

**TERM SHEET FOR IMPROVEMENT AGREEMENT  
FOR CONSTRUCTION OF HIGH PLAINS BOULEVARD (A.K.A. WELD COUNTY ROAD 9.5)  
BETWEEN WELD COUNTY ROAD 34 AND WELD COUNTY ROAD 36  
("Agreement")**

This Term Sheet sets forth the intent of the Parties only. It is not a contract and is not legally enforceable. Nonetheless, the Parties intend to proceed as rapidly as possible in negotiating a contractually binding improvement agreement consistent with the terms set forth herein.

<b>Effective Date</b>	<ul style="list-style-type: none"> <li>• Date that the last Party signs the Agreement.</li> </ul>
<b>Parties</b>	<ul style="list-style-type: none"> <li>• Town of Mead ("<u>Town</u>" or "<u>Mead</u>")</li> <li>• WCR 34 &amp; Hwy 25-220, LLC ("<u>W&amp;H</u>")</li> <li>• Mead Industrial Development, LLC ("<u>MID</u>")</li> <li>• Each, a "<u>Party</u>," and collectively, the "<u>Parties</u>."</li> </ul>
<b>Project</b>	<ul style="list-style-type: none"> <li>• The "<u>Project</u>" shall mean the design and construction of an interim cross section of High Plains Boulevard (a.k.a. Weld County Road ("<u>WCR</u>") 9.5) (1) from approximately 300 feet north of WCR 34 to WCR 36 and (2) interim cross section of WCR 36 from the intersection of WCR 9.5 west to the termination of the WCR 36 Home Depot improvements, as detailed in the engineering and construction plans and specifications ("<u>Plans</u>") approved by Mead (in its regulatory capacity) and any other governmental or quasi-governmental entity with approval authority.</li> <li>• <b><i>[Attach plan sheet(s) and cross section(s) as Exhibits.]</i></b></li> <li>• Plans and construction agreements are subject to the reasonable review and approval of W&amp;H within ten (10) business days of receipt of drafts from MID. If W&amp;H fails to provide comments in the foregoing period, the plans and/or construction agreements shall be deemed approved by W&amp;H.</li> </ul>
<b>Cooperative Nature of Agreement</b>	<ul style="list-style-type: none"> <li>• The Parties agree to work cooperatively, diligently, and in good faith to, among other things: perform their respective obligations under the Agreement, resolve any unforeseen issues or disputes (including with outside parties and other quasi-governmental and governmental approval authorities), and limit Project delays and Overages (as defined below and including those resulting from unnecessary changes to the Project as approved in the Plans).</li> </ul>
<b>Project Management: Obligation to Construct Project</b>	<ul style="list-style-type: none"> <li>• MID's affiliate, Broe Real Estate Services, Inc. ("<u>MID Project Manager</u>") will manage the Project under MID's direction, including overseeing the development of the Plans; obtaining</li> </ul>

	<p>Mead and other applicable governmental/quasi-governmental approvals of the Plans and required permits; conducting the bidding and awarding of a construction contract for the Project ("<u>Construction Contract</u>") in accordance with MID's internal procedures; providing construction contract management, construction inspection, and quality assurance services; coordinating with public and private utilities and other agencies.</p> <ul style="list-style-type: none"> <li>• If MID's desired contractor proposes a guaranteed maximum price or lump sum that exceeds the Maximum Project Cost (defined below), MID shall immediately advise the Mead Representative and the W&amp;H Representative (each defined below) of the same; in such case, MID shall not engage the contractor until Mead and W&amp;H have directed MID to proceed.</li> <li>• A Project Management fee of 3.5% of \$5,000,000 will be paid to MID in increments with disbursements of constructions costs.</li> <li>• MID shall provide copies of bid documents and the executed Construction Contract to the Mead Representative and W&amp;H Representative immediately after its execution.</li> <li>• <i>The Agreement will incorporate language from Mead's standard subdivision improvement agreement regarding plan and permit approvals, Mead's right to receive notices of commencement of construction and construction issues, inspection and testing requirements, workmanship and construction site maintenance requirements, and indemnification requirements.</i></li> </ul>
<b>Project Completion Date</b>	<ul style="list-style-type: none"> <li>• No later than December 31, 2025, unless extended (i) by Mead or (ii) by MID as a result of Force Majeure events by written notice to the other Parties. <i>[Note: "Force majeure events" need to be defined and the procedure for extending and length of extension if there is a force majeure event need to be explained in more detail in Agreement for Town's review.]</i></li> </ul>
<b>Conditional Acceptance; Warranty Period; Final Acceptance</b>	<ul style="list-style-type: none"> <li>• <i>The Agreement will incorporate language from Mead's standard subdivision improvement agreement regarding procedures and requirements for conditional acceptance and final acceptance by Mead of the Project. Following is a general summary of these procedures and requirements:</i> <ul style="list-style-type: none"> <li>➤ Upon completion of the Project, MID shall request in writing that Mead inspect and conditionally accept the Project. If Mead finds the Project does not comply with the Plans, Construction Contract, and/or Town/State laws and regulations, it will provide MID with a written explanation of such deficiencies, which MID will</li> </ul> </li> </ul>

