

## **FIRST AMENDMENT TO OVERSIZING AGREEMENT – PUBLIC WATER**

This FIRST AMENDMENT TO OVERSIZING AGREEMENT – PUBLIC WATER (“First Amendment”) is effective as of \_\_\_\_\_ (“Effective Date”) by and between the City of North Las Vegas, a political subdivision of the State of Nevada (“City”), and Solo Investments I LLC, a Nevada limited liability company (“Solo”), and MMESA 319, LLC, a Nevada limited company (“MMesa”; collectively, Solo and MMesa will be referred to as the “Developer”; and collectively, Developer and the City will be referred to as the “Parties”).

### **RECITALS**

WHEREAS, on April 18, 2018, the City and Developer entered into the Oversizing Agreement – Public Water (the “Original Agreement”), a copy of which is attached hereto as **Exhibit “1”** (52 pages);

WHEREAS, Developer has engineered, designed, and constructed a portion of the Oversize Water Line pursuant to the Original Agreement; and

WHEREAS, in order to more accurately reflect the actual development of the Oversize Water Line, the City and Developer desire to amend some provisions in the Original Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

### **AGREEMENT**

1. The Parties agree to remove **Exhibit “A”** attached to the Original Agreement and replace it with the revised **Exhibit “A”** attached to this First Amendment. The revised **Exhibit “A”** attached to this First Amendment accurately shows Developer’s Property within the Apex Industrial Park.

2. The Parties agree to remove **Exhibit “B”** attached to the Original Agreement and replace it with the revised **Exhibit “B”** attached to this First Amendment. The revised **Exhibit “B”** shows the revised route to connect the developer-only improvements located on the Developer’s Property to the City’s water system.

3. The Parties agree to remove the Buildout System Overall Map found at Sheet 1 of 5 of **Exhibit “C”** attached to the Original Agreement and replace it with the revised Buildout System Overall Map that is included as the first page of **Exhibit “C”** to this First Amendment. The revised Buildout System Overall Map shows the revised route to connect the oversized improvements located on the Developer’s Property to the City’s water system.

4. The Parties agree (i) to remove the Calculation of Estimated Maximum City Reimbursement (Excluding Line Power) at page 1 of 5 of **Exhibit “E”** attached to the Original Agreement and replace it with the Calculation of Estimated Maximum City Reimbursement (Including Line Power (Revised)) page 1 of 5 and (ii) to add Phase II Bid Costs dated April 11, 2022 as the last page of **Exhibit “E.”** A revised **Exhibit “E”** is attached to this First Amendment

that includes the two documents referenced in this paragraph. The revised **Exhibit “E”** shows the revised not-to-exceed costs that incorporate the cost to obtain power.

5. Section 1.7 of the Original Agreement shall be deleted in its entirety and replaced with the following language:

The Developer shall submit a schedule for completion of the Oversize Water Line, by phases, for the City’s approval. The schedule may be amended from time to time with the approval of the City.

Previously, the Developer submitted the following schedule for completion of the Oversize Water Line:

Phase 1 Substantial Completion: 1/31/21	Phase 2 Substantial Completion: 11/30/22
Phase 1 Final Completion: 2/28/21	Phase 2 Final Completion: 12/31/22

With this First Amendment, the Developer has submitted the following schedule for completion of the Oversize Water Line and the City hereby approves of the following schedule:

Phase 1 Final Completion: 4/30/21	Phase 2 Final Completion: 10/31/23
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Neither party shall be liable for delays caused by a Force Majeure Event provided, however, that both Parties agree to seek to mitigate the potential impact of any such delay. Any delay attributable to a Force Majeure Event shall not be the basis for a request for additional reimbursement, and the City shall not in any case be held liable or responsible to the Developer for any damage caused by such delay. In the event of any such delay, the required completion date may be extended for a reasonable period not exceeding the time actually lost by reason of the Force Majeure Event. A “Force Majeure Event” means a delay caused by fire, flood, storm, earthquake, war, acts of vandalism, destruction, public disobedience, terrorism, the action of civil or military authorities, unexpected supply or material shortages, or other events (1) that are not reasonably foreseeable as of the Effective Date; (2) that are attributable to a cause beyond the control and without the fault or negligence of the party incurring such delay; and (3) the effects of which cannot be avoided or mitigated by the party claiming such delay through the use of commercially reasonable efforts, provided that economic hardship, including lack of money, downturn in the economy, or credit and changes in exchange rates, does not constitute a Force Majeure Event.

