

## COUNCIL MINUTES

December 8, 2021

The City Council of the City of Mesa met in a Study Session in the lower-level meeting room of the Council Chambers, 57 East 1st Street, on December 8, 2021, at 5:15 p.m.

### COUNCIL PRESENT

John Giles  
Jennifer Duff\*  
Mark Freeman  
Francisco Heredia  
David Luna  
Julie Spilsbury  
Kevin Thompson

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Dee Ann Mickelsen  
Jim Smith

(\*Vice Mayor Duff participated in the meeting through the use of video conference equipment.)

Mayor Giles conducted a roll call.

### 1. Review and discuss items on the agenda for the December 8, 2021, Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflict of interest: None

Items removed from the consent agenda: None

In response to questions from Councilmember Luna regarding Item 6-d, **(Authorizing the City Manager to enter into a Sixth Amendment to the Development Agreement, a First Amendment to the Amended and Restated Ground and Air Lease, and a First Amendment to the Amended and Restated License Agreement for the development commonly known as The GRID, a project on City-owned property, generally located at the southwest corner of Main Street and Pomeroy at 233 East Main Street and 34 South Pomeroy and granting an option to purchase the associated land and air rights. (District 4))**, on the December 8, 2021, Regular Council meeting agenda, City Attorney Jim Smith explained a letter had been received from an attorney representing an adjacent property owner to The GRID project. Mr. Smith summarized the letter which primarily focused on two claims; taking or trespassing of a fence or a few other items from The GRID and a similar allegation from an attached letter from approximately two years ago. He clarified since receiving the letter two years ago, no other correspondence has been received. He stated the claims regarding The GRID and the fence being on or off the property are a private property matter, which means the property owner would have to resolve the claims by litigation. He continued by stating the letter noted the current status

of the building is a nuisance and detracts from the property value, which led to the claimant requesting for both a delay in the project to consider other items or asking for the project to be completed earlier. **(See Attachment 1)**

Downtown Transformation Manager Jeff McVay commented some elements of the letter claim Downtown Mesa was unaware of the efforts to move forward with The GRID project. He stated looking back at records of meetings there have been regular requests for updates from Caliber and has been made clear the City is continuing to work with the developer to find a resolution to the issue. He commented a delay would be counter to Caliber's intended goal of project completion and the opening of Pomeroy Road as soon as possible. He shared the City met with representatives of Caliber and Tony Wall the developer for The GRID to find a reasonable solution to attempt to open Pomeroy Road or sections of the road early.

Mr. McVay advised that staff recommended continuing to move forward with the project to complete as soon as possible. He shared it is in the developer's best interest to move as fast as possible to complete The GRID project. He noted if there is a resolution to open Pomeroy Road sooner, it will be done.

Councilmember Thompson expressed his concerns with Caliber and stated regardless of whether the project moves forward or not, it is prudent upon Caliber to ensure they can meet traffic flow patterns and work with the City without disrupting the traffic.

2. Current events summary including meetings and conferences attended.

Mayor Giles – MAG meeting – Regional Homeless Action Plan  
Economic development luncheon event

Councilmember Freeman – Coffee with a Cop – Gilbert and McKellips

Mayor Giles recognized Development Services Department Director Christine Zielonka for her service with the City of Mesa.

3. Scheduling of meetings.

City Manager Christopher Brady stated that the schedule of meetings is as follows:

Monday, January 6, 2022, 5:15 p.m. – Study Session

Monday, January 6, 2022, 5:45 p.m. – Regular Meeting

4. Adjournment.

Without objection, the Study Session adjourned at 5:39 p.m.

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JOHN GILES, MAYOR

ATTEST:

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DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 8<sup>th</sup> day of December 2021. I further certify that the meeting was duly called and held and that a quorum was present.

