

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 _____, 20__, by and between PHX-MESA GATEWAY AIRPORT 193, LLC, an Arizona limited liability company ("Owner") and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

A. Owner owns approximately 88.2598 acres of property located at various sites adjacent to East Ray Road, legally described in Exhibit A, and depicted on the map attached as Exhibit B (the "Property") within the City of Mesa, AZ.

B. The Parties desire to enter into this Agreement for the purpose of memorializing their agreements concerning the application of Section 9-8-3 of the Mesa City Code to the Property, intending this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05.

C. In December of 2009 (12/15/2009) Owner dedicated approximately 7.5001 acres of land to the City for the construction of a portion of East Ray Road and related sewer and water infrastructure ("Owner's Dedication"). The City constructed East Ray Road (the "Road Work") and related sewer and water infrastructure on the land that Owner dedicated, and Owner is preparing the Property for development.

D. After Owner's Dedication, and in connection with its construction of the road and infrastructure, the City extended sewer line and water line infrastructure along the East Ray Road roadway adjacent to the Property (the "Line Extension"; the Line Extension and Road Work are referred to as the "Improvements"). Under most circumstances, Section 9-8-3(H)(4) of the Mesa City Code would require Owner, when Owner further develops the Property and establishes water and sewer service for the Property, to reimburse the City for the Line Extension.

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. Covenants of the Parties.

1.1 Binding on Owner. Owner, 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 Owner, its successors and assigns.

1.2 Binding on City. City, on its behalf and on behalf of each of its subdivisions and departments and City's successors, assigns, agrees that the obligations set forth in this Agreement are binding and enforceable upon City and each of its departments and subdivisions.

1.3 Utilities. In connection with the development of the Property, Owner will comply the City's Terms and Conditions for the Sale of Utilities, and all applicable provisions of the Mesa City Code. Such compliance includes, but is not limited to, Owner's payment of various fees for water meters, connection of sewer and water services to the Property, and usage of water and sewerage services.

1.4 MCC Section 9-8-3(H)(4). Notwithstanding the foregoing, Owner will not be responsible to re-pay the City for the cost of the Improvements, or any portion thereof. This Agreement does not release Owner from its obligation to construct any future improvements adjacent to the Property which are necessary because of the impact of development on the Property or required under City Code.

2. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and effect for fifty (50) years.

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

Owner: C/O Orsett Properties, Ltd.
5353 North 16th Street, Suite 105
Phoenix, Arizona 85016
Facsimile: 602-241-3220
Attn: Mike Freret

With copy to: Peter G. Santin
Ball, Santin, & McLeran, PLC
2999 North 44th Street, Suite 500
Phoenix, Arizona 85018
Facsimile: 602-840-1400

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.

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 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 A.R.S. § 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.

3.18 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 Mickelsen, 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 _____, 2017, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

“Owner”

PHX-MESA GATEWAY AIRPORT 193, LLC,
an Arizona limited liability company

By: Mesa Gateway Investments LLC,
an Arizona limited liability company,
Sole Member

By: CRF Investments LLC,
an Arizona limited liability company,
Manager

By: _____
Curt R. Feuer, Sole Member

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Curt R. Feuer, the Sole Member of CRF Investments LLC, an Arizona limited liability company, as Manager of Mesa Gateway Investments LLC, an Arizona limited liability company, the Sole Member of PHX-MESA GATEWAY AIRPORT 193, LLC, an Arizona limited liability company, on behalf of the company.

Witness my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT A
TO DEVELOPMENT AGREEMENT

**LEGAL DESCRIPTION
FOR
RAY ROAD COMMERCE CENTER**

REAL PROPERTY IN THE CITY OF MESA, COUNTY OF MARICOPA, STATE OF ARIZONA,
DESCRIBED AS FOLLOWS:

A PORTION OF LAND LOCATED IN SECTION 19, 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 FOUND BRASS CAP WITH LS TAG 6451 AT THE SOUTHEAST CORNER OF SAID
SECTION 19;

THENCE NORTH 00 DEGREES 53 MINUTES 56 SECONDS WEST, ALONG THE EAST LINE OF SAID
SECTION 19, A DISTANCE OF 1,415.19 FEET TO A FOUND BRASS CAP WITH LS TAG 6451 AND THE
POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE NORTH 89 DEGREES 36 MINUTES 05 SECONDS WEST, LEAVING SAID EAST SECTION
LINE, ALONG THE SUBDIVISION BOUNDARY LINE OF WILLIAMS GATEWAY AIRPORT AUTHORITY
AIRPORT PARCEL, ACCORDING TO BOOK 409 OF MAPS, PAGE 13, RECORDS OF MARICOPA
COUNTY, ARIZONA, A DISTANCE OF 2,203.18 FEET TO A FOUND BRASS CAP WITH LS TAG 6451;

THENCE SOUTH 45 DEGREES 24 MINUTES 50 SECONDS WEST, A DISTANCE OF 1,533.98 FEET;

THENCE SOUTH 89 DEGREES 47 MINUTES 32 SECONDS WEST, A DISTANCE OF 222.11 FEET TO A
FOUND BRASS CAP WITH MARKINGS "WGA 1995";

THENCE SOUTH 00 DEGREES 35 MINUTES 45 SECONDS EAST, A DISTANCE OF 285.75 FEET;

THENCE NORTH 20 DEGREES 58 MINUTES 25 SECONDS WEST, LEAVING SAID SUBDIVISION
BOUNDARY LINE OF WILLIAMS GATEWAY AIRPORT AUTHORITY AIRPORT PARCEL, A DISTANCE
OF 606.37 FEET;

THENCE NORTH 00 DEGREES 50 MINUTES 27 SECONDS WEST, A DISTANCE OF 202.13 FEET;

THENCE NORTH 11 DEGREES 00 MINUTES 15 SECONDS EAST, ALONG A LINE PARALLEL WITH
AND 450 FEET EAST OF THE CENTERLINE OF THE RWCD CANAL, ACCORDING TO BOOK 168 OF
MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 1,308.79 FEET TO
A POINT ON LINE 2 OF THE LEGAL DESCRIPTION CONTAINED IN DEPARTMENT OF
TRANSPORTATION RIGHT-OF-WAY ACQUISITION ACCORDING TO DOCUMENT NO. 89-66727,
RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 68 DEGREES 38 MINUTES 29 SECONDS EAST, LEAVING SAID LINE PARALLEL TO
THE RWCD CANAL CENTERLINE, ALONG SAID LINE 2, A DISTANCE OF 190.00 FEET;

THENCE NORTH 86 DEGREES 43 MINUTES 58 SECONDS EAST, A DISTANCE OF 639.61 FEET;

THENCE NORTH 88 DEGREES 46 MINUTES 22 SECONDS EAST, A DISTANCE OF 498.66 FEET;

THENCE NORTH 87 DEGREES 37 MINUTES 53 SECONDS EAST, A DISTANCE OF 501.84 FEET;

THENCE SOUTH 87 DEGREES 47 MINUTES 27 SECONDS EAST, A DISTANCE OF 1,501.20 FEET;

THENCE NORTH 87 DEGREES 54 MINUTES 05 SECONDS EAST, A DISTANCE OF 157.11 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 19;

THENCE SOUTH 00 DEGREES 53 MINUTES 56 SECONDS EAST, LEAVING SAID LINE 2, ALONG SAID EAST SECTION LINE, A DISTANCE OF 790.04 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF MESA IN DOCUMENT NOS. 98-636304, 98-636305 AND 98-636306. AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF MESA IN DOCUMENT NO. 2009-1169903.

EXHIBIT B
TO DEVELOPMENT AGREEMENT

