

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**”) is entered into the _____ day of _____, 2020 (the “**Effective Date**”), by and between the City of Mesa, an Arizona municipal corporation (the “**City**”), and Sunbelt Land Holdings, LP, a Delaware limited partnership (the “**Owner**”), collectively referred to herein as the “**Parties**,” or individually as a “**Party**.”

RECITALS:

- A. Owner is the owner of approximately 73.7 acres of property, which is within the incorporated boundaries of the City, generally located at the northwest corner of Ellsworth Road and Point Twenty-Two Boulevard and legally described in Exhibit A and depicted in Exhibit B (the “Property”).
- B. The Property is, contemporaneously with the approval of this Agreement, being rezoned into three separate zoning districts that are depicted on Exhibit C as three development areas (each a “Development Area” and collectively the “Development Areas”) as depicted in Exhibit C; and each Development Area is further identified as “Development Area A,” “Development Area B,” and “Development Area C,” which consist of the following:
 - i. Development Area A is approximately 46.5 acres that is being rezoned to Light Industrial (LI) and is legally described in Exhibit C.
 - ii. Development Area B is approximately 19.4 acres that is being rezoned to Multiple Residence (RM-4) and is legally described in Exhibit C.
 - iii. Development Area C is approximately 7.7 acres that is being rezoned Light Commercial (LC) and is legally described in Exhibit C.
- C. The 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 and the zoning classifications is consistent with the Plan.
- D. Owner acknowledges that several of the land uses allowed in the zoning districts are either too intense or otherwise incompatible with the surrounding uses. To address this concern, Owner has agreed to limit certain uses on the Property as more fully set forth in this Agreement.
- E. Owner acknowledges and agrees that in order to facilitate the proposed development Owner will be required to make certain public and private improvements in the first phase of the

development of the Property and prior to the development of Development Area B.

- F. Owner acknowledges and agrees that maintaining the improvements on the Property is important for the economic and aesthetic vitality of the Property and the City and agrees to the maintenance obligations as set forth in this Agreement.
- G. Parties desire to enter into this Agreement to limit the land uses permitted on the Property, establish the phasing of certain public and private improvements, and provided for certain maintenance standards for the Property; and the Parties intend this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05 and § 9-500.11.

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. Recitals. The Recitals set forth above are acknowledged and agreed by the Parties to be accurate and correct and are incorporated herein by reference.
- 2. Owner's Improvement and Phasing Obligations. The Property is intended to be developed with industrial, multi-residence, and commercial uses. In order to facilitate this project, Owner agrees and shall, at Owner's sole cost and expense, construct the "Public Improvements" and "Private Improvements" as described in Exhibit D (the "Improvements and Phasing Plan"). Additionally, the development of the Property is subject to the phasing requirements set forth in the Improvements and Phasing Plan and the additional following terms and requirements:
 - 2.1 First Phase Required Before Development of Development Areas B. There shall be no vertical construction on Development Area B until the Owner receives a Certificate of Completion for all of the Private Improvements and a Letter of Acceptance for the Public Improvements. Without limiting the foregoing, Owner acknowledges and agrees that no vertical construction shall occur on Development Area B until a certificate of completion is issued for an industrial building of not less than 70,000 sq. ft. on development Area A.

Dedication of Public Improvements. Upon not fewer than ninety days advance request by City, or upon completion of any portion or segment of the Public Improvements offered for dedication by Owner and accepted by City, upon such reasonable and customary conditions as the City may impose, including, without limitation, a one (1) year workmanship and materials contractor's warranty in form and content reasonably acceptable to the City, Owner (at no cost to the City) will dedicate and grant to City the Public Improvements and any real property or real property interests owned or retained by Owner which (i) constitute a part of the Property; (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property.

3. Maintenance. The Owner shall at all times, and at its sole cost and expense, maintain the Property and the improvements thereon in a manner consistent with Class A level commercial development and as further described and required in Exhibit E. As provided in this Agreement, Owner shall have thirty (30) days from notice to cure any failure to maintain the Property and improvements as required under this Section 3.
4. Prohibited Uses. In addition to any uses prohibited by rules or regulations, Owner shall prohibit the use of the Property, and the Property shall not be used for any of the uses listed in Exhibit F (“Prohibited Uses”), which shall survive Term of the Agreement City’s Zoning Administrator shall interpret the meaning of the words and uses listed in Exhibit F in the same manner as the City’s Zoning Administrator interprets the City’s Zoning Code. Further, if there is a disagreement between Owner and City as to whether a particular or proposed use falls within the meaning of the uses prohibited in Exhibit F, the City’s Zoning Administrator shall determine whether the disputed particular or proposed use is a prohibited use under the list in Exhibit F, and such decision shall be final and not subject to appeal.
5. City Review Schedule. So long as Owner is not in default of this Agreement, City will review all plans and applications for the Private Improvements and Public Improvements in a prompt and commercially reasonable time period. City and Owner, at the time of submission of plans for the Private Improvements and Public Improvements, may agree on a customized review schedule. Owner will pay all applicable fees and charges related to such reviews, including expedited fees if Owner elects to expedite the review.
6. Term. The term of this Agreement is that period of time, commencing on the Effective Date, and terminating on that date that is forty (40) years after the Effective Date, unless terminated earlier pursuant to this Agreement or are expressly stated in this Agreement as surviving Term.
7. 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; or, if such default is of a nature is not capable of being cured within 30 days, the Defaulting Party shall notify the Non-Defaulting Party of such and so long as the Defaulting Party commences performance and diligently pursues to completion the cure, the Defaulting Party may have additional time up to, but not exceeding, 90 days to cure the default. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.
8. Remedy/Equitable Relief. The Parties agree that damages alone are not an adequate remedy for the breach of any provision of this Agreement. If a Party is in default and fails to cure within the time periods permitted in Section 7 above, the Non-Defaulting Party’s exclusive remedy shall be to 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, requiring the Defaulting Party to undertake and to fully perform its obligations under this Agreement. Additionally, and notwithstanding the limitations in the previous sentence, until Owner completes the Public Improvements and Private Improvement, if Owner is in default,

