate approvals necessary to permit the Developer to implement the Community Plan, subject to the City's approval of Development Unit Plans, site plans, subdivision plats and other similar items in accordance with the Regulations. Pursuant to the Rules and the PCD, all approvals of Development Unit Plans, subdivision plats and site plans are administrative actions. References hereafter in this Agreement to the PCD shall mean the PCD and Community Plan, as approved by Council, together with all stipulations and other provisions contained in the ordinance approving the PCD and Community Plan.

2.3 **Regulation of Development**. The development of the Property shall be in accordance with this Agreement and the PCD, if and once approved (collectively, the "**Regulations**"). The PCD shall control over conflicting City ordinances, rules, regulations, standards, procedures, and administrative policies (collectively, the "**Superceded Regulations**"), and shall be the primary regulations used by the City when reviewing and approving submittals within the Property. With the exception of the Superceded Regulations, all other applicable federal, state, county or city ordinance or officially-adopted policy shall apply to development of the Property (collectively, the "**Rules**"). If there is a conflict between the PCD and this Agreement regarding an issue, then the document that more specifically addresses the issue shall control.

2.4 **Anti-Moratorium**. The parties hereby acknowledge and agree that the development of the Property will be phased and that, for the term of this Agreement, no moratorium shall be imposed except as permitted by A.R.S. § 9-463.06 in effect on the Effective Date. The Parties agree that if a subsequent law changes or repeals the standards or language of A.R.S. § 9-463.06, which is set forth on **Exhibit C** and incorporated herein by this reference, such standards shall continue to apply to the Property. Any future City Rules imposing a

limitation on the rate, timing or sequencing of the development of property shall meet the requirements set forth on Exhibit C.

2.5 Powerline Floodway Channel. The Powerline Floodway Channel, which is owned and operated by the FCDMC, currently traverses the Property along the current Ray Road alignment. Developer and FCDMC currently are discussing the possible relocation of the Powerline Floodway Channel to facilitate development of the Property pursuant to the PCD. If the Developer and FCDMC, in consultation with the City, reach agreement regarding the relocation of the Powerline Floodway Channel, then, notwithstanding anything herein to the contrary, the City agrees that this Agreement shall be administratively amended to incorporate into this Agreement the property on which the existing Powerline Floodway Channel is located and delete from this Agreement the portion of the Property on which newly relocated Powerline Floodway Channel is located. Thereafter, the property on which the existing Powerline Floodway channel is located shall be included in the Property and shall be subject to and shall benefit from all provisions of this Agreement applicable thereto and any reference herein to the Property shall include such property. If the Powerline Floodway Channel is relocated, the City Manager is hereby given authority to effectuate the administrative amendment by substituting a revised legal description for the Property and re-recording this Agreement.

2.6 Additional Property. The City hereby agrees to consider, and, if in the best interest of the City, amend this Agreement from time to time at the request of the Developer solely to incorporate into this Agreement the whole or any portion of additional properties adjacent to or proximate to the Property (the "**Additional Property**") if and when the Developer acquires such Additional Property. Any incorporations of additional property will be considered and processed pursuant to the provisions of Title 11, Chapter 9.1 of the Mesa City Code.

2.7 Phasing. The development planned for the Property, including the infrastructure, is intended by the Developer to be carried out in phases over a significant number of years. Development of the Property is contemplated to progress in phases that may be non-contiguous until all of the Property is developed.

2.8 Development Rights. In consideration of the expenditures by the Developer for the design and planning for the PCD, the PCD, if and once approved, shall be deemed contractually vested as of the Effective Date for a period of twelve (12) years and the Developer and successor owners of the Property shall have a right to undertake and complete the development and use of the Property in accordance with the PCD. After twelve (12) years from the Effective Date, if the Developer has (i) completed construction of the on-site infrastructure listed below, and (ii) has paid to the City the entirety of the contribution toward fire protection referenced in Section 3.11, paragraph (a) in the sum of three million, three hundred thousand dollars ($3,300,000.00), then such contractual vesting shall extend for the Term of this Agreement:

(a) Four (4) miles or more of 16-24 inch diameter on-site water lines;

(b) Four (4) miles or more of 15-27 inch diameter on-site sewer lines;

(c) Two (2) miles or more of Arterial and/or District Streets exclusive of those referenced in Article IV;

(d) Mass grading to support development of portions of Development Units 1, 2 and 5.

The infrastructure improvements will be generally as depicted on **Exhibit D**. Actual location and sizes are subject to modification as approved by the City Engineer. Nothing herein affects the vesting of the PCD as a matter of common law during the Term of this Agreement or following its termination.

2.9 No Dedications or Exactions. Except for the dedications and requirements identified in the Rules and Regulations, the City agrees that it shall not attempt to acquire or require (through zoning, Development Unit Plans, subdivision, subdivision stipulations, site plan approvals or stipulations or otherwise) any requirements, reservations, conditions, or further dedications of portions of the Property or easements or other rights over portions of the Property (collectively "**Requirements**"), or money or other things of value in lieu of such Requirements.

2.10 Hotel Quality Guidelines. The Parties anticipate that certain non-resort hotels will be developed on the Property ("**Select Service Hotels**"). Select Service Hotels within Development Units 1, 2, 4, and 5 on the Property will be of a quality that would be equal to or exceed the Smith Travel Research Market Price Segments for Mid-Scale Price to Upscale such as Doubletree Club, Red Lion, Wyndham Garden Hotel, Hampton Inn & Suites, Holiday Inn & Suites, Summerfield Suites, Residence Inn, Homewood Suites, Springhill, Courtyard, Aloft, Indigo or Hyatt Place. Hotels such as Baymont Inns, Ramada Limited, Mainstay, La Quinta Inns, Comfort Inn, Quality Inn and Sleep Inn, not meeting this standard shall be discouraged. The quality of design for each Select Service Hotel constructed on the Property will be consistent with the Land Use Group as noted in the PCD within which the Select Service Hotel resides. It is anticipated that the Select Service Hotels will be in the Retreat, General Urban or Urban Core Land Use Groups. The City acknowledges and agrees that the Gaylord Project, as defined in the Gaylord Entitlements DA, does not meet the definition of Select Service Hotel, and, therefore, the provisions of this Section are not applicable to the Gaylord Project.

2.11 Continued Operations by General Motors. The City recognizes that General Motors may continue operations on a portion of the Property until December 31, 2011, and agrees that such operations shall not be affected by this Agreement and shall not be the basis for any claim of breach of this Agreement. The continued operations of General Motors as they are currently conducted shall not be the basis for a claim of noncompliance with the PCD.

2.12 Microwave Towers. In order to preserve the City's path for microwave transmissions as identified on the attached **Exhibit E**, the Developer will provide, at no cost to the City, access easements and/or sites, in locations mutually agreeable to the City and the Developer, as necessary for the City's construction, operation and maintenance of transmission apparatus. Any transmission apparatus constructed by the City shall be screened or painted, at

the City's cost, in a manner designed to harmonize such transmission apparatus with the surrounding development.

III. INFRASTRUCTURE AND CITY SERVICES.

3.1 Public Benefits. To the extent the Parties have information about the plans for development on the Property, this Agreement provides details for the coordinated planning, design, engineering, construction, acquisition, installation, and/or provision of services/infrastructure improvements as set forth in the PCD and as expected to be further developed and refined during the Development Unit Plan process or subdivision or site plan process described therein (collectively, the "**Infrastructure Plan**"). The Infrastructure Plan specifically includes, but is not limited to, the Master Drainage Report, the Master Transportation Report, the Master Potable Water Distribution Report, the Master Wastewater Report, and the Master Non-potable Water Report (collectively the "**Master Reports**"). The City Engineer and City Traffic Engineer have reviewed the Master Reports and have found them to be acceptable and in Draft Final form. The Infrastructure Plan, together with the off-site infrastructure improvements described in this Agreement, are the appropriate infrastructure improvements of the type described therein for the development of the Property contemplated by the PCD. Each Component or Segment of the infrastructure improvements identified in the Infrastructure Plan, as well as those infrastructure improvements not referenced in the Infrastructure Plan but specifically set forth in this Agreement shall be referred to herein, individually and collectively, as the "**Infrastructure**." If subsequent updates of the Master Reports, or other reports submitted at the Development Unit planning level, demonstrate the need for additional Infrastructure within the relevant Development Unit, adjacent to the Development Unit, or at any point off-site, beyond those described in the Master Reports or this Agreement, the Developer shall pay for such additional Infrastructure, or increase in the size of the planned Infrastructure (provided, however, that any additional Infrastructure shall be the financial responsibility of the Developer only if such additional Infrastructure is necessary to serve the portion of the Property for which the Reports have been updated due to changed on-site circumstances, as opposed to off-site changes in land use or use of off-site Infrastructure).

3.2 Regional Infrastructure Buy-In Fees/Off-Site Right-of-Way. Except as otherwise stated in Article IV, the City acknowledges and agrees that the Developer shall not be subject to any "buy-in fees" for off-site infrastructure already constructed by the City as of the date of this Agreement. Notwithstanding the foregoing, the Developer shall pay:

(**a**) Buy-in fees for three (3) existing projects including:

(**i**) Buy-In #12, sixteen inch (16") water line on South Ellsworth Road, constructed under City of Mesa Project 96-21. Rate equals $25.17/linear foot; and

(**ii**) Buy-In #185, sixteen inch (16") water line on East Elliot Road, constructed under City of Mesa Project 90-90. Rate equals $12.63 per linear foot; and

(**iii**) Developer's pro-rata share (based on flow capacity) of right-of-way/easement costs for the planned water line project from the CAP Canal to the City's water treatment plant in the current approximate amount of $500,000.00.

(**b**) Buy-in fees for future off-site infrastructure currently identified or identified in the future in the Master Reports or Development Unit Plans if such off-site infrastructure is constructed by a third party or the City.

(**c**) The City acknowledges and agrees that no additional right-of-way or easements are required for construction of:

(**i**) the sewer project planned for Ray Road, if constructed on the City's currently proposed alignment, set forth in **Exhibit F,** and if a construction contract is awarded by Council on or before December 31, 2009;

(**ii**) the Segment of the planned water line project from the CAP canal to the City's water treatment plant, as identified in the Master Reports as of the date of this Agreement;

(**iii**) Provided, however, the Parties acknowledge there may be nominal rights-of-way or easements that may be necessary to complete construction of the projects identified in this Section.

3.3 **Construction**. To the extent the Developer develops the Property, the Developer shall have the right and the obligation, at any time after the execution of this Agreement, to dedicate land, subject to the City's or other applicable jurisdiction's acceptance, and/or construct or cause to be constructed and installed any or all portions of the Infrastructure that relate to the portions of the Property developed by the Developer. All such construction performed by the Developer shall be performed in compliance with the Regulations and the Rules in effect at the time of such construction. The Developer, its agents, and employees, shall have the additional right, upon receipt from the City of an appropriate permit, as required by the Rules and Regulations, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to permit construction of the Infrastructure, or reasonably necessary to maintain or repair such Infrastructure, including privately-owned infrastructure, all as allowed by the permit, provided that the Developer's use of such easements and rights-of-way shall not impede or adversely affect the City's use and enjoyment thereof and provided that the Developer shall restore such easements and rights-of-way to their condition prior to Developer's entry upon completion of such construction, repairs or maintenance. Subject to obtaining the required permit from the City, and as allowed by the terms of such permit once obtained, the prior dedication of any easements or rights-of-way shall not affect or proscribe the Developer's right to construct, install, and/or provide Infrastructure thereon or thereover. The City, as necessary to implement the Infrastructure Plan, shall cooperate reasonably with: a) at the sole cost of the Developer, the abandonment of any unnecessary public rights-of-way or easements currently located on the Property and not otherwise used or required by other members of the public; (b) the Developer's requests or applications with Maricopa County or other appropriate governmental entities regarding the abandonment or acquisition of public rights-of-way or easements necessary to develop the Property; (c) establishing intergovernmental agreements with Maricopa County regarding the improvement of roads adjacent to the Property; (d) the Developer's requests to work with adjacent landowners regarding the installation of consistent landscaping within and next to perimeter arterial roadways; and (e) the Developer's requests for assistance in acquiring necessary off-site public rights-of-way or easements. If such acquisition

is determined to be feasible only by payment of above-market value or by condemnation and the City does not desire to exercise its power of condemnation, then the City will work with the Developer to find an alternative location for or consider deferring construction of the Public Infrastructure for which the necessary public rights-of-way or easements are required.

3.4 Infrastructure Assurance. Prior to the construction of any Infrastructure, or prior to the construction of Accelerated Public Improvements, the City may require the Developer to provide assurances to assure that; (i) the construction or installation of such Infrastructure being undertaken by the Developer within a particular subdivision or site plan or other Infrastructure Improvements directly related to such subdivision or site plan will be completed or, (ii) that the City will have assurances to cover funds advanced from time to time for the Project Costs (as defined in Exhibit G) of the Accelerated Public Improvements in the event that the existing lender elects to terminate this Agreement pursuant to the terms of the Existing Lender Consent attached hereto. The following methods of assurance are acceptable:

(i) Irrevocable letter of credit, in a form acceptable to the City Engineer and the City Attorney, from a recognized financial institution acceptable to the City, authorized and licensed to do business in the State of Arizona;

(ii) Cash or certified bank funds;

(iii) A surety bond, in a form acceptable to the City Engineer and the City Attorney, executed by a company acceptable to the City and licensed to do business in the State of Arizona;

(iv) Withholding of certificates of occupancy, pursuant to the applicable provisions of the Mesa City Code, or withholding the release of utility service for structures for which the Infrastructure is required;

(v) Guaranty of DMB Communities II LLC, limited to funds advanced by the City from time to time for Project Costs of the Accelerated Public Improvements, and which shall apply only in the event the existing lender elects to terminate this Agreement as provided in the Existing Lender Consent attached hereto; and

(vi) Any other method of assurance and amount of assurance agreed upon by the City and the Developer.

3.5 Dedication/Acceptance of Services/Infrastructure. The Parties hereto acknowledge and agree that the Community Plan and this Agreement provide that the City will own certain completed segments or components of the Infrastructure, including but not limited to the underlying land (the "**Public Infrastructure**"). Pursuant to the Rules, the City may accept Segments or Components of the Public Infrastructure that will be located under a public street or roadway before it accepts the street or roadway.

(a) Warranty. Developer or its assignee shall give the City one-year warranties for all Public Infrastructure, which warranties shall begin on the date that the City accepts such Public Infrastructure as provided in this section. Any material deficiencies in the material or workmanship identified by City staff during the one-year warranty period shall be

brought to the attention of the Developer or its assignee who provided the warranty, who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City Engineer. Continuing material deficiencies in a particular portion of a Segment or Component of the Infrastructure Improvements shall be sufficient grounds for the City to require the proper repair of, or the removal and reinstallation of, that portion of the Infrastructure that is subject to such continuing deficiencies and an extension of the warranty for an additional one-year period for such repairs. Regardless of whether the warranty period has expired, the Developer agrees to repair any damage to the Infrastructure caused by the Developer's construction activities on the Property. Nothing herein shall prevent the City or the Developer from seeking recourse against any third party for damage to the Infrastructure caused by such third party.

(b) Acceptance, Operation, and Maintenance. So long as such Public Infrastructure is constructed in accordance with the approved plans and the requirements of Section 3.3, as verified by the inspection of the completed improvements by the City Engineer, and all punch list items have been completed, and the Infrastructure is free of any liens and encumbrances, the City shall accept such conveyances of Public Infrastructure, and shall, except as otherwise provided in this Agreement, at its own cost and expense, maintain, repair and operate such Public Infrastructure. Acceptance of any Public Infrastructure is expressly conditioned upon Developer providing a warranty for the Infrastructure Improvement consistent with City standards and as provided in paragraph (a). Developer, at no cost to the City, shall dedicate, convey or obtain, as applicable all rights-of-way, rights of entry, easements and/or other use rights, wherever located, as useful or necessary for the operation and maintenance of the Public Infrastructure dedicated to and accepted by the City.

(c) Asphalt Phasing. Subject to the conditions in this Section, the Developer may construct and use certain street and roadway improvements on the Property before the final lift of asphalt has been placed ("**Incomplete Roads**"). The Developer will not seek to construct or use arterial streets on the Property and around the perimeter of the Property as Incomplete Roads. Other streets on the Property may be constructed and used as Incomplete Roads subject to the following conditions:

(i) The Developer will complete all other Components of the Incomplete Roads, including, without limitation, the subgrade, concrete (*e.g.*, curb and gutter, sidewalks, driveway entrances) and first lift of asphalt, except that the final lift of asphalt may be placed up to one (1) year after the underground infrastructure improvements, subgrade, concrete and the other lifts of asphalt have been constructed. City utility infrastructure improvements under the roadway may be accepted before the placement of the final asphalt lift according the City's usual and customary procedures.

(ii) The one-year warranty period on all asphalt, subgrade, concrete and initial lifts of asphalt associated with each of the Incomplete Roads will commence upon the City's acceptance of the final lift of asphalt. The one-year warranty period on City utility infrastructure improvements under the roadway may commence earlier, upon the City's acceptance of those improvements.

(iii) To ensure the completion of all street and roadway improvements on the Property, the Developer will provide financial security, as specified in Section 3.4 (with the exception of withholding Certificates of Occupancy or withholding release of Utility Services), in connection with each of the Incomplete Roads, or segment thereof, constructed on the Property.

(iv) The Developer will ensure that Incomplete Roads comply with all Regulations, including but not limited to compliance with federal laws involving accessibility. With respect to each of the Incomplete Roads, the Developer will also demonstrate, to the satisfaction of the City Engineer, and before the commencement of construction of any Incomplete Road, that storm water on and around the proposed Incomplete Road will be accommodated by existing drainage facilities, and will not pond on the proposed Incomplete Road.

(v) Before any Incomplete Roads are used without the final layer of asphalt, the Developer will ensure that the streets or roadways are properly striped. The Developer will also install concrete rings around valve and manhole lids in compliance with the Regulations before each of the Incomplete Roads is used. Before the final lift of asphalt is placed on each of the Incomplete Roads, concrete rings around valve and manhole lids will be removed and repaired as needed. After the placement of the final lift of asphalt on each of the Incomplete Roads, the Developer will install final striping and concrete rings around valve and manhole lids in compliance with the Regulations.

(vi) With respect to each of the Incomplete Roads, the Developer will arrange for City inspections before and after the placement of the final lift of asphalt. The Developer will be responsible for replacing any subgrade, asphalt or concrete on the Incomplete Roads and completing any final inspection or punch list items, as required by the City. As part of the final inspection of each of the Incomplete Roads, the Developer shall arrange for the video or television inspection of the sewer lines that underlie the completed roadway, provide a copy of the video or television report to the City, and report the results of such inspection to the City. The Developer will be responsible for the costs of these inspections, the final video of the sewer lines underlying each of the Incomplete Roads, and any additional punch list inspections associated with the Incomplete Roads.

3.6 Transportation.

(a) Transportation Infrastructure. Except as provided in Articles IV and V of this Agreement, the Developer, at its sole expense, shall construct or arrange for the construction of the streets, roadways, and parking facilities to be used for motorized vehicular travel, ingress, egress, and parking and pedestrian, bicycle or other facilities to be used for non-motor vehicular travel, ingress, egress, and parking within the Property, including street lighting with underground electric service distribution, and all striping, traffic signals, street sign posts, street name signs, stop signs, speed limit signs, and all other directional/warning/advisory signage as required, all in accordance with the applicable provisions of the Rules, the Community Plan, the Master Transportation Report, and applicable Development Unit Plans. The Developer shall not, except as otherwise specified herein or in a separate agreement with the City, install or cause to be installed any structure within the public right-of-way, or at any time

install or cause to be installed any access control structures limiting public access to public streets within the Property, or control public access to public streets by any other means. For all public streets within the Property, the Developer shall dedicate the right-of-way and construct the roadway improvements in accordance with the Regulations and any applicable Rules. Except for those roadways that the City has not yet accepted pursuant to Section 3.5, paragraph (c), the Developer will not, without obtaining the prior approval of the City Engineer, perform open cut trenching in streets accepted by the City for a period of five (5) years following the City's acceptance of any dedicated street. The City will permit, however, directional boring during such five (5) year period.

