

WHEN RECORDED RETURN TO:

City of Mesa (Beth Hughes-Ornelas)
55 North Center Street
Mesa, AZ 85201

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into _____, 2015, by and between ROBERT S. HOLYOAK and JEAN C. HOLYOAK, ("Owners"), and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owners and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

A. Owners owns approximately 4.8 acres of real property located at 2305 N. Harris Drive (north of McKellips Road) and legally described in Exhibit "A" and depicted in Exhibit "B" (the "Property") within the City of Mesa, Arizona.

B. The Owners have submitted an application to rezone the Property from RS-43 to RS-35 with a Planned Area Development Overlay (PAD) and site plan and preliminary plat approval to develop a six-lot residential subdivision called "Harris Crossing II."

C. The City Zoning Ordinance allows a PAD overlay district for site areas with a minimum of 5 acres. The Property is approximately 4.8 acres in size. The Mesa Zoning Administrator has interpreted the Property as satisfying the five (5) acre requirement in the City's ordinance.

D. The Owners would like to utilize on-lot retention that would require each lot owner to make provisions for their lot runoff. The City seeks to ensure, by this Agreement, Owners will make the improvements described herein during the timeframes provided herein, and that such improvements will result in appropriate on-site storm water retention for the future development of the Property.

E. The Parties acknowledge that this Development Agreement gives notice to current and future lot owners of the obligation to provide and maintain an on-lot storm water retention basin which may prohibit or restrict the building of structures, walls, pools, or other improvements on the Property.

F. The Parties desire to enter into this Agreement for the purpose of placing restrictions on the six-lot subdivision, ensuring appropriate storm water retention, provide notice to future lot owners of the storm water retention requirements, establish a Homeowners' Association, and intend this document to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Owners' Duties and Obligations. Owners, its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owners, its successors, assigns, mortgages and other persons who may have or who may acquire any right, title or interest in the Property, or any part thereof.

1.1 Subdivision Requirements. The maximum number of residential lots allowed in the subdivision shall be six (6) and each lot shall have a minimum lot size of 33,000 square feet. Owners shall comply with all requirements of the final plat, including street and utility improvements, storm water retention, and landscaping.

1.2 Initial Phase of Development. During the first phase of development ("Initial Phase"), the Owners are obligated to make the following property improvements, which are discussed in more detail below: 1) construct perimeter wall around the subdivision; 2) install street and utility infrastructure; 3) landscape the property along Harris Street; and 4) provide temporary on-lot retention for the six (6) lots. Plans shall be submitted to the Development and Sustainability Department for review and permits must be obtained for construction as discussed in more detail below. Once work commences on the Initial Phase, the Owners will have six (6) months to complete all the Initial Phase improvements stated in this Section 1.2 and have them inspected and approved by the City.

1.2.1 Construction During Initial Phase. The Initial Phase commences when construction for any of the required improvements in the Initial Phase begins. The Owners may elect to construct, contemporaneous with the construction of the improvements required in the Initial Phase, a building on two (2) of the lots in the subdivision. The Owners may only apply for no more than two (2) building permits for a residential home and the City shall only issue no more than two (2) such building permits during the Initial Phase. The City will not grant the final utility clearance for any residential building until the Initial Phase requirements are completed and approved by the City. No other building permits will be issued for the other lots in the subdivision until the Initial Phase is completed and approved by the City. Additionally, until the Initial Phase

improvements are completed and approved by the City, the Owners may not sell any lots within the subdivision to an end user.

1.2.2 Block Wall. The Owners shall build a perimeter block wall around the subdivision. During the Initial Phase, The Owners shall complete the block wall and have it approved by the City. The wall shall be built according to City code and the applicable development standards. Additionally, the design of the wall shall be consistent with the boundary wall of the Harris Crossing subdivision and shall complement the surrounding neighborhood.

1.2.3 Street and Utility Infrastructure. It is the Owners' obligation to ensure the street and utility infrastructure for the six (6) lots in the subdivision are installed ("Infrastructure Improvements"). The Infrastructure Improvements shall be paid for by the Owners. During the Initial Phase, The Owners shall complete the Infrastructure Improvements and have them approved. All Infrastructure Improvements shall be built according to City engineering and development standards.

1.2.4 Landscaping. Owners shall landscape, at Owners' expense, the frontage along Harris Street. The landscaping shall be completed during the Initial Phase. The Owners must submit a landscaping plan and have it approved by the City Planning Department prior to installing the landscaping.

1.2.5 Temporary On-lot Retention. Owners shall construct a temporary on-site (also referred to as on-lot) water retention basin on each lot within the subdivision ("Temporary Basins"). The Temporary Basins shall be built according to City development and engineering standards. The Owners shall construct the Temporary Basins, at Owners' expense, and have them approved by the City during the Initial Phase. The Owners are obligated to maintain the Temporary Basins at the Owners' expense. The Temporary Basins shall remain and can only be extinguished (i.e., reconfigured) when the subsequent permanent on-lot basin(s) is (are) constructed.

1.3 Subsequent Development. After the Initial Phase is complete, the Owners, future lot owners, and their successors shall be responsible for making the following improvements in this Section 1.3:

1.3.1 On-lot Storm Water Retention. The Owners and future lot owners are required to provide storm water retention as required by Sections 806 and 807 of the City of Mesa Engineering & Design Standards as follows:

1.3.1.1 Each future lot owner within the subdivision shall be required to retain storm water on-site for lot runoff and the adjacent half-street storm water run-off by building an on-site drainage and retention facility.

1.3.1.2 Each lot owner, at the time of submittal for a construction permit, shall submit a site plan and a grading and drainage plan, sealed by a licensed, registered engineer. The grading and drainage plan and site plan are considered part of the construction documents that must be submitted to the City in order for the lot owner to obtain a building permit on such lot.

