

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the City of Mansfield, a municipal corporation of the State of Texas ("City") and Posse Construction, LLC, a Texas limited liability company ("Developer").

WITNESSETH:

WHEREAS, the City issued an invitation to bid on certain property described generally as approximately .463 acres of land located north of Alvarado Street, between 1st and 2nd Streets, in the City of Mansfield ("Property"); and

WHEREAS, the City's invitation to bid set forth certain development standards which a successful bidder must meet as a condition of the sale of the Property; and

WHEREAS, the City awarded the bid to Posse Construction, LLC d/b/a Mansfield Custom Homes in accordance with the terms of the bid proposal and state law; and

WHEREAS, the parties desire to enter into this Agreement to memorialize the terms of the proposal with respect to the development of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. PURCHASE OF THE PROPERTY

A. Contract of Sale. Commensurate with the execution of this Agreement, the parties agree to sign the Contract of Sale attached hereto as Exhibit "A" and incorporated herein for all purposes. The parties agree that the Contract of Sale incorporates all the terms of the conveyance of the Property to Developer except as may be provided in this Agreement. In the event of any conflict between this Agreement and the Contract of Sale, this Agreement shall control.

B. Zoning Change. The parties agree that in the event the City does not grant Developer's application for a zoning change to permit the Property to be developed for five single family dwellings, on or before sixty days after the execution of this Agreement, this Agreement and the Contract of Sale shall be null and void.

SECTION 2. DEVELOPER'S OBLIGATIONS

A. Generally. Developer agrees, as consideration for this Agreement and the Contract of Sale, to construct five single family residential, Craftsman Style dwellings on the Property with an average size between 2000 and 2200 square feet and with an average fair market value of each lot between \$225,000 and \$250,000 and an aggregate fair market value of all lots of approximately \$1,200,000.

B. Development Plans. Developer further agrees that it will develop the Property in accordance with the terms of this Agreement, the City's Code of Ordinances and the conceptual development plans attached hereto as Exhibit "B" and incorporated herein.

C. Fees. Developer agrees that it will timely pay all City fees associated with the development of the Property as set forth in the City's Code of Ordinances, including but not limited to, impact fees, park fees, building permit fees, and any applicable utility installation fees.

D. Commencement of the Development. Developer further agrees to commence development of the Property after the closing of the Contract of Sale and to finish the foundations of three of the five single family dwellings on or before the later of September 27, 2015 or six months from the closing of the Contract of Sale.

SECTION 3. CITY PARTICIPATION

A. Survey and Title Policy. Prior to the closing of the Contract of Sale, the City agrees to provide Developer with a boundary survey of the Property and a title policy as more fully described in the Contract of Sale. The City agrees to provide the survey and title policy at its sole cost and expense.

B. Infrastructure. In consideration of the Developer's agreement to take the actions set forth in Section 2 of this Agreement, the City agrees to design and construct the water and sewer utilities that will service the five single family homes that Developer will construct on the Property in an amount not to exceed \$50,000. Developer agrees that Developer shall be liable for his pro-rata share of the design and construction cost of such utilities over and above \$50,000.

SECTION 4. TERM

The term of this Agreement shall begin on the Effective Date and shall terminate upon the earlier of: (a) the complete performance of all obligations and conditions precedent by parties to this Agreement; or (b) upon the termination of this Agreement by either party if done in accordance with the terms of this Agreement.

SECTION 5. AUTHORITY; COMPLIANCE WITH LAW

Developer hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by the Developer and this Agreement constitutes the legal, valid and binding obligation of the Developer, and is enforceable in accordance with its terms and provisions.

SECTION 6. DEFAULT AND REMEDIES

A. In the event Developer fails to meet the deadline specified in Section 2.D of this Agreement, the City may terminate this Agreement by providing notice of termination to Developer. In such event, Developer shall immediately convey title for all the lots without foundations back to the City.

B. In the event Developer fails to meet the requirements set forth in Section 2.A of this Agreement, the City shall provide Developer a sixty day notice of default. If the default remains uncured at the end of the sixty day period, the City may terminate this Agreement by providing notice of termination to Developer. In such event, Developer shall reimburse the City for the City's costs of designing and constructing the water and sewer utilities as set forth in Section 3.B of this Agreement.

