

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 by and between the CITY OF MESA, an Arizona municipal corporation (the “City”) and MESA AZ INDUSTRIAL OWNER, LLC, a Delaware limited liability company (the “Owner”). City and Owner are collectively referred to herein as the “Parties,” or individually as a “Party.”

RECITALS

A. Owner owns approximately +/- two hundred seventy-three (273) acres of property located north of the southwest corner of East Elliot Road and South Sossaman Road in Mesa, Arizona consisting of APNs 304-17-014L, 304-17-005B, 304-17-014M, as legally described and depicted in Exhibit A (the “Property”).

B. The Property is currently zoned Agriculture (AG) and the Owner has submitted an application to rezone the entire Property to Light Industrial with a Planned Area Development Overlay (“LI-PAD”) through Zoning Case ZON22-00921 (the “Proposed Project”).

C. Pursuant to the Mesa 2040 General Plan (“Plan”), the Property is located in the Mixed-Use Activity/Employment Character Area.

D. The Property is located in the Inner Loop District of the Mesa Gateway Strategic Development Plan (the “ILD”). The Parties acknowledge that while the Proposed Project (is consistent with the Inner Loop District of the Mesa Gateway Strategic Development Plan.

E. The ILD strives to, among other things, include a variety of uses that ensure employment and that development is compatible with over flight activity. The City is requiring restriction of various permitted land uses on a property or within a proposed development for, among other reasons, to ensure compatibility with neighboring development and suitability with the character type and intended character traits. To that end, and in the interest of compatibility, Owner has agreed, and City is requiring the Owner, to prohibit or restrict certain land uses that might otherwise be allowed in the proposed LI-PAD zoning district.

F. The Parties desire to enter into this Agreement for the purpose of limiting or prohibiting the land uses permitted on the Property as may be required by Mesa Zoning Ordinance § 11-22-2 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. Definitions.

(a) “Tenant” is any owner, tenant, subtenant, licensee, or sublicensee that occupies any portion of a Building during the term of this Agreement.

(b) “Tenant’s Space” is the gross floor area of interior Building space that a specific Tenant occupies, leases, sublicenses, licenses, uses, or intends to use including, but not limited to, all suites, offices, hallways or other areas within any Building.

2. Owner’s Duties and Obligations Run With and Bind the Property. Owner and 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 and its successors and assigns.

3. Phasing. The Property’s site plan approved by the City Council concurrently with the approval of this Agreement sets forth the location on the Property of the buildings which shall be constructed in multiple phases which is currently anticipated to be (3) phases: North Phase, Middle Phase and South Phase as shown on the Site Plan and Phasing Plan.

4. South Phase Design Review. All development on South Phase shall be subject to future Design Review approval in accordance with Chapter 69 of the City of Mesa Zoning Ordinance (Mesa City Code Title 11), which shall consider, among other things, building limitations based on the timeline of construction for adjacent roadways as recommended by a traffic impact analysis TIA and the City transportation engineer.

5. Prohibited Uses: General. The following land uses in the Mesa Zoning Ordinance, as amended, shall be prohibited on any portion of the Property, and shall not be allowed:

(a) Airport Land Use Classifications, including Aircraft Refueling Stations, Aircraft Light Maintenance, Airport Transit Stations, Airport Related Long-Term Parking Lots, Heliports, Transportation Facilities, provided that aircraft related manufacturing, modification, supply, distribution or similar type uses shall be an allowed use.

(b) All Marijuana Uses, including but not limited to, Recreational Dispensaries, Medical Dispensaries, and Cultivation Facilities.

(c) Animal Sales and Services, including Kennels, Pet Stores, and Veterinary Services.

(d) Automobile Rentals.

(e) Automobile/Vehicle Service and Repair, Major as a primary use (but allowed as an accessory use to a permitted use).

(f) Automobile/Vehicle Service and Repair, Minor as a primary use (but allowed as an accessory use to a permitted use).

(g) Automobile/Vehicle Washing as a primary use.

(h) Boat and Recreational Vehicle Storage and Mini-Storage.

(i) Building Materials and Services, excluding outdoor storage and display.

(j) Clubs and Lodges.

(k) Commercial Recreation, Large-Scale, when located entirely within a building.

(l) Correctional Transitional Housing Facility (CTHF).

(m) Cultural Institutions.

(n) Freight/Truck Terminals and Warehouses.

(o) Funeral Parlors and Mortuaries.

(p) Large Vehicle and Equipment Sales, Service, and Rental.