City reserves the right to withhold any City permits or approvals the Owner seek or apply for in relationship to the development of Development Area B or Development Area C.

9. General Provisions.

9.1 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.

9.2 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: Sunbelt Land Holdings, L.P.
8095 Othello Avenue
San Diego, California 92111
Email: tholzer@sunbeltinv.com
Attn: Todd Holzer

With copy to: Beus Gilbert McGroder PLLC
701 North 44th Street
Phoenix, Arizona 85008
Email: jblilie@beusgilbert.com
Attn: Jeff Blilie

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.

- 9.3 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. The prevailing Party shall be entitled to recover its attorneys' fees and other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action.
- 9.4 Exhibits. The following documents are referred to in this Agreement and are attached and made part of and incorporated into this Agreement:
- Exhibit A: Legal Description of the Property.
 - Exhibit B: Depiction of the Property.
 - Exhibit C: Development Areas.
 - Exhibit D: Improvements and Phasing Plan.
 - Exhibit E: Maintenance.
 - Exhibit F: Prohibited Uses.
- 9.5 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.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 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.

- 9.10 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.
- 9.11 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.
- 9.12 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.
- 9.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto constitute the entire agreement between the Parties:
- Exhibit A: Legal Description of the Property.
 - Exhibit B: Depiction of the Property.
 - Exhibit C: Development Areas.
 - Exhibit D: Improvements and Phasing Plan.
 - Exhibit E: Maintenance.
 - Exhibit F: Prohibited Uses.
- All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.
- 9.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.
- 9.15 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.
- 9.16 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.

- 9.17 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.
- 9.18 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.
- 9.19 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.
- 9.20 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement shall run with the Property and will be binding upon and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

[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: _____
Christopher J. Brady, City Manager

APPROVED AS TO FORM

By: _____
James Smith, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Christopher J. Brady, the City Manager of the City of Mesa, an Arizona municipal corporation.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On May 11, 2020 before me, Melissa J. Tadayon
(insert name and title of the officer)

personally appeared Todd Holzer and Linda Forment,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Melissa J. Tadayon

(Seal)

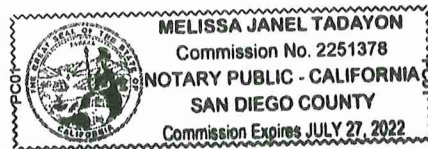


EXHIBIT A
TO DEVELOPMENT AGREEMENT

(Legal Description of the Property)

BEING A PORTION OF THE SOUTH HALF OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 21, BEING A MCDOT BRASS CAP IN HANDHOLE, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 21, BEING A MCDOT BRASS CAP IN HANDHOLE, WHICH BEARS SOUTH 00°15'45" EAST, FOR A DISTANCE OF 2635.77 FEET;

THENCE NORTH 89°33'17" WEST, ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 21, FOR A DISTANCE OF 65.00 FEET, TO A POINT ON A LINE 65 FOOT WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTH HALF AND THE POINT OF BEGINNING;

THENCE SOUTH 00°15'45" EAST, ALONG SAID PARALLEL LINE FOR A DISTANCE OF 988.40 FEET;

THENCE NORTH 89°31'43" WEST, FOR A DISTANCE OF 2569.47 FEET, TO A POINT ON THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION 21;

THENCE SOUTH 00°22'24" EAST, ALONG SAID NORTH-SOUTH MID-SECTION LINE, FOR A DISTANCE OF 413.90 FEET, TO A POINT ON THE EAST RIGHT OF WAY LINE OF STATE ROUTE 24;

THE NEXT 4 CALLS SHALL BE ALONG THE EAST RIGHT OF WAY LINE OF SAID STATE ROUTE 24;