C. In the event Developer fails to meet the requirements of any other provision of this Agreement, the City shall provide Developer with a thirty day notice of default. If the default remains uncured at the end of the thirty day period, the City may terminate this Agreement by providing notice of termination to Developer. In such event, Developer shall reimburse the City for the City's costs of designing and constructing the water and sewer utilities as set forth in Section 3.B of this Agreement.

D. The City's remedies for a default set forth in this Agreement shall not be limited by the terms of this Agreement but shall include any other remedy the City may have at law or in equity.

E. In the event the City shall fail to comply with any requirement of this Agreement, Developer shall have the right to terminate this Agreement by providing notice of termination to the City. Developer may also pursue any other remedy available to it at law or in equity.

SECTION 9. GOVERNING LAW AND VENUE

This Agreement is performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County, Texas. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Mansfield, applicable federal and state laws, violation of which shall constitute a default of this Agreement.

SECTION 10. FORCE MAJEURE

Performance of Developer's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and Developer's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, issuance of any permit and/or legal authorization (including engineering approvals by any

governmental entity), shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

SECTION 11. BINDING AGREEMENT; ASSIGNMENT

A. The terms and conditions of this Agreement are binding upon the successors and assigns of the parties hereto. The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on the Developer and each and every subsequent owner of all or any portion of the Property and shall be binding on all successors, heirs, and assigns of the Developer which acquire any right, title, or interest in or to the Property, or any part thereof.

B. Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property.

C. This Agreement may not be assigned without the express written consent of the City, except as may be necessary to a lender of Developer, which shall be permitted. Any assignment shall be contingent upon the assignee's agreement to comply with the provisions of this Agreement.

SECTION 12. INDEMNIFICATION

A. THE DEVELOPER EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF THE DEVELOPER OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER OR NOT THE NEGLIGENCE, GROSS NEGLIGENCE, WRONGFUL ACT, OR FAULT OF THE CITY OR ITS OFFICERS, AGENTS, OR EMPLOYEES, CONTRIBUTES IN ANY WAY TO THE DAMAGE, INJURY, OR OTHER HARM. Nothing in this paragraph may be construed as waiving any governmental immunity available to the City under state law. This provision is solely for the benefit of the Developer and the City and is not intended to create or grant any rights, contractual or otherwise, in or to any other person.

SECTION 13. NO JOINT VENTURE

It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City, their past, present and future officers, elected officials, directors, employees and agents of the City does not assume any responsibility to any third party in connection with the Developer's construction of single family dwellings described in this Agreement.

SECTION 14. MISCELLANEOUS MATTERS

A. Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

B. Agreement Subject to Law. This Agreement is made subject to the provisions of the Mansfield Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws.

C. Interpretation. This Agreement shall not be construed against the drafting party.

D. Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

E. Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

F. Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement.

G. Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this subsection.

If intended for City, to:

City Manager
City of Mansfield
1200 E. Broad Street
Mansfield, TX 76063

If intended for the Developer, to:

Posse Construction, LLC
Attn: Julie Short
P.O. Box 1927
Mansfield, TX 76063

H. Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

I. Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

**SECTION 15.
EFFECTIVE DATE.**

This Agreement shall become effective upon the last to occur: of the execution of the Agreement by all parties.

EXECUTED and effective as of the _____ day of _____, 2015.

CITY OF MANSFIELD, TEXAS

Posse Construction, LLC d/b/a Mansfield
Custom Homes

By: _____
Clayton Chandler, City Manager

By: _____
Julie Short, Director

ATTEST:

By: _____
Vicki Collins, City Secretary

ACKNOWLEDGEMENT

STATE OF TEXAS §

§

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority in and for said County, Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of Posse Construction, LLC d/b/a Mansfield Custom Homes and is duly authorized to execute this Contract on behalf of said entity for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2015.

Notary Public in and for the State of Texas

Typed or Printed Name of Notary

My Commission Expires:_____

EXHIBIT "A"

CONTRACT OF SALE

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS CONTRACT OF SALE ("Contract") is made by and between the City of Mansfield, a Texas municipal corporation ("Seller") and Posse Construction, LLC, a Texas limited liability company d/b/a Mansfield Custom Homes ("Purchaser"). For convenience, the Seller and Purchaser may be referred to herein collectively as "parties" and individually as a "party."

ARTICLE I
PURCHASE AND SALE

By this Contract, Seller sells and agrees to convey, and Purchaser purchases and agrees to pay for a certain .463 acre tract of land situated in Tarrant County, Texas, being more particularly described on Exhibit "A1" attached hereto and incorporated herein, together with all and singular the rights and appurtenances pertaining to the Property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being referred to in this Contract as the "Property"), together with any improvements, fixtures, and personal Property situated on and attached to the Property, for the consideration and upon and subject to the terms, provisions, and conditions set forth below.