(b) **Landscaping, Specialty Features, and Specialty Materials in Public Streets.**

(i) Except as otherwise provided herein, the Developer, and its successors and assigns, shall install and maintain the landscaping both within and adjacent to the road rights-of-way according the Rules and Regulations, and applicable Development Unit Plans and site plans. Thereafter, the Developer, and its successors and assigns, shall maintain all landscaping within all public right-of-way at its sole expense and obtain right-of-way permits on an annual basis to perform such maintenance in the rights-of-way.

(ii) As permitted and approved pursuant to the Rules and Regulations, the Developer may design and install 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 ("**Specialty Features and Materials**"). At the Development Unit Plan stage of the planning process, the Developer and the City will enter into one or more maintenance agreements concerning the Specialty Features and Materials. Each such maintenance agreement shall contain provisions for the Developer to provide the 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, and (ii) funds, on an annual basis, to offset the City's costs to perform maintenance or repair the Specialty Features and Materials in the public streets. Each such maintenance agreement shall provide for annual adjustments of the funds provided for the City's costs to maintain, repair, and replace the Specialty Features and Materials in the public streets. The Developer, upon prior written consent of the City, which shall not unreasonably be withheld, may assign its rights and obligations under this subsection to a property owners' association; provided, however, that such assignment shall be accompanied by conclusive evidence of such property owners' association's irrevocable commitment to perform the Developer's obligations hereunder.

(c) **Landscape Maintenance for Arterial Street Medians**. The Developer and the City shall enter into a landscape maintenance agreement that provides for the City's maintenance (or contracting for the maintenance) of the landscaping on medians located in those portions of Elliott Road, Williams Field Road, Ellsworth Road and Signal Butte Road adjacent to the Property and Ray Road through the Property (the "**Arterial Median Landscaping**"). The City, at its cost, will maintain the Arterial Median Landscaping to the City's landscaping standards. The landscape maintenance agreement also shall permit the Developer to pay the City for the installation and maintenance of the Arterial Landscaping at a level higher than the

City's landscaping standards. The maintenance agreement shall provide that the Developer will pay to replace plant material as necessary, at its sole cost, in order for the Arterial Median Landscaping to meet the City's minimum requirements, or any desired higher standard, with respect to density and size of plant material on the arterial medians set forth in this Section. Finally, the maintenance agreement shall provide that the City and the Developer will mutually pursue recovery of the cost of any repairs to or replacement of the Arterial Median Landscaping required due to vehicle accidents, vandalism, or otherwise from those responsible for such damage. The Developer may assign its rights and obligations to a CFD, or upon prior written consent of the City which shall not unreasonably be withheld, may assign its rights and obligations to a property owners' association; provided, however, that such assignment to a property owners' association shall be accompanied by conclusive evidence of such property owners' association's financial ability to assume and irrevocable commitment to perform the Developer's obligations hereunder.

(d) **Private Streets/Street Naming.** The City and the Developer hereby acknowledge and agree that Developer will have the right to retain some interior local streets located within the Property ("**Private Streets**"). In addition, some or all of the Private Streets may be conveyed to one or more property owners' associations created by Developer and/or any successor of the Developer for this and other purposes. The Developer shall have the right to install access control structures across the Private Streets at any portions of the Property. The Developer shall grant to the City an easement for police, fire, ambulance, solid waste collection, water, gas, storm drain line, or wastewater line installation and repair, and other similar public purposes, over the Private Streets. The Developer, its successors and assigns, shall, at its sole cost and expense, maintain the Private Streets in a manner such that City vehicles may safely, and without undue wear and tear or damage, use the Private Streets for their intended purposes. The Developer and the City agree that new private or public streets shall be named to ensure that the public interest, health, safety, convenience and general welfare are maintained. Street names for major arterials and address numbering conventions shall be in conformance with the Rules. Unique non-arterial street names for streets within the Property may be proposed by the Developer and shall be reviewed and approved by City staff upon the determination by City staff that the unique street names do not compromise public health safety, convenience and general welfare. Address numbering on non-arterial streets shall be in conformance with the Rules.

(e) **Technology.** Subject to compliance with the approval processes contained in Section 3.3 above, the Developer may locate private technology facilities within public or private rights-of-way or public utility facilities easements for purposes of facilitating community communications within the Property, subject to pre-existing franchises and other City agreements regulating the use of City rights-of-way.

(f) **Arterial Road Construction.**

(i) **Right-of-Way Annexed By City.** The Developer, at its expense or from funding sources identified in Article V, shall construct or arrange for the construction of the outer two (2) lanes and bike lane, inclusive of paving, outside curb and gutter, sidewalk, and street lights, for those arterial roadways for which right-of-way is annexed by the City pursuant to the Annexation Ordinance (each a **"City Road"**). The City Roads shall be constructed in Segments as development of the adjacent portions of the Property occurs. Notwithstanding the

foregoing, if any portion of a City Road is identified in **Exhibit G** and constructed pursuant to the terms thereof, then the terms of such **Exhibit G** shall control over the obligation to construct the City Roads contained in this Section.

(ii) **Right-of-Way Not Annexed By City.** The Developer, at its expense or from funding sources identified in Article V, shall construct or arrange for the construction of arterial roadways on right-of-way not annexed by the City pursuant to the Annexation Ordinance (each a "**County Road**") in Segments as development of the adjacent portions of the Property occurs, and may delay construction of any Segment of a County Road if the traffic anticipated to be generated from the land uses developing adjacent to such County Road does not require the construction of such County Road as determined by the City and/or County Traffic Engineer. In addition, the Developer may initially construct the outer two (2) lanes and bike lane, inclusive of paving, outside curb and gutter, sidewalk, and street lights of any Segment of the County Road, provided that, at such time as the "level of service" or "LOS" for any such constructed Segment of County Road exceeds LOS D, or the adjacent landowner develops a full half-street Segment of County Road, the Developer shall construct the inner lane and half-median adjacent to the already-constructed outer two lanes and bike lane.

Notwithstanding the foregoing, if any Segment of the County Road is identified in **Exhibit G** and constructed pursuant to the terms thereof, then the terms of such **Exhibit G** shall control over the obligation to construct the County Road contained in this Section. Upon the Developer's completion of each Segment of County Road, the City will consider annexing the County Road into the City. The City will coordinate with the County to review plans and inspect roadway improvements

3.7 Drainage Improvements. The Developer, at its expense or pursuant to funding sources identified in Article V, will construct or arrange for the construction of drainage improvements in phases and in accordance with the Regulations, the Rules and Regulations, the Master Drainage Report and applicable Development Unit Drainage Reports and after consultation with the FCDMC. Such drainage improvements shall include, without limitation, drainage and flood control systems and facilities for collection, diversion, detention, retention, dispersal, use, and discharge as necessary for development of the Property.

3.8 Water.

(a) **Water Use Limitations.** The Developer acknowledges that the Applicable Water Laws may limit or restrict the City's ability to serve and the Developer's ability to use potable and non-potable water for certain uses on the Property, including uses that would be subject to Title 45, Chapter 1, Article 3. The Developer further acknowledges that use of potable and non-potable water on the Property may be subject to conservation and reporting requirements under the Applicable Water Laws. Nothing in this Section limits the City's obligation to deliver potable water of sufficient quality to satisfy all Applicable Water Laws.

(b) **Water Service.** The City agrees to serve water to the Property for domestic, municipal, and commercial demands for potable and non-potable uses as specified in the Master Reports submitted with the Community Plan, any approved Master Report updates submitted in connection with the Development Unit planning process, and in connection with the

development of the Property, subject to the Applicable Water Laws, the Terms and Conditions, payment of applicable Utility Rates, and the provisions of this Agreement. The City shall execute a written commitment to water service for the Property on any forms reasonably required by ADWR.

(c) **Non-Potable Water**.

(i) **Quality and Source Limitations.** The City makes no guarantee as to the quality of non-potable water, and the Developer recognizes and acknowledges that the City is not treating the non-potable water, which may consist of water from the Central Arizona Project ("**CAP**") canal obtained through exchange of effluent ("**Exchange Effluent**"), recovered stored effluent pumped from underground ("**Recovered Effluent**"), or direct delivery of reclaimed water. The City is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of non-potable water pursuant to this Agreement.

(ii) **Open space landscaping; bodies of water.** The City acknowledges that the Developer is planning for landscaping in areas of the Property as entrance features or accents to enhance the marketability of the Property and that such enhancement may involve the use of turf at or near public rights-of-way or water features that may qualify as bodies of water regulated under A.R.S. Title 45, Chapter 1, Article 3. The City agrees to consider the use of such water bodies on the Property consistent with the limitations set forth in this Agreement and subject to the Terms and Conditions, the Applicable Water Laws, and payment of applicable Utility Rates.

(iii) **Golf courses.** The City agrees that the Developer may construct one or more golf courses on the Property and the City may provide non-potable water for such purposes, consistent with the limitations set forth in this Agreement and subject to the Terms and Conditions, the Applicable Water Laws, and payment of Applicable Utility Rates.

(iv) **Private Lakes.** The parties acknowledge that the Developer is considering certain private lakes within the development which may qualify as bodies of water regulated under A.R.S. Title 45, Chapter 1, Article 3 and therefore can only be constructed if they are filled and refilled solely with effluent. The City agrees to consider the use of such private lakes on the Property consistent with the limitations set forth in this Agreement and subject to the Terms and Conditions, the Applicable Water Laws, and payment of applicable Utility Rates.

(v) **Non-Potable Reporting.** To the extent permitted by the Applicable Water Laws, and consistent with the actual deliveries of non-potable water to the Property, the City shall account for and report to the ADWR all non-potable water as effluent as defined under the Applicable Water Laws. Subject to the provisions of this Agreement, the City agrees to cooperate with the Developer in order to allow such water to be considered effluent under the Applicable Water Laws, including where possible making deliveries of Recovered Effluent and/or Exchange Effluent in a manner consistent with the position of ADWR regarding the co-mingling of different sources of supplies in the same pipeline while maintaining the legal status of such supplies as solely effluent for purposes of the Applicable Water Laws (also known as "volumetric accounting").

(vi) **Quantity Limitation**. Notwithstanding any other provision of this Agreement, the City's provision of non-potable water supplies to the Developer for all uses on the Property shall be limited to a maximum of nine hundred (900) acre feet per year. The Parties agree that this amount may be increased in connection with the City's review and approval of Development Unit Plans that specifically provide, upon the approval of the City Engineer, and in connection with any required additional or updated Water Reports, for non-potable deliveries in excess of this base amount.

(d) **General Reporting.**

(i) **By Developer.** If as a result of water use on the Property, the Developer qualifies as an "individual user" under any Management Plan adopted by ADWR pursuant to the Applicable Water Laws, the Developer shall account for and report to ADWR all water used on the Property by the Developer as required by such Management Plans. The Developer further agrees to keep all records, acquire all permits and other approvals, perform all tests, and submit all reports and other information necessary and required for all other water uses by the Developer for compliance with the Applicable Water Laws.

(ii) **By the City.** Except as otherwise provided in this Agreement, the City shall be responsible for metering and reporting all water deliveries to the Property.

(e) **Infrastructure.** With the exception of (1) well construction, which is addressed in Section 3.10 hereof; (2) Paragraph (i) of this Section (e); and (3) subject to the scope outlined Article IV, the Developer, at its sole expense, shall construct or arrange for the construction of the on-site potable and non-potable water Infrastructure necessary for the development of the Property in phases as approved by the City Engineer. Infrastructure that the Developer constructs, or has the responsibility to construct, shall be subject to the terms for acceptance by the City as set forth in the Rules and this Agreement.

(i) The City shall build a regional non-potable distribution system subject to the scope and limitations and pursuant to Article IV of this Agreement and the Applicable Water Laws to allow for the delivery of Exchange Effluent or Recovered Effluent to the non-potable water storage facility at the golf course lake and, if constructed, at the Great Park.

(ii) **City Ownership and Operation.** The Parties agree that upon completion of the construction, the entire potable system shall be owned and operated by the City at its sole cost and expense. Additionally, the non-potable distribution system shall be owned and operated by the City at the City's sole cost and expense up to the point of discharge at the Great Park lake, if constructed, and the non-potable water storage facility at the golf course.

(iii) **Developer Ownership and Operation.** The Parties agree that any secondary non-potable distribution systems, including but not limited to, golf course and Great Park lake irrigation and associated pump systems shall be owned and operated by the Developer at its sole cost and expense.

3.9 **Construction water.** Limited to the maximum flow rates in the Non-Potable Water Master Report the City agrees to provide water for construction purposes from its offsite non-potable distribution system upon completion of the associated infrastructure by the

City and subject to the limitations set forth in this Agreement, the Applicable Water Laws, the Terms and Conditions and payment of applicable Utility Rates.

3.10 Wells.

(a) Requirements. The City shall require between four (4) and six (6) wells capable of supplying water for the potable supply system to be located on the Property, with one (1) additional well for a non-potable system.

(b) Conveyance of Existing Wells and Well Sites/City Construction of New Wells. In order to provide for service by the City of water to the Property as set forth in this Agreement, the Developer agrees that it shall convey not fewer than four (4) nor more than six (6) well sites located on the Property to the City for the potable system, and one (1) well site for the non-potable system at locations mutually agreeable to the Parties. Pursuant to the process for providing credits set forth in MCC § 5-17-9, the Developer shall receive credits against the City's Water Impact Fees for the value of the land conveyed for the potable well sites. After the conveyance of the well sites, the City shall construct, at its sole cost and expense, all potable system wells to be located on the Property. The City and the Developer further agree and acknowledge that there are existing wells on the Property. Where feasible as indicated by any hydrogeologic studies, conducted by the City at no cost to the Developer except pursuant to Article IV, or system demands and where compatible with adjacent intended land uses, all conveyed well sites shall be located within 660 feet of existing groundwater production wells, in order to facilitate the drilling of the new wells as replacement wells in accordance with A.R.S. § 45-598 and other Applicable Water Laws. In all such cases, to the extent that the Developer conveys, upon the City's written request, such existing groundwater production wells to the City without cost to the Developer, then such existing groundwater production wells shall be conveyed by the Developer in "as-is" condition and at no charge to the City. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, abandon such existing groundwater production wells not conveyed to the City in accordance with the Applicable Water Laws.

(c) Cooperation. In order to further facilitate the provision of service by the City of water to the Property as set forth herein, the Developer further agrees that it shall provide such assistance to the City as is reasonably necessary to allow for the permitting by the City of the wells described herein in accordance with the Applicable Water Laws, including but not limited to, providing signed and notarized consent forms acceptable to ADWR pursuant to A.A.C.R. 12-15-1302 *et. seq.* in the event that the City seeks to construct a new or replacement well which may impact any well on the Property owned by the Developer.

(d) Abandonment by Developer. The Parties agree that the Developer shall properly abandon all such existing potable groundwater production wells as are not conveyed by the Developer to the City pursuant to this Agreement in a manner and at a time that is consistent with the Applicable Water Laws.

3.11 Wastewater.

(a) Sewer Service. The City agrees to provide sewer service to the Property subject to the Applicable Wastewater Laws, Terms and Conditions and payment of applicable

Utility Rates, and further subject to the Developer arranging for the construction of the non-regional on-site wastewater Infrastructure necessary to serve the portion of the Property for which sewer service is desired, as provided in this Agreement.

(b) Wastewater Infrastructure. The Developer, at its expense, shall construct or arrange for the construction of the on-site wastewater Infrastructure for the Property in phases as necessary for development of the Property.

3.12 Fire Protection. Fire service will be provided to the Property in conformance with the City's Public Safety Master Plan and this Agreement.

(a) Contribution Toward Fire Protection for the Property. The Developer shall pay to the City the sum of three million, three hundred thousand dollars ($3,300,000.00) in three annual installments, which funds may be used by the City, at its discretion, for the acquisition of fire apparatus, operation and maintenance costs associated with providing fire service to the Property, or other expenses related to providing fire service to the Property. The first payment of one million eight hundred thousand dollars ($1,800,000.00) shall be paid by the Developer prior to the issuance of the first building permit for vertical construction on the Property. The second and third payments, each of which shall be seven hundred fifty thousand dollars ($750,000.00), shall be paid by the Developer on the first and second anniversaries of payment of the first payment. The Developer will not receive credits against the City's Fire Impact Fee for this contribution.

(b) Developer's Conveyance/Reservation of Land for Permanent Fire Station Sites on the Property. Developer shall convey to the City two (2) sites for the construction of permanent fire stations on the Property as set forth below. The Parties currently anticipate that if two (2) fire stations are constructed on the Property, one fire station will be located in either Development Unit 3 or 4, and the second fire station will be in either Development Unit 7 or 8.

(i) Site One. Upon the submission of each Development Unit Plan, the City and the Developer shall consider the need for a fire station on the Property, and if requested by the City, the Developer shall convey at the time of platting, at no cost to the City, a site for the first fire station, in a specific location acceptable to the City and the Developer (the "**First Permanent Fire Station Site**"). The First Permanent Fire Station Site will meet all of the following criteria: (a) not less than two (2) acres nor more than two and one half (2.5) acres in size; (b) minimum dimension of 300 feet on each side with at least one street side unobstructed; and (c) located on a non-arterial street. The Developer will not receive credits against the City's Fire Impact Fee for its conveyance of the First Permanent Fire Station Site.

(ii) Site Two. Upon the submission of each Development Unit Plan after Developer's conveyance of the First Permanent Fire Station Site to the City, the City and the Developer shall consider the need for a second fire station on the Property, and if requested by the City, Developer shall reserve a site for the second fire station, in a specific location acceptable to the City and the Developer (the "**Second Permanent Fire Station Site**"). The Second Permanent Fire Station Site will meet all of the following criteria: (a) not less than two (2) acres nor more than two and one half (2.5) acres in size; (b) minimum dimension of 300 feet

on each side with at least one street side unobstructed; and (c) located on a non-arterial street. The City may purchase, pursuant to Section 3.19, the Second Permanent Fire Station Site from the Developer at any time prior to completion of development of the Property. The Developer will not receive credits against the City's Fire Impact Fee for its conveyance of the Second Permanent Fire Station Site.

(c) **Construction of Permanent Fire Stations on the Property/Developer Payment.** The City shall design, construct, and operate a permanent fire station on the First Permanent Fire Station Site. If the City elects to purchase the Second Permanent Fire Station Site, the City shall design, construct, and operate a permanent fire station on the Second Permanent Fire Station Site. Except as expressly provided herein, the Developer shall not be responsible for any costs associated with the design or construction of the permanent fire stations other than to pay the City's Fire Impact Fee in place at the time of issuance of each building permit. The City agrees that the permanent fire stations shall comply with the design guidelines governing commercial development on the Property. Within thirty (30) days of receipt of a written notice from the City, which notice states that the City has determined that adequate operating revenues are available to the City and calls for fire service in the response boundaries warrant construction of a fire station on the First Permanent Fire Station Site, the Developer shall pay to the City the sum of two million two hundred thousand dollars ($2,200,000.00), which funds shall be used toward the design and construction of a fire station on the First Permanent Fire Station Site. Upon receipt of such funds, the City will proceed diligently with the design and construction of the fire station on the First Permanent Fire Station Site. The Developer will not receive credits against the City's Fire Impact Fee for its payment under this paragraph.

3.13 **Police Services.** Police services will be provided to the Property in conformance with the City's Public Safety Master Plan and this Agreement.

(a) **Developer's Reservation of a Site for a Permanent Police Station.** Developer shall reserve one (1) site for sale to the City for the construction and operation of one (1) police substation on the Property ("**Police Substation Site**"). The Police Substation Site shall be located in either Development Unit 3, 6, or 7, in a specific location mutually acceptable to the City and the Developer. Upon the submission of each Development Unit Plan for Development Units 3, 6 and 7, the City and the Developer shall consider the need for a Police Substation Site within the particular Development Unit, and promptly upon the Developer's payment of funds pursuant to Section 3.12, paragraph (c), and in conjunction with a subdivision plat, the City shall purchase from the Developer the Police Substation Site. The City will purchase the Police Substation Site pursuant to Section 3.19. The Developer will not receive credits against the City's Police Impact Fee for its conveyance of the Police Substation Site. The Police Substation Site will not be larger than six (6) acres in size at the City's discretion, and as centrally located in the chosen Development Unit as possible and feasible for the Developer and the City. The City shall be solely responsible for the costs of designing and constructing a permanent police substation on the Police Substation Site.

