Print Document

APN#'s:_____

_____

RESTRICTIVE COVENANT AND RESIDENTIAL OFF-SITE AGREEMENT RUNNING WITH THE LAND

THIS AGREEMENT, made and entered into by and between _____ (Developer), whose mailing address is:

_____

_____

_____

& _____ (Property Owner), whose mailing address is:

_____

_____

_____

and the City of Mesquite ("City") and is legally effective when signed and dated by all parties.

SUBJECT: Construction of off-site improvements for (Insert Project Name)

_____

project consisting of but not limited to: grading, street improvements, which include pavement and base, sidewalk, street and gutter, street lights, ramps, driveways, street signs, painted crosswalks, painted lanes, drop inlets, drainage pipes or culverts, sewer lines, water lines, power lines, phone lines, and utility services to each building or unit and (list other improvements, if any)_____ at the following location:_____

_____

(note major cross streets and which corner) and including the following streets:

_____

_____

(list all included streets)

Also known as APN(s): _____

_____

WHEREAS, Developer wishes to obtain a building permit for the above location, or has received approval from the City for a Zone Change, Use Permit, Variance or other Zoning related request and/or WHEREAS the developer and owner hereby certify that they are mutually and individually, responsible for the development of the above location; and,

WHEREAS, the City Building Official, Public Works Director, City Engineer or an authorized City representative, hereinafter referred to as "City Official", shall administer the provisions of this Agreement.

NOW, THEREFORE, the parties to this agreement for and in consideration of the mutual promises herein contained and for good and valuable considerations do hereby agree as follows:

1. OFF-SITE IMPROVEMENTS:

Developer and/or Owner, at his own cost, shall perform and complete all off-site work and improvements which may consist of, but not limited to, streets, street name signs, traffic signs, sewers, water systems, fire hydrants, curbs, gutters, sidewalks, street lighting, driveways, drainage, rights of way, accesses, lawns, trees, shrubs, survey monuments, reference lines or points, etc., in accordance with specifications, or other requirements of Mesquite, Nevada in the particular circumstances of the development herein specified, and shall assure that the costs of all labor and materials therefore shall be property and timely paid.

2. PREMATURE CLEARING AND GRADING OF LANDS:

No lands shall be cleared of vegetation, graded or the natural ground surface hereof otherwise disturbed so as to create a dust nuisance unless and until the City has granted approval of the zone change, use permit, or other zoning action as well as a site plan or tentative map approval, including approval of the improvements designated therein. Clearing and grading thereof shall be limited to such land as the Developer proposes to immediately improve and/or record as a final map, or to such lands as necessary to reasonably balance the earthwork for the project (lands graded but not developed immediately will be maintained in a manner free of silt/debris, runoff or dust creation). Such permission will only be granted after approval of required drainage studies and grading plans, and issuance of the required grading permit.

3. PLANS APPROVED BY THE CITY OFFICIAL:

No improvements shall commence, except clearing and grading as specified in Paragraph #2 above, until improvement plans have been approved by the City Official(s) and one hundred percent (100%) of the plan check and inspection fees have been paid.

4. NOTICE OF COMMENCEMENT OF CERTAIN WORK

Developer will require his contractors to contact the Public Works Director no less than one work week prior to commencement of any work within public or private street rights of way to obtain the appropriate encroachment permit.

Developer shall notify the City Authorized Inspector no less than 24 hours in advance of the date and hour work on any of the following items is expected to begin, and thereafter if conditions develop to delay the start of work, the Developer agrees to notify the City Authorized Inspector of the delay not less than two hours before work is scheduled to begin:

Placing sewer, water, gas, power, telephone lines and fire hydrants.

Backfilling of sewer, water, gas, power and telephone lines.

Placing concrete for curb, gutter, sidewalk, valley gutters, storm drain structures, manholes, street lighting foundations and alley gutters.

Placing Type I gravel base course.

Placing street lighting and burn testing.

Placing street name signs and traffic control signs.

Should the developer suspend work on any item longer than overnight (except during Saturday or Sunday or legal holidays), a new notification shall be made to the City Official before work may begin anew of any items requiring inspection.

