

WHEN RECORDED RETURN TO:

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement" or "DA") is entered into the _____ day of _____, 2018, by and between Lynn M. Urry, Scott W. Urry, and Peggy A. Urry, individuals (collectively referred to as "Owner") and the CITY OF MESA, an Arizona municipal corporation ("City"). Owner and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

- A. Whereas, Owner owns approximately 3.8 acres of real property located at 1849 South Recker Road which is north of Baseline Road on the east side of Recker Road, assessor parcel number ("APN") 141-54-007 R and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, AZ; and
- B. Whereas, Owner has a residential home on the Property and has submitted an application to rezone the Property from AG to RS-43 BIZ; and has submitted an application for a land split to divide the Property into three individual lots ("Lot") referred to as Lot 1, Lot 2, and Lot 3 and depicted in the site plan (Exhibit C); and
- C. Whereas, approval of the rezoning and land split will allow the Owner to build a single residential home on Lot 2 and Lot 3; and
- D. Whereas, Owner, as part of the rezoning, land split, and development of the Property, is required by Mesa City Code to install on-site and off-site improvements, including extending water and sewer lines adjacent to the Property; and
- E. Whereas, Owner, pursuant to the Terms and Conditions for the Sale of Utilities, has requested a deferment of the requirement to extend sewer lines to the Property and has requested that the on-site wastewater needs for each

Lot be served via individual on-site commercial septic system approved and permitted by the Maricopa County Environmental Services Department; and

- F. Whereas, the Terms and Conditions for the Sale of Utilities (as adopted by Ordinance) allows the City Council to defer utility improvements in order to promote the interests of the City; and
- G. Whereas, the City Council found that requiring the Property to connect to the municipal wastewater system is not in the best interest of the Parties at this time; and
- H. Whereas, the City Council voted unanimously to approve the deferment of the sewer line extension to the Property and to allow the on-site wastewater needs for each Lot to be served by individual private on-site septic system; and
- I. Whereas, the Parties desire to enter into this Agreement for the purpose of documenting the deferral of sewer improvements associated with the Property, and intend this document to be a "Development Agreement" within the meaning of A. R. S. 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's Duties and Obligations. Owner, on behalf of Owner and its successors and assigns, agrees that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner and its successors, and assigns.

1.1 Compliance with City Requirements. As part of the development of the Property, including Lots 1, 2, and 3, Owner agrees to comply with all Mesa City Code requirements to the extent not specifically modified by this Agreement, including but not limited to, completion of street improvements, water line extensions, and all other on-site and off-site improvements. This Agreement provides for deferment of the extension of the sewer line as set forth herein.

1.2 On-Site Wastewater Treatment. Owner, in lieu of extending the sewer lines and connecting to the City system, may install a fully contained private onsite wastewater treatment system ("Septic") on each Lot. Septic must be permitted, installed,

and maintained in full conformance with the requirements of the Arizona Department of Health Services and the Maricopa County Health Services Department.

1.3 Timeframe to Install Septic. Owner acknowledges and agrees that Septic may be installed on each Lot during the six (6) year period from the date of this Agreement. If Septic is not installed on the Lot within such time, this Agreement will automatically terminate and be of no further force and effect as to such Lot.

1.4 Availability of City Sewer in the Future. Owner acknowledges and agrees that in the event the City sewer line is installed in Recker Road adjacent to the Property, an individual Lot may lose the deferment and without further notice be required to connect to the City's sewer system upon the need for replacement, reconstruction, or other failure of Septic on the Lot. In such event, the owner of the individual Lot will be required to connect to the City's sewer system in compliance with Mesa City Code and any other City regulations that apply, including payment of all applicable fees and charges associated with such connection. Thereafter, City will provide wastewater service to the Lot.

1.5 Limited Use of the Property. Owner further acknowledges and agrees that to qualify for the deferment under this Agreement, all the Lots are limited to use for one single residence home. The City may terminate the deferrment and without further notice require an individual Lot to extend the sewer line and connect to the City's sewer system if the existing Septic needs to be replaced, upgraded, increased in size, or otherwise replaced in order to accept an increase in calculated sewer flows or if the existing Septic needs to be replaced.

In such event, the owner of the individual Lot must comply with Mesa City Code and any other City regulations that apply, including payment of all applicable fees and charges associated with such connection. Thereafter, City will provide wastewater service to the Lot.

2. Term/Termination. This Agreement shall become effective on the date recorded and shall continue in full force and effect for a period of fifty years. This Agreement shall terminate as to a Lot upon the occurrence of: (i) the effective date of a Council approved re-zoning on the Lot which is in conflict with this Agreement; (ii) the City requires the Lot to connect to the City's sewer system as set forth herein; or (iii) mutual written consent of the City and the owner of the Lot.