(b) **Construction of a Police Substation on the Property.** Developer shall not be responsible for any costs associated with the design or construction of the permanent police substation other than to pay the City's Police Impact Fee in place at the time of issuance

of each building permit. The City agrees that the permanent police substation shall comply with the design guidelines governing commercial development on the Property.

3.14 Parks/Public and Private Recreation Areas/Open Space/Trails.

(a) **Great Park Construction and Master Plan.** The PCD depicts an approximate 106-acre site for the location of a Great Park (the "**Great Park**"). The Developer shall reserve sixteen (16) contiguous acres within the Great Park for the City to construct certain recreational amenities that it desires to locate within the southeast portion of the City, which recreational amenities may include an aquatic center, sports courts, and a recreational facility ("**Recreational Facility Site**"). Upon request by the City, the Developer shall sell to the City the Recreational Facility Site. Prior to commencement of development of the Great Park, the Developer shall generate a master plan for the Great Park that has been mutually agreed upon by the Developer and the City ("**Great Park Master Plan**"). The Great Park Master Plan will include provisions for lake design, retention, landscaping, improvements and other amenities. The Developer may construct and dedicate improvements to the Great Park in phases which are reasonably approved by the City so that it can provide the maintenance and operation of the Great Park at the time of dedication. Pursuant to the process for providing credits set forth in MCC § 5-17-9, the Developer shall receive credits against the City's Parks Impact Fees for its dedication of ninety (90) acres of land for the Great Park and for the costs to plan, design, engineer, permit and construct/install improvements to the Great Park, which the Parties agree are "key public facilities" pursuant to MCC § 5-17-9. To the extent that the Great Park construction costs exceed the available Park Impact Fee credits, then the City will provide a cash payment pursuant to MCC § 5-17-9(J). The improvements to the Great Park may include non-potable water storage facilities, which may be owned by City for purposes of irrigating the Great Park. Upon completion of construction of the initial improvements to the Great Park, the Developer shall convey to the City the portion of the Great Park on which such initial improvements have been constructed, which shall be responsible for the operation and cost of maintaining the Great Park pursuant to the provisions of Section 3.14, paragraph (b). Upon completion of the construction of future phases, Developer shall convey to the City the portion of the Great Park on which such future phases of improvements have been constructed, which shall be responsible for the operation and cost of maintaining the Great Park pursuant to the provisions of Section 3.14, paragraph (b). It is the Developer's intent to utilize the Great Park for retention of storm water runoff from other areas with the Property. The Developer will work with the City to ensure that the design of all hard surfaced courts, tot lots, play equipment, building structures, parking lots and other specialty amenities remain above the storm water retention inundation line. Up to five (5) school sites may be located adjacent to the Great Park; it is the Parties' intent that the City and the relevant school district arrange for the joint use by the public and such school district of the facilities within the Great Park located adjacent to the school site(s).

(b) **Great Park Maintenance.** The Developer and City shall enter into a park maintenance agreement that provides for the Developer's maintenance (or contracting for the maintenance) of the park landscaping and other improvements located in the Great Park, including, if constructed, the Great Park Lake (the "**Park Improvements**"). The Developer will maintain the Park Improvements to the City's standards, and such maintenance costs, if the maintenance services are publicly bid, will be reimbursed to the Developer from the City. The maintenance agreement also shall permit the Developer to maintain, or cause to be maintained,

the Park Improvements at a level higher than the City's standards, in which case the Developer shall receive reimbursement from the City only for that portion of the maintenance costs attributable to maintenance at the City's standards unless the City has received or will receive funds earmarked for such enhanced maintenance from other sources, including a CFD. The park maintenance agreement will also contain appropriate insurance provisions to protect against loss and damage and liability related to the Great Park. The Developer may assign its rights and obligations to a CFD, or upon prior written consent of the City which shall not unreasonably be withheld, may assign its rights and obligations to a property owners' association; provided, however, that such assignment to a property owners' association shall be accompanied by conclusive evidence of such property owners' association's financial ability to assume and irrevocable commitment to perform the Developer's obligations hereunder.

(c) **Great Park Lake.** The improvements to the Great Park may include non-potable water storage facilities, which may be owned by City for purposes of irrigating the Great Park. Specifically, the Developer intends to construct a lake that will be owned by the City. Notwithstanding subparagraph (b) above, the Developer shall initially fill the Great Park Lake, subject to the Applicable Water Laws, the Terms and Conditions, and applicable Utility Rates, without reimbursement from the City. After dedication the Developer shall operate and maintain the lake at its sole cost and expense.

3.15 Library. The Developer shall reserve for sale to the City a site for the location of a public library ("**Library Site**"). The Developer and the City shall mutually agree on the location of the Library Site, which shall be sized to accommodate a 35,000 square foot library building, together with required parking, and which may be co-located, upon the agreement of the Developer and the City, with other public or educational uses. In consideration of the Developer's reservation of the Library Site, the City agrees that it shall use City library Impact Fees collected within the City as of the date of this Agreement and library Impact Fees collected on the Property after the date of this Agreement for the construction of the library on the Library Site. The Developer shall sell the Library Site to the City at such time as the City demonstrates that it has funds sufficient to design, construct, and operate the library on the Library Site. The parties acknowledge that the library will be important to the community, and the parties agree to cooperate in the planning and design of the library to ensure that the library complements the overall urban fabric and architecture of the community.

3.16 Municipal Services Generally. The City hereby agrees to include the Property in any and all City service areas and to provide the Property with water, wastewater, police and fire protection services, refuse collection service, and all other services provided by the City, in a manner comparable to those services provided to all landowners and occupants of the City, subject to the terms of this Agreement.

3.17 Schools. The Property is located in the Gilbert and Queen Creek Unified School Districts (the "**Districts**"). The Developer will work diligently with the Districts to ensure that the educational needs of Property residents are met.

3.18 Impact Fee Credits. Using the process set forth in MCC § 5-17-9, the Developer shall be entitled to credits against current and future City impact or development fees ("**Impact Fees**") for Infrastructure or improvements constructed by the Developer that are

components of, and specific to any particular Impact Fee payable by development on the Property. The Developer may assign such credits to entities that will be requesting issuance of building permits for development on the Property pursuant to an administrative procedure to be developed by the City and the Developer. Public Infrastructure that is the subject of credits against Impact Fees is not required to be publicly procured; however, if the Developer receives cash payments pursuant to MCC § 5-17-9(J) for an particular Public Infrastructure, then such Public Infrastructure must be publicly procured using the processes permitted by A.R.S. Title 34.

3.19 Establishment of Land Value. The value of the land to be conveyed upon sale to the City pursuant to Sections 3.12, paragraph (b) (Second Permanent Fire Station Site), 3.13 (Police Substation Site), 3.14 (16-acre City site for recreational amenities), and 3.15 (Library Site) shall be five hundred and seventy-two thousand dollars ($572,000.00) per net acre, and such per acre value shall be established and fixed for the term of this Agreement.

IV. CONSTRUCTION COMMITMENTS OF THE CITY.

4.1 Construction of Accelerated Public Improvements. Subject to the conditions, terms and limitations set forth in **Exhibit G** to this Agreement, and in order to facilitate the provision of public infrastructure necessary to attain jobs-based City planning goals for the Mesa Gateway region, the City, at its sole cost and expense, shall design, engineer, bid, construct and install (or cause the same to be done) those public improvements (and only those public improvements) (the "**Accelerated Public Improvements**") listed as projects 1, 2(a), (b), and (c), and 3, and more fully described, on **Exhibit G** to this Agreement (the "**Accelerated Project List**"), subject to a maximum City expenditure of Project Costs in the amount of $17,800,000.00 (the "**Maximum City Cost**"). Upon expending the Maximum City Cost, City shall have no further obligations to construct (or cause to be constructed) the Accelerated Public Improvements and shall have no further obligations under this Article IV of the Agreement.

(a) Determination to add Projects 4 and 5 to the Accelerated Public Improvements. The City has identified current funding for the construction of projects 1, 2(a), (b) and (c), and 3. The City shall use good faith efforts to identify additional sources of City funds, up to the Maximum City Cost, for the construction of the Accelerated Public Improvements including Projects 4 and 5. The City Manager, on or before November 24, 2008, shall conclusively determine, and advise Developer in writing, whether City funding is available to add projects 4 and 5, as listed and described on the Accelerated Project List, to the Accelerated Public Improvements for the City to construct (or cause to be constructed); provided, however, if the City Manager does so determine to add Projects 4 and 5 to the Accelerated Public Improvements, the Maximum City Cost shall not increase and shall remain $17,800,000.00. If the City Manager fails to timely advise Developer of such determination or if the City Manager timely advises Developer that Projects 4 and 5 shall not be added to the Accelerated Public Improvements, then and in either such event, the City shall have no obligations whatsoever as to Projects 4 and 5 and neither the City nor Developer shall have any further obligations relative to the Accelerated Public Improvements except as expressly provided in **Exhibit G** community facilities district.

V. COMMUNITY FACILITIES DISTRICTS

5.1 Formation. It is contemplated that two (not overlapping) community facilities districts will be formed within the boundaries of the Property with terms and conditions as set forth in **Exhibit H**. Upon the filing of a complete application, the City shall use good faith efforts to conduct the applicable procedures for formation of each district although the final decision to form any district is a discretionary legislative act of the City Council.

5.2 Policy Guidelines and Application Procedures. The City Council (with respect to formation), and the City Council when seated as the District Board (with respect to any actions of any district), may consider alternatives to any provision of the City of Mesa, Arizona Policy Guidelines and Application Procedures for the Establishment of Community Facilities Districts then in effect if the City Council or the District Board, as applicable, believe it to be in the best interest of the City and the district.

VI. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

6.1 Appointment of Representatives. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and the Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The City Council or the Developer may change their representative at any time, but each party agrees to have a current active representative appointed for discussion and review as further detailed in this Agreement. The initial representative for the City (the "**City Representative**") shall be the City Manager or his designee, and the initial representative for the Developer (the "**Developer Representative**") shall be the General Manager for the Property. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property pursuant to this Agreement.

6.2 Impasse. For purposes of this Section 6.2 only, "Impasse" shall mean either a failure of a City department director to make a decision or the Developer's disagreement with a decision of a City department director. The Parties agree that if the Developer believes that an Impasse has been reached with the City on any issue affecting the Property, and no appeal process is established in the Rules and Regulations, the Developer shall have the right to appeal to the City Manager for a decision pursuant to this Section. This appeal shall be made in writing and delivered to the City Manager's attention. To facilitate the resolution of such an Impasse, the City Manager shall schedule a meeting with the Developer and the City Manager or a designated deputy city manager, within fifteen days (15) of the delivery of written notice of the Impasse, to discuss resolution of the Impasse. At that meeting, the parties will mutually agree on a method and time frame for resolution of the Impasse. Both parties agree to continue to use reasonable good faith efforts to resolve any such Impasse pending any such appeal to the City Manager.

6.3 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days after written notice thereof from the other party ("**Cure Period**"), shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more

than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies provided by law or equity. A default by any owner of a portion of the Property shall not be deemed a default by Developer or any other owner of a different portion of the Property, and the City may not withhold or condition its performance under this Agreement as to any owner of a portion of the Property who is not in default of this Agreement. With the exception of the Developer, no owner of a portion of the Property may enforce this Agreement as against any other owner of a portion of the Property.

6.4 Duties of the Master Developer. In addition to the duties and obligations undertaken in the PCD and elsewhere in this Agreement, the Developer shall have the specific duties and obligations listed in this Section as the "Master Developer" of the Property and shall be the "Master Developer" for purposes of this Section and Section 9.6.

(a) Project Governance. The Master Developer will implement a system of private governance to ensure the development, operation, use and maintenance of special community features and infrastructure, and to administer and enforce various governance procedures and design review processes. The private governance overview attached hereto as **Exhibit I** provides the framework and generalized responsibilities of identified private governance entities.

(b) Funding for review of Submitted Materials. Due to the scale, and scope of the development contemplated for the Property, the Parties acknowledge that (i) the implementation of the Regulations involves unique design and engineering standards, and a significant amount of plan review and engineering work, and (ii) the City has no standard or specified turn-around or completion times for many submittals. Therefore, if Developer has specific deadlines or wishes to establish specific review or inspection time parameters for the development of all or any portion of the Property, the Master Developer shall enter into a funding agreement, which will include provisions addressing the following issues: (i) identifying additional City staff position(s) or outside consultant(s) that may be necessary to review Development Unit Plans, site plans, subdivision plats, construction plans, and other submitted materials (collectively, the "**Submitted Materials**") or provide land development and construction inspection services (collectively, the "**Inspection Services**") within the timeframes desired by the Developer; (ii) providing for the cooperation and mutual agreement of the City and the Developer as to the persons or consultants who are best suited to review the Submitted Materials or provide the Inspection Services; (iii) identifying the time period for which the additional City staff positions and/or outside consultants are necessary; and (iv) any other provision deemed necessary by the City and the Developer. The Parties agree that any portion of the Property may be the subject of a funding agreement, even if such portion of the Property is not owned or developed by Developer.

The City and Developer will mutually agree on review times applicable to construction documents. In the event the City does not have a sufficient number of personnel to implement an expedited development review process requested by the Developer, or expedited land development and construction inspection services requested by the Developer, the Developer may elect to pay the costs incurred by the City for such private, independent consultants and advisors which may be retained by the City, as necessary, to assist the City in the review and/or inspection process; provided, however, that such consultants shall take instructions from, be controlled by, and be responsible to, the City and not the Developer.

(c) **Update of the Land Use Budget**. The Master Developer shall submit an update to the land use budget set forth in the PCD concurrently with the submittal of each Development Unit Plan, site plan, or subdivision plat (or any revisions to such submittals, in the case of redevelopment). The update shall be in chart form and shall identify the allocation of the land use budget to such Development Unit Plan, site plan, or subdivision plat as well as the remaining unallocated portion of the land use budget.

(d) **Enforcement of Design Standards.** The City and the Master Developer shall cooperate to ensure that any developer who acquires a portion of the Property builds or constructs such portion of the Property in accordance with the design standards set forth in the PCD. The City and the Master Developer acknowledge and agree that the Gaylord Property meets the exemption criteria set forth in Section 4.6 of the Community Plan and is, therefore, exempt from having to obtain Master Developer approval of its development applications.

(e) **Updating of Development Schedule.** The Developer shall annually update the phasing plan and development schedule submitted pursuant to MCC § 11-9.1-3(B)(6) based upon changing infrastructure needs, residential and commercial real estate market conditions, industry factors, and/or business considerations. Any such modification shall not necessitate an amendment to this Agreement or the PCD.

VII. NOTICES AND FILINGS.

7.1 Manner of Service. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by telecopy facsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

The City: City of Mesa
20 E. Main Street
Mesa, Arizona 85211
Attention: City Manager
Facsimile: (480) 644-2175

Copy to: City of Mesa
20 E. Main Street
Mesa, Arizona 85211
Attention: City Attorney
Facsimile: (480) 644-2498

Developer: John Bradley
DMB Mesa Proving Grounds LLC
7600 East Doubletree Ranch Road, Suite 300
Scottsdale, Arizona 85258-2137
Facsimile: (480) 367-7522

Copy to: Dana Stagg Belknap
Gallagher & Kennedy
2575 E. Camelback Road
Phoenix, Arizona 85016
Facsimile: (602) 530-8500

7.2 Notice Effective. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any notice sent by telecopy facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's telecopy facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

VIII. MISCELLANEOUS.

8.1 Airport Avigation Easement. The Developer shall use the form attached hereto as **Exhibit J** to provide the airport avigation easement required by the PCD.

8.2 Indemnification by Developer. To the extent permitted by law, the Developer shall pay, defend, indemnify and hold harmless the City and its City Council members, officers, officials, agents, volunteers, and employees 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 arise from or relate in any way to any act or omission by the Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the Developer's obligations under this Agreement or otherwise arising from or relating to the development of the Property. The provisions of this Section 8.2, however, shall not apply to loss or damage or claims therefore which are attributable solely to acts or omissions of the City, its Council

members, officers, officials, agents, employees, volunteers, contractors, subcontractors or representatives. The foregoing indemnity obligations of the Developer shall survive the expiration or termination of this Agreement except as otherwise provided in Section 9.6 (d).

IX. GENERAL.

9.1 Delay; Waiver. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the 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.

9.2 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

9.3 Headings. The descriptive headings of the Paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

9.4 Exhibits and Recitals. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this agreement are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof.

9.5 Further Acts. Each of the Parties shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the intent and purposes of this Agreement.

9.6 Future Effect.

(a) Time of Essence and Successors. Time is of the essence in implementing the terms of this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties pursuant to A.R.S. § 9-500.05(D), except as provided below; provided, however, the Developer's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only pursuant to the terms and conditions of this Section.

(i) Assignment to Property Owners' Association or Complete Assignment. Notwithstanding the foregoing, the City and the Developer agree that the ongoing ownership, operation and maintenance obligations provided by this Agreement and the Master Developer's obligations contained in Section 6.4 may only be assigned to one or more property

owners' association(s) to be established by the Developer or as part of a complete assignment by the Developer of all rights and obligations of the Developer hereunder. The Developer may assign its rights and obligations to a CFD, or upon prior written consent of the City which shall not unreasonably be withheld, may assign its rights and obligations to a property owners' association; provided, however, that such assignment to a property owners' association shall be accompanied by conclusive evidence of such property owners' association's financial ability to assume and irrevocable commitment to perform the Developer's obligations hereunder. The Developer agrees to provide the City with written notice of any assignment of the Developer's rights or obligations in a complete assignment by the Developer of all rights and obligations of the Developer hereunder within a reasonable period of time following such assignment, provided however, such assignment shall be accompanied by conclusive evidence of assignee's irrevocable commitment to perform the Developer's obligations hereunder, and upon the City's receipt of such notice, the Developer's liability hereunder shall terminate as to the obligations assigned.

(ii) **Partial Assignment to Purchasers.** The Developer may assign less than all of its rights and obligations under this Agreement to those entities that acquire any portion of the Property (each, an "**Assignment**"). The Developer will be released from its obligations under this Agreement with respect to Assignment, subject to the following: (i) the Developer has given the City written notice of the Assignment, which shall include the name, address, and facsimile number for notice purposes; (ii) the assignee has agreed in writing to be subject to all of the applicable provisions of this Agreement and such agreement provides for the allocation of responsibilities and obligations between the Developer and the assignee; and (iii) such agreement has been recorded in the official records of Maricopa County on that portion of the Property owned by such Transferee.

(iii) Notwithstanding any other provisions of this Agreement, the Developer may assign all or part of its rights and duties under this Agreement to any financial institution from which the Developer has borrowed funds for use in constructing the Infrastructure Improvements or otherwise developing the Property. Additionally, the Developer may assign its rights and duties under this Agreement to another developer or owner.

(b) **Term and Effective Date.** This Agreement shall be effective for the Parties' rights and responsibilities which shall occur before annexation of the Property into the corporate limits of the City on the date it is approved by the Mesa City Council and operative for all purposes on the date that the annexation ordinance is effective for all or a portion of the Property (the "**Effective Date**"). The term of the Agreement shall be fifty (50) years from the date on which the Mesa City Council approves the Agreement (the "**Term**").

(c) **Termination Upon Sale to Public.** This Agreement shall not impose any obligations upon and shall terminate without the execution or recordation of any further document or instrument as to: (i) any residential or commercial lot which has been finally subdivided and sold with a completed structure thereon for which a certificate of occupancy or equivalent has been issued; and (ii) any land that has been conveyed to a private utility or governmental authority. Thereafter, such lot or land shall be released from and no longer be subject to or burdened by the provisions of this Agreement. Notwithstanding the foregoing, Sections 2.8, 3.15 and 8.2 shall not terminate but shall remain in full force and effect.