	<p>promptly correct. When all such deficiencies have been corrected to Mead's reasonable satisfaction, Mead shall issue MID a letter of conditional acceptance.</p> <ul style="list-style-type: none"> <li>➤ MID and W&amp;H shall warrant the Project for a period of 2 years ("<u>Warranty Period</u>"), beginning on the date of the letter of conditional acceptance.</li> <li>➤ Mead requires security during the Warranty Period in an amount equal to 15% of the bondable construction costs ("<u>Warranty Security</u>"). <i>[Note: bondable construction costs generally mean the actual construction costs and do not include the project management fee. The parties will define more clearly in the Agreement.]</i> At conditional acceptance of the Project, MID shall provide (or shall cause the Project contractor to provide) Mead with security equal to the Warranty Security <i>less</i> the balance of the Project Account at Conditional Acceptance (the "<u>MID-Provided Security</u>"). At least \$200,000 of the Warranty Security shall be in the form of cash or a letter of credit or both (the "<u>Cash Requirement</u>"). Once the Cash Requirement is met, MID shall bond over the remaining balance of the Warranty Security with a warranty bond in a form reasonably acceptable to the parties.</li> <li>➤ The Warranty Security shall be held for the duration of the Warranty Period.</li> <li>➤ During the Warranty Period, MID shall facilitate the performance of repairs and replacements required to ensure compliance with the Plans, Construction Contract and applicable laws and standards, except that MID shall not be responsible for routine maintenance or repairs or correcting damage or destruction caused by the public, or agents or employees of Mead, the County, or State of Colorado (the "<u>Warranty Items</u>"). The Town shall be responsible for all routine maintenance and repairs not related to the Warranty Items. If MID fails to perform the foregoing obligations within 30 days of receiving written notice from Mead of needed work on Warranty Items, Mead may draw on the Warranty Security to correct such breach. Any draws on the Warranty Security will first be drawn from the MID-Provided Security, and only after the MID-Provided Security is fully depleted will funds that were in the Project Account at Conditional Acceptance ("<u>Project Balance at Conditional Acceptance</u>") be drawn upon. Items deemed "Warranty</li> </ul>
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	<p>Items” are not considered Eligible Project Costs. No draws for cost of work associated with Warranty Items shall be allowed or approved, but draws for Eligible Project Costs accruing prior to the start of or during the Warranty Period shall be eligible for reimbursement from the Project Account during the Warranty Period.</p> <ul style="list-style-type: none"> <li>➤ No sooner than 60 days prior to the end of the Warranty Period and at least 30 days prior to the end of the Warranty Period, MID shall request in writing that Mead inspect and finally accept the Project. If Mead finds the Project does not comply with the Plans, the Construction Contract, or applicable laws, it will provide MID with a written explanation of such deficiencies, and MID will promptly thereafter correct all deficiencies confirmed as Warranty Items. When all such deficiencies have been corrected to Mead’s reasonable satisfaction, Mead shall issue a certificate of final acceptance.</li> <li>➤ Except as otherwise provided in “Cost Savings” provision below, upon issuance of the certificate of final acceptance, Mead shall release any MID-Provided Security bonds and/or LOCs, and any cash portion of the MID-Provided Security remaining in the Project Account, if any (together with any interest accrued thereon) shall be returned to MID, and only then shall the remaining balance of the Project Account (together with any interest accrued thereon) be returned to Weld County. Except as otherwise provided in “Cost Savings” provision below, upon approval by all parties and confirmation that all Eligible Project Costs and fees have been paid/reimbursed, then and only then shall the remaining balance of the Project Account be returned to Weld County.</li> </ul>
<b>ROW dedication</b>	<ul style="list-style-type: none"> <li>• If any ROW needs to be dedicated by MID or W&amp;H to Mead, this will occur prior to conditional acceptance in a form approved by the Mead.</li> </ul>
<b>As-Builts</b>	<ul style="list-style-type: none"> <li>• At time of request for conditional acceptance, MID shall provide 2 copies of as-built drawings of the Project. As-built drawings shall be prepared under the direction of a Colorado licensed professional engineer based on information provided by the general contractor and a survey of surface features of the constructed site within the public right-of-way and easements</li> </ul>

