

First American Title

When recorded return to:

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mc:

Biskind Hunt, PLC
11201 N. Tatum Blvd.
Suite 330
Phoenix, Arizona 85028
Attention: Gordon E. Hunt, Esq.

717 632146

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is made this 31 day of October, 2013 (the "Effective Date"), by DMB Mesa Proving Grounds LLC, a Delaware limited liability company ("DMB").

RECITALS

A. Concurrently herewith, First Solar, Inc., a Delaware corporation ("First Solar") has conveyed to Platypus Development LLC, a Delaware limited liability company ("Owner") the real property legally described on Exhibit "A" attached hereto (the "Property"), located in the master-planned development commonly known as Mesa Proving Grounds (the "Development") located in the City of Mesa, Arizona.

B. The Property was made subject to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Eastmark, recorded February 6, 2013 as Document No. 2013 0122018, in the official records of Maricopa County, Arizona (the "Community Declaration"), and the Supplemental Community Declaration for First Solar North Parcel recorded July 15, 2011 as Document No. 2011 0587858, in the official records of Maricopa County, Arizona (the "Supplemental Declaration"),

C. Concurrently herewith, the Supplemental Declaration has been terminated, and the Property has been withdrawn from the Community Declaration, pursuant to separate recorded documents.

D. DMB requires (and Owner consents to) the establishment and imposition of certain covenants, duties, obligations and responsibilities upon the Property, in order to provide for the orderly development, operation and maintenance of the Property, and to enhance, protect and maintain the value, desirability and attractiveness of the Development.

DECLARATION

1. Covenants Running With the Land. DMB hereby declares that the Property, and all interests therein, shall be owned, held, conveyed, leased, mortgaged, encumbered, used, occupied and improved subject to the covenants, conditions, restrictions, duties, obligations and responsibilities set forth in this Declaration (collectively, the "Covenants"), and that all Covenants are hereby imposed as covenants running with the land and equitable servitudes

pursuant to a general plan for the development of the Development, and which shall run with the land within the Property and all interests in the Property and be binding on all parties having or acquiring any right, title or interest in or to the Property or any part thereof, their heirs, personal representatives, successors and assigns.

2. Permitted Uses. The Property is intended for development and operation of high-tech manufacturing facilities and accessory uses (which accessory uses may include, without limitation, associated office space and research and development facilities, solar power arrays, and electric power substations), that (i) do not constitute a major source for which a Title V Permit is required under the federal Clean Air Act, (ii) do not discharge wastewater other than a lawful discharge through the municipal sewer system, (iii) do not generate solid waste that may not lawfully be disposed of at a Resource Conservation and Recovery Act (RCRA) Subtitle C or Subtitle D landfill, or a RCRA treatment, storage and disposal facility, and (iv) do not generate radioactive waste (collectively, the "Permitted Use"). Notwithstanding the foregoing, however, during construction on the Property, the Owner of the Property shall have (a) the right to construct and install within the Property one or more temporary construction trailers used in connection with construction activities within the Property, and (b) the right to use the Property for equipment and materials staging and storage in connection with construction of Improvements (as defined in Section 7 below) on the Property, provided that all such equipment and materials (to the extent not incorporated into the Improvements) shall be removed from the Property promptly after the completion of all applicable construction activity.

3. References to Community Declaration. For ease of drafting, this Declaration refers to the Community Declaration for ¹ _{Unofficial Document} tion of various defined terms used herein and/or for the description of certain disclosures and other provisions that apply to the Property as described in Section 12 below. Notwithstanding any such references to the Community Declaration, and for the avoidance of doubt, it is specifically declared and acknowledged that (i) the Property is not subject to the Community Declaration, and such references to the Community Declaration are not intended to, and shall not, subject the Property to the Community Declaration, and (ii) this Declaration is not intended to create any rights (including, but not limited to, enforcement rights) in the Community Alliance (as defined in the Community Declaration), the Associations (as defined in the Community Declaration), or any other homeowners' or property owners' association, or in any member of any of the foregoing.