(d) **Termination Upon Conveyance under Gaylord Agreement.** The City acknowledges that the Developer has entered into an agreement (**"Gaylord Agreement"**) to sell a portion of the Property to Gaylord Mesa, LLC, (**"Gaylord"**). Except as provided below, effective upon the sale or other conveyance of the Gaylord Property (defined below), this Agreement shall not impose any obligations upon and shall terminate without the execution or recordation of any further document or instrument as to any portion of the Property which has been sold or otherwise conveyed under the terms and conditions of the Gaylord Agreement (the **"Gaylord Property"**), and the Gaylord Property shall, thereafter, be released from and no longer be subject to or burdened by the provisions of this Agreement. Notwithstanding the foregoing, Sections 2.2 and 2.8 shall not terminate but shall remain in full force and effect, provided, however, that in the event of a conflict between such Sections and the provisions of that certain development agreement entered into between the City and Gaylord, dated November 3, 2008, governing the development of the Gaylord Property (the **"Gaylord Entitlements DA"**), the provisions of the Gaylord Entitlements DA shall control. Notwithstanding the provisions of Section 9.9 of this Agreement, any amendment to Section 2.2 or the PCD that changes the manner in which the Gaylord Property may be used or developed must be approved by the fee title owner of the Gaylord Property, or for any portion of the Gaylord Property subject to one or more ground leases, the lessee(s) under such ground lease(s); provided, however, that any amendment to Section 2.2 or the PCD that relates solely to portions of the Property other than the Gaylord Property shall not require the approval of the fee title owner of the Gaylord Property nor any ground lessee thereof.

9.7 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right to cause of action hereunder, except for transferees or assignees to the extent they assume or succeed to the rights and obligations of the Developer as set forth in this Agreement.

9.8 Entire Agreement. 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.

9.9 Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the City and the Developer. Within ten (10) days after any approved amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona. The Developer anticipates conveying one or more parcels of the Property to other owners. After such conveyance, a subsequent owner shall have no right to consent to or approve any future amendment to the Agreement requested by the Developer if such future amendment relates solely to the development or use of the portion of the Property owned by the Developer. "Development or use" includes land use, infrastructure requirements, and all other issues related to the entitlement, development, and use of the portion of the Property owned by the Developer. No subsequent owner shall be considered a third-party beneficiary to any future amendments to the Agreement that relate to the portion of the Property not owned by such owner. Neither the Developer nor any future owner

may enforce or request that the City enforce the obligations contained in this Agreement as against each other. If a future amendment proposed by the City or a subsequent owner impacts the development or use of another subsequent owner or the Developer's portion of the Property, then the party seeking the amendment shall submit its proposed amendment in writing to the other parties for review and approval.

9.10 Names and Plans. The Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of the Developer in connection with the Property; provided, however, that in connection with any conveyance of portions of the Property to the City, such rights pertaining to the portions of the Property so conveyed shall be assigned to the extent that such rights are assignable, to the City. Notwithstanding the foregoing, the Developer shall be entitled to utilize all such materials described herein to the extent required for the Developer to construct, operate or maintain improvements relating to the Property.

9.11 Good Standing; Authority. Each of the parties represents to the other (i) that it is duly formed and validly existing under the laws of Arizona, with respect to the Developer or a municipal corporation within the State of Arizona, with respect to the City, (ii) that it is a Delaware limited liability company or municipal corporation duly qualified to do business in the State of Arizona and is in good standing under applicable state laws, and (iii) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

9.12 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. The parties acknowledge and agree that, although the parties believe that the terms and conditions contained in this Agreement do not constitute an impermissible restriction of the police power of the City, and that it is their express intention that such terms and conditions be construed and applied as provided herein, to the fullest extent possible, it is their further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of the City, such term or condition shall be construed and applied in such lesser fashion as may be necessary to reserve to the City all such power and authority that cannot be restricted by contract.

9.13 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to cancellation under the provisions of A.R.S. § 38-511.

9.14 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona not later than ten (10) days after this Agreement is executed by the City and the Developer.

9.15 No Developer Representations. If the Developer does not develop the Property, then nothing contained herein or in the PCD shall be deemed to obligate the City or the Developer to complete any part or all of the development of the Property in accordance with the

PCD or any other plan, and the PCD shall not be deemed a representation or warranty by the Developer of any kind whatsoever.

9.16 Status Statements. Any party (the "**Requesting Party**") may, at any time, and from time to time, deliver written notice to any other party requesting such other party (the "**Providing Party**") to provide in writing that, to the knowledge of the providing party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults (a "**Status Statement**"). A party receiving a request hereunder shall execute and return such Status Statement within fifteen (15) days following the receipt thereof. The City Manager or designee shall have the right to execute any Status Statement requested by Developer hereunder. The City acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees. The City shall have no liability for monetary damages to Developer, and transferee or mortgagee, or any other person in connection with, resulting from or based upon the issuance of any Status Statement hereunder.

9.17 Mortgage Provisions.

(a) Mortgagee Protection. This Agreement shall be superior and senior to any future lien placed upon the Property, or any portion thereof, including the lien of any mortgage or deed of trust (herein "**Mortgage**"). However, no breach hereof shall invalidate or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a mortgagee (herein defined to include a beneficiary under a deed of trust), whether under or pursuant to a mortgage foreclosure, trustee's sale or deed in lieu of foreclosure or trustee's sale, or otherwise, shall be subject to all of the terms and conditions contained in this Agreement. No mortgagee shall have an obligation or duty under this Agreement to perform the Developer's obligations or other affirmative covenants of the Developer hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by the Developer is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder.

(b) Bankruptcy. If any mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer, the times specified for performing Developer's obligations or other affirmative covenants of the Developer hereunder shall be extended for the period of the prohibition, provided that such mortgagee is proceeding expeditiously to terminate such prohibition and in no event for a period longer than two years.

9.18 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of the Developer. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Non-Performance or breach by the City or for any amount which may become due to any of the other Parties or their

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

9.19 **Proposition 207 Waiver.** The Developer hereby waives and releases the City from any and all claims under A.R.S. § 12-1134, et seq., including any right to compensation for reduction to the fair market value of the Property, as a result of the City's approval of this Agreement. The terms of this Waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

9.20 **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.

9.21 **Compliance with Federal Immigration Laws and Regulations**. To the extent that A.R.S. § 23-214(b) is applicable, the Developer shall comply, and be responsible for all non-compliance, with A.R.S. § 23-214(b).

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date.

DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: _____

Its: V.P.

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____

Its: City Manager

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 06 day of November, 2008, by John Brady, the Vice President of DMB Mesa Proving Grounds LLC, a Delaware limited liability company.

Lynnette Zeroulias
Notary Public

My commission expires:

OFFICIAL SEAL
LYNNETTE ZEROULIAS
NOTARY PUBLIC-STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires Sept. 21, 2010

9/21/2010

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 12 day of NOVEMBER, 2008, by CHRISTOPHER J. BRADY, City MANAGER of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

MARCH 28, 2011

OFFICIAL SEAL
LIDIA MARTINEZ
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires March 28, 2011

TENANT CONSENT

The undersigned, as Tenant under that certain "**Lease**", by and between DMB MESA PROVING GROUNDS, LLC, a Delaware limited liability company ("**Developer**"), as Lessor, and Tenant, dated December 28, 2006, evidenced by that certain Memorandum of Lease, dated December 28, 2006, recorded as Document No. 2006-1695608 in the Official Records of Maricopa County, Arizona, in respect of certain real property which includes the Property that is the subject of this Pre-Annexation and Development Agreement, dated November 3, 2008, by and among the CITY OF MESA, ARIZONA, an Arizona municipal corporation, and Developer (the "**Agreement**"), hereby: (i) acknowledges that the Agreement shall bind that Property that is subject to the Lease and subject to the Agreement; (ii) approves the recordation of the Agreement; (iii) represents and warrants that the undersigned has the requisite right, power and authorization to enter into, execute, and deliver this Tenant Consent on behalf of Tenant; and (iv) Tenant has been assisted by counsel of its own choosing in connection with the preparation and execution of this Tenant Consent. By acceptance of this Tenant Consent, the Parties acknowledge and recognize the continued operations of Tenant on a portion of the Property so long as the Lease remains in effect and agree that such operations shall not be affected by the Agreement, nor, so long as such operations continue as they are currently conducted and are in compliance with applicable laws, will the Parties object to the continuation of such operations under the terms of the Lease.

DATED: November 11, 2008

GENERAL MOTORS CORPORATION, a Delaware corporation

By: _____

Name: ROCH X. McCLAIN

Its: DIRECTOR WORLDWIDE REAL ESTATE

Execution Recommended
Worldwide Real Estate
By: _____

STATE OF Michigan)
)ss.
County of Wayne)

The foregoing was acknowledged before me this 11 day of November 2008, by Rock McClain, the Director of General Motors Corporation, a Delaware corporation, on behalf thereof.

Nancy DeVoe Treuter
Notary Public

My Commission Expires:
NANCY DE VOE TREUTER
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Aug 25, 2012
ACTING IN COUNTY OF Wayne

ACCEPTED THIS 11 DAY OF November, 2008

EXISTING LENDER CONSENT

The undersigned, as Beneficiary ("**Existing Lender**") under that certain DEED OF TRUST AND FIXTURE FILING (With Assignment of Rents and Security Agreement) (the "**Deed of Trust**"), by and between DMB MESA PROVING GROUNDS, LLC, a Delaware limited liability company ("**Developer**"), as Trustor, and FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, as Trustee, dated December 28, 2006, and recorded on December 28, 2006 as Document No. 2006-1695609 in the Official Records of Maricopa County, Arizona, in respect of certain real property which includes the Property that is the subject of this Pre-Annexation and Development Agreement, dated Nov. 3, 2008, by and among the CITY OF MESA, ARIZONA, an Arizona municipal corporation, and Developer (the "**Agreement**"), but not as a party, hereby: (i) consents to the Agreement; (ii) acknowledges that the Agreement shall bind that portion of the Property that is subject to the Deed of Trust and subject to the Agreement; (iii) approves the recordation of the Agreement; (iv) agrees to execute, acknowledge and deliver such additional documents and instruments reasonably required to consummate, evidence, or carry out the matters contemplated by the Agreement and this Existing Lender Consent; (vii) agrees that the Agreement shall continue in full force and effect, at Existing Lender's option, in the event of foreclosure or trustee's sale pursuant to such Deed of Trust or any other acquisition of title by the undersigned, its successors, or assigns, of all or any portion of the Property covered by such Deed of Trust; (viii) represents and warrants that the undersigned has the requisite right, power and authorization to enter into, execute, and deliver this Existing Lender Consent on behalf of Beneficiary; and (ix) the execution and delivery of this Existing Lender Consent by Beneficiary is not prohibited by, and does not conflict with any other agreements or instruments to which Beneficiary is a party.

DATED: November 7th, 2008

SAN DIEGO NATIONAL BANK, a national banking association

By: _____

Name: Elliot Jensen

Its: Senior Vice President

STATE OF Arizona)
)ss.
County of Maricopa)

The foregoing was acknowledged before me this 7th day of November 2008 by Elliot Jensen, the Sr. Vice President of San Diego National Bank, a national banking association, on behalf thereof.

F Midas
Notary Public

My Commission Expires:

Notary Public State of Arizona
Maricopa County
F Midas
My Commission Expires
11/20/2009

11-20-2009

LIST OF EXHIBITS

A	Legal Description of the Property
B	Map of the Property
C	Moratorium Statute
D	Infrastructure Vesting
E	Communications Microwave Path
F	Proposed Ray Road Alignment
G	Accelerated Public Improvements
H	Community Facilities District
I	Project Governance
J	Avigation Easement

Exhibit A

Wood, Patel & Associates, Inc.
(480) 834-3300
www.woodpatel.com

Exhibit 'A'

PARCEL DESCRIPTION
Mesa Proving Grounds
Proposed Overall Boundary

A parcel of land lying within Sections 14, 15, 22, 23, 26 and 27, Township 1 South, Range 7 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the northwest corner of said Section 15, a 3-inch Maricopa County Department of Transportation brass cap in handhole stamped 2007 RLS 35694, from which the north quarter corner of said Section 15, a 2-inch Maricopa County aluminum cap stamped RLS 38563, bears South 89°37'01" East (basis of bearing), a distance of 2639.46 feet;
THENCE along the north line of said Section 15, South 89°37'01" East, a distance of 50.01 feet, to the **POINT OF BEGINNING**;
THENCE continuing, South 89°37'01" East, a distance of 2589.45 feet, to the north quarter corner of said Section 15;
THENCE South 89°37'46" East, a distance of 2628.91 feet, to the northeast corner of said Section 15, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563;
THENCE leaving said north line, along the north line of said Section 14, South 89°41'01" East, a distance of 2658.58 feet, to the north quarter corner of said Section 14, an iron pipe with no identification;
THENCE South 89°45'48" East, a distance of 2661.68 feet, to the northeast corner of said Section 14, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563;
THENCE leaving said north line, along the east line of said Section 14, South 00°38'25" East, a distance of 33.00 feet, to the northeast corner of that certain parcel of land described in Document No. 2007-1007585, Maricopa County Records (M.C.R.);
THENCE leaving said east line, along the north line of said parcel of land, North 89°46'13" West, a distance of 40.57 feet, to the northwest corner of said parcel of land;
THENCE leaving said north line, along the westerly line of said parcel of land, South 00°39'10" East, a distance of 42.00 feet;
THENCE South 89°45'28" East, a distance of 15.17 feet;
THENCE South 03°26'56" East, a distance of 403.87 feet, to the southwest corner of said parcel of land;
THENCE leaving said westerly line, along the south line of said parcel of land, North 89°21'35" East, a distance of 5.60 feet, to the southeast corner of said parcel of land and the east line of said Section 14;
THENCE leaving said south line, along the east line of said Section 14, South 00°38'25" East, a distance of 2157.16 feet, to the east quarter corner of said Section 14, a 3-inch City of Mesa brass cap in handhole;
THENCE South 00°37'57" East, a distance of 2640.25 feet, to the southeast corner of said Section 14, a 1/2–inch rebar with illegible cap;

THENCE leaving said east line, along the east line of said Section 23, South 00°50'18" East, a distance of 2628.64 feet, to the east quarter corner of said Section 14, a 1/2–inch rebar with cap stamped RLS 29272;
THENCE South 00°42'59" East, a distance of 2597.28 feet, to the north line of that certain tract of land described in Docket 6414, page 56, Maricopa County Records (M.C.R.) and a point hereby designated as Point "A" for future reference in this description;
THENCE leaving said east line, along said north line, a line parallel to and 40 feet north of the south line of said Section 23, North 89°37'09" West, a distance of 2664.99 feet;
THENCE North 89°38'35" West, a distance of 2664.76 feet;
THENCE along said north line, a line parallel to and 40 feet north of the south line of said Section 22, North 89°36'10" West, a distance of 2658.23 feet;
THENCE continuing, North 89°38'34" West, a distance of 2597.52 feet, to the easterly right-of-way line of Ellsworth Road as described in Quit Claim Deed recorded in Docket 1606, page 249, (DKT.1) M.C.R.;
THENCE along said easterly right-of-way line, a line parallel to and 50 feet east of the west line of said Section 22, North 00°16'04" West, a distance of 25.00 feet;
THENCE leaving said DKT.1 and parallel line, South 89°38'34" East, a distance of 5.00 feet, to the easterly right-of-way line of Ellsworth Road as described in the Maricopa County Condemnation Order CV2003-015999, recorded in Document No. 2005-0714663 (DOC.1), M.C.R.;
THENCE along said easterly right-of-way line, a line parallel to and 55 feet east of the west line of said Section 22, North 00°16'04" West, a distance of 2571.31 feet;
THENCE North 00°14'45" West, a distance of 324.85 feet;
THENCE leaving said DOC.1, North 89°38'34" West, a distance of 5.00 feet, to said easterly right-of-way line per DKT.1;
THENCE along said easterly right-of-way line, a line parallel to and 50 feet east of the west line of said Section 22, North 00°14'45" West, a distance of 2310.10 feet;
THENCE leaving said parallel line, along a line parallel to and 50 feet east of the west line of the southwest quarter of said Section 15, North 00°42'29" West, a distance of 2638.13 feet;
THENCE North 00°34'56" West, a distance of 1177.68 feet;
THENCE leaving said parallel line, North 57°48'44" East, a distance of 17.61 feet, to a line parallel to and 65 feet east of the west line of said Section 15;
THENCE along said parallel line, North 00°34'56" West, a distance of 870.51 feet;
THENCE leaving said parallel line, North 89°25'04" East, a distance of 10.00 feet, to a line parallel to and 75 feet east of the west line of said Section 15;
THENCE along said parallel line, North 00°34'56" West, a distance of 484.70 feet;
THENCE leaving said parallel line, North 44°54'02" East, a distance of 21.03 feet, to a line parallel to and 65 feet south of the north line of said Section 15;
THENCE along said parallel line, South 89°37'01" East, a distance of 2548.36 feet;
THENCE South 89°37'46" East, a distance of 2628.95 feet;
THENCE leaving said parallel line, along a line parallel to and 65 feet south of the north line of said Section 14, South 89°41'01" East, a distance of 2659.74 feet;
THENCE leaving said parallel line, North 00°40'39" West, a distance of 32.00 feet, to the south line of that certain easement for highway purposes described in Docket 12368, page 462, M.C.R.;
THENCE along said south line, a line parallel to and 33 feet south of the north line of said Section 14, North 89°41'01" West, a distance of 2659.17 feet, to the south line of that certain easement for highway purposes described in Docket 12368, page 460, M.C.R.;

THENCE along said south line, a line parallel to and 33 feet south of the north line of said Section 15, North 89°37'46" West, a distance of 2628.93 feet;
THENCE continuing, North 89°37'01" West, a distance of 2588.90 feet, to the easterly right-of-way line of Ellsworth Road;
THENCE leaving said south line, along said easterly right-of-way line of Ellsworth Road, a line parallel to and 50 feet east of said Section 15, North 00°34'56" West, a distance of 33.00 feet, to the **POINT OF BEGINNING.**

TOGETHER WITH

Commencing at said Point "A":
THENCE along the east line of said Section 23, South 00°42'59" East, a distance of 40.01 feet, to the northeast corner of said Section 26, a 3-inch Maricopa County brass cap in pothole stamped 2002 RLS 36563, being the **POINT OF BEGINNING;**
THENCE leaving said east line, along the east line of said Section 26, South 00°43'36" East, a distance of 2644.19 feet, to the east quarter corner of said Section 26, a 2-inch Maricopa County aluminum cap stamped 2002 RLS 36563;
THENCE South 00°25'08" East, a distance of 2591.81 feet, to the northerly right-of-way line of Williams Field Road as described in the Maricopa County Condemnation Order CV2004-005453, recorded in Document No. 2005-0928928, M.C.R.;
THENCE along said northerly right-of-way line, a line parallel to and 33 north of the southeast quarter of said Section 26, North 89°33'33" West, a distance of 1325.51 feet;
THENCE leaving said northerly right-of-way line and said parallel line, South 00°34'39" East, a distance of 33.01 feet, to the south line of said Section 26;
THENCE along said south line, North 89°33'33" West, a distance of 1325.41 feet, to the south quarter corner of said Section 26, a 3-inch Maricopa County aluminum cap stamped 2002 RLS 38683;
THENCE North 89°38'20" West, a distance of 1119.51 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE leaving said south line, North 00°28'37" East, a distance of 2730.93 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 89°13'26" West, a distance of 1323.87 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 00°23'52" East, a distance of 1531.75 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 89°29'17" West, a distance of 3465.06 feet, to a 1/2-inch rebar with tag stamped RLS 29272;
THENCE North 52°18'31" West, a distance of 1625.16 feet, to the north line of said Section 27 and a 1/2-inch rebar with no identification;
THENCE along said north line, South 89°38'34" East, a distance of 1770.29 feet, to the north quarter corner of said Section 27, a 2-inch Maricopa County aluminum cap flush stamped 2002 RLS 36563;
THENCE South 89°36'10" East, a distance of 2658.23 feet, to the northeast corner of said Section 27, a 3-inch Maricopa County brass cap flush stamped 2002 RLS 36563;
THENCE leaving said north line, along the north line of said Section 26, South 89°38'35" East, a distance of 2664.76 feet, to the north quarter corner of said Section 26, a Maricopa County aluminum cap flush stamped 2002 RLS 36568;

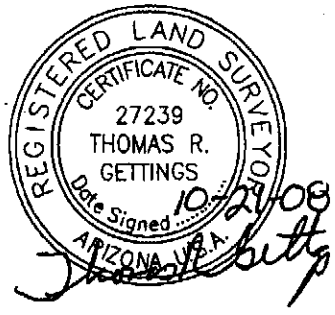
THENCE continuing, South 89°37'09" East, a distance of 2665.75 feet, to the **POINT OF BEGINNING.**

Containing 3,154.3527 acres, or 137,403,604 square feet of land, more or less.