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 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: Lynn Urry
1849 South Recker Road
Mesa, Arizona 85206

Scott and Peggy Urry
1048 North Wren Drive
Gilbert, Arizona 85234 With 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 Remedy/Equitable Relief. The Parties agree that damages alone are not an adequate remedy for the breach of any provision of this Agreement. In the event Owner fails to perform or fails to otherwise act in accordance with any term or provision hereof the City shall be entitled to immediately seek enforcement of this Agreement by means of specific performance, injunction or other equitable relief, without any requirement to post a bond or other security. The specific performance remedy provided in this section 3.5 shall be cumulative relief, and shall not be a limitation on the City's other remedies, including the right to seek contract damages hereunder.

3.6 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.

3.7 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.

3.7.1 Partial Assignment. The Owner (as Assignor) may assign less than all of its rights and obligations under this Agreement to those entities that acquire a portion of the Property constituting a Lot (each, an "Assignment"). The Assignor will be released from its obligations under this Agreement with respect to Assignment, subject to the following: (i) the owner of the individual Lot (as Assignee) agrees in writing to be subject to and bound by all of the applicable provisions of this Agreement, and such agreement provides for the allocation of responsibilities and obligations between the

Assignor and the Assignee; (ii) such agreement has been recorded in the official records of Maricopa County on that portion of the Property constituting the Lot; and (iii) the Assignor has given the City written notice and a copy of

the Assignment, including the name and address of the Assignee for notice purposes.

3.8 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.

3.9 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.

3.10 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.

3.11 Fair Interpretation. The Parties have been represented by counsel, or have had the opportunity to engage such representation, 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.

3.12 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.

3.13 Conflict of Interest. Pursuant to A.R.S. S 38-503 and A.R.S. S 38511, 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. S 38-511.

3.14 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: Site Plan

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

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

3.16 Severability. If any provision(s) of this Agreement is declared void or unenforceable, such provision(s) shall be severed from this Agreement, which shall otherwise remain in full force and effect.

3.17 Proposition 207 Waiver. Developer hereby waives and releases the City from any and all claims under A.R.S. 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 Appropriation and Availability of Funds. To the extent applicable to a contract of the nature of this Agreement, notice is hereby given of A.R.S. S 4217106, which provides that the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations.

[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

County of Maricopa) ss.
)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

"Owner"

Lynn Urry, an Individual



Name/Title

Scott Urry, an Individual By:

[Signature]
Name/Title

Peggy Urry, an Individual

Arizona)
)
maricopa)

[Signature]
me/Title

STATE OF

County of

The foregoing instrument was acknowledged before me this L\ day of April, 2018, _____ by an individual.

[Signature]
Notary Public

My commission expires:

June 24, 2020

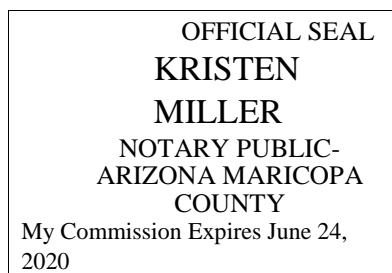


EXHIBIT A
TO DEVELOPMENT AGREEMENT
(Legal Description of the Property)

That part of the Southwest quarter of Section 36, Township 1 North, Range 6 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Beginning at the Southwest corner of Section 36;

Thence North (assumed bearing), along the West line of said Section 36, a distance of 882.10 feet to the POINT OF BEGINNING;

Thence continuing North on said West line of Section 36, a distance of 483.75 feet to a point;

Thence North 88 degrees 20 minutes East 754.67 feet to a point on the Westerly right of way boundary of the Roosevelt Water Conservation District Main Canal;

Thence South 28 degrees 35 minutes East along said right of way 550.6 feet to a point;

Thence South 88 degrees 45 minutes West, 101822 feet to the place of beginning.

Except the North 338.75 feet thereof, measured along the Western Boundary; and Except that portion as conveyed to the City of Mesa as described;

That part of the Southwest quarter of Section 36, Township 1 North, Range 6 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 36;

Thence North (assumed bearing), along the West line of said Section 36; distance of 882.10 feet to the TRUE POINT OF BEGINNING;

Thence continuing North a distance of 144.86 feet;

Thence North 88 degrees 20 minutes 00 seconds East a distance of 40.02 feet; Thence due South a distance of 145.15 feet;

Thence South 88 degrees 45 minutes 00 seconds West a distance of 40.01 feet back to the POINT OF BEGINNING.

(Depiction of the Property)

EXHIBIT B
TO DEVELOPMENT AGREEMENT



(Site Plan)

[illegible]