4. DMB First-Class Project. No portion of the Property may be used for any use, activity or purpose that is not in reasonable harmony with or would materially detract from the overall image of the Development as a first-class mixed-use project of a quality at least consistent with or similar to the projects in the greater Phoenix area developed by DMB Associates, Inc., an Arizona corporation, its affiliates and subsidiaries, commonly known as "Marley ParkTM", "Verrado[®]" and "DC Ranch[®]". DMB acknowledges that the Permitted Use does not violate the provisions of the immediately preceding sentence, notwithstanding that the foregoing projects do not include an industrial component of the size and scope of that which is located on the Property.

5. Restricted Uses. No portion of the Property may be used for any use, activity or purpose (each a "Restricted Use") (a) that creates excessive noise, emits foul or obnoxious odors or any other condition that disturbs the peace, or threatens the safety, of occupants of the

Convention Center Property (as defined in the Community Declaration), or (b) that constitutes or creates a nuisance or is illegal. The foregoing restrictions shall not be construed to prohibit (i) normal or customary construction activities and/or maintenance activities, (ii) truck traffic associated with the Permitted Use, (iii) the Permitted Use, or (iii) other customary operational activities found in other DMB First-Class Projects, nor the permanent installation of exterior speakers, so long as the volume level of sound emitted therefrom does not create a nuisance to the occupants of the Convention Center Property.

6. Hotel Restriction. For a period commencing on the date hereof and continuing until the date (the "Expiration Date") that is twenty-five (25) years from the date that the Hotel and Convention Center (as defined in the Community Declaration) is first open for business to the general public (the "Opening Date"), no portion of the Property shall be occupied or used, directly or indirectly, as a Hotel Convention Center. For purposes of this Declaration, a "Hotel Convention Center" shall be defined as any hotel or other transient lodging facility, but only if such facility also includes on contiguous property facilities containing more than fifty thousand (50,000) gross square feet of meeting and pre-function floor area. It is expressly intended that any hotel or other transient lodging facility that does not include facilities containing more than fifty thousand (50,000) gross square feet of meeting and pre-function floor area on contiguous property shall not be subject to the restriction contained in this Section 6. Promptly following the occurrence of the Opening Date, DMB and the operator of the Hotel Convention Center shall jointly prepare and record an instrument referencing this Declaration and identifying the Opening Date and the Expiration Date. Upon the occurrence of the Expiration Date, the effectiveness of the provisions of this Section 6 shall automatically terminate without need for further action by any party.

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7. Design Review.

7.1 Approval of Improvement Materials. No building or other structure ("Building") or other improvement may be constructed or installed within the boundaries of the Property after the Effective Date, including all parking areas, paved areas, driveways, roadways, sidewalks, walkways, storage areas, fences, walls, exterior lighting, lighting standards, signage, satellite dishes, trash enclosures, landscaping, and any replacements, additions, repairs or alterations thereto (collectively "Improvements") without first obtaining DMB's approval in accordance with this subsection. No approval shall be required (i) to repaint the exterior of a Building in accordance with the color scheme in existence on the Effective Date, (ii) to rebuild or expand in accordance with that certain Site Plan for the Property entitled "Site Coordination Preliminary" prepared by CH2MHILL, dated October 25, 2013 (Project No. 478102), which has been approved by the City and DMB as of the Effective Date (the "Approved Site Plan"), so long as the written conditions to approval thereof imposed by the City (or DMB, as applicable) are satisfied, (iii) in connection with any improvement that constitutes a non-material modification of the Approved Site Plan, or (iv) for interior improvements that do not affect exterior appearance. Owner shall provide to DMB for review and approval all items required to be submitted to the City of Mesa to obtain the City's approval of any proposed Improvements (herein collectively the "Improvement Materials"). DMB shall review any Improvement Materials submitted by Owner and notify Owner in writing of DMB's approval or disapproval of Owner's materials no later than ten (10) business days following DMB's receipt of such materials. DMB shall not unreasonably withhold, condition or delay its approval of any