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DEE ANN MICKELSEN, CITY CLERK

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(Attachments – 1)

The Grid-Led

# Snell & Wilmer

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December 8, 2021

## VIA EMAIL

DeeAnn Mickelson, City Clerk  
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James N. Smith, City Attorney  
City Attorney's Civil Office MS-1077  
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Mesa, Arizona 85211  
[attorney.info@mesaaz.gov](mailto:attorney.info@mesaaz.gov)

Re: *Agenda Item 6-d at City Council Meeting Scheduled for December 8, 2021*

To Whom It May Concern:

This firm represents DT Mesa Holdco II, LLC ("DT Mesa") which owns real property located at 305 E Main Street, Mesa, Arizona (the "DT Mesa Property"). On behalf of DT Mesa, I write to express DT Mesa's concerns with the City Council's consideration of agenda item 6-d during the December 8, 2021 City Council meeting ("Item 6-d"). Item 6-d concerns proposed amendments to certain agreements between the City of Mesa ("City") and The Grid at Mesa, LLC (the "Grid") for a project on City-owned property generally located at the southwest corner of Main Street and Pomeroy at 233 East Main Street and 34 South Pomeroy in Mesa, Arizona (the "GRID Project").

DT Mesa only learned last week that Item 6-d would be considered and voted on by the City Council today. As a property owner adjacent to and directly and adversely affected by the ongoing construction at the GRID Project, DT Mesa respectfully requests that the City Council table and delay consideration of Item 6-d and any proposed amendments to the City's agreements with the Grid until DT Mesa has had an opportunity to participate in discussions with the City Manager and the Grid concerning the proposed amendments and to have DT Mesa's concerns met and addressed in those proposed amendments. In the alternative, DT Mesa requests that the City Council revise and condition approval of the terms of the proposed amendments under consideration in Item 6-d as follows: (1) set a firm deadline for the Grid to obtain the Escrow

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Agreement or Letter of Credit for the Restoration Amount (as defined and referenced in the amendment to the development agreement) within 30 calendar days and (2) complete construction of and restore access to Pomeroy Road (as well as the affected portions of the DT Mesa Property) within 90 calendar days.

As you know, the Grid Project began construction in late 2019, well over two years ago. Soon thereafter, construction came to a complete standstill with virtually zero progress made over the last two years. This has resulted in the destruction of Pomeroy Road, which is now dirt and cannot be accessed (by the public or DT Mesa), as well as portions of the DT Mesa Property that cannot even be used (and is being trespassed on). That has been the state of the Grid Project for over two years.

From the outset, the Grid has failed to perform or comply with its development agreement with the City. For example, when the Grid first began, it ignored its obligations under the development agreement to neighboring property owners such as DT Mesa, which prompted DT Mesa to raise these issues in a demand letter in January 2020.<sup>1</sup> As more extensively detailed in that letter, the Grid, among other things, erected fencing over portions of the DT Mesa Property, including over seven (7) surface parking spaces belonging to and used by DT Mesa and its tenants (including Wells Fargo), without obtaining any consent or authorization from DT Mesa. The Grid's failures, trespasses on the DT Mesa Property, and interference with DT Mesa's ability to attract and retain tenants, continues to this day.

Not only did the Grid demolish portions of the DT Mesa Property, but the Grid has also demolished and rendered Pomeroy Road useless and unavailable to the general public and all citizens of the City, including and especially neighbors such as DT Mesa and its tenants (in particular, Wells Fargo and its customers). For over two years now, the failed construction for the Grid Project has prevented (1) the general public (and DT Mesa) from using and enjoying Pomeroy Road and (2) DT Mesa (and its tenants) from the enjoyment and use of the DT Mesa Property and accessing it from Pomeroy Road.