	<p>indicating that the constructed improvements are in substantial compliance with the approved Plans. All as-built drawings shall be in a form acceptable to the Town Engineer.</p>
<b>Maximum Project Cost</b>	<ul style="list-style-type: none"> <li>• The Parties anticipate that the maximum cost for the Project will not exceed \$6,000,000.00 (the "<u>Maximum Project Cost</u>").</li> <li>• In the event the Maximum Project Cost exceeds \$6,000,000 (such amount being the "<u>Overage</u>"), W&amp;H and MID shall each be responsible for 50% of the Overage, provided that Mead will endeavor in good faith and in accordance with law to obtain a monetary contribution from future developers of properties in the vicinity of, and that will be served by, the Project (not including properties currently owned by Developers). Promptly following receipt of any such monetary contributions, Mead will pay the contributions in equal proportions to W&amp;H and MID until such Overage has been fully reimbursed to Developers.</li> </ul>
<b>Project Funding</b>	<ul style="list-style-type: none"> <li>• W&amp;H and MID (each a "<u>Developer</u>" and collectively, "<u>Developers</u>") shall each contribute \$1,000,000.00, for a total contribution of \$2,000,000.00 ("<u>Developers' Contribution</u>"). Developers' Contribution shall be deposited with Mead on or before the later of 15 days after: (i) the Effective Date, (ii) Mead provides written notice (including via email) to Developers of Mead's receipt of the County Contribution, or (iii) approval of the Plans by the Town and all other applicable governmental agencies ("<u>Deposit Date</u>"). Mead shall not issue permits for the Project and construction shall not commence, with the exception of design and preconstruction activities, until Mead is in receipt of Developers' Contribution.</li> <li>• Weld County has agreed in a separate agreement between the County and Mead to contribute \$3,000,000.00 ("<u>County Contribution</u>").</li> <li>• Mead shall contribute \$1,000,000.00 ("<u>Mead's Contribution</u>"). Mead shall deposit such sum in the Project Account following the Effective Date and on or before 7 days after receipt of the Developers' Contribution and County Contribution.</li> <li>• Mead shall deposit the Developers' Contribution, County Contribution, and Mead's Contribution into a separate interest-bearing account for the Project, which account shall be established and managed by the Mead Treasurer (the "<u>Project Account</u>").</li> <li>• Any interest earned on the Project Account shall be credited to the Project Account.</li> </ul>