Improvement Materials. If DMB disapproves of any Improvement Materials, DMB shall specify in writing the reason or reasons for such disapproval. If DMB disapproves any Improvement Materials, Owner shall modify and resubmit the Improvement Materials to DMB. DMB shall review Owner's modified Improvement Materials and provide notice of its approval or disapproval thereof to Owner within ten (10) days following receipt of such modified Improvement Materials. The foregoing review, notice and modification procedure shall continue until DMB has approved the Improvement Materials. If DMB fails to approve or disapprove of any Improvement Materials submitted to it by Owner within the time periods provided in this subsection, Owner shall provide written notice of such failure to DMB, and if DMB fails to provide a written response within five (5) Business Days following its receipt of such notice, the Improvement Materials submitted by Owner shall be deemed approved. Owner shall be entitled to submit reasonable portions of the Improvement Materials from time to time to DMB for DMB's review and approval under this subsection and the approval procedures set forth in this subsection shall apply to each such submission in turn. Once DMB has approved Owner's Improvement Materials as to a particular area of the Property to be developed, Owner shall not modify, amend, supplement or otherwise change such Improvement Materials in any material respect unless such modifications, amendments, supplements or changes are first approved in writing by DMB in accordance with this Section 7. Approval of any Improvement Materials by DMB does not obviate the need for approval of such Improvement Materials by the City, and does not assure approval by the City.

7.2 Limitation of Liability. Review and approval of any Improvement Materials by DMB shall be made on the basis of aesthetic considerations and DMB shall bear no responsibility for insuring (i) structural Unofficial Document soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements, and (iii) conformity of quality, value, size or design with other improvements. DMB shall not be held liable for any claim whatsoever arising out of construction of Owner's Improvements as a result of DMB's approval of same pursuant to this Section 7.

7.3 Inspection of Work. DMB or its duly authorized representative shall have the right to inspect any Improvement prior to or after completion following two (2) business days prior notice to Owner, provided that the right of inspection shall be limited to no more than once a month and shall terminate sixty (60) days after DMB shall have received a written notice from Owner indicating that construction of an Improvement is completed ("Notice of Completion"). DMB's right of inspection shall not extend to the interior of any such Improvement.

7.4 Notice of Non-Compliance. If, as a result of inspections or otherwise, DMB finds that any Improvement has been done without obtaining the approval of DMB or was not done in substantial compliance with the Improvement Materials furnished to and any reasonable conditions imposed by DMB, DMB shall notify Owner in writing of the non-compliance, which notice shall be given within ten (10) days following DMB's completion of an inspection pursuant to Subsection 7.3 above and, in any event, within sixty (60) days after DMB receives a Notice of Completion from Owner. The notice shall specify the particulars of the non-compliance and Owner shall promptly take such actions as may be reasonably necessary to remedy the non-compliance.

7.5 Default; Remedies. In the event of any breach of any of the Covenants set forth in this Section 7, DMB may pursue any and all remedies available at law or in equity and, in elaboration and not in limitation of the foregoing, DMB may pursue any proceedings at law or in equity to enjoin such breach and/or to recover damages for any such breach.

8. Construction Obligations. Throughout any period of construction on or about the Property, the Owner of the Property shall comply (and shall be responsible for causing its employees, contractors, subcontractors and suppliers to comply) with the obligations set forth in this Section 8.

8.1 Coordination of Construction. Owner shall coordinate with DMB, all applicable owners' associations, and all owners of adjoining property within the Development to ensure that the employees, agents, contractors and subcontractors employed by or on behalf of each may proceed with the construction of improvements and the other work in the Development without material interruption.