(q) Live-Work Units.

(r) Parking, Commercial.

(s) Places of Worship.

(t) Plant Nurseries and Garden Centers.

(u) Recycling Facilities, including Reverse Vending Machines, Small Indoor Collection Facilities, and Large Collection Facilities.

(v) Service Station.

(w) Solar Farms.

(x) Tattoo and Body Piercing Parlors.

(y) Towing and Impound.

(z) Utilities, Major.

6. Limitation on Eating and Drinking Establishments with Drive-Thru Facilities. Eating and Drinking Establishments with Drive-Thru Facilities are permitted on the Property, but there may be no more than two (2) such facilities on the Property and they may be located only on non-arterial streets.

7. Cross Docks. Cross-docks are prohibited on the North and Middle Phase of the Property. For the purposes of this Agreement, “cross-docks” means the logistics practice of unloading goods from inbound delivery vehicles and loading them directly onto outbound vehicles. The prohibition on cross-docks includes: (i) a prohibition that the buildings shall not have bay doors, docking doors, or other similar loading doors on more than one side of a building; and (ii) no building shall serve as a cross-docking terminal. Cross Docks shall be prohibited within the buildings constructed in the South Phase for a period of five (5) years from the date of this Agreement, provided, however this prohibition may be waived by the City of Mesa Planning Director, in consultation with the Economic Development Director prior to the five-year sunset upon the approval of an application for a Site Plan Modification application and Design Review (as required pursuant to City Code). After five (5) years, Cross Docks shall be permitted on the South Portion of the Property, subject to review and approval by the City of Mesa Planning Division pursuant to City Code.

8. Prohibited Use: Indoor Warehousing and Storage as Primary Use. The intent of this Section 8 is to limit the amount of “Indoor Warehousing and Storage” (as defined in Mesa Zoning Ordinance § 11-86-5) as a primary use on the Property. It is not the intent of this Section 8 to prohibit the “bulk storage and handling of [manufactured] products and materials,” permitted as “Manufacturing, General” activities (also defined in Mesa Zoning Ordinance § 11-86-5). Except as set forth in Section 8(b), Indoor Warehousing and Storage is a prohibited use if it is determined to be the primary use of the business operating within a building. Indoor Warehousing and Storage is, however, permitted as an accessory use to a permitted primary use business activity engaged in manufacturing, fabricating, altering, or processing of goods, so long as the Indoor Warehousing and Storage use is for the storing of raw materials or completed products customarily incidental to, related to, and clearly subordinate to the permitted primary use.

(a) North Phase and Middle Phase. The prohibitions outlined in Section 8 above applies to the activity within all buildings in the North Phase and Middle Phase.

(b) South Phase. Indoor Warehousing and Storage is allowed within buildings constructed in the South Phase, subject to Site Plan approval of appropriate facilities. No certificates of occupancy will be issued for the South Phase until the sooner of: (i) five (5) years after the issuance of a final certificate of occupancy for the final building in both the North and Middle Phases, or (ii) completion of the roadway improvements as recommended by a Traffic Impact Analysis and approved by the City Transportation Engineer, to be submitted with the South Phase, providing the Traffic Impact Analysis recommended improvements to either: (1) Ray Road via Sossaman Road south of the site, or (2) Hawes and 202 Freeway access via Warner Road, or (3) improved access to Power Road, whether such improvements are completed by Owner or other adjacent property owners or developments or the City; or (iv) rescission of this provision pursuant

to an amendment to this Agreement approved by the Mesa City Council. Given the extent of the roadway improvements necessary to support Indoor Warehousing and Storage in the South Phase, the determination on whether the above-listed conditions on the issuance of certificates of occupancy have been satisfied shall be vested with the City of Mesa Development Services Director, in consultation with the City Transportation Director.

(c) Notice to Tenants. Prior to a Tenant entering into an agreement with Owner to occupy any portion of a Building, Owner shall notify each such prospective Tenant in writing the prohibitions and limitations on Indoor Warehousing and Storage in this Section 8 of the Agreement; and Owner shall include language in each lease, license, or similar agreement that prohibits the use, or conversion to a use, of the Property or Tenant Space that would result in a violation of this Section 8 of the Agreement.

(d) Prohibition. No use by Owner or Tenant in violation of Sections 5, 7 and 8 is permitted in any building and no Tenant shall convert the use of its Tenant's Space in a manner that would result in a violation of this Section 8.