ARTICLE II
CONSIDERATION

The purchase price for the Property shall be Fifty Thousand Dollars (\$50,000.00) ("Purchase Price"). The Purchase Price shall be paid by Purchaser in full in cash at the closing.

ARTICLE III
PURCHASER'S RIGHTS AND OBLIGATIONS

It is understood by the parties to this Contract that Purchaser is purchasing the Property to construct a minimum of five single-family detached homes. The rights and obligations of Purchaser hereunder to consummate the transactions contemplated hereby are subject to the satisfaction of each of the conditions set forth in the development agreement to which this Contract is attached as Exhibit "A" ("Development Agreement"). In the event Purchaser fails to satisfy any term or condition of the Development Agreement, this Contract shall automatically be null and void and title to the Property shall automatically revert to Seller.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

4.01 Seller hereby represents and warrants to Purchaser as follows, which representations and warranties shall be deemed made by Seller to Purchaser also as of the Closing Date:

EXHIBIT "A"

- (a) There are no parties in possession of any portion of the Property as lessees, tenants at sufferance, or trespassers; and
 - (b) Seller has the right and ability to convey good and marketable title in fee simple to the Property to Purchaser without the approval or participation of any other person and free and clear of any and all liens, encumbrances, conditions, assessments and restrictions.
- 4.02 Seller and Purchaser agree that the Property is being sold on an "as is" basis with all faults. Seller makes no warranties regarding the Property or the condition of the Property and hereby disclaims all express or implied warranties except for the warranty of title stated in this Article.

ARTICLE V **CLOSING**

Closing Date

- 5.01. The closing of this Contract shall be held at the office of Reunion Title, 1000 N. Walnut Creek Dr., Suite 120, Mansfield, Texas, on or before March 27, 2015 ("Closing Date"). In the event the City of Mansfield has not approved Purchaser's application for a zoning change on the Property to allow for the construction of five single family dwellings thereon on or before the Closing Date, the Closing Date shall be automatically extended until the Monday after the date of such approval or such earlier date as the parties may agree.

Requirements at Closing

- 5.02. At the closing Seller shall:
- (a) Deliver to Purchaser a duly executed and acknowledged Special Warranty Deed conveying good and marketable title in fee simple to all of the Property, free and clear of any and all liens, encumbrances, conditions, assessments, and restrictions other than as provided in this Contract;
 - (b) Execute such documents and instruments reasonable requested by the title company to consummate the transactions contemplated herein; and
 - (c) Deliver to Purchaser possession of the Property.
- 5.03. At the closing, Purchaser shall pay to Seller the lump sum payment of the Purchase Price.
- 5.04. All costs and expenses of closing in consummating the sale and purchase of the Property shall be borne and paid as follows:
- Seller shall pay for the cost of the title policy.
 - Purchaser shall pay all other closing costs and fees.
 - Attorney's fees shall be paid by the party incurring same.

EXHIBIT "A"

ARTICLE VI
REAL ESTATE COMMISSIONS

It is understood and agreed that no brokers were involved in the negotiation and consummation of this Contract, none are, or may be, a principal at the time of closing, and no commission is to be payable in cash at the closing. If this Contract is terminated for any reason prior to closing, there will be no commission due or payable hereunder. Each of the parties represents to the other that it has not incurred and will not incur any liability for brokerage fees or agent's commissions in connection with this Contract.

ARTICLE VII
MISCELLANEOUS

Survival of Covenants

- 7.01 Any of the representations, warranties, covenants, and contracts of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the closing date of the transactions contemplated hereby shall survive the closing.

Breach by Seller

- 7.02 Should Seller fail to satisfy any of the conditions specified in this Contract or in the Development Agreement, Purchaser shall have the right as its sole remedy to terminate this Contract and to recover any amounts paid to Seller on account of Purchaser's performance of this Contract. Purchaser's damages shall be limited to the amount, if any, paid to Seller, and Seller shall not be liable to Purchaser for any incidental or consequential damages resulting from such breach.

Breach by Purchaser

- 7.03 Should Purchaser fail to satisfy its obligations set forth in this Contract or in the Development Agreement or this Agreement, Seller shall have the right to terminate this Contract

Governing Law and Venue

- 7.04 This Contract shall be construed under and in accordance with the laws of the State of Texas. Venue for any legal action related to this Contract shall lie in Tarrant County, Texas.