8.2 Compliance with Construction Rules. Construction activities within the Property shall be limited and restricted as described in the Mesa Proving Grounds Construction and Access Rules (3740 S. Signal Butte Road Only) (dated October 31, 2013) issued by DMB (collectively, the "On-Site Construction Rules"). Construction activities within other portions of the Development shall be limited and restricted as described in the Mesa Proving Grounds Construction and Access Rules issued by DMB (collectively, the "Off-Site Construction Rules"). DMB reserves the right, to adopt rules and impose restrictions (and to amend such rules and restrictions from time to time) on conduct Unofficial Document and construction activities within the Development, including without limitation supplementing the Off-Site Construction Rules from time to time in order to conform to construction guidelines adopted by DMB, provided that such rules and restrictions shall be reasonable and shall be applied on a non-discriminatory basis; and provided further, that such additional rules and restrictions shall not apply to the Property.

8.3 Maintenance of Property During Construction. So long as Owner is constructing any Improvements, Owner shall:

(i) keep the Property in a neat, orderly and clean condition, free of weeds and debris, and promptly remedy any erosion affecting the Property;

(ii) protect improvements within the Development (outside the Property) from damage caused by Owner, or its agents, employees, contractors or subcontractors, and to promptly repair such improvements if damaged, including without limitation all pavement, curbs, gutters, sidewalks, streets, shoulders, utility lines and appurtenances, grade stakes, surveyor markers, landscaping, drainage facilities, and hydrants;

(iii) secure a dust control permit from Maricopa County with respect to its construction activities on the Property, before commencing any such activities, and thereafter comply in all respects with the provisions of such permit;

(iv) file, maintain and comply with, a current Notice of Intent (NOI) under the Arizona Pollution, Discharge Elimination System ("AzPDES") program, and a Storm Water Pollution Preventative Plan, and, promptly upon completion of such construction and final

stabilization of the site, file a Notice of Termination (NOT) under AzPDES with respect to the Property, and comply with any and all provisions of DMB's Stormwater Pollution Prevention Plan that are applicable to Owner's activities on or about the Property;

(v) comply with all applicable laws, rules, orders and regulations pertaining to construction and safety, and with the Construction Rules, as amended from time to time.

8.4 Compliance by Employees and Third Parties. Owner shall be responsible for the conduct of its employees and shall include provisions in its agreements with its agents, subcontractors and suppliers requiring compliance with the terms and conditions of this Declaration. If any subcontractor, supplier, employee or agent of Owner, in its capacity as such, (a) materially violates any of the terms of this Declaration (including the terms of the Construction Rules), (b) materially violates applicable laws within the Development, (c) commits negligent acts or omissions causing damage to improvements (other than Improvements owned by Owner) within the Development, and if such violation is not cured within ten (10) business days after such party's receipt of written notice of the violation from DMB, then DMB may prohibit the violator from any further entry upon any portion of the Development. DMB shall provide a copy of any such written notice to Owner.

8.5 Remedies. In the event of any breach of any of the Covenants set forth in this Section 8, DMB shall provide written notice to Owner and Owner shall have a period of thirty (30) days thereafter to cure the breach prior to DMB pursuing any remedy for such breach; provided, however, if additional time is Unofficial Document required for Owner to cure the breach and Owner commences the cure within the thirty (30) days following receipt of DMB's notice of breach, the time period to cure shall be extended for the time period reasonably necessary for Owner to cure the breach, provided that Owner is undertaking diligent efforts to do so during such period. If following notice and the expiration of any applicable cure period provided herein Owner has not cured any breach for which it has received written notice from DMB, DMB may pursue any and all remedies available at law or in equity and, in elaboration and not in limitation of the foregoing, DMB may pursue any proceedings at law or in equity to enjoin such breach and/or to recover damages for any such breach, provided that DMB hereby waives any right to recover punitive, indirect, consequential, special, or other damages, other than its actual damages.

9. Maintenance. The Owner of the Property shall maintain the Property and all improvements thereon in good condition and repair, in a neat, orderly and clean condition, free of weeds and debris, and promptly remedy any erosion affecting the Property.