	<ul style="list-style-type: none"> <li>• The Project Account will be used only to reimburse (1) MID for all Eligible Project Costs expended during the planning, design, and construction of the Project; (2) Mead for costs incurred on the Project (including engineering, inspection, legal, and other consultant costs); and (3) W&amp;H for costs incurred with respect to the Project (including design, engineering, legal, and other consultant costs) in accordance with the Reimbursement Process outlined below. The parties will cooperate in good faith to prepare an estimate of the Eligible Project Costs and attach the same to the Agreement.</li> </ul>
<b>One-Time Advance Payment Request</b>	<ul style="list-style-type: none"> <li>• MID may submit a one-time request to the Town Board for an advance payment from the Project Account in an amount equal to \$1,000,000.00 ("<u>One-Time Advance</u>"). This request may be submitted on or before the later of 7 days after: (i) the Deposit Date, (ii) the date MID provides Mead with the executed Construction Contract, or (iii) the date the Plans have been finally approved and executed by Mead.</li> <li>• This One-Time Advance shall be used to fund an escrow account with Thomas Title ("<u>Disbursement Account</u>"). The Disbursement Account will be used to (a) pay or reimburse MID for Eligible Project Costs expended during the planning, design, and construction of the Project, (b) fund the advancements to MID's contractor(s) pursuant to the Construction Contract and to the MID Project Manager for payment of the Project Management Fee, and (c) receive payments from the Project Account in accordance with the Reimbursement Process outlined below. The Disbursement Account will be subject to a separate escrow agreement among MID, W&amp;H, and an escrow agent ("<u>Disbursement Escrow Agreement</u>"). Any fees and costs related to establishing and maintaining the Disbursement Account and negotiating the Disbursement Escrow Agreement shall not constitute Eligible Project Costs; MID and W&amp;H shall be solely responsible for these fees and costs.</li> </ul>
<b>Reimbursement Process</b>	<ul style="list-style-type: none"> <li>• Except for the One-Time Advance, all other disbursements from Mead to MID from the Project Account shall be on a reimbursement basis.</li> <li>• Eligible Project Costs incurred by MID shall be reimbursed from the Project Account in accordance with the following process and requirements.</li> <li>• "Eligible Project Costs" include only the Project Management Fee, those costs and expenses that accrue during Project design</li> </ul>

	<p>and construction, including, without limitation, design fees, permitting costs, utility extension fees, engineering and legal fees, relocation costs, and all other costs and expenses arising under the Construction Contract, all of which costs and expenses shall be subject to approval in writing by MID, W&amp;H and the Town.</p> <ul style="list-style-type: none"> <li>• MID may submit written reimbursement requests in a format approved by MID, Mead and W&amp;H no more than once monthly following commencement of construction of the Project (<u>"Reimbursement Requests"</u>). Reimbursement Requests shall include the amount of the requested reimbursement, a description of the work performed, invoices for the work performed, the total percentage of the Project completed to date, the dates of performance, documentation—including lien waivers—that MID has paid the invoices for the work, and other agreed upon supporting documentation.</li> <li>• W&amp;H shall have seven (7) calendar days from receipt of a Reimbursement Request to approve or deny such request by execution (wet ink or electronic) of a form mutually agreeable to the Parties. If W&amp;H fails to respond to a Reimbursement Request within the foregoing period, then W&amp;H shall be deemed to have approved the Reimbursement Request.</li> <li>• Town staff shall endeavor to expeditiously review Reimbursement Requests. Following receipt of a Reimbursement Request, Mead may inspect (or cause to be inspected) the Project site to confirm that the work described in the request was completed in compliance with the Plans and applicable standards. If Mead finds the Reimbursement Request includes work unsatisfactory or incomplete because it does not comply with the Plans, Construction Contract, or applicable laws or regulations, it will provide MID with a written explanation of such deficiencies, which MID will promptly correct (which might require submission of a revised Reimbursement Request).</li> <li>• After all such deficiencies have been corrected to Mead's reasonable satisfaction and Mead has received written confirmation of W&amp;H's approval (actual or deemed approval) of a Reimbursement Request, Town staff will endeavor to submit the request at the next immediate Board Meeting (subject to meeting the Board's packet deadline). The Reimbursement Request will be included on the Town Board's consent agenda along with other Town payables.</li> <li>• Following Board approval, Mead shall send the full amount of each Reimbursement Request by check or wire to the Disbursement Account, provided that, if the balance of the</li> </ul>
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	<p>Project Account reaches 5% of the bondable costs of the Project, Mead shall retain said 5% as retainage (the “<u>Retainage</u>”). The Retainage shall be deducted from the total amount of the Warranty Security (the Retainage being part of the Project Balance at Conditional Acceptance). 100% of the Retainage shall be released to the Disbursement Account when all conditions identified in the Conditional Acceptance letter are completed and approved by the Town, all conditional lien waivers for such work have been received by the Town, and all requests for Reimbursement have been submitted and paid.</p> <ul style="list-style-type: none"> <li>• To avoid reimbursement delays as a result of holidays, the Town will implement its current process for issuing reimbursements related to this Project.</li> <li>• If a Reimbursement Request is denied, the denying Party or Parties shall provide the reason for such denial and a means of cure.</li> <li>• The Town may reimburse itself from the Project Account for costs and expenses incurred by the Town on the Project (including engineering, inspection, legal, and other consultant costs) in accordance with the Town’s typical process for third party review of Town payments and invoices, and only after such reimbursements are approved by the Town Board.</li> <li>• W&amp;H may be reimbursed from the Project Account for all Eligible Project Costs incurred by W&amp;H (including engineering, inspection, legal, and other consultant costs) subject to reasonable prior approval by the Town, MID and W&amp;H.</li> </ul>
<b>Cost Savings</b>	<ul style="list-style-type: none"> <li>• If the actual total cost for the Project is less than the Maximum Project Cost, the cost savings shall be paid to Weld County at the end of the Warranty Period following (i) final acceptance, and (ii) the return of any MID-Provided Security to MID; provided, however, if the Project Balance at Conditional Acceptance exceeds the amount required for Warranty Security, the amount in excess of the amount required for Warranty Security shall be paid to Weld County at the time of conditional acceptance. The Project Balance at Conditional Acceptance shall be determined after all Reimbursement Requests for Eligible Project Costs accruing prior to the start of the Warranty Period, including Eligible Project Costs incurred to correct any deficiencies identified by the Town during its inspection for conditional acceptance, have been submitted and paid.</li> </ul>
<b>Existing SIAs; Future</b>	<ul style="list-style-type: none"> <li>• The Developers’ obligations under the Agreement will supersede</li> </ul>