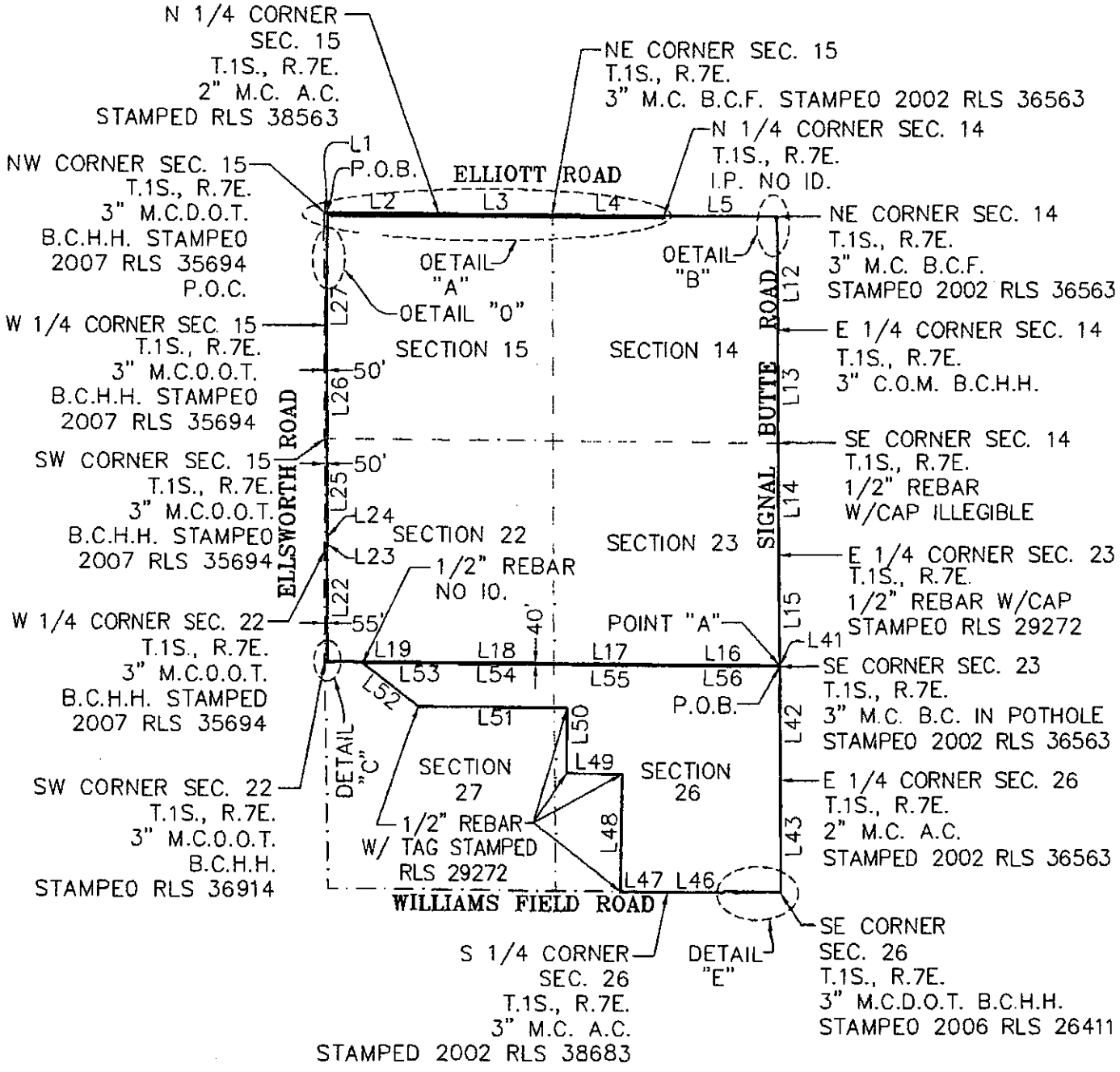
Subject to existing rights-of-way and easements.

This parcel description is based on the unrecorded ATLA Survey of GM Proving Grounds prepared by CMX, dated November 21, 2006, job number 7405.01 and other client provided information. This parcel description is located within an area surveyed by WOOD/PATEL during the month of May, 2007 and any monumentation noted in this parcel description is within acceptable tolerance (as defined in Arizona Boundary Survey Minimum Standards dated 02/14/2002) of said positions based on said survey.

X:\Y-Drive\Parcel Descriptions\2006\062753.26 Mesa Proving Grounds Proposed Overall Boundary L02 Rev. 2 10-21-08.doc



EXPIRES 06-30-11



WOOD/PATEL
1855 North Stapley Drive
Mesa, AZ 85203
Phone: (480) 834-3300
Fax: (480) 834-3320
PHOENIX • MESA • TUCSON • GOODYEAR

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 10-21-08
ARIZONA U.S.A.

EXPIRES 06-30-11

EXHIBIT "B"

MESA PROVING GROUNDS
PROPOSED OVERALL BOUNDARY
REVISED 10-21-08
WP#062753.26
PAGE 5 OF 6
NOT TO SCALE
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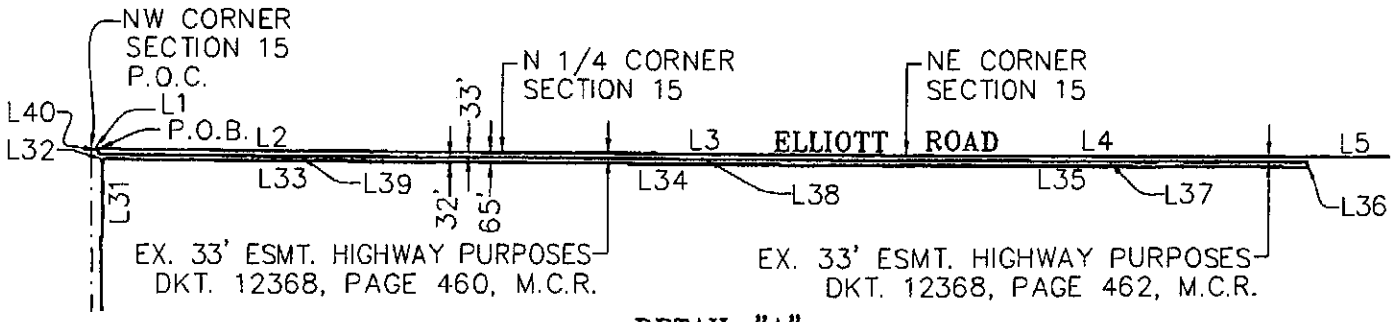

DETAIL "A"
N.T.S.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°37'01"E	50.01'
L2	S89°37'01"E	2589.45'
L3	S89°37'46"E	2628.91'
L4	S89°41'01"E	2658.58'
L5	S89°45'48"E	2661.68'
L6	S00°38'25"E	33.00'
L7	N89°46'13"W	40.57'
L8	S00°39'10"E	42.00'
L9	S89°45'28"E	15.17'
L10	S03°26'56"E	403.87'
L11	N89°21'35"E	5.60'
L12	S00°38'25"E	2157.16'
L13	S00°37'57"E	2640.25'
L14	S00°50'18"E	2628.64'
L15	S00°42'59"E	2597.28'
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L19	N89°38'34"W	2597.52'
L20	N00°16'04"W	25.00'
L21	S89°38'34"E	5.00'
L22	N00°16'04"W	2571.31'
L23	N00°14'45"W	324.85'
L24	N89°38'34"W	5.00'
L25	N00°14'45"W	2310.10'
L26	N00°42'29"W	2638.13'
L27	N00°34'56"W	1177.68'
L28	N57°48'44"E	17.61'
L29	N00°34'56"W	870.51'
L30	N89°25'04"E	10.00'

LINE TABLE		
LINE	BEARING	DISTANCE
L31	N00°34'56"W	484.70'
L32	N44°54'02"E	21.03'
L33	S89°37'01"E	2548.36'
L34	S89°37'46"E	2628.95'
L35	S89°41'01"E	2659.74'
L36	N00°40'39"W	32.00'
L37	N89°41'01"W	2659.17'
L38	N89°37'46"W	2628.93'
L39	N89°37'01"W	2588.90'
L40	N00°34'52"W	33.00'
L41	S00°42'59"E	40.01'
L42	S00°43'36"E	2644.19'
L43	S00°25'08"E	2591.81'
L44	N89°33'33"W	1325.51'
L45	S00°34'39"E	33.01'
L46	N89°33'33"W	1325.41'
L47	N89°38'20"W	1119.51'
L48	N00°28'37"E	2730.93'
L49	N89°13'26"W	1323.87'
L50	N00°23'52"E	1531.75'
L51	N89°29'17"W	3465.06'
L52	N52°18'31"W	1625.16'
L53	S89°38'34"E	1770.29'
L54	S89°36'10"E	2658.23'
L55	S89°38'35"E	2664.76'
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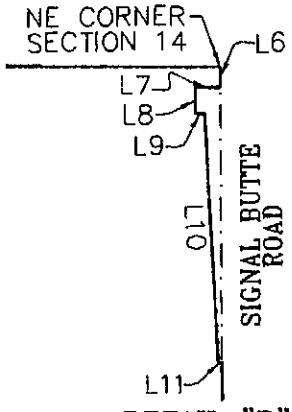

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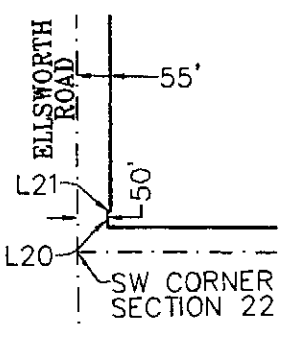

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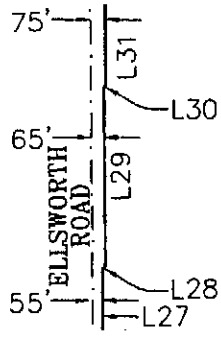

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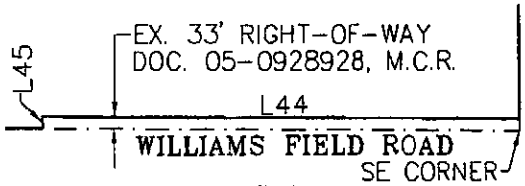

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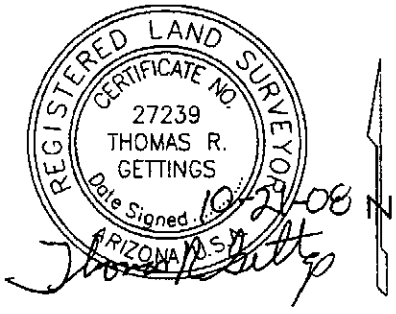

EXPIRES 06-30-11

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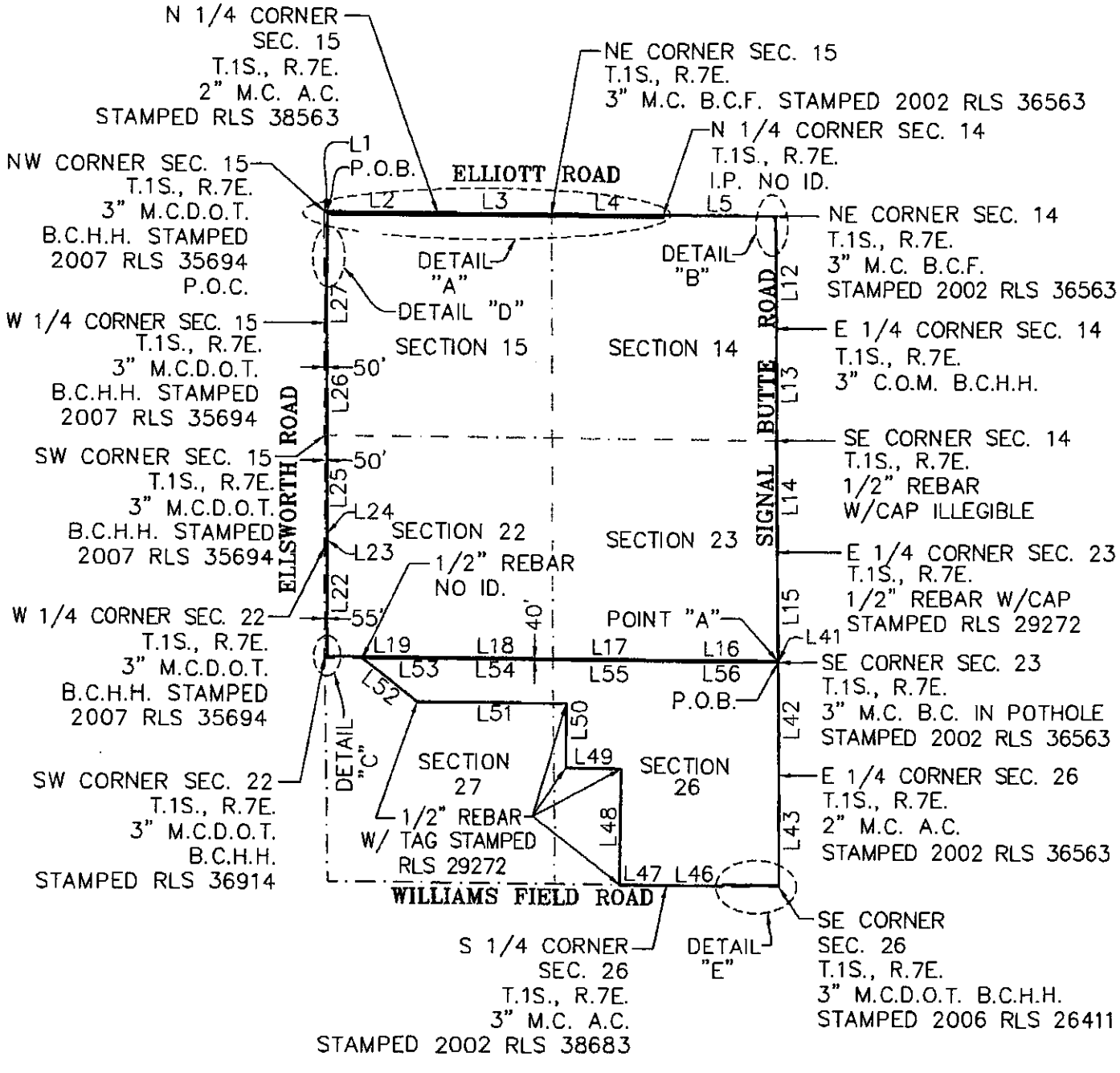
Exhibit B



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REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 10-27-08
ARIZONA U.S.A.

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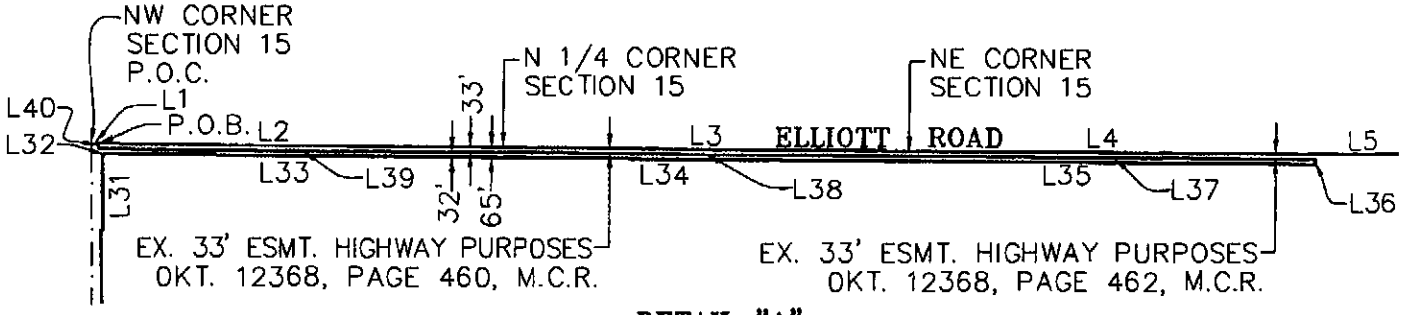

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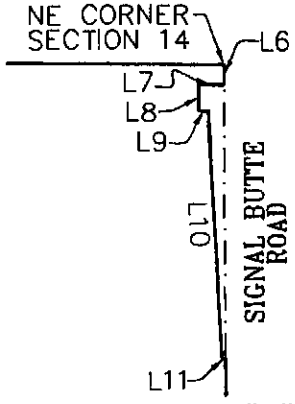
L55	S89°38'35"E	2664.76'
L56	S89°37'09"E	2665.75'



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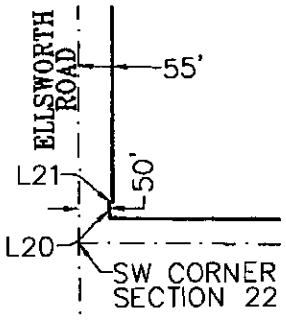

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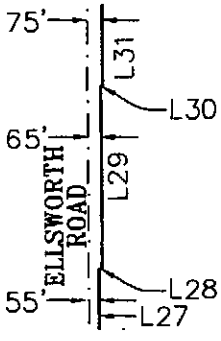

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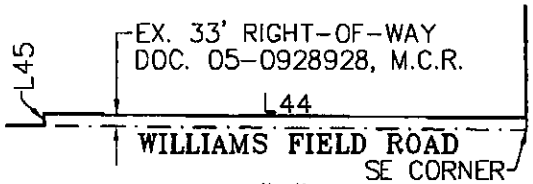


DETAIL "E"
N.T.S.

WOOD/PATEL
1855 North Stapley Drive
Mesa, AZ 85203
Phone: (480) 834-3300
Fax: (480) 834-3320
PHOENIX • MESA • TUCSON • GOODYEAR

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed: 10-22-08
ARIZONA U.S.A.

EXPIRES 06-30-11

EXHIBIT "B"

MESA PROVING GROUNDS
PROPOSED OVERALL BOUNDARY
REVISED 10-21-08
WP#062753.26
PAGE 6 OF 6
NOT TO SCALE
T:\2006\062753\LEGAL
2753L02-DB\DWG\2753L02RR

Exhibit C

Exhibit C
Moratorium Statute

9-463.06. Standards for enactment of moratorium; land development; limitations; definitions

A. A city or town shall not adopt a moratorium on construction or land development unless it first:

1. Provides notice to the public published once in a newspaper of general circulation in the community at least thirty days before a final public hearing to be held to consider the adoption of the moratorium.

2. Makes written findings justifying the need for the moratorium in the manner provided for in this section.

3. Holds a public hearing on the adoption of the moratorium and the findings that support the moratorium.

B. For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of essential public facilities that would otherwise occur during the effective period of the moratorium. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. A showing of the extent of need beyond the estimated capacity of existing essential public facilities expected to result from new land development, including identification of any essential public facilities currently operating beyond capacity and the portion of this capacity already committed to development, or in the case of water resources, a showing that, in an active management area, an assured water supply cannot be provided or, outside an active management area, a sufficient water supply cannot be provided, to the new land development, including identification of current water resources and the portion already committed to development.

2. That the moratorium is reasonably limited to those areas of the city or town where a shortage of essential public facilities would otherwise occur and on property that has not received development approvals based upon the sufficiency of existing essential public facilities.

3. That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining essential public facility capacity.

C. A moratorium not based on a shortage of essential public facilities under subsection B of this section may be justified only by a demonstration of compelling need for other public facilities, including police and fire facilities. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. For urban or urbanizable land:
(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.
(b) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or town are not unreasonably restricted by the adoption of the moratorium.
(c) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.
(d) That the city or town has determined that the public harm that would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands and the overall impact of the moratorium on population distribution.
(e) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.
2. For rural land:
(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.
(b) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.
(c) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium.
(d) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.
D. Any moratorium adopted pursuant to this section does not affect any express provision in a development agreement entered into pursuant to section 9-500.05 or as defined in section 11-1101 governing the rate, timing and sequencing of development, nor does it affect rights acquired pursuant to a protected development right granted according to chapter 11 of this title or title 11, chapter 9. Any moratorium adopted pursuant to this section shall provide a procedure pursuant to which an individual landowner may apply for a waiver of the moratorium's applicability to its property by claiming rights obtained pursuant to a development agreement, a protected development right or any vested right

or by providing the public facilities that are the subject of the moratorium at the landowner's cost.