10. Telecommunications.

10.1 Without the advance written consent of DMB, which may be granted or withheld in DMB's sole and absolute discretion, Owner shall not install or permit to be installed in, upon, over, under, across or through the Property (i) cell phone towers or other telecommunications facilities not primarily serving Owner's personnel and/or operations on the Property, or (ii) any associated improvements, equipment and facilities, including but not limited to antennas, broadcasting and receiving devices, conduits, junction boxes, wires, cables, fiber optics, and any other enclosures or connections (the items described in the foregoing clauses (i)

and (ii) being referred to collectively in this Declaration as the “Non-Primary Telecommunications Facilities”). DMB intends that the term “Non-Primary Telecommunications Facilities” be interpreted to include facilities based on new technologies that replace the technologies that are used when this Declaration is recorded. Notwithstanding the foregoing, public utilities holding a valid franchise license under applicable law shall not be prohibited from installing underground or above-ground cable, conduit and related facilities, including above-ground cabinets and pedestals, but not including antennas and related facilities, if and to the extent such installation is authorized under a duly recorded public utility easement.

10.2 Without the advance written consent of DMB, which consent may be withheld in its sole and absolute discretion, Owner shall not enter into any agreement which permits any other person or party to provide, install, build or operate any Non-Primary Telecommunications Facilities that would be prohibited pursuant to the foregoing terms of this Section 10.

11. Perimeter Landscape Work.

11.1 As used in this Declaration, the term “Perimeter Landscape Work” means maintaining, repairing and replacing landscaping and related improvements (such as irrigation lines, sprinklers, timers, controllers, backflow preventers, and the like) installed in right-of-way areas adjacent to the Property (as contemplated by the Development Unit Plan for the Property) performed as required (a) pursuant to Section 3.6(b)(i) of the DMB Development Agreement (as defined in the Community Declaration), and (b) to sustain a level of maintenance that is consistent with the maintenance performed Unofficial Document respect to other arterial right-of-way areas within or adjacent to the Development by DMB, any affiliate of DMB, or the Community Alliance.

11.2 If the Owner of the Property fails to perform the Perimeter Landscape Work as required under this Section 11, and if such failure continues to for thirty (30) days after DMB gives notice of such failure to Owner, then DMB shall have the right (but not the obligation), in addition to any other remedies that may be available to DMB at law or in equity, (a) to undertake the relevant Perimeter Landscape Work, (b) to recover from Owner all costs and expenses thereby incurred (including ten percent (10%) of the total of such costs and expenses as a management fee), together with interest thereon at the rate of ten percent (10%) per annum from the date of notice of demand until paid in full, which obligation shall be a charge and continuing lien upon the Property as well as a personal obligation of Owner, (c) if such payment is not made within fifteen (15) days after notice of demand is given, to record a notice of such lien (more fully described in Subsection 11.3 below) against the Property, and (d) thereafter foreclose such lien under then prevailing Arizona law relating to the foreclosure of realty mortgages.

11.3 The lien provided for in Subsection 11.2 above is subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, and (ii) all liens recorded in the official records of Maricopa County, Arizona, prior to the date of recordation of the notice of lien. The sale or transfer of the Property (or any portion thereof) does not affect such lien, except that the sale or transfer of the Property (or any portion thereof) pursuant to foreclosure of a mortgage or deed of trust superior in priority to a notice of

lien under Subsection 11.2 above (including the exercise of the power of sale by a trustee under a deed of trust) extinguishes said lien for obligations arising prior (but not subsequent) thereto, but does not extinguish the personal liability of Owner. Any such notice of lien shall be filed in the official records of Maricopa County, Arizona, shall be signed and acknowledged by DMB, and shall contain (i) a statement of the unpaid amount of the obligation, (ii) the legal description of the Property, and (iii) the name of the owner(s) or reputed owner(s) of the Property. Upon the curing of any default for which a Notice of Lien was recorded, DMB will record an appropriate release of such Notice of Lien.

12. Disclosures. DMB hereby incorporates into this Declaration all of the disclosures and other contents of Article 10 of the Community Declaration; provided, however, that the provisions of Section 10.3 thereof shall apply to the Property only if (and only to the extent) approved by Owner from time to time, which approval may be withheld at any time, or from time to time, in Owner's sole and absolute discretion.

