

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate Department
20 East Main Street
Mesa, Arizona 85201

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement" or "DA") is entered into the _____ day of _____, 2020 (the "Effective Date"), by and between the CITY OF MESA, an Arizona municipal corporation (the "City"), and PDE Investments, LLC, an Arizona Limited Liability Company (the "Owner"). City and Owner are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

- A. Owner owns approximately 1.4 acres of property at 535 West Baseline Road, APN 302-04-008P, located on the south side of Baseline Road east of Extension Road in Mesa, Arizona; and as legally described in Exhibit A and depicted in Exhibit B (the "Property").
- B. Property is in the Employment Districts character type as described in the Mesa 2040 General Plan (the "Plan") and the development of the Property pursuant to this Agreement is consistent with the Plan.
- C. Property is currently zoned Neighborhood Commercial ("NC") and the Owner has submitted an application to rezone the Property from NC to Light Industrial ("LI") to allow certain land uses permitted in the LI zoning district.
- D. City and Owner acknowledge that several of the land uses allowed in the LI zoning district are more intense than those allowed in the NC zoning district and are incompatible with the surrounding uses. To address this concern, the Owner has agreed to limit certain uses that are allowed in the LI zoning district.
- E. Whereas, the Parties desire to enter into this Agreement for the purpose of limiting the land uses permitted on the Property 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. Owner's Duties and Obligations. 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.

2. Prohibited Uses. The uses listed in this Section 2 shall be prohibited on any portion of the Property:

Public and Semi-Public Use Classifications

- Colleges and Universities
- Commercial Trade Schools
- Industrial Trade Schools

Commercial Use Classifications

- Automobile Rentals
- Automobile/Vehicle Sales and Leasing
- Automobile/Vehicle Repair, Major
- Automobile/Vehicle Service and Repair, Minor
- Automobile/Vehicle Washing
- Large Vehicle and Equipment Sales, Services, and Rental
- Towing and Impound
- Building Materials and Services
- Funeral Parlors and Mortuaries
- Hotels and Motels
- Laboratories
- Light Fleet Based Services
- Marijuana Dispensaries and Cultivation Facilities (including but not limited to medical marijuana dispensaries, recreational marijuana dispensaries, medical marijuana cultivation facilities, recreational marijuana cultivation facilities and cultivation facilities accessory to any type of marijuana dispensary)
- Parking, Commercial
- Plant Nurseries and Garden Centers
- Retail Sales - Large Format (as defined in Chapter 86 of the Mesa Zoning Ordinance)
- Swap Meets and Flea Markets
- Tattoo and Body Piercing Parlors

Employment and Industrial Use Classifications

- Cement Plants
- Handicraft/Custom Manufacturing
- Manufacturing General
- Manufacturing Limited
- Research and Development
- Recycling Facilities - Small Indoor Collection Facilities
- Recycling Facilities - Large Collection Facilities
- Recycling Facilities - Process Facilities
- Salvage and Wrecking
- Tanneries
- Warehousing and Storage - Contractors' Yards
- Warehousing and Storage - Indoor Warehousing and Storage
- Warehousing and Storage - Outdoor Storage
- Warehousing and Storage - Mini Storage
- Warehousing and Storage - Wholesale

Airport Land Use Classifications

- Aircraft Refueling Stations
- Aircraft Light Maintenance
- Airport Transit Station
- Airport Related Long-term Parking Lots
- Heliports

Transportation, Communication, and Utilities Use Classifications

- Transportation Facilities - Freight/Truck Terminals and Warehouses
- Solar Farms
- Utilities, Major

Specific Accessory Uses and Facilities

- Outdoor Storage
- Outdoor Display
- Portable Storage Containers

To the extent there is a disagreement between the Owner and the City 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 Agreement, and such a decision shall be final and not subject to appeal.

3. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force 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 which is in conflict with this Agreement, or (iii) fifty (50) years from the approval date of this Agreement.

4. General Provisions.

4.1 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.

4.2 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: PDE Investments, LLC
c/o Steve Adams, Member
1601 W. Lynx Way
Chandler, AZ 85248

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.

4.3 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.

4.4 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.

4.5 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 the 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 4.5 shall be cumulative relief, and shall not be a limitation on the City's other remedies, including the right to seek contract damages hereunder.

Additionally, the City reserves the right to withhold any City permits or approvals the Owner may need to in order to develop the Property and may revoke any City approval, permit, or certificate of occupancy if the Owner allows any of the prohibited uses listed in Section 2 to operate on the Property.

4.6 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.

4.7 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.

4.8 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.

4.9 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.

4.10 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.

4.11 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.

4.12 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.

4.13 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.

4.14 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

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

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

4.16 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.

4.17 Amendments. Any change, addition or deletion to this Agreement must be by written amendment executed by City and Owner and approved by the City Council. Within ten (10) days after any amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona.

4.18 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.

4.19 E-Verify. To the extent applicable under A.R.S. § 41-4401 and A.R.S. § 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.

4.20 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, ARIZONA,
an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ the _____ of the City of Mesa, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

Notary Public

My Commission Expires:

"Owner"

PDE Investments, LLC,
an Arizona limited liability company

By: *Steph Adams*
Its: PRESIDENT

STATE OF arizona)
) ss.
County of maricopa)

The foregoing instrument was acknowledged before me this 15 day of January, 2020, by Stephan adams, the president of PDE Investments, LLC, an Arizona limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Owner.

John Goff
Notary Public

My commission expires:

6-3-23



**EXHIBIT A
TO DEVELOPMENT AGREEMENT**

That portion of the Northeast quarter of Section 4, Township 1 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:
COMMENCING at the North quarter corner of said Section 4;
Thence North 89 degrees 31 minutes 00 seconds East, along the North Section line of said Section 4, a distance of 1661.51 feet;
Thence South 02 degrees 12 minutes 45 seconds East, a distance of 65.03 feet to the POINT OF BEGINNING;
Thence continuing South 02 degrees 12 minutes 45 seconds East, a distance of 242.11 feet to a point on the North line of HUNTERS RIDGE UNIT TWO, according to the plat recorded in Book 228 of Maps, page 41, records of Maricopa County, Arizona;
Thence South 89 degrees 31 minutes 00 seconds West, along the said North line of HUNTERS RIDGE UNIT TWO, a distance of 250.00 feet;
Thence North 02 degrees 12 minutes 45 seconds West, a distance of 242.11 feet to a point 65.00 feet South of the North line of said Section 4;
Thence North 89 degrees 31 minutes 00 seconds East, parallel to and 65.00 feet South of said North Section line, a distance of 250.00 feet to the POINT OF BEGINNING.
EXCEPT any portion lying Easterly of the Easterly line of the property described in Deed recorded in Docket 14855, page 160.

**EXHIBIT B
TO DEVELOPMENT AGREEMENT
(Depiction of the Property)**