In light of this history (and the significant lack of any progress towards repairing and restoring Pomeroy Road since at least January 2020), DT Mesa is surprised that the City Council is even considering Item 6-d, which DT Mesa had not even learned about until late last week. DT Mesa is concerned with Item 6-d because it is a resolution that would include an amendment to the term of the development agreement with the Grid *to effectively extend it for another over two years*. Under that amendment, restoration of Pomeroy Road for the public's use would not be completed *until December 31, 2023*. This is not only unconscionable and unacceptable, but by

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<sup>1</sup> A copy of DT Mesa's January 22, 2020 demand letter to the Grid is enclosed as Exhibit 1.

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endorsing the Grid's ongoing development efforts at the Grid Project, the City's decision would effectively constitute a taking of (not to mention the ongoing damage to) the DT Mesa Property without any just compensation, a clear violation of the Arizona Constitution and applicable law.

The Arizona Constitution specifically provides that "[p]rivate property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes." Arizona Constitution, Art. 2, Sec. 17. Accordingly, "[t]aking one person's property for another's private use is plainly prohibited, with a few specific exceptions not applicable here." *Bailey v. Myers*, 206 Ariz. 224, 227, ¶ 12, 76 P.3d 898, 901 (Ct. App. 2003) (citing Article 2, Section 17 of the Arizona Constitution). Despite these clear constitutional prohibitions, both the City and the Grid will have effected a taking of the DT Mesa Property for the Grid's private use, should the City enter into an amendment to the development agreement through December 31, 2023. And considering the Grid's failures and more than apparent inability to complete the Grid Project to date, DT Mesa has legitimate concerns that these violations and infringements of the DT Mesa Property will continue well beyond 2023.

The Arizona Constitution also provides that "[n]o private property shall be **taken or damaged** for public or private use without just compensation having first been made ...." Arizona Constitution, Art. 2, Sec. 17 (emphasis added). Despite extensive, continuous damage and harm to the DT Mesa Property due to the Grid's (the City's tenant on City-owned property) non-performance of its development agreement with the City, DT Mesa has not received any compensation from either the City or the Grid for such damage, harm, and effective taking of portions of the DT Mesa Property. Notably, none of the proposed amendments or anything in Item 6-d addresses any of these constitutional violations resulting from the proposed amendment to the development agreement, or any compensation that DT Mesa would be entitled to.

Entering into the proposed amendment to the development agreement would also constitute a ratification and endorsement by the City of the Grid's ongoing and continuous trespass of, and nuisance to, the DT Mesa Property. "Trespass is any unauthorized physical presence on another's property." *Ranch 57 v. City of Yuma*, 152 Ariz. 218, 221, 731 P.2d 113, 116 (Ct. App. 1986). As detailed herein, an ongoing and continuous trespass of the DT Mesa Property (including, but not limited to, the demolition and occupation of the aforementioned parking spaces) has occurred throughout the duration of the Grid Project. If the City approves Item 6-d, the City will have ratified and endorsed the ongoing and continuous trespass of the DT Mesa Property.

The stoppage of any construction for the Grid Project and failure to restore Pomeroy Road for over two years now also constitute both a public and private nuisance. "[A] nuisance is public when it affects rights of 'citizens as a part of the public, while a private nuisance is one which affects a single individual or a definite number of persons in the enjoyment of some private right

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which is not common to the public.” *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. Ariz.*, 148 Ariz. 1, 4, 712 P.2d 914, 917 (1985) (quoting *City of Phoenix v. Johnson*, 51 Ariz. 115, 123, 75 P.2d 30, 34 (1938)). A public nuisance “encompasses any unreasonable interference with a right common to the general public”, while a private nuisance is a “nontrespassory invasion of another’s interest in the private use and enjoyment of land.” *Armory Park* (citing RESTATEMENT (SECOND) OF TORTS §§ 821B & 821D). As detailed herein, the failed construction at the Grid Project constitutes both a public and private nuisance by, among other things, preventing the public’s (and DT Mesa’s and its tenants’) right to use and enjoy Pomeroy Road, infringing on and violating DT Mesa’s Property and parking, and preventing DT Mesa, its tenants, and the general public from accessing the DT Mesa Property from Pomeroy Road. By approving the proposed amendment that is the subject of Item 6-d, the City will have ratified and endorsed both public and private nuisances resulting from the Grid Project for at least another two years.

