

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 Roger D. Overson, an individual ("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 16.3 acres of real property located on the southwest corner of the Loop 202 Red Mountain Freeway and Main Street, assessor's parcel numbers ("APN") 218-41-280F, 218-41-280E, and 218-41-278B and legally described in Exhibit A and depicted in Exhibit B (collectively, the "Property") within the City of Mesa, AZ; and
- B. Whereas, Owner has submitted an application to rezone the Property from GC and RS-43 to GC-PAD in order to develop an RV dealership and RV storage facility. Specifically, Owner plans to develop an RV storage facility on APN 218-41-280E and 218-41-278B ("RV Storage") and 10,900 square feet of office and RV service with no more than three (3) restrooms on APN 218-41-280F ("Office"). RV Storage and Office are collectively referred to herein as the "Project;" and
- C. Whereas, the southern portion of the Property is located next to a residential district, but some of the land uses allowed in the GC zoning district may be detrimental to such adjacent and surrounding property owners. Therefore, Owner has agreed to limit the land uses on all portions of the Property located 600 feet or more from the Main Street right-of-way; and
- D. Whereas, Owner as part of the rezoning, development, and operation of the Property is required by Mesa City Code to install onsite and offsite improvements, including extending water and sewer lines to be adjacent to the Property; and

- E. Whereas, Owner, pursuant to Mesa City Code, has requested a deferment of the requirement to extend sewer lines to the Property and has requested that the onsite wastewater needs for the Office be served via an onsite commercial septic system as approved and permitted by the Maricopa County Environmental Services Department; and
- F. Whereas, Mesa City Code allows the City Manager or designee to defer street and utility improvements based on a finding that there are special conditions involving the development and that the required improvements will substantially impair the ability for development; and
- G. Whereas, the City has found that there are special conditions associated with this Project including: the size of the Office will create minimal demand for wastewater services and the RV Storage will create no demand; the nearest suitable and existing wastewater main is located on Broadway Road, at Glenmar, a linear distance of approximately 3,200 feet from the Property; and the limited availability of future customers along the alignment; and
- H. Whereas, because of these special conditions, and the associated impairment on the ability to develop the Property, the City has determined that connecting the Property to the municipal wastewater system, at this time, is not in the best interest of the Parties; and
- I. Whereas, the Parties desire to enter into this Agreement for the purpose of limiting the land uses permitted on the Property and for the purpose of deferring sewer improvements associated with the Project 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:

2. 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.

2.1 Prohibited Uses. The uses listed below (as set forth in the Mesa

Zoning Ordinance) shall be prohibited on any portion of the Property that is located six-hundred feet or more from the Main Street right-of-way.

- Group Housing
- Automobile Rentals
- Automobile/Vehicle Sales and Leasing
- Automobile/Vehicle Repair, Major
- Automobile/Vehicle Service and Repair, Minor
- Large Vehicle and Equipment Sales, Services, and Rental
- Banquet and Conference Center
- Building Materials and Services
- Commercial Recreation Small-Scale
- Commercial Recreation Large-Scale
- Restaurants with Drive-Thru Facilities
- Restaurants with Live Entertainment
- Maintenance and Repair Services
- Funeral Parlors and Mortuaries (including Accessory Crematorium)
- Hotels and Motels
- Light Fleet-Based Services
- Handicraft/Custom Manufacturing
- Light Assembly/Cabinetry
- Research and Development
- Reverse Vending Machine
- Small Indoor Collection Facility
- Transportation Passenger Terminals
- Utilities, Minor
- Heliports

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 this section of the Agreement, and such a decision shall be final and not subject to appeal.

2.2 Compliance with City Requirements. As part of the development of the Property, 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.

2.3 On-Site Wastewater Treatment. Owner, in lieu of extending the sewer lines and connecting to the City system, may install a fully contained on-site wastewater treatment system ("Septic") to serve the Office that is planned on the

Property. Septic must be permitted, installed, and maintained in full conformance with the requirements of the Maricopa County Health Services Department. Owner acknowledges and agrees that, in the future, if the Septic fails and requires replacement, City may completely terminate the deferment and without further notice, require Owner to extend the sewer line and connect to the City's sewer system. If Owner is required to extend the sewer line and connect to City's sewer system, Owner further acknowledges and agrees that Owner 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 Property.

2.4 Limited Use of Office and the Property. Owner acknowledges and agrees that the deferment of the requirement to extend and connect to the City's sewer system, and the ability to serve the wastewater needs of the Office via Septic is contingent on the Office being no more than 10,900 square feet with no more than three (3) restrooms, with the remainder of the Property being used as RV Storage not generating wastewater and labeled as Phase I on the Site Plan attached as Exhibit C (the "Site Plan").

Owner further acknowledges and agrees that the City may completely terminate the deferment and without further notice, require Owner to extend the sewer line, connect to the City's sewer system, and serve the wastewater needs of the Property via the City's wastewater service if any of the following occur:

- The size of the Office or the number of restrooms associated with the Office increases or expands;
- The RV Storage expands and substantively increases the wastewater volume;
- Any alternative use of the Property;
- Any change in use that is a more intense use of the Property; or
- Any use that creates a substantive increase in wastewater volume.

If Owner is required to extend the sewer line and connect to the City's sewer system, Owner further acknowledges and agrees that Owner 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 Property.

2.5 Future Availability of Sewer Service to the Property. Owner further acknowledges and agrees that upon the City providing written notice to Owner that City sewer service is available at the Property, Owner will connect to the City's wastewater system and stop using Septic within sixty (60) days from the date Owner receives such notice. If Owner is required to connect the Property to the City's sewer system, Owner further acknowledges and agrees that Owner 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 Property.

3. City's Deferral and Notice of Availability of Sewer Service. City agrees to the deferral of the extension by Owner of the wastewater collection system as set forth herein. City will provide written notice to Owner if City sewer service becomes available at the Property.

4. Term/Termination. This Agreement shall become effective on the date recorded and shall continue in full force and shall automatically terminate upon the earlier of: (i) termination by the mutual written consent of 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 years from the approval date of this Agreement.

5. General Provisions.

5.1 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.

5.2 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: Roger D. Overson
5120 S RANGER TRAIL
GILBERT, AZ 85298

With copy to: MARY GERMANE
2145 E MAIN, Mesa AZ 85213

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.

5.3 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.

5.4 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.

5.5 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 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 Owner may need to in order to develop the Property and may revoke any City

approval, permit, or certificate of occupancy if Owner allows any of the prohibited uses listed in section 2.1 to operate on the Property.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

5.11 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.

5.12 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.

5.13 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.

5.14 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.

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

5.16 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.

5.17 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.

5.18 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.

5.19 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.

[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 _____, 2018, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

"Owner"

ABO

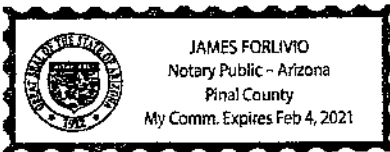
Rodger D. Overson

Roger D. Overson, an Individual

By: Rodger D. Overson
Name/Title

STATE OF AZ)
County of PINAL) ss.

The foregoing instrument was acknowledged before me this 21st day of FEBRUARY, 2018, by ROGER D. OVERSON, an individual.



James Forlivo
Notary Public

My commission expires:

02.04.2021