13. Estoppel Certificates. DMB, upon not less than ten (10) days' prior notice from Owner, shall execute, acknowledge and deliver to such Owner and to any prospective purchaser, tenant or Mortgagee (as defined in the Community Declaration) of Owner, a certificate of DMB stating (a) whether its records reflect that there are then existing defaults by the Owner in the payment or performance of its obligations under this Declaration (and, if so, specifying same), (b) that this Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Declaration is in full force and effect as modified and stating the modifications), and (c) any other information that may reasonably be required by such persons. It is intended that any such certificate delivered pursuant to this section may be relied upon by the requesting Owner, or any prospective purchaser, tenant or Mortgagee designated by the requesting Owner.

14. Running with the Land. DMB hereby declares its express intent that the foregoing Covenants shall run with the land and shall be an encumbrance on the Property, and, except as otherwise provided, shall be binding upon and enforceable against Owner and its successors and assigns, including successors-in-title to all or any portion of the Property, and shall inure to the benefit of DMB and its successors and assigns (subject to the limitations set forth below in this Section). Each and every contract, deed or other instrument hereafter executed conveying, transferring or otherwise disposing of the Property or any portion thereof, shall conclusively be held to have been executed, delivered and accepted by the grantee or transferee subject to the Covenants regardless of whether the Covenants are set forth in such contract, deed or other instrument. The Covenants shall continue in full force and effect perpetually. DMB may assign its rights under this Agreement to any affiliate of DMB or DMB Associates, Inc., an Arizona corporation. In no event shall DMB be permitted to assign this Declaration (including, but not limited to, any of its rights and obligations hereunder) to the Community Alliance or any other homeowners' association or property owners' association.

15. Miscellaneous.

a. Attorneys' Fees. If either party brings an action or other proceeding to enforce any of the terms, covenants or conditions of this Declaration, or for declaratory judgment with respect to any of the terms, covenants or conditions of this Declaration, the prevailing party

in any such action or proceeding shall be entitled to recover its reasonable costs and expenses incurred in such action from the other party, including, without limitation, reasonable attorneys' fees, and if any decision, order or judgment is obtained by the prevailing party, then payment of all such costs, expenses and fees shall be included in the decision, order or judgment, as applicable.

b. Amendments. No modification of this Agreement shall be deemed effective unless in writing and signed by both Owner and DMB. Any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

c. Validity of Provisions. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provisions of this Declaration but this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

d. Construction. In all cases, this Declaration shall be construed simply, according to its fair meaning and not strictly for or against either party.

e. Governing Law; Venue. This Declaration shall be governed by, construed under, and enforced in accordance with ^{the laws} _{Unofficial Document} of the State of Arizona, without regard to conflicts of law principles. Owner (on behalf of itself and its successors and assigns), by accepting fee title to, or any other interest in, any portion of the Property, consents to the jurisdiction of the courts of the State of Arizona and the United States of America, and agrees that venue property lies in the Superior Court of Maricopa County and the United States District Court for the District of Arizona, as appropriate.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, DMB has executed this Declaration, to be effective as of the date first set forth above.

DMB: DMB MESA PROVING GROUNDS LLC, an Arizona limited liability company

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

By: [Handwritten Signature]

Its: SENIOR VICE PRESIDENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 31 day of October, 2013, by W. Dea McDonald, the SENIOR VICE PRESIDENT of DMB Associates, Inc., an Arizona corporation, in its capacity as Project Manager of DMB MESA PROVING GROUNDS LLC, an Arizona limited liability company.

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[Handwritten Signature]
Notary Public

My commission expires: July 4, 2015



EXHIBIT "A"

to

Declaration of Construction Covenants

LEGAL DESCRIPTION OF PROPERTY

Parcel No. 2, according to MINOR LAND DIVISION FOR "FIRST SOLAR" recorded in Book 1162 of Maps, page 45, official records of Maricopa County, Arizona.

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