E. A moratorium adopted under subsection C, paragraph 1 of this section shall not remain in effect for more than one hundred twenty days, but such a moratorium may be extended for additional periods of time of up to one hundred twenty days if the city or town adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:

1. Verify the problem requiring the need for the moratorium to be extended.

2. Demonstrate that reasonable progress is being made to alleviate the problem resulting in the moratorium.

3. Set a specific duration for the renewal of the moratorium.

F. A city or town considering an extension of a moratorium shall provide notice to the general public published once in a newspaper of general circulation in the community at least thirty days before a final hearing is held to consider an extension of a moratorium.

G. Nothing in this section shall prevent a city or town from complying with any state or federal law, regulation or order issued in writing by a legally authorized governmental entity.

H. A landowner aggrieved by a municipality's adoption of a moratorium pursuant to this section may file, at any time within thirty days after the moratorium has been adopted, a complaint for a trial de novo in the superior court on the facts and the law regarding the moratorium. All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party.

I. In this section:

1. "Compelling need" means a clear and imminent danger to the health and safety of the public.

2. "Essential public facilities" means water, sewer and street improvements to the extent that these improvements and water resources are provided by the city, town or private utility.

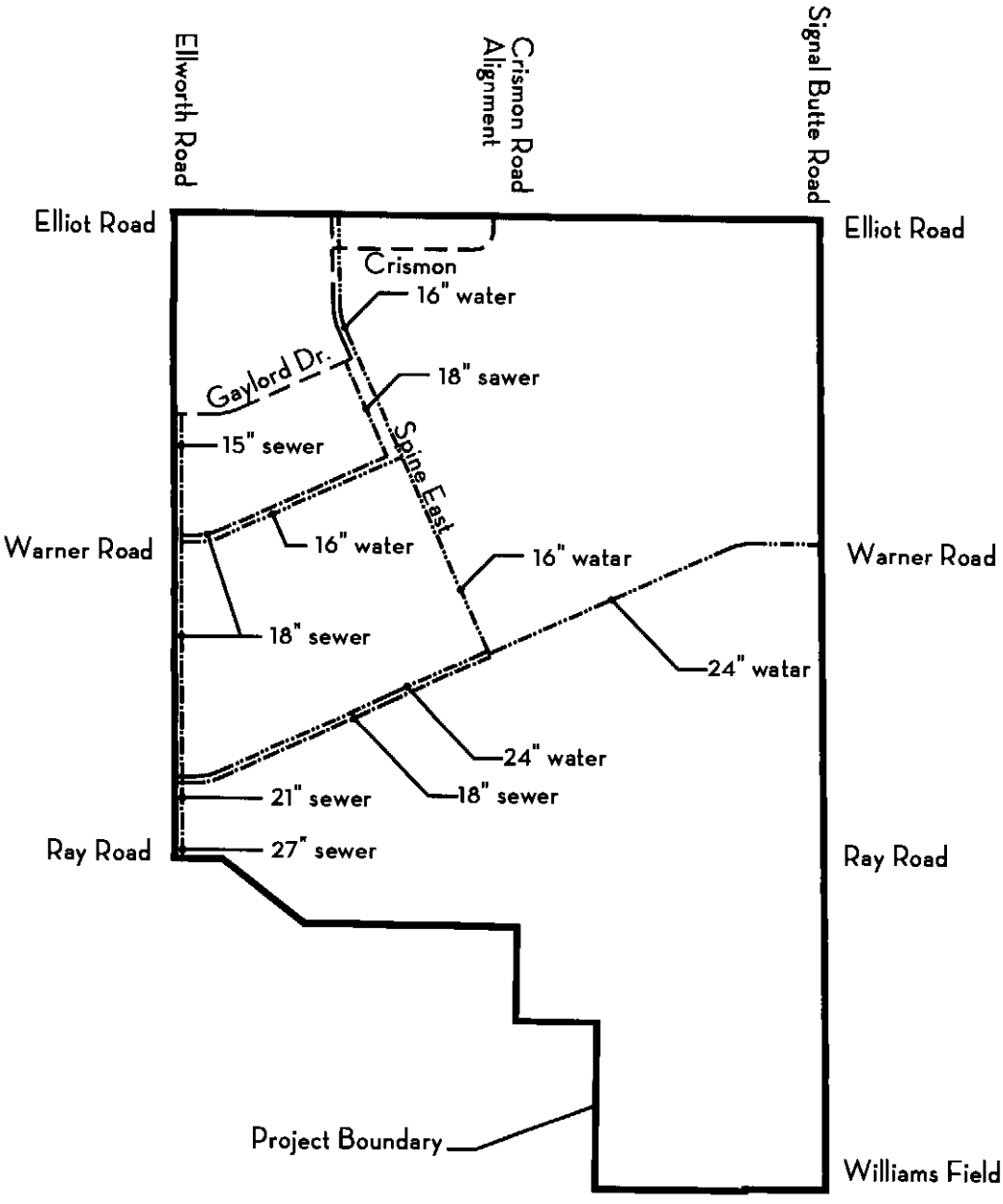
3. "Moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or construction on, any land. It does not include denial or delay of permits or authorizations because they are inconsistent with applicable statutes, rules, zoning or other ordinances.

4. "Rural land" means all property in the unincorporated area of a county or in the incorporated area of the city or town with a population of two thousand nine hundred or less persons according to the most recent United States decennial census.
5. "Urban or urbanizable land" means all property in the incorporated area of a city or town with a population of more than two thousand nine hundred persons according to the most recent United States decennial census.
6. "Vested right" means a right to develop property established by the expenditure of substantial sums of money pursuant to a permit or approval granted by the city, town or county.

Exhibit D

Exhibit D

Infrastructure Vesting



MESA PROVING GROUNDS

DMB®

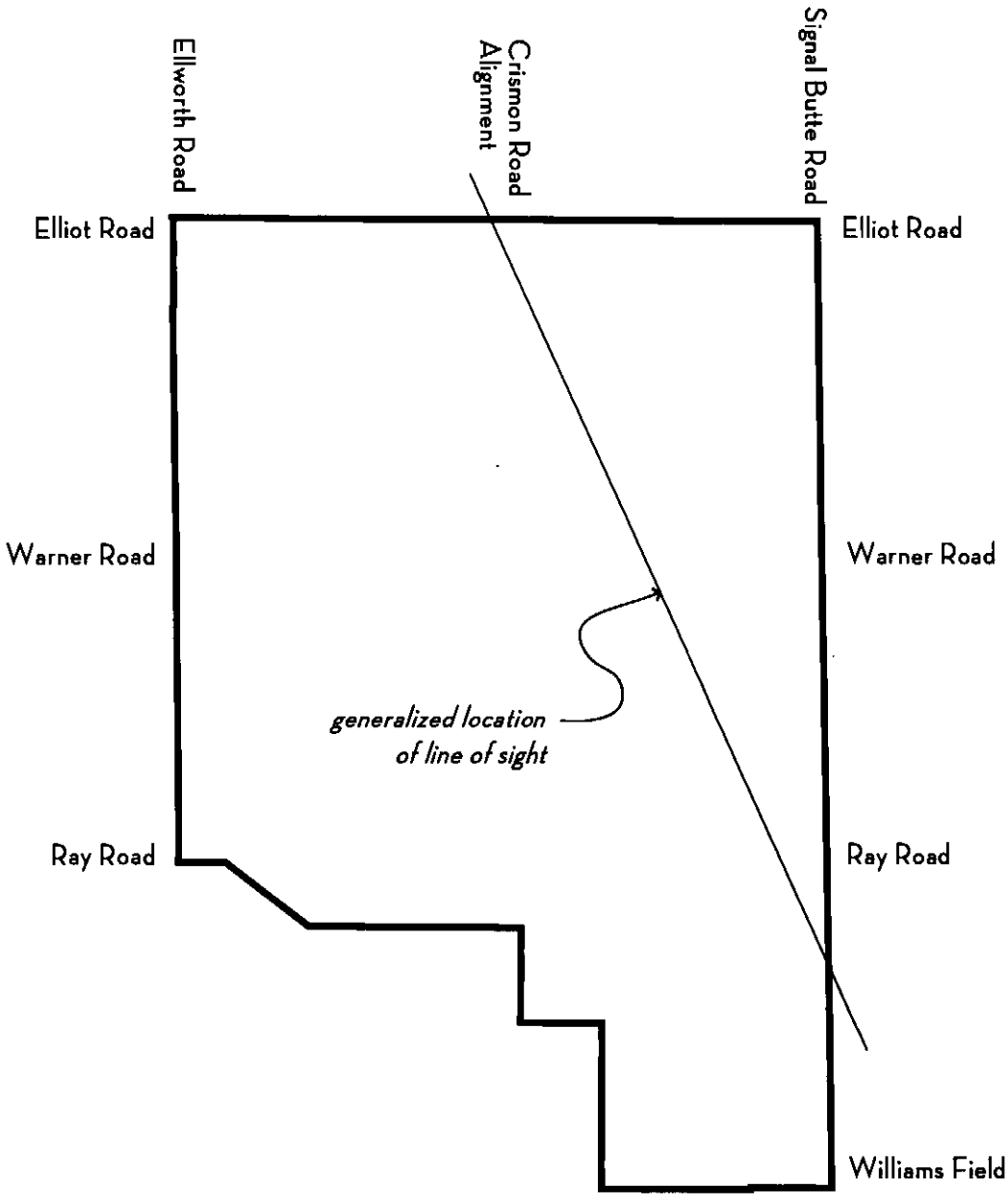
North
N.T.S.

31 Oct 08

Exhibit E

EXHIBIT E

Communication Transmitter Line of Sight



MESA PROVING GROUNDS

DMB®

North
N.T.S.

03 Nov 08

Exhibit F

EXHIBIT "F" – PROPOSED RAY ROAD ALIGNMENT

ON FILE WITH THE CITY OF MESA, CITY CLERK'S OFFICE

Exhibit G

EXHIBIT G

ACCELERATED PUBLIC IMPROVEMENTS

The Accelerated Public Improvements shall be designed, engineered, bid and constructed on the terms and conditions stated in Article IV of the Agreement and as follows.

1. **Definitions**. All section references refer to this **Exhibit G**, unless otherwise noted. All definitions contained within **Exhibit G** apply solely to the provisions contained within **Exhibits G and G-1**.

(a) "**Accelerated Project List**" means as defined in Section 4.1 of the Agreement and which is attached as **Exhibit G-1.**

(b) "**Completion of Construction**" means the date on which: (i) as to the private improvements (*i.e*, the improvements described in Section 3), when one or more temporary or final certificates of occupancy have been issued by the City and such improvements are open for business to the public; and (ii) as to the Accelerated Public Improvements, final acceptance by the City of the completed Accelerated Public Improvements for maintenance in accordance with the policies, standards and specifications contained in applicable City ordinances.

(c) "**Engineering and Procurement Requirements**" means as described in Section 5(a).

(d) "**Maximum City Cost**" means all Project Costs incurred up to $17,800,000.

(e) **"Notice Not to Proceed"** means written notice not to proceed with the design, acquiring of necessary easements and/or rights-of-way, engineering, bidding and construction of the Accelerated Public Improvements.

(f) "**Project Costs**" means all actual costs and expenses incurred to design, acquire necessary easements and/or rights-of-way, engineer, bid and construct the Accelerated Public Improvements or portions thereof, as applicable; provided, however, (i) Project Costs for Project 1 shall be the cost that would be incurred to design, engineer, bid and construct a twelve inch (12") wastewater interceptor and, unless Developer otherwise agrees, the Project Costs attributed to construction shall be the lowest and best bid received by the City pursuant to a bid solicitation issued in conjunction with the bid solicitation for Project 1; (ii) and Project Costs for Project 2(a) shall be based on a percentage of the pro-rata share of the total design flow of the water line.

(g) "**Project Schedule**" means as described in Section 2.

(h) "**Projects**" means the projects included in the Accelerated Project List, and the Projects are individually referred to as a "**Project**."

2. **Project Schedule**. The Parties acknowledge that the Accelerated Project List is in priority order, reflects the designated dates for design, construction contract award and Completion of Construction of the Accelerated Public Improvements, and that the City has already started design work for Projects 1 and 2(a). In order to timely complete the Accelerated Public Improvements, Developer acknowledges and agrees that it shall timely make Development Unit submittals and provide accurate and complete engineering information to the City as described and required in the schedule in the Accelerated Project List attached as **Exhibit G**-1 (the "**Project Schedule**") so that the City may design, engineer, bid and award construction contracts for the Accelerated Public Improvements within the timeframes in the Project Schedule. Subject to Developer's compliance with its requirements in the Project Schedule and in Article IV and this **Exhibit G**, and unless Developer timely provides the City with a deferral letter as provided in Section 2(b) or a Notice Not to Proceed as provided in Section 3, the City shall timely complete the requirements in the Project Schedule, which includes timeframes for designing, bidding and Completion of Construction of (including acquisition of rights of way and easements) the Accelerated Public Improvements. Without limitation of the foregoing, it is anticipated that Developer will need construction water as of the outside date designated in the Project Schedule for Completion of Construction of Project 2(a) and prior to the outside date designated for Completion of Construction of Project 2(c); the Parties agree to cooperate, diligently and in good faith, and at Developer's sole cost, to design and install interim facilities as necessary for the City to timely provide construction water to Developer, at the applicable water rate, until Completion of Construction of Project 2(c).

(a) **Mutually Agreed Extensions**. Developer and the City may mutually agree to extend any dates listed in the Project Schedule.

(b) **Developer Deferral Letter**. On or before the earliest of December 15, 2011 or the date that is ninety (90) days prior to the date designated in the Project Schedule for the construction contract award for any of Projects 2(c), 3, 4 or 5, Developer may provide Mesa's City Manager with written notice that the designated outside date for Completion of Construction is to be extended, in each instance to a date not later than December 15, 2014, in which event (i) the outside date designated in the Project Schedule for such Completion of Construction shall be extended to the date designated by Developer, not later than December 15, 2014, and all other applicable dates designated in the Project Schedule shall be extended by the same period of time; (ii) the City's costs incurred in connection with any such notice and extension shall be included in reimbursable Project Costs; and (iii) if such notice is with respect to Project 2(c), the City may elect to proceed with Project 2(c) or portion thereof; if the City elects to proceed and if the minimum hotel construction condition described in Section 3 is not timely satisfied or if Developer provides the City with a Notice Not to Proceed, Developer shall be obligated to reimburse the City for Developer's proportionate share, determined based on a percentage of the total design flow for Project 2(c), of the costs incurred to Complete Construction of Project 2(c) or portion thereof, as applicable.

3. **Developer's Obligation to Reimburse City.** If, as of March 15, 2015, there has not been the Completion of Construction on the Property of not less than 1200 rooms and/or suites of full-service, first-class hotel improvements consistent in overall quality, range of facilities and services with other facilities rated "four-diamond properties" by the American

Automobile Association or if Developer provides a Notice Not to Proceed after February 6, 2009 (as described below), then Developer shall reimburse the City for all Project Costs incurred up to the cap of the Maximum City Cost, subject to the following additional terms and limitations:

(a) Notice Not to Proceed and Effect of Same. Developer may provide the City with a Notice Not to Proceed at any time and with respect to any Project on the Accelerated Project List in which event the City shall have no further obligations relative to the Accelerated Public Improvements except as provided in (ii) Notice Not To Proceed After February 6, 2009, upon reimbursement to the City and Developer's assumption of responsibility for the remaining Accelerated Public Improvements. The effect of Developer's provision of a Notice Not to Proceed shall be as described below:

(i) Notice Not to Proceed Before February 6, 2009. If Developer provides Mesa's City Manager with a Notice Not to Proceed on or before February 6, 2009, Developer shall have no obligation to reimburse the City for Project Costs except as provided in clause (iii).

(ii) Notice Not to Proceed After February 6, 2009. If Developer provides Mesa's City Manager with a Notice Not to Proceed after February 6, 2009, Developer shall reimburse the City for all Project Costs incurred to the date of such Notice Not to Proceed and for all future Project Costs that: (i) the City incurs due to contractual obligations (for contracts entered into prior to Mesa's City Manager actually receiving the Notice Not to Proceed) for the design, and/or acquisition of necessary easements and/or rights-of-way, and/or engineering of a Project; provided, however, the City shall minimize such cost by terminating such contracts if it has the contractual right to do so; and (ii) the City incurs to Complete Construction of a Project if the Mesa City Council has awarded a contract to construct the Project on or before the Notice Not to Proceed has been actually received by Mesa's City Manager. Without limitation of the foregoing, and so long as Developer has reimbursed the City for all such Project Costs, the Parties agree that the provisions of Sections 5(a)(iv) and 5(a)(v) shall apply when and at such time as Developer assumes responsibility for the remaining Accelerated Public Improvements.

(iii) Developer's Responsibility for Reimbursement of Project Costs for Projects (1) and 2(a). Notwithstanding anything herein to the contrary, if the minimum hotel construction condition described above is not timely satisfied or if Developer provides the City with a Notice Not to Proceed, Developer shall be obligated to reimburse the City for the Project Costs incurred to design, engineer, bid and construct Projects 1 (costs associated with the base twelve inch (12") interceptor) and 2(a) (shall be based on a percentage of the pro-rata share of the total design flow of the water line).

(b) Payment. All Project Costs Developer is obligated to reimburse shall be due and payable to the City sixty (60) days following City's written notice for payment. If Developer is obligated to pay for future Project Costs, City may send a notice for payment, with reasonable supporting documentation, after the Completion of Construction of any Project for contracts entered into prior to Mesa's City Manager actually receiving the Notice Not to Proceed and, otherwise, upon completion of the design, acquisition of necessary easements and/or rights-of-way, and/or engineering work or at stages during the completion of such work at the City's

election. If Developer fails to timely pay any Project Costs payable by Developer to the City, such amount shall bear interest from the date which is sixty (60) days following Developer's receipt of notice from the City at the rate of six percent (6%) per annum until paid in full.

4. Final Work to Reach the Maximum City Cost. If the City determines, at any time, that the costs of the Accelerated Public Improvements will exceed the Maximum City Cost, the City shall promptly notify Developer of this determination. Thereafter, the City and Developer shall promptly, and in all events within thirty (30) days, meet in order to determine whether (i) the City will retain responsibility for the design, engineering and/or construction (as applicable) of the remaining work in respect of the Accelerated Public Improvements, in which case Developer will reimburse the City as provided for in Section 3(b); (ii) Developer will assume responsibility for the design, engineering and/or construction contract award (as applicable) of the remaining work in respect of the Accelerated Public Improvements, in which case the City will reimburse Developer as provided for in Section 4(a); provided, however, in no event shall the City be required to expend more than the Maximum City Cost, and/or (iii) the scope of any or all of the uncompleted work in respect of the Accelerated Public Improvements will be limited or modified so that the Project Costs of the remaining work in respect of the Accelerated Public Improvements is within the Maximum City Cost.

(a) City Reimbursement to Developer. If Developer assumes responsibility for the design, engineering, bidding and/or construction (as applicable) of any of the Accelerated Public Improvements pursuant to Section 4 or 6, provided that Developer complies with the terms of Article IV and this **Exhibit G**, the City shall reimburse Developer for the Accelerated Public Improvements, or portions thereof, that Developer designs, engineers, bids and/or constructs (as applicable) in an amount not to exceed the difference of: (Maximum City Cost [i.e., $17,800,000]) minus (all Project Costs incurred by the City) equals the "**Reimbursement Cap**". The City shall pay Developer, subject to the Reimbursement Cap, the applicable reimbursement amount within sixty (60) days following Completion of Construction of each Project or, if the City and Developer have mutually agreed concerning a lesser scope of work, applicable portion thereof; provided, if the City fails to timely pay any Project Costs payable by the City to Developer, such amount shall bear interest from the date on which such payment was due at the rate of six percent (6%) per annum until paid in full.

5. Developer Construction. In the event that the Parties so determine following termination of the City's obligations under Article IV and this **Exhibit G** or, in the event of the City's default and failure to cure as provided in Section 6, Developer may assume responsibility for the design, engineering, bid and/or construction of all or the applicable portions of the work in respect of the Accelerated Public Improvements. If Developer assumes responsibility for any such work:

(a) Developer Obligations. Developer shall, at its sole cost, complete the design, engineering, bidding, and/or construction, as applicable, or cause the same to be done, and (if applicable) dedicate to the City the Accelerated Public Improvements, or portions thereof, that have been assumed by Developer, subject to the terms and conditions of this Agreement and in compliance with the City's Code, ordinances, engineering standards, procurement requirements, guidelines, and all applicable State statutes, and state procurement laws and requirements (the "**Engineering and Procurement Requirements**").