1.3.1.3 No building permit will be issued until the City approves the site plan and grading and drainage plan for such lot.

1.3.1.4 Each lot owner, as part of the construction of a home upon said lot, shall construct an on-lot retention basin(s) according to the approved grading and drainage plan for such lot.

1.3.1.5 Upon completion of the on-lot retention basin for a lot, the lot owner is required to have a licensed, registered engineer inspect the basin and drainage system and certify that it is constructed in accordance with the approved site plan, grading and drainage plan and City development and engineering standards. The engineer shall use the Construction Certification Letter in the City of Mesa Engineering & Design Standards to certify the on-lot retention basin and drainage system. This letter must be submitted to the City.

1.3.1.6 Additionally, no City permit will be issued to build any subsequent structure, building, accessory structure, pool, or landscaping on a lot without drainage clearance from the City. If a permit is issued by the City without the lot owner receiving drainage clearance, the lot owner is not relieved from their responsibility to maintain on-lot retention.

1.3.2 Enforcement of the Construction of the On-lot Basin. No lot owner shall receive final utility clearance from the City for electric or gas utility service until the City receives the Construction Certification Letter for the on-site retention basin and drainage system.

1.3.3 Notice to Lot Owners. In order to provide future lot owners with notice that each lot is encumbered by the obligation to provide an on-lot drainage basin, the deed for each lot as well as the final plat for the subdivision shall include a Drainage Narrative that states the following obligations required of each lot owner: 1) provide adequate measures for on-lot storm water retention; 2) prepare, submit and have the City approve a sealed drainage report for on-lot retention; 3) at the time of development of the lot, build an on-lot retention facility according to City development and engineering standards as well as in accordance with the grading and drainage plan; 4) have the retention facility certified by an engineer; and 5) continuously maintain the basin) to ensure adequate storm water retention. The deed and final plat shall be recorded against each lot in the subdivision.

1.3.4 Maintenance & Improvements of On-Lot Retention. Each lot owner shall restrict the use of the on-lot drainage facility and prohibit the construction of buildings, structures, hardscaping, or other similar improvements, that will impede, divert, or cause the storm water runoff to have an adverse effect on adjoining property owners. The property owner shall be responsible to maintain the on-lot retention facility and make all repairs necessary to retain the runoff on their lot. This shall be done at the property owner's expense.

1.3.5 Homeowners' Association. The Owners shall create a Homeowners' Association (HOA) within one (1) year from the date this Agreement is signed. The HOA will succeed to Owners' obligations under this Agreement including maintaining, preserving and improving the landscaping, the wall around the subdivision, the road within the subdivision and the temporary on-lot retention. The Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") associated with the HOA shall incorporate the duties in this Agreement as well as the requirement that each lot owner maintain and preserve the on-lot retention on each lot as described herein.

2. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and effect until the earliest of twenty-five (25) years or the effective date of Council approved re-zoning in conflict with this Agreement.

3. General Provisions.

3.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after its full execution by the Parties.

3.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85211
Facsimile: 480-644-2175
Attn: City Manager

With copy to: Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: 480-644-2498
Attn: City Attorney

Owners: Robert S. Holyoak
1711 East Hermosa Vista Drive
Mesa, Arizona 85203

Jean C. Holyoak
1711 East Hermosa Vista Drive
Mesa, Arizona 85203

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

3.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

3.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the City of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible. Notwithstanding the foregoing, in the event of any default or breach by Owner(s), the City may, at any time thereafter, exercise, singly or cumulatively, any other or further right or remedy at law or in equity which City may have by reason of such default or breach.

3.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owners, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

3.6 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

3.7 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

3.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

3.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

3.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

3.11 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

3.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

3.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

Exhibit "A": Legal Description of the Property

Exhibit "B": Depiction of the Property

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

3.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

3.15 Severability. If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

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

3.17 E-Verify. To the extent applicable under A.R.S. § 41-4401 and § 23-214, Owners represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. § 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

3.18 Prior Appropriation. Pursuant to A.R.S. § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above:

"City"

CITY OF MESA, an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

ATTEST:

Dee Ann Mickelson, City Clerk

APPROVED AS TO FORM

Deborah J. Spinner, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

"Owners"

Robert S. Holyoak

By: Robert S. Holyoak

Name: Robert S. Holyoak

Title: _____

STATE OF Arizona)

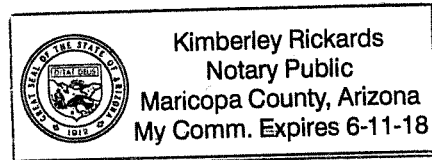
) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this 30 day of June, 2015, by Robert Holyoak, the _____ of _____, Inc., a _____ corporation on behalf of the corporation.

Kimberley Rickards
Notary Public

My commission expires:



06-11-2018

Jean C. Holyoak

By: Jean C. Holyoak

Name: Jean C. Holyoak

Title: _____

STATE OF Arizona)

) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this 30 day of June, 2015, by Jean C Holyoak, the _____ of _____, Inc., a _____ corporation on behalf of the corporation.

Kimberley Rickards
Notary Public

My commission expires:

6-11-2018

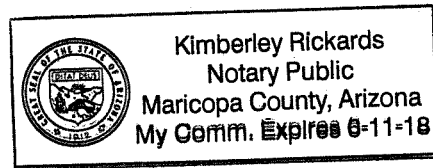


EXHIBIT "A"
TO DEVELOPMENT AGREEMENT
(Legal Description of the Property)

The South 330 feet of the North 792 feet of the West half of the Northwest quarter of the Southeast quarter of Section 1, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian;

EXCEPT the west 33 feet thereof.

(Depiction of the Property)