The ongoing construction for the Grid Project has also interfered with DT Mesa’s ability to lease to new prospective tenants, which DT Mesa had warned the Grid of in January 2020. *See* Ex. 1. Despite continuous efforts to lease space over the past two years, DT Mesa has only been able to secure a single new tenant,<sup>2</sup> a charter school organization scheduled to move in in 2022, with classes beginning in August 2022. But without any plan to provide for the safe transportation of children attending the charter school with access to Pomeroy Road, that new tenant opportunity is now potentially at risk and in jeopardy. Despite DT Mesa’s efforts to discuss this issue with you and others, DT Mesa’s concerns have not been addressed or heard. DT Mesa also has concerns that the ongoing Grid Project has had—and will continue to have—on DT Mesa’s ability to retain its current tenants, including Wells Fargo.

To summarize, the Grid started something it could not (and apparently has no ability to) finish. Because of those failures, Pomeroy Road has been destroyed and rendered useless for over two years now, with no progress made or end in sight. Under the proposed amendment, Pomeroy Road would remain unusable until over two years from now (or potentially, given the Grid’s history and apparent inability to complete the Grid Project, even longer). The failed construction for the Grid Project has interfered with DT Mesa’s use and enjoyment of the DT Mesa Property (and ability to lease space to new tenants) for over two years, and under the proposed amendment, that interference will continue for at least another over two years (or even longer). DT Mesa can no longer tolerate this continued, ongoing infringement and violation of its constitutional and property rights.

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<sup>2</sup> The DT Mesa Property is an opportunity zone fund property that requires compliance with certain deadlines, which are being tested with the two plus year closure of, and inability to use and access, Pomeroy Road.



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Even though DT Mesa has already suffered significant harm, damage, and infringement of its rights, DT Mesa is optimistic and hopeful that the City Council will consider these issues and concerns when evaluating and discussing Item 6-d. Accordingly, DT Mesa respectfully requests that the City Council postpone any decision or vote on Item 6-d until DT Mesa has had the opportunity to participate in the discussions with the City Manager and the Grid concerning the proposed amendments and have DT Mesa's concerns met and addressed in those proposed amendments. DT Mesa is willing and able to promptly meet with the City Manager, the Grid, and any others to facilitate and work towards a resolution that is satisfactory for everyone involved.

In the alternative, if the City Council does consider and will vote on Item 6-d, DT Mesa respectfully requests that the City Council revise and condition approval of the proposed amendment to the development agreement to require the Grid to do the following:

- (1) Set a firm deadline for the Grid to obtain the Escrow Agreement or Letter of Credit for the Restoration Amount (as defined and referenced in the amendment) within 30 calendar days; and
- (2) Complete construction of and restore access to Pomeroy Road (as well as the aforementioned affected portions of the DT Mesa Property) within 90 calendar days.

While these revisions will not cure or alleviate the harm and damages that DT Mesa has already suffered, they will hopefully mitigate further harm and damage to DT Mesa and infringement of the public's right to use and access Pomeroy Road.

DT Mesa appreciates the City Council's time and consideration of DT Mesa's concerns and requests. DT Mesa looks forward to working and cooperating with the City, the Grid, and others, to address and resolve these issues of public concern and violation of and infringement on DT Mesa's property rights.

DT Mesa reserves any and all rights and claims, and nothing in this letter shall be construed as a waiver of same.

Should you wish to discuss any of the contents of this letter, please do not hesitate to contact me at [aking@swlaw.com](mailto:aking@swlaw.com) or 602-382-6513.



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James N. Smith, City Attorney  
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Very truly yours,

Snell & Wilmer

A handwritten signature in black ink, appearing to read 'Anthony T. King', with a stylized, cursive script.