6. Sections 2.1 and 2.2 of the Original Agreement shall be deleted in their entireties and replaced with the following language:

2.1 Subject to the limitations set forth in the Original Agreement and this First Amendment, it is understood and agreed that the Developer shall be reimbursed for the difference in costs which it incurs in designing, constructing, and installing the Oversize Water Line as compared to designing, constructing, and installing the Developer Only Water Line. Subject to Section 10 of the Original Agreement, the Parties understand and agree that all of the costs and expenses of installing a water system from the Oversize Water Line to and within the Developer's Property for the Property's benefit are the sole responsibility of the Developer without any right of reimbursement from the City. However, the Parties acknowledge and agree that that the revised routing of the Oversize Water Line, as shown on **Exhibit "B"** attached hereto, will place a portion of Phase 2 of the Oversize Water Line on the Developer's Property. Therefore, any portion of the Oversize Water Line that lies within the Property boundary that is part of the main transmission service and not tied to serving only the Property shall be subject to reimbursement as contemplated in the Original Agreement.

7. Section 3.3 of the Original Agreement shall be deleted in its entirety and replaced with the following language:

3.3 It is acknowledged that the cost to obtain power to construct and operate the OVERSIZE WATER LINE is an estimate. The DEVELOPER shall apply for service to power the OVERSIZE WATER LINE and such costs shall be included in the total costs of the OVERSIZE WATER LINE, as shown in the amended **Exhibit "E"**, thus increasing the maximum reimbursement to DEVELOPER.

8. Section 8.1 of the Original Agreement shall be deleted in its entirety and replaced with the following language:

8.1 The Developer shall guarantee all materials, workmanship, and design of the Oversize Water Line for a period of one year from the date of acceptance by the City of any portion of the Oversize Water Line that is dedicated and formally accepted by the City. Should any defective material or workmanship affecting water lines and related facilities installed by the Developer or any problem which results from the negligent design thereof be discovered within one year of the date of completion and acceptance of any portion of the Oversize Water Line by the City, the Developer shall, within commercially reasonable time, either (1) cause the defect to be corrected, or (b) reimburse the City for all costs incurred by City in correcting said defect.

9. General Provisions:

- a. *Nevada and City Law.* The laws of the State of Nevada and the North Las Vegas Municipal Code shall govern the validity, construction, performance, and effect of

the Original Agreement and this First Amendment without regard to conflicts of law.

- b. *Assignment.* Neither party shall assign the Original Agreement or this First Amendment without the prior written consent of the other party.
- c. *Entire Agreement/No Modifications.* This First Amendment and the Original Agreement constitute the entire agreement between the Parties and supersede all prior representations, agreements, and understandings of the Parties. No addition to or modification of the Agreement shall be binding unless executed in writing by the Parties.
- d. *Counterparts.* This First Amendment may be executed in counterparts.
- e. *No Joint Venture.* This First Amendment and the Original Agreement are not intended to create, and shall not be deemed to create, any relationship between the Parties hereto other than that of independent entities, contracting with each other solely for the purpose of effecting the provisions of this First Amendment and the Original Agreement. Neither party shall be construed to be an agent, employer, representative, or joint venturer of the other.
- f. *Controlling Agreement.* To the extent there is a conflict between the terms of this First Amendment and the terms of the Original Agreement, the terms of this First Amendment shall control. Any terms capitalized in this First Amendment that are not defined herein shall have the meanings noted in the Original Agreement.

10. In all other aspects, the Parties confirm and re-affirm the terms and provisions of the Original Agreement.

**[SIGNATURES ARE ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the City and the Developer have caused this First Amendment to be executed as of the day and year indicated above.

**City of North Las Vegas,**  
a political subdivision of the State of Nevada

**Solo Investments I LLC,**  
a Nevada limited liability company


By: \_\_\_\_\_  
John J. Lee  
Mayor

By: \_\_\_\_\_  
  
Weston Adams  
Manager

Attest:

**MMesa 319, LLC**  
a Nevada limited liability company

By: \_\_\_\_\_  
Jackie Rodgers  
City Clerk

By: \_\_\_\_\_  
  
Weston Adams  
Manager

Approved as to form:

By: \_\_\_\_\_  
Micaela Rustia Moore  
City Attorney