9. Phasing of Off-Site Improvements. Development of the Property triggers the obligation to complete all off-site improvements. Developer may, however, phase the construction of off-site improvements under the conditions set forth, below. The option to phase off-site improvements under this Section affects only the timing of the construction of off-site improvements and does not reduce the overall scope the off-site improvements that Developer ultimately must install.

(a) Developer shall complete all half-street improvements for Elliot Road, including the complete intersection of Elliot Road and Sossaman Road, concurrent with development of any portion of the Property.

(b) If development occurs adjacent to Sossaman Road, then Developer may complete only those required half-street improvements on Sossaman Road from the southernmost point of development north to the intersection of Elliot and Sossaman.

10. Disputes. The limitations on use in Sections 5, 7, and 8 are material and essential provisions of this Agreement and City would not have entered into this Agreement but for their inclusion herein. 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 the Agreement and such decision shall be deemed a final decision of the Zoning Administrator, which may then be appealed, and is governed by the appeal rights, as set forth in Mesa Zoning Ordinance § 11-67-12.

11. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded in accordance with Section 12(a) and shall continue in full force until automatically terminated upon the earlier of (a) twenty (20) years after the effective date, (b) termination by the mutual written agreement of the Owner and City pursuant to this Agreement, or (c) the effective date of Mesa City Council-approved rezoning of the Property to a different zoning district than the LI-PAD zoning described in this Agreement. The Parties agree that, if only

a portion of the Property is rezoned to a different zoning district than the LI-PAD zoning described in this Agreement, the Agreement shall automatically terminate only to that portion of the Property that is so rezoned and will remain in full force and effect as to the remainder of the Property.

12. General Provisions.

(a) 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.

(b) 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: (1) delivered to the Party at the address set forth below; (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address of the Party set forth below; or (3) given to a recognized and reputable overnight delivery service, to the Party at the address set forth below. The addresses set forth in this Section 12(b) may be modified by a Party at any time by such Party designating in writing by notice duly given pursuant to this Section.

City: City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85211
Attn: City Manager

With a copy to: Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Attn: City Attorney

With a copy to: City of Mesa Economic Development Department
20 East Main Street, Suite 200
Mesa, Arizona 85211
Attn: Economic Development Director

Owner: Shopoff Realty Investments
c/o Brian Rupp
18565 Jamboree Road, Suite 200
Irvine, CA 92612

With a copy to: Pew & Lake PLC
Sean B. Lake
1744 South Val Vista, Suite 217
Mesa, Arizona 85204

Notices shall be deemed received (i) when delivered to the Party; (ii) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage; or (iii) 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 about 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.

(c) 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.

(d) 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 thirty (30) days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision in this Agreement, then the Defaulting Party shall notify the Non-Defaulting Party of such and the timeframe needed to cure such default, and so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within the required thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation, then the time to cure the default shall be extended,; however, no such extended cure period shall exceed ninety (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.

(e) 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 City shall be entitled, subject to any cure period set forth in this Agreement, to immediately seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post bond or other security. The specific performance remedy provided in this Section 8(e) shall be cumulative relief and shall not be a limitation on City's other remedies, including the right to seek contract damages under this Agreement. Additionally, City reserves the right to withhold any City permits or approvals needed to develop, construct, or improve any portion of the Property and may revoke any City approval, permit, or certificate of occupancy if the Owner allows any of the prohibited uses identified in this Agreement to operate on the Property including, but not limited to, Indoor Warehousing and Storage on the Property.

(f) Good Standing; Authority. Each Party represents and warrants that it is duly formed and a legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation in Arizona with respect to 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.

(g) Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and their successors in interest and assigns.

(h) No Partnership or Joint Venture; 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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. (Mesa, Arizona time) on the last day of the applicable time period provided in this Agreement. A “business day” shall mean a City business day which is any day Monday through Thursday except for a legal holiday.

(m) Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official, or employee of 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.

(n) Entire Agreement. This Agreement, together with the following Exhibit(s) attached hereto (which are incorporated herein by this reference), constitute the entire agreement between the Parties:

(i) Exhibit A: Legal Description & 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.

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

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

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

(r) Proposition 207 Waiver. Owner hereby waives and releases 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 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.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

“CITY”

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

By: _____

Its: _____

Date: _____

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, a notary public, this ____ day of _____, 2023, 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”

MESA AZ INDUSTRIAL OWNER, LLC,
a Delaware limited liability company

By: _____

Its: _____

Date: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me, a notary public, this ____
day of _____, 2023, by _____, as _____ of _____, an
_____.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION & DEPICTION OF THE PROPERTY