(i) **Design, Bidding, Construction and Dedication**. Any such Accelerated Public Improvements, or portions thereof, shall be designed, bid, constructed and dedicated, as applicable, in accordance with the Engineering and Procurement Requirements, including, without limitation, the City's normal plan submittal, review and approval processes, day-to-day inspection requirements, insurance requirements and financial assurance requirements. Additionally, Developer shall comply with all public bid and procurement Rules deemed applicable by the City Engineer and City Attorney with respect to the design and construction of the Accelerated Public Improvements for which the Developer will seek reimbursement from the City.

(ii) **Payment of Accelerated Public Improvement Costs**. The Developer shall pay all Accelerated Public Improvement costs as the same become due; provided that City shall be obligated to provide reimbursement as described in Section 4 (a) above.

(iii) **Dedication, Acceptance and Maintenance of Public Improvements**. Upon Developer's Completion of Construction of any Project, Developer shall dedicate and the City shall accept such Accelerated Public Improvements in accordance with the Engineering and Procurement Requirements and upon such reasonable and customary conditions as the City may impose, including, without limitation, a one (1) year workmanship and materials contractor's warranty in form and content conforming to the City's customary requirements for like-kind improvements.

(iv) **Authorization to Use City Plans**. The City and Developer acknowledge that Developer may be taking over the design, engineering and construction of one or more Projects for which the City may have started or partially completed the design, engineering or construction. To the extent permitted by the Engineering and Procurement Requirements, the City shall be deemed to have granted Developer the non-exclusive right to use all design and engineering plans, and approvals then in existence and in the possession of the City with respect to the Accelerated Public Improvements, as necessary to complete and/or proceed with the design, engineering, bid and construction of such Accelerated Public Improvements.

(v) **Right of Entry**. Subject to compliance with the Engineering and Procurement Requirements, Developer and its agents and contractors shall have the right to enter, remain upon and cross over any City easement or right-of-way to the extent reasonably necessary to design, engineer or construct such Accelerated Public Improvements (or portion thereof).

6. **Non-Performance**. This Section 6 shall apply solely in connection with the rights and obligations of the City and Developer under Article IV of the Agreement and this **Exhibit G**. If the City or Developer, respectively, fails to perform its obligations under Article IV and this **Exhibit G**, and such failure continues for a period of sixty (60) days after written notice thereof from the other Party (the "**Cure Period**"), such failure shall constitute a default under Article IV and this **Exhibit G** (a "**Default**"); provided, however, that if the failure is such that more than sixty (60) days would reasonably be required to perform such action or comply with any term or provision hereof, then such Party shall have such additional time as may be necessary to perform its obligations so long as such Party commences performance or

compliance within said sixty (60) day period and diligently proceeds to complete such performance. Any notice of an alleged Default shall specify the nature of the alleged Default and the manner in which the alleged Default may be satisfactorily cured. If a Default is not cured within the Cure Period, the remedies of Developer and the City shall consist of and shall be limited to the following:

(a) **City Remedies**. Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by Developer within the Cure Period accordance with this Section 6, the City's sole and exclusive remedies shall consist of and be limited to the following:

(i) If Developer has made the election to design, engineer, bid, and/or construct the Accelerated Public Improvements (or portions thereof) under Section 4 or 6(b), the City's actual damages, which the Parties agrees shall be the actual direct costs to complete any design, engineering, bidding and/or construction of Accelerated Public Improvements which Developer is then obligated for, and not any other damages of any kind or nature.

(ii) If Developer is obligated to reimburse the City under Section 3, recovery of any amounts owing to the City pursuant to Section 3, together with the City's attorneys' fees and court costs.

(iii) Specific performance, an injunction, special action, declaratory relief or other similar relief requiring Developer to undertake and fully and timely perform its obligations under this Agreement.

(iv) All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(b) **Developer Remedies**. Whenever a Default occurs and is not cured (or, if appropriate, cure undertaken) by the City in accordance with this Section 6, Developer's sole and exclusive remedies shall consist of and be limited to the following:

(i) Specific performance, an injunction, special action, declaratory relief or other similar relief requiring the City to undertake and fully and timely perform its obligations under this Agreement. The City further agrees that specific performance, special action, declaratory or injunctive relief is appropriate in the event of a failure to timely perform its obligations as set forth in the Project Schedule.

(ii) Developer may elect to assume responsibility for the design, engineering, bid and/or construction of the Accelerated Public Improvements (or portions thereof) under the terms of Section 5; and, if Developer makes such election and the City does not timely reimburse Developer, the City expressly acknowledges and agrees that Developer may seek damages from the City, which the Parties agree shall be limited to the amount of the Reimbursement Cap, together with interest pursuant to Section 4(a) (if applicable) and Developer's attorneys' fees and court costs, and not for any other damages of any kind or nature..

(iii) If Developer is precluded from assuming responsibility for the design, engineering, bid and/or construction of the Accelerated Public Improvements (or portions thereof) under the terms of Section 7 for any reason other than Developer's Default, the City expressly acknowledges and agrees that Developer may seek damages from the City, which the Parties agree shall be limited to the amount of the Reimbursement Cap, together with Developer's attorneys' fees and court costs, and not for any other damages of any kind or nature.

(iv) Except as expressly provided in the above Section 6(b)(ii) and 6(b)(iii), Developer expressly waives any and all right to seek damages of any kind or nature as a remedy with respect to a Default by the City, although any order or equitable decree may require the City to reimburse monies it may be obligated to reimburse pursuant to this Agreement.

(v) All such remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

(c) **Limitation on Damages**. Claims for damages (when and if permitted) shall be limited to actual and consequential damages as of the time of entry of judgment and the City and Developer hereby waive any right to seek special, punitive, multiple, exemplary or other similar damages.

7. **Enforced Delay In Performance For Causes Beyond Control of Party.** Neither the City nor Developer, as the case may be, shall be considered to have caused an Event of Default with respect to its obligations under Article IV or this **Exhibit G** in the event of a delay (an "**Enforced Delay**") due to causes beyond its control and without its fault, negligence or failure to comply with the Rules and Regulations, including, but not restricted to, acts of God, acts of a Third Party, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain by any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property by any governmental entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Property, from the unavailability of financing or financing on terms acceptable to a Party, from labor shortages, from any time required by the City to review, comment upon, or process any plan, submittal or approval, nor from the unavailability for any reason of particular materials or other supplies, contractors, subcontractors, vendors, investors or lenders desired by a Party. It is understood and agreed that the Parties will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 7, shall, within thirty (30) days after such Party knows or reasonably should know of any such Enforced Delay, first notify the other Party or Parties of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that if such Party provides

such notice more than thirty (30) days after such Party knows of such an Enforced Delay, the length of the Enforced Delay shall be measured from the date which is thirty (30) days prior to such notice.

Exhibit G1

EXHIBIT "G1" – ACCELERATED PROJECT LIST

ON FILE WITH THE CITY OF MESA, CITY CLERK'S OFFICE

Exhibit H

EXHIBIT H

Community Facilities Districts

1. **District 1**. If formed, it is contemplated that one of the two districts will encompass all, or substantially all, of the land located generally within the area depicted on **Exhibit H-1**, that the property will be primarily for residential uses, that the Developer will seek a 30-year bond authorization of $435,000,000 or such higher amount as the Developer and the District Board may agree, that the target ad valorem tax rate for the District will be $3.00, and that a $.30 ad valorem tax rate for operation and maintenance expenses will be authorized and, if any operation and maintenance expenses are not paid or provided for by the Developer in a form satisfactory to the District Board, levied. Of the amount authorized at the election, the Developer shall not request the issuance of more than $350,000,000 in general obligation bonds.

2. **District 2**. If formed, it is contemplated that a second district will encompass all, or substantially all, of the land located generally within the area also depicted on **Exhibit H-1**, that the property will be used primarily for non-residential uses, that the Developer will seek a 30-year general obligation bond authorization of $60,000,000 or such higher amount as the Developer and the District Board may agree, that the target ad valorem tax rate will be agreed upon but is not expected to be in excess of $3.00, that a $.30 ad valorem tax rate for operation and maintenance expenses will be authorized but will not be levied so long as arrangements for payment of operation and maintenance, in a form satisfactory to the District Board, are made, and that the district will rely primarily on special assessment financing. Of the amount authorized at the election, the Developer shall not request the issuance of more than $50,000,000 in general obligation bonds.

3. **Ongoing Obligations for Infrastructure**. Except as otherwise expressly agreed by the Parties, upon acceptance by the City of public infrastructure, the City will not impose ongoing maintenance and operation responsibility or expenses with respect to such infrastructure on the district, the Developer or the property owners within the district except on the same terms as the City imposes such responsibility or expenses on other developers or property owners for similar infrastructure accepted by the City.

4. **Proposed Infrastructure**. Although the determination of the infrastructure that may be financed by each District will be in the sole and absolute discretion of the District Board, it is contemplated that only the infrastructure of the types described on **Exhibit H-2** will be eligible for financing and such other infrastructure as may be requested by the Developer and acceptable to the District Board, in its sole and absolute discretion.

5. **Right to Initiate Financing**. The District Board of each district on its own initiative may consider applications or feasibility reports not submitted by the Developer and issue district bonds pursuant to such feasibility reports only as follows:

a. After the earlier of (i) the twenty-fifth (25^{th}) anniversary of the formation of the district, (ii) the date on which the undeveloped land owned by the Developer within the District represents less than ten percent (10%) of the land within the district, or (iii) the date on which eighty percent (80%) of the bonds authorized at the election have been issued, the District Board may initiate or consider applications or feasibility studies submitted by the City (A) for any remaining authorization of general obligation bonds, (B) for revenue bonds, or (C) for special assessment bonds if less than five percent (5%) of the assessment to be levied to secure the bonds will be levied on property owned by the Developer.

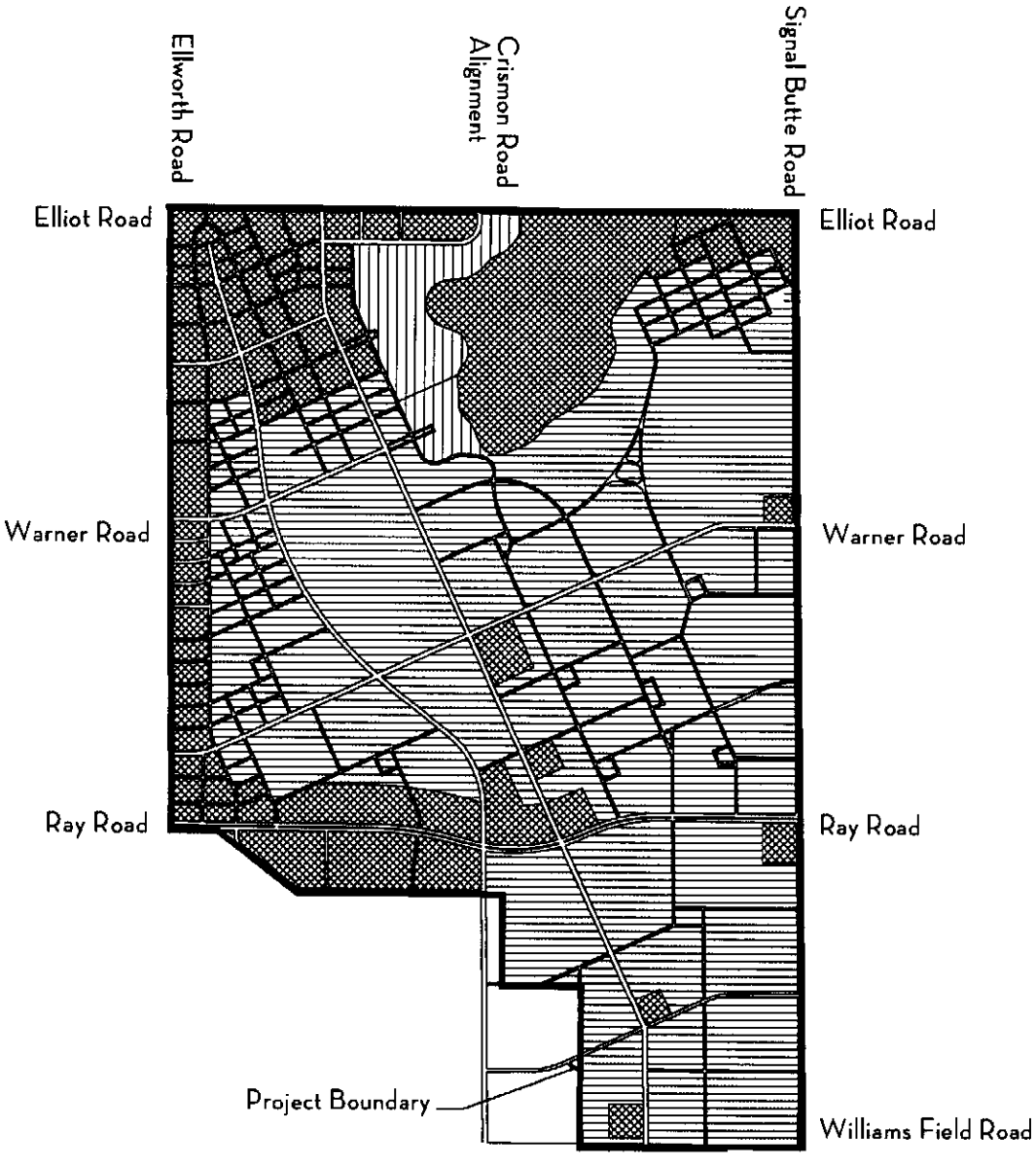
b. After the earlier of (i) the twenty-fifth (25^{th}) anniversary of the formation of the district or (ii) the date on which the undeveloped land owned by the Developer within the District represents less than ten percent (10%) of the land within the district, the District Board may, but is not obligated to, consider applications or feasibility studies submitted by any person for general obligation bonds, revenue bonds or special assessment bonds.

c. With respect to District 2, the amount of general obligation bonds issued under this Section 5 shall not exceed $10,000,000 unless otherwise agreed by the Developer and the District.

Exhibit H1

EXHIBIT H-1

Community Facilities Districts 1 and 2



DMB

District 1

District 2

Non-CFD

MESA PROVING GROUNDS

North
N.T.S.

24 Oct 08

Exhibit H2

Exhibit H-2
Public Infrastructure

- **Community Monuments and Signage**
- **Offsite Warner Road Sewer** (within Warner Rd ROW from intersection of Ellsworth Rd and Warner Rd to East Maricopa Interceptor (EMI), including sewer pipe, sewer manholes and sewer connection to EMI).
- **Non-Potable Flow Control Structure and Non-Potable Water Line** (Water Line within Signal Butte Road and Elliot Road ROW's from South CAP Water Treatment Plant to Project; within Project, Water Line to extend to Golf Course Lake and Great Park Lake. Flow Control Structure to be located adjacent to South CAP Water Treatment Plant).
- **Non-Potable Ground Water Wells** (located within Project, including casing, pump, appurtenant facilities, lateral distribution piping connected to Non-Potable Water Line).
- **Perimeter Elliot Road (Ellsworth Road to Signal Butte Road)** (all or portion of southern half-street section of 6-lane arterial roadway including sidewalk, transit stops, lighting, traffic signals, utilities, landscaping and hardscape).
- **Perimeter Ellsworth Road (Elliot Road to Ray Road)** (all or portion of the eastern half-street section of 6-lane arterial roadway including sidewalk, transit stops, lighting, traffic signals, utilities, landscaping and hardscape).
- **Perimeter Signal Butte Road (Elliot Road to Williams Field Road)** (all or portion of western half-street section of 6-lane arterial roadway including sidewalk, transit stops, lighting, traffic signals, utilities, landscaping and hardscape).
- **Perimeter Williams Field Road (Signal Butte Road to approximately 3150 Feet West)** (all or portion of northern half-street section of 6-lane arterial roadway including sidewalk, transit stops, lighting, traffic signals, utilities, landscaping and hardscape).
- **Internal Ray Road (Ellsworth Road to Signal Butte Road)** (6-lane arterial roadway within Project including sidewalk, pedestrian bridge or tunnel, transit stops, lighting, traffic signals, utilities, landscaping and hardscape).
- **Internal District Streets** (2-lane and 4-lane roadways within Project including sidewalk, grade separated crossings, transit stops, lighting, traffic signals, utilities, furniture, landscaping and hardscape).
- **Internal Neighborhood Collector Streets** (2-lane collector roadways within Project including sidewalk, lighting, furniture, utilities, landscaping and hardscape).
- **Internal Non-Residential Streets and Parking Facilities** (non-residential roadways and parking facilities within Project including sidewalk, transit stops, lighting, traffic signals, utilities, furniture, landscaping and hardscape).
- **Internal Public Parks and Plazas** (public park improvements within Project; may include ball fields, ball courts, event facilities, lakes, streams, restrooms, ramadas, furniture, sports, recreation and play equipment, parking lots, lighting, trails, drainage improvements, tunnels, bridges landscaping and hardscape).
- **Internal Drainage and Retention Improvements** (drainage and retention improvements within Project; may include box culverts, bridges, tunnels, retaining walls, storm drain piping and ancillary improvements, lakes, streams, open channels, retention basins, drywells, underground storage and dispersion basins, landscaping and hardscape).

Exhibit I

EXHIBIT I

PROJECT GOVERNANCE

NOTE: **THE FOLLOWING REPRESENTS AN OUTLINE OF THE MESA PROVING GROUNDS' GOVERNANCE STRUCTURE AND SPECIFICALLY, THE HIERARCHY OF GOVERNANCE ENTITIES AND RECIPROCAL EASEMENT AND MAINTENANCE COVENANTS ("REA'S") DESIGNED TO GOVERN THE DEVELOPMENT, OPERATION, USE AND MAINTENANCE OF PROPERTIES WITHIN THE MESA PROVING GROUNDS COMMUNITY. THE REVIEWS BY THE CITY OF MESA (THE "CITY") REQUIRED BY THIS EXHIBIT I WILL BE HANDLED IN A MANNER CONSISTENT WITH THIS EXHIBIT. INITIAL APPROVAL AND ANY MATERIAL AMENDMENT OF GOVERNANCE DOCUMENTS SHALL REQUIRE CITY REVIEW PURSUANT TO THE REQUIREMENTS OF THIS EXHIBIT I. THIS PRIVATE GOVERNANCE OUTLINE IS INCLUDED AS AN EXHIBIT TO THAT CERTAIN AGREEMENT ENTERED INTO BETWEEN THE CITY AND DMB MESA PROVING GROUNDS, LLC, A DELAWARE LIMITED LIABILITY COMPANY (HEREAFTER REFERRED TO AS "COMMUNITY DECLARANT" OR "MASTER DEVELOPER") (THE "DEVELOPMENT AGREEMENT")**

**Note that all names provided for herein for the various governance entities are placeholder names only and subject to change at the time that the entities are legally created and the documents are recorded. Additionally, the reference to "Mesa Proving Grounds" as the name of the overall community is also a placeholder and will be changed in the future.*

I. INTRODUCTION TO GOVERNANCE PRIORITIES:

Mesa Proving Grounds is an approximately 3,200 acre property generally located south of Elliot Road, west of Signal Butte Road, east of Ellsworth Road and north of Williams Field Road (hereinafter referred to as the "Property" or "Mesa Proving Grounds"). Master Developer intends to develop the Property as a mixed-use community (the "Community"), which is envisioned to be an innovative community with a character that has been referred to as 21st Century Desert Urbanism. This character is intended to include a diverse mix of uses with concentrated focus on sustainability initiatives, design elements that respect and relate to the native desert environment, while encouraging convenient access to high-density urban development including employment opportunities mixed with residential, office, shopping, restaurants and entertainment venues. A centrally-located park (referred to herein as the "Great Park") is intended to feature open space, along with programmed and passive recreational facilities, and will serve to connect the Community's diverse elements.

Mesa Proving Grounds is currently intended to include retail, general commercial, medical and office space, educational uses, a resort hotel with convention space, one or more boutique class hotels, single-family detached homes, single-family attached homes, including condominiums, apartments and other multi-family properties, houses of worship, schools, parks, open space and a golf course. Residential development within the Community may include age-qualified areas.