<p><b>Agreements</b></p>	<p>WCR 9.5 obligations and WCR 36 obligations west of WCR 9.5 under their respective Annexation Agreements and Subdivision Improvement Agreements; WCR 36 obligations east of WCR 9.5 remain in place. The Parties agree to work diligently and in good faith to amend such agreements consistent with the foregoing following execution of the Agreement. <i>[Note, on 7/17, the Parties' attorneys agreed to review the Annexation Agreements and SIAs and include in the Agreement reference to the specific provisions in the Annexation Agreements and SIAs that are being superseded.]</i></p> <ul style="list-style-type: none"> <li>• Future developer agreements with Mead shall acknowledge and conform with the Agreement.</li> </ul>
<p><b>Remedies</b></p> <p><i>(Note: The Town's remedies generally track the remedies provided to Mead in its standard subdivision improvement agreement.)</i></p>	<ul style="list-style-type: none"> <li>• Upon the breach of any provision of the Agreement beyond a 30- day cure period following notice, the Parties may initiate any one or more of the following actions:</li> <li>• <b>Town's remedies:</b> <ul style="list-style-type: none"> <li>○ Delay processing of applications for development of land adjacent to the Project submitted by the breaching party; or</li> <li>○ Issue stop work orders; or</li> <li>○ Adjust the term of the Warranty Period, as may be appropriate for specific deficiencies arising thereunder; or</li> <li>○ Draw from the Warranty Security to cover the costs associated with correcting the breach; or</li> <li>○ Issue a citation for violating requirements of the Mead Municipal Code; or</li> <li>○ Initiate legal proceedings in any appropriate court of law.</li> </ul> <p>In the event a Developer provides written notice of breach of the Agreement to the other Developer and copies the Town on such written notice, and the Developer receiving such notice fails to cure the breach within the 30-day cure period, the Town may, in its sole discretion, initiate one or more of the above remedies against the breaching Developer. If a breach by a Developer occurs under the Disbursement Escrow Agreement, such breach shall be resolved solely between the Developers in accordance with the Disbursement Escrow Agreement.</p> </li> <li>• <b>MID's remedies:</b> <ul style="list-style-type: none"> <li>○ If Town fails to deposit Mead's Contribution into the Project Account as set forth in the Agreement, MID may suspend construction activity on the Project. If the Town fails to issue a reimbursement following the Town</li> </ul> </li> </ul>

