

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 February 8, 2016, by and between MPT of Mesa-Eastmark AD, LLC, a Delaware limited liability company ("Owner"), PMRG Associates II, LP, a Texas limited partnership ("Developer") and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner, Developer and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

- A. The Owner owns approximately 8 gross acres, 7.91 net acres, of real property located at the northwest corner of Elliot Road and Ellsworth Road and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, Arizona.
- B. The Owner has submitted the Elliot Road Technology Corridor Opt-In Form that is required in order to opt-in to the Elliot Road Technology Corridor ("ERTC").
- C. The Developer will be responsible for certain development and construction activities in connection with the construction of a hospital facility on the Property.
- D. By "opting-in" to the ERTC the Property will be rezoned from Limited Commercial Planned Area Development ("LC PAD") and Planned Employment Park Planned Area Development ("PEP PAD") to Limited Industrial with a Planned Area Development ("LI PAD") Overlay as part of the ERTC that was approved by City Council on November 3, 2014 and adopted by Ordinance #5255.
- E. The ERTC Narrative outlines the design standards, modifies the development standards, and identifies the permitted land uses the Owner agrees to when opting-in to the ERTC.
- F. The Parties acknowledge that the Property is located within the ERTC near the proposed new entrance to the Phoenix-Mesa Gateway Airport and by the

Owner opting-in to the ERTC there will be planning and economic benefits to both the City and the Owner.

G. The Parties desire to enter into this Agreement to establish the design guidelines, modify the development standards and place land use restrictions on the Property, intending 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. Owner/Developer Duties and Obligations. Owner, the Developer, and their respective successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner, its successors and assigns.

1.1 Use Restrictions. The uses listed below shall be prohibited on the Property. Exhibit C hereto compares the land uses in the base zoning district for the Property with the land uses for the Property.

- Correctional Transitional Housing Facility
- Clubs and Lodges
- Cultural Institutions
- Day Care Centers as a stand-alone use, allowed as a component of a service to on-site business or industry
- Places of Worship
- Schools, Public or Private
- Animal Sales and Services
 - Kennels
 - Pets Stores
 - Veterinary Services
- Artists' Studios
- Automobile/Vehicle Sales and Services
 - Automobile Rentals
 - Automobile/Vehicle Sales and Leasing
 - Automobile/Vehicle Repair, Major
 - Automobile/Vehicle Repair, Minor
 - Automobile/Vehicle Repair, Washing
 - Large Vehicle and Equipment Sales, Services and Rental
 - Service Station
 - Towing and Impound
- Banks and Financial Institutions

- Banks and Financial Institutions with Drive-Thru Facilities
- Building Materials and Services
- Commercial Recreation
 - Small-Scale
 - Large-Scale
- Eating and Drinking Establishments as a stand-alone use, allowed as a component of a service to on-site business or industry
 - Bars/Clubs/Lounges
 - Coffee Shops/Cafes
 - Restaurants, Bar and Grill
 - Restaurants, Full-Service
 - Restaurants, Limited Service
 - With Drive-thru Facilities
 - With Outdoor Seating Areas
 - Off-track Betting
 - Off-track Betting With Live Entertainment
 - Farmer's Market
- Convenience Market
- Funeral Parlors and Mortuaries
- Light Fleet-Based Services
- Live-Work Units
- Maintenance and Repair Services
- Medical Marijuana Dispensaries
- Medical Marijuana Cultivation Facilities
- Parking, Commercial
- Personal Services
- Plant Nurseries and Garden Centers
- Retail sales, General
- Retail Sales, Large Format
- Swap Meets and Flea Markets
- Tattoo and Body Piercing Parlors
- Handicraft/Custom Manufacturing
- Light Assembly/Cabinetry
- Reverse Vending Machines
- Small Indoor Collections
- Large Collection Facilities
- Warehouse and Storage
 - Contractor's Yards
 - Indoor Warehousing and Storage
 - Mini-Storage
 - Wholesale
- Airport land use classifications
 - Aircraft Refueling Stations
 - Aircraft Light Maintenance
 - Airport Transit Station
 - Airport Related Long-Term Parking Lots

- Transportation Facilities
 - Freight/Truck Terminals and Warehouses
 - Transportation Passenger Terminals
- Specific Accessory Uses and Facilities
 - Outdoor Storage
 - Outdoor entertainment or activities as an accessory use
 - Outdoor Display

To the extent there is a disagreement between the Parties as to whether a use is allowed or permitted, such determination shall be submitted to the City's Zoning Administrator, who shall determine whether a proposed use is a prohibited use under this section of the DA, and such a decision shall be final and not subject to appeal. Notwithstanding anything to the contrary contained herein, the following uses, without limitation, shall be expressly permitted upon the Property: hospital, emergency department, emergency room, emergency care facility, or urgent care facility or for procedures requiring sedation and the services of an anesthesiologist that are not typically performed in a physician's office.

1.2 Design Guidelines. The Owner shall comply with the Elliot Road Technology Corridor Narrative as well as the Mesa Gateway Strategic Development Plan ("MGSDP").

1.3 Development Standards. The Owner shall comply with all City Development Standards in the Mesa Zoning Ordinance with the exception that the maximum building height shall be 150 feet.

2. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and effect and shall automatically terminate upon the earlier of: (i) termination by the mutual written consent of the Owner and City pursuant to this Agreement (ii) the effective date of Council approved re-zoning initiated by Owner which is in conflict with this Agreement, or (iii) fifty (50) years from the approval date of this Agreement.

3. General Provisions.

3.1 Recordation. The City shall record this Agreement in its entirety in the Official Records of Maricopa County, Arizona, not later than ten 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: Jim Smith, Esq.