The governance approach for a community with such diverse and extensive needs and a lengthy development cycle must be clearly stated and comprehensive in order to convey the vision to future developers, owners and lessees, yet flexible enough to allow for changing conditions and advancements in technology over time.

II. OVERVIEW OF GOVERNANCE STRUCTURE:

Governance of the Community will rest upon a foundation of recorded covenants and restrictions, which will bind present and future owners, successors and assigns, lessees, sub lessees, guests and other users within the Property. In addition to containing the standards and guidelines for development, operation, use and maintenance of various areas within the Property, certain covenants, conditions and restrictions (collectively referred to as "Declarations") will create governance entities (referred to herein as "Associations") to administer and enforce the respective governance processes and regulations. These associations will be non-profit Arizona corporations with broad powers and specific responsibilities.

Additional governance authority for each individual building, group of buildings, subdivision or condominium project will be provided by a building-specific declaration and may be further governed by separate supplemental declarations for particular types of uses or maintenance needs within the building or area. Commercial property owners will enter into other agreements or other documents that will be recorded as properties are sold to provide for easements, property maintenance obligations (including cost-sharing arrangements), use restrictions, REAs and related provisions. These individual arrangements will be determined in the future and will be a critical component of the day-to-day governance of the Community.

Specifically, the following structure of governance documentation is planned as the Community develops (collectively, the "Declarations"):

1. **Community Declaration** (affecting the entire Community)

2. **Resort Core Declaration** (governing (i) the resort projects other than the Gaylord Property (as defined below), (ii) golf course, and (iii) homes neighboring the golf course)

3. **Residential Declaration** (creating a residential association and governing the residential areas only, including residences within the Urban Core)

    3A. **Residential Supplemental Declarations** (annexing each residential subdivision into the Residential Declaration)

3B. **Residential Condominium Declarations** (annexing each residential condominium into the Residential Declaration)

4. **Urban Core Commercial Declaration(s)** (including apartments, governing the Commercial areas only within the Urban Core)

4A. **Commercial Supplemental Declarations** (annexing each commercial block into Urban Core commercial declaration)

5. **Neighborhood Commercial Declarations/REAs** (governing commercial centers outside the Urban Core)

6. **[Project Name] Residential Community Council Declaration** (providing lifestyle programming and community benefits for the residential areas only, including residences within the Urban Core)

A chart reflecting the hierarchy of these governance entities is attached as **Exhibit I-1**.

Each of the above-noted Declaration categories will be subject to targeted architectural guidelines, rules, and procedures for the review of plans for design and construction of buildings and other improvements, as well as general rules and regulations addressing the conduct of persons and the development and use of properties within such areas.

III. DETAILS OF EACH OF THE DEFINED GOVERNANCE ENTITIES:

1. Governance Entity: [Project Name] Community Association, Inc., an Arizona nonprofit corporation ("Community Association")

Governs: Entire Community, unless excluded by Community Declarant.

Structure: The Community Association operates in conformance with a declaration, which together with related Bylaws, Articles, rules and regulations, provides a governance structure covering certain limited aspects of the development, administration, maintenance, and preservation of the Community, as well as procedures for future expansion of the Community to include additional real property ("Community Declaration") as the Community Association deems appropriate. That governance structure is primarily the responsibility of the Community Association. The Community Declaration will be recorded against the initial approved subdivisions, and addition Declarations ("Supplemental Declarations") will be recorded from time to time to annex the remaining land within the Community as it is subdivided into this Community Declaration.

Addresses: Community common areas – boulevard landscaping, perimeter landscaping, special street enhancements; Development Agreement compliance; certain resort issues – specific use restrictions and project wide disclosures.

The Community Declarant reserves the right and authority to exclude one or more properties within the Community from this Community Declaration and/or from the Association Declarations to allow imposition of separate covenants providing for direct owner contributions to common maintenance and other Community needs.

2. **Governance Entity: Declarant and Gaylord Entity**

Governs: Resort projects, golf course, and homes neighboring the golf course, provided however, that the Gaylord Property shall not be included within such governance entity or subject to the Resort Core Declaration (defined below). The term "Gaylord Property" as used herein shall mean that property within the Community as described in the Development Agreement.

Structure: The intended area at the northern portion of the Community, which has been planned to include a high-end destination resort(s), convention and golf area (collectively, the "Resort Core") that may include some residential elements as allowed in the Community Plan, will be further governed by the Declaration of Covenants, Conditions, Easements and Restrictions for the Resort Core (the "Resort Core Declaration"). The Resort Core Declaration may provide for the formation of an association of the residential property owners that become subject to such declaration. The Resort Core Declaration will address the specific provisions concerning use limitation and design control on resort owner(s) in connection with the resort property(ies).

Addresses: Resort specific issues (including use limitations and design control)
Note: *Separate restrictions affecting the Gaylord Property only will be recorded with that sale.*

3. **Governance Entity:** Residential Community Association, Inc. (the "Residential Community Association")

Governs: The residential areas only, including those within the Urban Core.

Structure: Residential areas in the Community will be further governed by one or more Declaration of Covenants, Conditions, Easements and Restrictions for the residential areas (collectively, the "Residential Declarations"). Each Residential Declaration will provide for the formation of an association of the property owners that become subject to such declaration.

(a) The structure of the Residential Community Association shall be established with enforceable powers over residential development throughout the Community, and may be divided into neighborhoods to address localized issues. The governing authority of the Residential Community Association (the "Board of Directors") shall initially be appointed by the Master Developer, acting as Community Declarant, who shall retain the power to appoint the Board of Directors until the Master Developer has completed development of the Community, or such earlier date required by law. Ultimately, the Board of

Directors of the Residential Community Association will be comprised of residents elected by its members to represent the Community.

(b) The Residential Declaration includes assessment authority to ensure the functions of the Residential Community Association are appropriately funded in accordance with its governance role, both during the period of development and thereafter. The governance role of the Residential Community Association is anticipated to expand and diversify throughout the period of residential development on the Community.

(c) The Residential Community Association shall have the ability to create separate neighborhood cost center assessment areas, without creating separate sub-associations, pursuant to which the Residential Community Association may assess the cost of maintenance of certain identified neighborhood common elements and amenities to the owners of the residential properties primarily benefited thereby, and may create a neighborhood committee to provide input and recommendations relating to ongoing management and maintenance of such neighborhood common elements and amenities. The neighborhood assessment areas may be created initially by the Community Declarant or, if requested by residential property owners within a prospective neighborhood assessment area, by the Board of Directors of the Residential Community Association.

(d) Recorded covenants, conditions and restrictions setting forth standards for residential development and subjecting residential areas within the Property to control and authority by the Residential Community Association shall be established prior to closing sales of residential lots or structures within the Community.

(e) The Residential Community Association shall have the obligation to maintain only such common areas, amenities and facilities, including neighborhood common elements and amenities within neighborhood assessment areas, for which the Residential Community Association has expressly accepted responsibility of maintenance pursuant to authorized execution of recorded instrument or subdivision plat. Complaints respecting maintenance of common areas, amenities and facilities accepted for maintenance by the Residential Community Association shall be resolved by the Residential Community Association.

(f) The Residential Community Association shall have enforcement rights which include monetary sanctions for violations, the ability to impose a lien to enforce payment of monetary sanctions, authority for injunctive orders and for specific enforcement of its covenants and restrictions.

Addresses: The Residential Community Association is envisioned as the entity that will be formed with responsibility for establishment, implementation and enforcement of standards applicable to residential development throughout the Community and to manage, maintain and operate common areas closely

associated with residential development. This includes maintenance of neighborhood common areas – the Great Park, medians, neighborhood parks, landscaping, special street enhancements, all within the residential areas; residential use restrictions (e.g., rental), residential design review and shared facilities (e.g., schools, City).

3A. Residential Supplemental Declarations

Governs: Adds subdivision specific restrictions to the Residential Declaration.

Addresses: Annexation of additional subdivisions to the Residential Community Association, number of assessable units, subdivision-specific easements, cost centers, permitted use restrictions and special issues (e.g., party walls).

3B. Residential Condominium Declarations

Governs: Each residential condominium.

Addresses: Building level issues and may include additional design or use restrictions. Includes assessment authority to ensure the functions of the Condominium Association are appropriately funded in accordance with its governance role.

4. **Governance Entity: None** Urban Core Commercial Declarations

Governs: Commercial areas only, including apartments

Structure: The area generally at the northwest corner of the Property is referred to generally as the urban core (the "Urban Core"). Urban Core restrictions will be imposed as the commercial parcels are sold to provide for equitable cost sharing in common area maintenance most directly related to the Urban Core areas and to include Community Declarant's rights to review commercial designs and enforcement of standards applicable to development of nonresidential properties. There is no governance association applicable to this Declaration.

Addresses: Urban Core common areas which are planned to include parks, medians, landscaping, special street enhancements, all within commercial areas (parking lots and garages);

4A. Urban Core Supplemental Declarations (Single-Building)

Governs: Each commercial block

Addresses: Number of assessable units, subdivision-specific easements, cost centers and permitted use restrictions; for multi-building blocks, may also cover typical "shopping center" issues: common areas maintenance, access and parking easements, etc.

5. **Neighborhood Commercial Declarations or REAs**

Governs: Neighborhood commercial centers located within the Property

Addresses: Number of assessable units, cost centers, permitted use restrictions and typical "shopping center" issues: common area maintenance, access and parking easements, etc.

6. **Governance Entity:** The Community Council.

Governance: The community council is envisioned as the entity coordinating with the Residential Community Association and positively impacting the entire residential community, including residences within the Urban Core (the "Community Council"). The Community Council will have overall responsibility as the coordinator and facilitator of activities, events, cultural programming, education and communications regarding sustainability goals and educational programming to promote the active community life envisioned by the Master Developer. The Community Council will act as a liaison with the greater community, including educational institutions, health care organizations, City departments, and other Mesa community organizations. In addition, this entity will serve as the primary coordinator with the City, as it relates to the Great Park and programming, events and activities open to the public.

Addresses: Resident activities and rules associated with Community events, programming, partnerships, assessments, transfer fees and use fees to support positive engagement, educational and charitable work, programming and events for the Community and the public.

7. **Design Guidelines**. The Mesa Proving Grounds Design Guidelines (the "Private Governance Design Guidelines") are the central documents that will be established to preserve, continue and maintain the character of the Community to fulfill the vision of 21st Century Desert Urbanism. The two components of the Private Governance Design Guidelines, for residential uses ("Residential Design Guidelines") and for commercial and mixed-use areas ("Non-Residential Design Guidelines"), establish a comprehensive plan for and uphold the quality of all future architecture, development, and land use within the Community and are intended to create a developmental culture of the highest quality land use and development. These Private Governance Design Guidelines will encourage innovation and application of advancing technologies, while maintaining the quality standards that are essential to the Community character. The Private Governance Design Guidelines shall not apply to the Gaylord Property, and the City and Community Declarant acknowledge and agree that the Gaylord Property is excepted from the requirements of having to obtain Master Developer approval to proceed with City processes before submitting any development application.

The Private Governance Design Guidelines discussed herein are separate and apart from the design guidelines contained within the Planned Community District ("PCD") and Community Plan which are the City zoning regulations which also govern the design of the Property and are reviewed by the City as part of the approval processes specified with the PCD and the Community Plan (the "PCD Design Guidelines").

Community Declarant or its appointee as initial residential and non-residential design reviewer ("Design Reviewer") (and ultimately, the residential design review committee and non-residential design review committee (collectively the "Design Review Committee") after Community Declarant transitions out of the development phase of the Community) are intended to be the group of individuals responsible for reviewing and enforcing the standards relating to design, use and quality of development within the Community.

(a) To ensure legal enforceability of the residential and non-residential Design Guidelines and authority of the residential and non-residential Design Reviewers (and ultimately, the Residential Design Review Committee and Non-Residential Design Review Committee), owners will specifically agree that they, collectively and individually, benefit from the applicable Design Guidelines and from the plan for orderly, planned and controlled development.

(b) The Design Guidelines will be fully enforceable under Arizona law and will include authority for monetary sanctions for violations, authority for injunctive orders, and for specific enforcement of its terms in accordance with Arizona law.

(c) In addition, the Design Guidelines shall include:

(i) provisions prohibiting submission to the City of applications for building permits, unless and until all such submissions first have been reviewed and approved by the applicable Design Reviewer as provided in the Design Guidelines. Additionally, a letter from the Master Developer evidencing such review or approval shall be submitted to the City concurrently with applications for building permits;

(ii) provisions empowering the Design Reviewer to grant variances from strict enforcement of provisions of the applicable standards (as indicated in the Design Guidelines) in narrow circumstances where granting of the variances would enhance design innovation and excellence and the intent of the standards continues to be met;

(iii) provisions for funding and implementation of design review through filing fees, assessments and other charges reasonably calculated to ensure adequate funding for enforcement of the applicable Residential or Non-Residential Design Guidelines and activities and procedural processes of the Design Reviewer;

(iv) provisions creating a process and a single point of contact with the Design Reviewer for persons, including members of the public or the City, requesting

clarification, interpretation or explanation of particular architectural and landscape design standards;

(v) provisions creating a process and a single point of contact to the City, on request, a written description of the status of approval or denial of submissions to the applicable Design Reviewer respecting particular development sites within the Community; and

(vi) Provisions that provide for a courtesy review by a designated member of the City ("City Design Review Designee") of all design review submissions (submissions required to comply with the design guidelines) prior to approval by the Design Reviewer. Such courtesy submissions shall be submitted to the City at least twenty (20) days before approval by the Design Reviewer. The City Design Review Designee shall have up to fifteen (15) days after receipt thereof to forward the comments to the Design Reviewer for Design Reviewer's consideration.

(d) The applicable Design Guidelines shall be created and legally enforceable, subjecting all areas of the Community, except the Gaylord Property, to its mandate prior to sale or development of any development sites within the Property.

8. **City Review of Governance Entities.** The foregoing overview of governance entities and responsibilities, once created, are intended to satisfy the requirement contained in Section 6.4 (a) of the Development Agreement (the "Review Condition"). Accordingly, the City's role in review of the creation of such entities shall be to confirm, in accordance with the foregoing, the creation of appropriate entities empowered with refinement and administration of governance processes legally binding on present and future owners and providing for the perpetual support and maintenance of the governance entities and processes during the period of development and thereafter. In connection with this review, it is expressly recognized by the City and the Master Developer that the entities listed above do not represent the only potential framework of entities to accomplish the governance processes described for the Community in a legally enforceable manner. Accordingly, the City agrees to accept, in satisfaction of this requirement by the Master Developer, the creation of such entities or combination of entities as may legally be empowered with refinement and administration of governance processes envisioned by the foregoing Section.

9. **Procedure for Review of Governance Entity Documents.** On or before forty-five (45) days prior to the date anticipated for creation of the governance entities set forth above, all documents creating such governance entities and empowering such entities with refinement and administration of governance processes described above (the "Governance Documents") shall be delivered by the Master Developer in draft form to the City Attorney for review and comment. The City Attorney, shall within thirty (30) days thereafter provide written notice of the satisfaction of the Review Condition, or shall provide written comments indicating such provisions within the submitted Governance Documents which must be addressed in order to satisfy said review condition. Upon incorporation of changes and comments and resubmission of the Governance Documents, the City shall have an additional fifteen (15) days to complete its review and provide written notice of satisfaction of the Review Condition. Copies of all Governance

Documents, as finally executed, and if applicable as recorded, shall be delivered to the City.

10. **Procedure for Review of Design Guidelines Documents.** On or before forty-five (45) days prior to the date anticipated for adoption by the Master Developer, acting as Community Declarant, of Design Guidelines Documents, all such documents shall be delivered by the Master Developer to the City Attorney for review. The City Attorney, shall within thirty (30) days thereafter provide written notice of satisfaction of the Review Condition, or shall provide written comments indicating such provisions (or omissions) within the submitted Design Guidelines Documents which must be addressed in order to satisfy said review condition. Upon incorporation of changes and comments and resubmission of the Design Guidelines Documents, the City shall have an additional fifteen (15) days to complete its review and provide written notice of satisfaction of the Review Condition. The final form of Design Guidelines Documents shall be provided to the City upon adoption from time to time by the appropriate governance entity.

Exhibit I1

EXHIBIT "I1" – MESA PROVING GROUND – GOVERNANCE FLOW CHART

ON FILE WITH THE CITY OF MESA, CITY CLERK'S OFFICE

Exhibit J

EXHIBIT J

CITY OF MESA
AIRCRAFT OPERATION, SOUND AND AVIGATION EASEMENT AND RELEASE FOR PHOENIX-MESA GATEWAY AIRPORT

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, DMB Mesa Proving Grounds LLC, a Delaware limited liability company, hereinafter called "Owner" is the owner of that certain parcel of land situated in the City of Mesa, Maricopa County, Arizona, consisting of approximately three thousand one hundred fifty-four (3,154) acres, legally described on the attached **Schedule A**, and incorporated by reference herein, which is hereinafter referred to as the "Land", and which the Owner desires to develop as a mixed use community which will include both residential and non-residential uses.

WHEREAS, the Owner is aware that the Land lies in an area that is subject to aircraft overflights for aircraft utilizing "Phoenix-Mesa Gateway Airport" (formerly known as Williams Air Force Base), which is hereinafter referred to as the "Airport", and is willing to develop such Land as a mixed-use community subject to the right of flight over the Land and all effects flowing therefrom.

NOW THEREFORE, for and in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby fully acknowledged, Owner, its heirs, administrators, executors, successors and assigns, do hereby give and grant to the City of Mesa, a municipal corporation, its heirs, administrators, executors, successors and assigns, lessees, sublessees, invitees and permittees (hereinafter, collectively called "City"), a perpetual, non-exclusive easement for avigation purposes over and across the

Land in connection with flights in, to, over and through all navigable air space above Owner's Land, and on and to the surface of the Land and on, to and through all structures now existing or hereafter constructed on the Land, or any portion of the Land, which easement shall include, but not be limited to, the right of flight of aircraft over the Land, together with its inconvenience, smoke, attendant sound and noise, vibrations, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on Airport. The Owner does further release and discharge the City and the Airport Authority, for the use and benefit of the public and other agencies, of and from any liability for any and all claims for damages of any kind to persons or property that may arise now or at any time in the future over or in connection with the Owner's Land above in, to, over and through all navigable air space above Owner's Land, and on and to the surface of the Land and on, to and through all structures now existing or hereafter constructed on the Land, or any portion of the Land, whether such damage shall originate from smoke, noise, vibration, fumes, dust, fuel and lubricant particles, and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on Airport. This easement is granted for any use for the passage of all aircraft of any type specifically including but not limited to military aircraft, present or future, by whomever owned or operated from or to the Airport and any other airport or air facility which is or may be located at or near the site of said Airport, including any future change or increase in the boundaries of the Airport or air facility(ies), the volume or nature of operation of the Airport or air facility(ies), or the aircraft using such facility or airspace in the vicinity of the Airport or air facility (ies), or noise or pattern of air traffic thereof.

This instrument does not release the owners or operators of aircraft from liability for damage or injury to person or property caused by falling aircraft or falling physical objects from

such aircraft, except as stated herein with respect to inconvenience, smoke, attendant sound and noise, vibrations, fumes, dust, fuel and lubricant particles and lubricant particles. This Aircraft Operation, Sound and Avigation Easement and Release shall be binding upon said Owner and its heirs, assigns, administrators, executors and successors in interest to the Land described in said book and page, and it is further agreed that this instrument shall be a covenant running with the Land, and shall be recorded in the office of the County Recorder of Maricopa County, Arizona.

Signature and Acknowledgement appear on next page

EXECUTED at _____, Arizona, this _____ day of

_____, 20____.

DMB MESA PROVING GROUNDS LLC, a Delaware limited liability company

By: DMB Associates, Inc., an Arizona corporation, its manager

By:_____

Its_____

ACKNOWLEDGEMENT

STATE OF ARIZONA,)
) SS
County of Maricopa)

The foregoing Aircraft Operations, Sound and Avigation Easement and Release was acknowledged before me this _____ day of _____, 20____, by _____.

Witness My Hand and Official Seal.

_____
NOTARY PUBLIC

My Commission Expires:

_____