5. APPROVAL OF WORK AFTER INSPECTION

a. Whenever the City Authorized Inspector inspects portions of work as mentioned hereinbefore, and finds the work performed to be in a satisfactory condition for inclusion in the completed project, the City Official shall issue a statement of inspection which shall permit the Developer to perform the next phase of the construction. Ordinarily, not less than one continuous block of any one of the items of work mentioned will be approved.

b. Copies of field test reports shall be delivered to the City Authorized Inspector as they are preformed at least daily and final reports shall be mailed to the City Official as soon as they are available. Failure to do

so may be sufficient cause for stoppage of work, removal and replacement of overlying work to provide for retesting.

c. Inspection and approval of any item of work shall not forfeit the right of the City Official to require the corrections of quality, workmanship or materials at any time during the course of work.

d. Final approval of work will require submittal to and approval by the City Official of all labor and material lien releases and further of all inspectors daily logs, test reports, final grading reports and a final report from the Project Engineer stating that the project is in substantial conformance with the plans and specifications. The final report will clearly denote any deviations.

e. Nothing herein shall relieve the Developer of the responsibility for proper construction and maintenance of all improvements until the work has been accepted by the City for maintenance.

6. ADJUSTMENT TO EXISTING UTILITIES AND COST THEREOF

Developer shall provide for adjustments necessary to all existing utilities because of the work required by this Agreement, without cost to the City.

7. FULL COMPLIANCE WITH CITY REQUIREMENTS

Developer shall perform and complete all such improvements in accordance with the regulations, specifications and ordinances of the City, and approval of the final map shall not be made until all street plans and profiles, electric light layout, architectural arrangement of construction units, and all other such plans and specifications as may be required have been submitted to, and approved by, the City Engineer.

The City Official shall have the right to require corrections by the Developer at any time before release of the surety bond, Cash Deposit or Agreement in Lieu of Bond required herein, of any item or items contained in this Agreement which do not conform to City Standard specifications or ordinances, even though the plans for the item in question may have been approved by the City Official.

Developer shall start said improvements within ninety (90) days from the date of the signing of this Agreement unless another time frame is approved by the City Official, or as required by Council action. Commencement will be not later than _____.

Developer shall complete said improvements within three hundred sixty-five (365) days from the date of the signing of this Agreement unless another time frame as approved by the City Official, or as required by Council action. Completion will be not later than _____ .

In the event Developer fails to commence or complete within the indicated time frames (by the indicated dates) the bond will be required to be increased by 15% due to late commencement or 50% due to late completion. Permits will be revoked and work will cease until appropriate new bond is in place.

In the event Developer fails to complete said improvements or obtain labor and material lien releases for said improvement within said period, the City, at its option, may proceed to complete said improvements at the expense of the Developer or under his bond as hereinafter provided.

8. SPECIAL CONDITIONS

The following conditions are unique to this project and must be met as noted below:

1)_____

2)_____

3)_____

4)_____

9. OTHER CONDITIONS AND REQUIREMENTS

The Developer further agrees that, in addition to the requirements of this agreement, all conditions, stipulations, and agreements which may be required by the City Council shall be fully performed.

Developer further agrees that all work is to be performed by a contractor or contractors holding a valid and existing license(s) from the Nevada State Contractor's Board and a valid City business license(s).

Developer further agrees that all inspection and testing will be performed by the City or by persons or firms under the direction of a Nevada licensed Civil Engineer.

Developer shall maintain, protect and be responsible for any damages to all work until its completion and final acceptance by the City. Maintenance of any inhabited area of the development shall include, but not be limited to, sweeping of the streets and keeping the gutter free of dirt and debris.

During move-in, construction and move-off, Developer shall keep the site free and clear from dangerous accumulation of rubbish and debris and shall maintain sufficient and proper barricades, lights, etc., in accordance with the latest manual on the placement of traffic control devised accepted by the City Department of Public Works and City Engineer, for the protection of the public. Also, after excavation or placement of gravel, if the subgrade and/or base material is left exposed and in the opinion of the City Official is not properly maintained, thus causing either a rough riding surface or a dust problem, the City Official may require Developer to do whatever is necessary to provide an adequate travelway. If a detour is needed, the City Official shall determine to what extent it shall be maintained, which shall include the placing of temporary paving, it is to be used for an extended period of time.

Final acceptance of the work will not be made by the City until the area (falling under the Agreement) and adjacent property has been cleared of all rubbish, surplus materials and equipment resulting from the contractor's operations, and to the satisfaction of the City Official.

10. MAP REQUIREMENTS ON COMPLETION OF IMPROVEMENTS

Upon completion of all the improvements within the City right-of-way required hereby, and prior to release of any performance security, the Developer shall furnish the City Official with an as-built map which shall accurately indicate, by lettered dimensions, the location of all manholes, the location, size and depth of all sewer mains, underground water, power, gas and other lines, with street plans and profiles for the same, including laterals and "Y"s for connection of house service lines.

11. WARRANTY

Developer is responsible should any original or developed defects or failures appear within a period of one year from the date of acceptance of the work by the City. The Developer shall, at his own expense, make good such defects and failures and make all replacements and adjustments required, within thirty (30) days after being notified by the City to do so. All repairs shall be subject to the approval of the City Official.