Anthony T. King

ATK:cm  
Enclosures

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cc: John Giles, Mayor (via email only)  
Jenn Duff, Vice Mayor (via email only)  
Mark Freeman, Councilmember (via email only)  
Francisco Heredia, Councilmember (via email only)  
David Luna, Councilmember (via email only)  
Julie Spilsbury, Councilmember (via email only)  
Kevin Thompson, Councilmember (via email only)  
Chris Brady, City Manager (via email only)  
Jeff McVey, Manager of Downtown Transformation (via email only)  
Tony Wall (via email only)  
Chris Loeffler (via email only)  
Brian Snider (via email only)  
Byron Sarhangian (via email only)

# EXHIBIT 1

**Snell & Wilmer**  
— L.L.P. —  
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LOS CABOS  
ORANGE COUNTY  
PHOENIX  
RENO  
SALT LAKE CITY  
TUCSON  
WASHINGTON DC

January 22, 2020

**VIA EMAIL AND US MAIL**

Neil W. Thomson  
Thomson Esq, PLC  
3033 N. Central Ave., Suite 810  
Phoenix, Arizona 85012  
neil@thomson-esq.com

Re: *DT Mesa Holdco II, LLC ("DT Mesa") v. The Grid at Mesa, LLC ("The Grid")*

Dear Mr. Thomson:

As you know, this firm represents DT Mesa, which owns certain real property located at 305 E Main Street, Mesa, Arizona (the "Property"). I write on behalf of DT Mesa to demand that your client, The Grid, comply with its obligations under its Development Agreement with the City of Mesa (together with all applicable amendments, the "Development Agreement") and to cease and desist from any further actions and conduct resulting in The Grid's trespass on, and damages caused to, the Property. I also write to place The Grid on notice that its misconduct to date has interfered with DT Mesa's contractual relationship with its current tenant, as well as tortuously interfered with DT Mesa's potential tenants for the Property, and to demand that The Grid cease and desist from such further interference.

**THE GRID HAS FAILED TO COMPLY WITH ITS CONTRACTUAL OBLIGATIONS UNDER THE DEVELOPMENT AGREEMENT.**

As The Grid is well aware, a parking garage that provided approximately four hundred and seventy-five (475) parking spaces (the "Pomeroy Garage") is adjacent to the Property. Through its agreements with the City of Mesa, DT Mesa leases and is entitled to use one hundred and fifty-seven (157) parking spaces in the Pomeroy Garage.

Pursuant to the Development Agreement, The Grid was contractually obligated to provide DT Mesa with temporary alternative parking arrangements during The Grid's construction on the Pomeroy Garage. As just several examples:

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- Pursuant to Section 4.16 of the Development Agreement, The Grid agreed that “at all times” during its construction of the Minimum Public Improvements (as that term is defined in the Development Agreement), The Grid, “at its sole cost and expense ... will provide replacement parking for the Permittees and the public acceptable to Permittees [as that term is defined in the Development Agreement] and otherwise resolve all temporary parking issues with Permittees ....”
- In Exhibit M-2, entitled “Phasing and Mitigation Plan,” The Grid agreed to provide “at least 45 days written notice” before changing any dates of closure for parking in the Pomeroy Garage.
- Also in Exhibit M-2, The Grid was required to provide “secure parking ... in locations within a quarter mile radius of the existing Pomeroy Garage[,]” and “[i]f any temporary parking locations are farther than a quarter-mile radius of the existing Pomeroy Garage, [The Grid] shall provide a shuttle service ... to transport individuals to and from the temporary parking site.”
- Further in Exhibit M-2, The Grid was obligated to provide a “Mitigation Plan” “at least 45 days before the first closure” of the Pomeroy Garage, which shall contain “a map depicting the location of the temporary parking sites in relation to the existing Pomeroy Garage” and “details regarding number of parking spaces being provided at each temporary parking site.”
- Pursuant to Exhibit M-2, the City of Mesa must approve the updated Mitigation Plan before construction may commence on the Pomeroy Garage.