	<p>Board's approval of the subject Reimbursement Request, MID may suspend construction activity on the Project. However, if the Town has a reasonable basis for denying or not acting on a Reimbursement Request (e.g., if the request does not include the information required by the Agreement), the Town's failure to issue the reimbursement shall not be deemed a breach of the Agreement.</p> <ul style="list-style-type: none"> <li>• <b>W&amp;H's remedies:</b> <ul style="list-style-type: none"> <li>○ For failure of MID to complete the improvements in accordance with the Agreement, W&amp;H is entitled to replace MID as the project manager to oversee completion, and shall receive the Project Management Fee for the improvements it completes and other costs incurred as a result of such failure. W&amp;H shall provide prior written notice to Mead of its exercise of this remedy, which notice shall include the name and contact information of the new project manager.</li> </ul> </li> <li>• The Parties' rights and remedies in the Agreement shall not be exclusive and shall be in addition to any other rights and remedies provided by law.</li> </ul>
<b>Representatives</b>	<ul style="list-style-type: none"> <li>• Each Party shall name an individual to serve as such Party's representative for the Project. The named individuals shall be responsible for coordinating all communications with the other Parties related to the Project.</li> <li>• Mead's representative will be Erika Rasmussen, Town of Mead Director of Public Works ("<u>Mead Representative</u>").</li> <li>• MID's representative, and MID Project Manager's representative, will be Dean Brown, Broe's Senior Vice President ("<u>MID Representative</u>").</li> <li>• W&amp;H's representative will be Augustine H. Gomez and Jim Belfiore ("<u>W&amp;H Representatives</u>").</li> </ul>
<b>Term of this Agreement</b>	<ul style="list-style-type: none"> <li>• The term of this Agreement shall commence on the Effective Date and shall terminate upon the date that all obligations of the Parties under this Agreement have been satisfied, unless terminated earlier by mutual written agreement of the Parties.</li> <li>• This Agreement may also be terminated if Weld County fails to deposit the County Contribution with the Town; such failure by Weld County shall not be deemed a breach of this Agreement by Mead.</li> </ul>
<b>Subject to Appropriation</b>	<ul style="list-style-type: none"> <li>• The Parties understand and acknowledge that Mead is subject to Article X, § 20 of the Colorado Constitution ("<u>TABOR</u>"). Mead</li> </ul>

	<p>does not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR as no future appropriation of funds beyond the current fiscal year is anticipated or expected. Notwithstanding anything in this Agreement to the contrary, all payment obligations of Mead are expressly dependent and conditioned upon the continuing availability of funds for Mead beyond the term of Mead’s current fiscal period ending upon the next succeeding December 31. Financial obligations of Mead payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Mead and other applicable law; if financial obligations of Mead under this Agreement are payable after the current fiscal year, then Mead staff shall include such obligations in the applicable future fiscal year budget submitted for Town Board approval, or otherwise seek appropriation from the Town Board for such obligations.</p>
<b>Examination of Records</b>	<ul style="list-style-type: none"><li>Any authorized agent of the Town, including the Town finance director and Town auditors, has the right to access, and the right to examine, copy and retain copies, at Town’s election in paper or electronic form, any pertinent books, documents, papers, and records related to Developers’ performance pursuant to the Agreement. Developers shall cooperate with Town representatives and Town representatives shall be granted access to the forgoing documents and information during reasonable business hours and until the latter of three (3) years after the expiration or earlier termination of the Agreement or expiration of any applicable statute of limitations.</li></ul>

IN WITNESS WHEREOF, the Parties have executed this Term Sheet as of the date of the last signature affixed hereto.

[Signature Pages Follow]

**TOWN OF MEAD, COLORADO**

By: \_\_\_\_\_

Helen Migchelbrink, Town Manager

Date: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_

Mary E. Strutt, Town Clerk

**MID:**

MEAD INDUSTRIAL DEVELOPMENT, LLC,  
a Colorado limited liability company

DocuSigned by:  
By: John Spiegelman  
Name: John Spiegelman  
Its: Authorized Signatory

**W&H:**

WCR 34 & HWY 25-220, LLC, a  
Colorado limited liability company

By: RMG Real Estate Services XV, L.L.C., an  
Arizona limited liability company, its Administrator

Signed by:  
*Augustine H. Gomez*  
By: 1C32DCD4F7294D8...  
Augustine H. Gomez, its Authorized officer