THENCE NORTH 35°28'32" WEST, FOR A DISTANCE OF 521.83 FEET, TO A FOUND ALUM. ADOT CAP;

THENCE NORTH 34°16'05" WEST, FOR A DISTANCE OF 738.03 FEET, TO A FOUND ALUM. ADOT CAP;

THENCE NORTH 29°07'09" WEST, FOR A DISTANCE OF 310.02 FEET, TO A FOUND ALUM. ADOT CAP;

THENCE NORTH 18°15'32" WEST, FOR A DISTANCE OF 107.08 FEET, TO A FOUND ALUM. ADOT CAP ON THE EAST-WEST MID-SECTION LINE OF SAID SECTION 21;

THENCE SOUTH 89°33'17" EAST, ALONG SAID EAST-WEST MID-SECTION LINE, FOR A DISTANCE OF 3465.31 FEET TO THE POINT OF BEGINNING.

SAID OVERALL PARCEL CONTAINS 73.709 ACRES (3,210,805 S.F.) MORE OR LESS.

EXHIBIT B
TO DEVELOPMENT AGREEMENT

(Depiction of the Property)

EXHIBIT C
TO THE DEVELOPMENT AGREEMENT
(Development Areas)

EXHIBIT D
TO DEVELOPMENT AGREEMENT

(Improvements and Depiction of Phasing Plan)

1. Public Improvements. Means the design and construction of all the following:
 - A. Starfire Avenue. Street improvements as defined in Exhibit E to include landscaping in compliance with Chapter 33 of the Mesa Zoning Ordinance.
 - B. Ellsworth Road. Street improvements as defined in Exhibit E to include landscaping in compliance with Chapter 33 of the Mesa Zoning Ordinance.
 - C. Point Twenty-Two Boulevard. Street improvements as defined in Exhibit E to include landscaping in compliance with Chapter 33 of the Mesa Zoning Ordinance
 - D. Buffer. Forty (40) foot buffer along the east boundary of Parcel A, adjacent to the west boundary of Parcel B, as described in Exhibit C and landscaping in compliance with Chapter 33 of the Mesa Zoning Ordinance.
2. Private Improvements. Means the design or construction of all of the following:
 - A. Industrial Building. Construction of not less than 70,000 square foot industrial building at the east end of Parcel A as described in Exhibit C and consistent with the terms of this Agreement Section 2.
 - B. All construction shall conform with Class A commercial building standards.

EXHIBIT E
TO DEVELOPMENT AGREEMENT

(Maintenance)

- A. Asphalt. The quality of the asphalt surfaces shall be maintained in compliance with class A commercial building standards.
- B. Building. Building paint, colors, finishes, materials shall be maintained consistent with the quality established in the design guidelines for case ZON18-00483.
- C. Exposed Exterior Surfaces. Maintain, repair, replace or complete improvements to the exposed exterior surface of all buildings or structures to include exterior windows, doors, canopies, metal awnings, roofs, exhaust ducts, chimneys, painted surfaces, window screens, foundations, cooling devices, outdoor stairs, porches, and railings as visible from the right of way in such a manner that surfaces do not exhibit deterioration or disrepair, damage or blight, holes or breaks, crumbling or cracks, chipping or peeling, cracking or blistering paint.
- D. Exterior Doors and Windows. Shall not be broken, missing, ill fitting, show excessive wear and tear or rips.
- E. Fences and Screening Walls. Must be free of deterioration and blight and be maintained, repaired, and replaced as needed.
- F. Painted Surfaces. Shall be free of peeling, chipping, cracking or blistering paint.
- G. Plants. The replacement of any missing, dead, drying, diseased or non-thriving plant material within thirty (30) days and shall be in compliance with approved landscape plans.
- H. Roofs. Shall be free from surface breaks, raised edges, missing, curled loose or excessively worn shingles.
- I. Street Improvements. means asphalt, parking lots, circulation aisles, pedestrian connections, curbs, gutters, sidewalks, bicycle/running paths, driveways where applicable, water lines, gas lines, medians, drainage, handicap ramps, street lighting, etc. all of which shall be maintained in compliance with Class A commercial condition.
- J. Yards and Landscape. Shall be free from litter and/or weeds.
- K. Standard. At all times, the Property shall be maintained in Class A commercial condition and similar to well maintained developments within the City.
- L. Nuisance. At all times, the Property shall be maintained in compliance with City's nuisance standards.
- M. Notice. Upon notice from City for non-compliance with any and all of the foregoing, Owner shall have thirty (30) days to bring the Property in compliance therewith.

EXHIBIT F
TO DEVELOPMENT AGREEMENT

(Prohibited Uses)

Prohibited Uses:

1. Only one drive-thru restaurant shall be allowed on the property and shall not be a standalone facility
2. Automobile/Vehicle Washing
3. Service stations
4. Convenience Markets
5. Assisted Living Facilities
6. Tattoo and Body Piercing Parlors
7. Pawn Shops
8. Mini-Storage