These are The Grid’s affirmative obligations under the Development Agreement, and The Grid failed to comply with each of them. The Grid never provided DT Mesa with a Mitigation Plan or parking map for temporary parking spaces, even though The Grid has already commenced construction on the Pomeroy Garage (as evidenced by, among other things, its erecting fences around the Pomeroy Garage and already demolishing concrete and pavement surface of the street and parking spaces surrounding the Pomeroy Garage, including on the Property).<sup>1</sup> Nor has The Grid even identified (much less provided) any temporary parking spaces for DT Mesa. Simply put, The Grid has wholly failed to comply with its affirmative obligations under the Development Agreement concerning provision of temporary parking spaces during its construction on the Pomeroy Garage.

Rather than comply with its obligations under the Development Agreement, on December 24, 2019, The Grid provided DT Mesa with a “Memorandum,” which informed DT Mesa that

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<sup>1</sup> Pictures showing the state of construction, fencing, and demolition as of January 21, 2020 are enclosed as Exhibit 1.

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construction would commence on January 2, 2020, and that The Grid “will notify you of the [Pomeroy G]arage closure in advance.” The Memorandum did not contain a map concerning any temporary parking spaces during construction or otherwise address temporary parking, as required under the Development Agreement.

The Grid also provided DT Mesa with a document entitled “Project Fencing Map Phase 1,” which outlined in red the location of fences to be placed during construction. The red line intruded on several portions of the DT Mesa Property, including over seven (7) surface parking spaces directly on the Property (the “7 Parking Spaces”).

Ultimately, The Grid failed to timely notify DT Mesa in advance of the Pomeroy Garage closure by providing at least 45 days prior notice before the first closure of the Pomeroy Garage. And rather than provide DT Mesa with temporary parking spaces (as it was required to do under the Development Agreement), The Grid proceeded with its demolition of the concrete and pavement underlying the 7 Parking Spaces on the Property. *See* Ex. 1. The Grid did so without obtaining DT Mesa’s consent or permission. The Grid had no authority to damage and violate DT Mesa’s Property or to deprive DT Mesa the use of the 7 Parking Spaces on its Property.

As demonstrated above, The Grid’s actions to date are in direct violation of the express terms of the Development Agreement. Thus, DT Mesa hereby demands that The Grid comply with its obligations under the Development Agreement by:

- (1) Providing DT Mesa with the requisite notices for commencement of construction, closures, etc. (as applicable), within the timeframes provided under the Development Agreement;
- (2) Providing DT Mesa with temporary replacement parking (and, if applicable, transportation to and from), pursuant to the terms of the Development Agreement, including but not limited to, a map showing the location and number of temporary parking spaces;
- (3) Compensating DT Mesa for the damage and destruction of the 7 Parking Spaces on the Property in the amount of fifteen thousand dollars (\$15,000.00); and
- (4) Refraining and desisting from any further violations of, and damage to, the Property in violation of applicable law.<sup>2</sup>

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<sup>2</sup> It goes without saying that The Grid must comply with applicable law in its demolition and construction of the Pomeroy Garage, *see, e.g.*, Development Agreement, § 4.1, and The Grid fails to do so when it trespasses and damages neighboring property, such as the Property.

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DT Mesa expects The Grid to begin compliance with its obligations under the Development Agreement immediately, but in no event later than **Friday, January 24, 2020**.

**THE GRID FAILED TO OBTAIN DT MESA'S CONSENT OR PERMISSION TO USE DT MESA'S PROPERTY FOR CONSTRUCTION AND MUST CEASE AND DESIST FROM ANY FURTHER TRESPASS ON DT MESA'S PROPERTY.**

The Grid commenced demolition of the surrounding areas of the Pomeroy Garage, including portions of the Property, without first obtaining the consent or permission of DT Mesa to do so. The Grid's conduct constitutes a clear trespass and violation of DT Mesa's Property.