Owner: MPT of Mesa-Eastmark AD, LLC

With copy to:

Developer: PMRG Associates II, L.P.

With a copy to:

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 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.

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 Owner, 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 reasonably necessary or reasonably appropriate to fully carry out the intent and purpose of this Agreement.

3.10 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.

3.11 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.

3.12 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
- Exhibit C: Table of Land Uses

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

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

3.14 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.

3.15 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.

3.16 E-Verify. To the extent applicable under A.R.S. § 41-4401 and § 23-214, Owner 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.

3.17 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. City hereby acknowledges that this Agreement does not require any expenditure of funds or payment of monies by the City.

[SIGNATURES ON 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

James Smith, City Attorney

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

general partner

By: _____

Rick V. Kirk, Manager

OR

Wm. Roger Gregory, Assistant Manager

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2016, by _____, the _____
_____ of _____ on behalf of _____.

Notary Public

My commission expires:

EXHIBIT A
TO DEVELOPMENT AGREEMENT

[Legal Description of the Property]

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 1 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION BRASS CAP IN HANDHOLE MARKING THE SOUTHEAST CORNER OF SAID SECTION 9, FROM WHICH AN A.D.O.T BRASS CAP FLUSH MARKING THE SOUTH QUARTER CORNER OF SAID SECTION 9 BEARS NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, A DISTANCE OF 2656.38 FEET;

THENCE NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 81.38 FEET;

THENCE NORTH 00 DEGREES 20 MINUTES 16 SECONDS EAST, A DISTANCE OF 65.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE NORTH 89 DEGREES 39 MINUTES 44 SECONDS WEST, ALONG THE NORTHERLY RIGHT OF WAY LINE OF ELLIOT ROAD, A DISTANCE OF 692.62 FEET;

THENCE NORTH 00 DEGREES 20 MINUTES 16 SECONDS EAST, A DISTANCE OF 496.27 FEET;

THENCE SOUTH 89 DEGREES 39 MINUTES 44 SECONDS EAST, A DISTANCE OF 697.22 FEET TO THE WESTERLY RIGHT OF WAY LINE OF ELLSWORTH ROAD;

THENCE SOUTH 00 DEGREES 51 MINUTES 48 SECONDS EAST, ALONG SAID WESTERLY RIGHT OF WAY LINE, A DISTANCE OF 481.38 FEET;

THENCE SOUTH 44 DEGREES 44 MINUTES 14 SECONDS WEST, A DISTANCE OF 20.99 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

EXHIBIT B TO DEVELOPMENT AGREEMENT DEPICTION OF THE PROPERTY

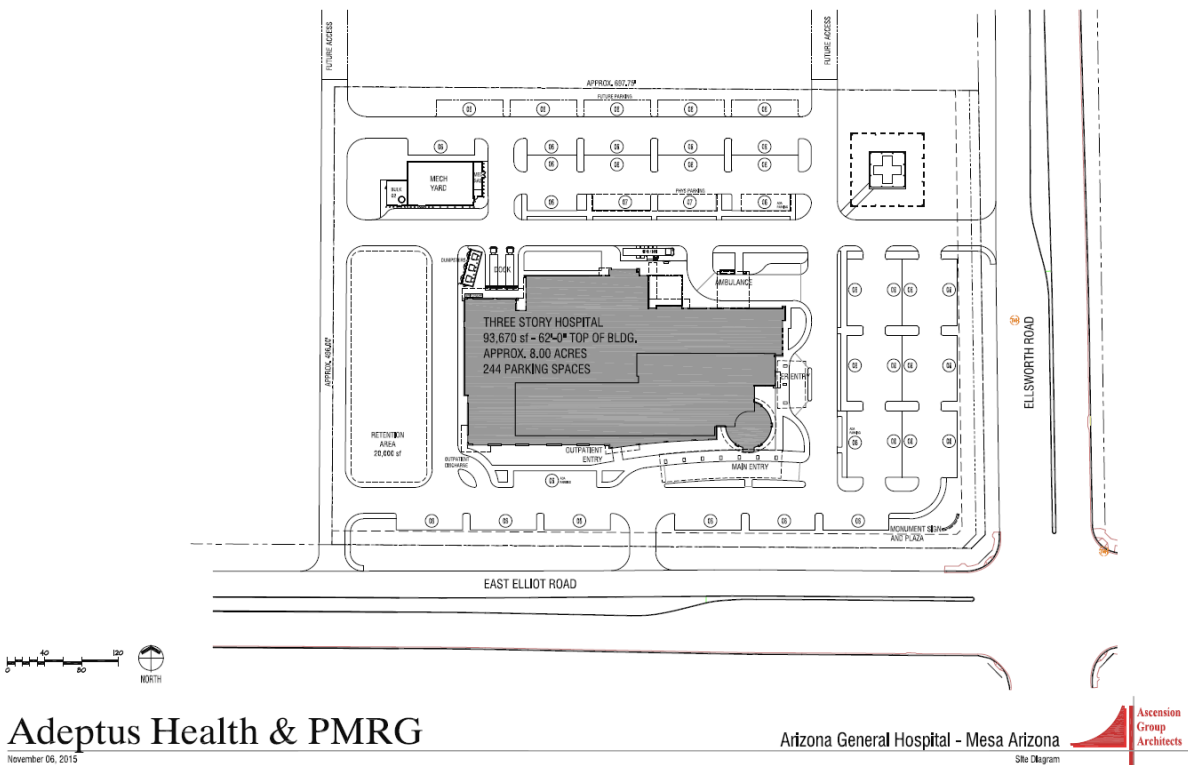


EXHIBIT C
TABLE OF PERMITTED USES