12. REQUIREMENTS OF PERFORMANCE BOND OR OTHER SECURITY

Developer shall furnish without cost to the City a non-expiring surety and performance bond (Rated A or A- by AM Best Rating Center), cash deposit or Agreement in Lieu of Bond (Rated A or A- by AM Best Rating Center) for the full cost of said improvements including project completion as well as payment for all

labor and materials related thereto in favor of the City conditioned upon the Developer completing said improvements within the prescribed period and warrantee the improvements for twelve (12) months after their completion and acceptance by the City. Also, in the event the City exercises its option to complete said improvements, that said bond, cash deposit or Agreement shall be used for the payment of the costs of completion of said improvements to include the cost for any labor and materials related thereto by the City in case the Developer fails to do so within said period.

If the construction or installation of any improvements or facilities are not completed within thirty (30) days after substantial completion of the building or structures which the same are designed to serve, or within fifteen (15) months of the date of approval of this Agreement, or when notified by the City Official, whichever is sooner; or if such construction is not in accordance with applicable regulations, specifications and ordinances of the City, or if labor and materials necessary for such completion are not paid, then, in any of such events, the City may, at its option within the aforesaid period, proceed to complete said improvements or make such payments at the expense of the Developer and/or under any of the bonds as herein provided.

Any application for release of said bond or cash deposit upon the completion of the improvements by Developer shall not be granted unless accompanied by a written certificate to the Public Works Official stating that all requirements hereof have been completed in accordance with the terms of this Agreement and signed by a Nevada Licensed Civil Engineer.

13. CERTIFICATE OF OCCUPANCY

No certificates of occupancy shall be granted until such times as the off-site improvements have been completed to the satisfaction of the City Official and all test reports certificates and final reports are delivered to and approved by the City Official in accordance with this Agreement and the performance bond, cash security or Agreement in Lieu of Bond.

No certification of occupancy shall be granted until such time as the Developer has provided to the City release of liens for all work performed on the project including but not limited to design, survey, engineering, construction materials, supply, inspection, and testing.

Upon signing of this Agreement by the parties hereto, and the execution of the performance bond, cash deposit or Agreement in Lieu of Bond by the Developer and acceptance thereof by the City, and upon compliance with the provisions of this Agreement, the City will, by its proper authority, accept said project of the Developer and do such other acts as may be necessary to approve such project.

14. NO THIRD PARTY BENEFICIARY

Any inspections or subsequent approvals undertaken by the City pursuant to express or implied terms of this Agreement are undertaken solely to insure compliance with the terms of this Agreement and are not undertaken for the benefit of any individual or group of individuals as members of the public. It is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a part to this Agreement to maintain a suit for personal injuries or provisions of this Agreement. Provisions in this Agreement dealing with inspections, approvals or changes requested or made do not expand the City's general law duties.

15. It is expressly agreed and understood that this Agreement will be recorded in the Office of the Clark County Recorder and is intended to convey the developer obligations noted herein to any successors, heirs or assigns of the developer and property owner and that this Agreement will be a part of every Deed on land sold in the project as conditions running with the land.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

DEVELOPER:

By:_____
(Signature)

_____
(Name Printed)

Date:_____

PROPERTY OWNER:

By:_____
(Signature)

_____
(Name Printed)

Date:_____

CITY OF MESQUITE, NEVADA:

By:_____
(Signature)

Bill Tanner, Public Works Director

Date:_____

APPROVED AS TO FORM:

By:_____
(Signature)

Robert Sweetin, City Attorney

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

_____ (Developer) did personally appear before me on the _____ of _____ , 20___, and proved to me, a notary public to be the person whose name is subscribed to the above instrument who acknowledged that he/she executed the instrument freely and voluntarily and for the purposes set forth therein.

_____
(Notary Public Signature)

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

_____ (Property Owner) did personally appear before me on the _____ of_____ ,20___, and proved to me, a notary public to be the person whose name is subscribed to the above instrument who acknowledged that he/she executed the instrument freely and voluntarily and for the purposes set forth therein.

_____
(Notary Public Signature)

CORPORATE CERTIFICATE

I,_____ , certify that I am the Secretary of the Corporation named as Developer in the foregoing Agreement; that _____ _____, who signed said Agreement on behalf of the Developer was then President/Vice President of said Corporation; that said Agreement was duly signed for on behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

_____
Secretary

Corporate Seal:

When recorded return to:
City of Mesquite
10 E Mesquite Blvd
Mesquite NV 89027