Notwithstanding The Grid's trespass on and violation of the DT Mesa's Property, DT Mesa attempted to negotiate a license agreement with The Grid to, in essence, retroactively authorize The Grid's trespass on and violations of the Property. After DT Mesa provided its revisions to a Temporary Crane, Construction Fence, and Parking License Agreement (the "License Agreement"), The Grid refused to agree to the License Agreement and suddenly took the position that it would no longer need to use the Property for its construction of the Pomeroy Garage.

The Grid's sudden change in position is as perplexing as it is unjustified. Without the License Agreement, The Grid has trespassed—and continues to trespass—on the Property. Not only has The Grid already demolished and damaged significant portions of the Property, but The Grid's construction equipment (including fences and construction tape) still remain on the Property. *See* Ex. 1. Considering the proximity of the Pomeroy Garage to the Property, the existing fencing, and The Grid's demolition of portions of the Property, we fail to see how The Grid can proceed without obtaining necessary licenses for the Property.

Nonetheless, in light of The Grid's decision, DT Mesa hereby places The Grid on notice that any trespass or other violation of the Property is strictly prohibited, and DT Mesa demands that The Grid cease and desist from any and all construction activities (including but not limited to, use of a construction crane over, or placement of construction equipment and/or fencing on, the Property) that trespass on, infringe, or otherwise violate DT Mesa's Property and/or its property rights therein (including but not limited to, the airspace over the Property). DT Mesa will treat any trespass or violation of its Property seriously and will vigilantly act to protect and defend its rights in and to the Property.

**THE GRID'S CONDUCT IS INTERFERING WITH ITS CONTRACTUAL RELATIONSHIP WITH ITS CURRENT TENANT AS WELL AS JEOPARDIZING ITS PROSPECTIVE BUSINESS RELATIONSHIPS.**

In addition to The Grid's failures to abide by its contractual obligations under the Development Agreement and The Grid's continuing trespass on and damage to DT Mesa's Property, The Grid's conduct has (1) interfered with DT Mesa's existing contractual relationship with its current tenant, Wells Fargo, and (2) tortuously interfered with DT Mesa's potential



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business relationships with prospective tenants (several of whom have received letters of intent from DT Mesa). The Grid's unauthorized demolition of the Property and refusal to provide acceptable temporary parking spaces "at its sole cost and expense," as it is obligated to do under the Development Agreement, has interfered, and continues to interfere, with DT Mesa's existing and potential contractual relationships. Thus, DT Mesa puts The Grid on notice that DT Mesa will hold The Grid responsible for any breach or termination that may occur as a result of The Grid's improper conduct.


DT Mesa further places The Grid on notice that The Grid assumes any and all risk of its construction activities and other conduct that occurs on or near the Property. DT Mesa will hold The Grid responsible for any and all claims, damages, or injuries that arise out of or relate to The Grid's construction on the Pomeroy Garage which may, at any time, be asserted or brought against DT Mesa.<sup>3</sup>

DT Mesa reserves any and all rights and claims it may have against The Grid, and nothing in this letter shall be construed as a waiver of same.

Should The Grid wish to discuss any of the contents of this letter, please do not hesitate to contact me at [aking@swlaw.com](mailto:aking@swlaw.com) or 602-382-6513.

Very truly yours,

Snell & Wilmer



Anthony T. King

ATK:ad

Enclosures

cc: Tony Wall (via email only)  
Karrin Taylor (via email only)  
Jeffrey McVay (via email only)  
Rodney Riley (via email only)  
Byron Sarhangian (via email only)  
Kade Miller (via email only)

4831-6243-3458.1

<sup>3</sup> While The Grid may simply address this concern by adding DT Mesa as an additional insured on its insurance policies, to date, The Grid has refused to do so.

# EXHIBIT 1