Parties Bound

- 7.05 This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns where permitted by this Contract.

EXHIBIT "A"

Legal Construction

- 7.06 In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

Entirety and Amendment

- 7.07 This Contract and the exhibits attached hereto constitute the sole and only contract of the parties and supersede any prior understandings or written or oral contracts between the parties respecting the Property or the subject matter of this Contract. This Contract may only be amended by a written document signed by both parties.

Assignment

- 7.08 This Contract may not be assigned by any party to a third party without the written consent of the other party.

Notice

- 7.09 Any notice required to be given by this Contract shall be deemed to have been given within three days of depositing in the mail, if sent to the other party by United States certified mail, return receipt requested, or upon receipt of the notice if sent by other receipted delivery service, to the address listed below the party's signature to this Contract. A party may change the address for notice by sending written notice of such change to the other party in accordance with this section.

Time of Essence

- 7.10 Time is of the essence in this Contract.

Waiver of Objections

- 7.11 Purchaser acknowledges that prior to the execution of this Contract, Seller provided Purchaser with a copy of a boundary survey of the Property and a Title Commitment on the standard form prescribed by the Texas Department of Insurance. Purchaser, by signing this Contract, hereby waives all objections Purchaser may have to the contents of such documents for all purposes.

Attorney's Fees

- 7.12 If it should become necessary to file a legal action to interpret or enforce the terms of this Contract, the prevailing party in such action shall be entitled to recover from the non-prevailing party, reasonable attorney's fees and costs of court.

EXHIBIT "A"

EXECUTED this ____ day of _____, 2015.

SELLER:

CITY OF MANSFIELD, TEXAS

By:_____

Print Name:_____

Title:_____

Address: 1200 E. Broad St.
Mansfield, Texas 76063

PURCHASER:

POSSE CONSTRUCTION, LLC D/B/A
MANSFIELD CUSTOM HOMES

By:_____

Print Name:_____

Title:_____

Address: 5 Calloway Ct.
Mansfield, Texas 76063

[Notary page to follow]

EXHIBIT "A"

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed above (description of identity card or other document) and affirmed he/she is the _____ of the City of Mansfield and that he/she executed the above and foregoing as the act and deed of said City for the purposes and consideration therein expressed and with full authority to so act.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2015.

Notary Public in and for the State of Texas

Typed or Printed Name of Notary

My Commission Expires:_____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority in and for said County, Texas, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she is the _____ of Posse Construction, LLC d/b/a Mansfield Custom Homes and is duly authorized to execute this Contract on behalf of said entity for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the _____ day of _____, 2015.

Notary Public in and for the State of Texas

Typed or Printed Name of Notary

My Commission Expires:_____

EXHIBIT "A1"

LEGAL DESCRIPTION

BEING 0.478 acre of land located in Lots 4, 5, 6, 7 & 8, Block 28, ORIGINAL TOWN OF MANSFIELD, an Addition to the City of Mansfield, Tarrant County, Texas, according to the plat recorded in Volume 63, Page 53, of the Plat Records of Tarrant County, Texas, and being the combined two tracts of land conveyed to the City of Mansfield, by the deed recorded in Volume 15243, Page 1513, of the Deed Records of Tarrant County, Texas, and the tract of land designated as Tract I, in the deed to the City of Mansfield, by the deed recorded in Volume 9057, Page 1453, of the Deed Records of Tarrant County, Texas. Said 0.478 acre of land being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod marked "Brittain & Crawford" set, at the Southeast corner of aforesaid Block 28, lying at the intersection of the North right-of-way line of Alvarado Street and the West right-of-way line of First Avenue (a 50 foot wide public right-of-way), also being the Southeast corner of the aforesaid Tract I;

THENCE N 85° 08' 03" W along the South boundary line of aforesaid Block 28, and the North right-of-way line of Alvarado Street (a 50 foot wide public right-of-way), at 165.00 feet, passing a 1" iron pipe found, at the Southeast corner of aforesaid City of Mansfield Tract, recorded in Volume 15243, Page 1513, and continuing all 250.00 feet, to a ½" iron rod found, at the Southwest corner of said City of Mansfield Tract and the Southwest corner of Block 28, being the intersection of the East right-of-way line of Second Avenue;

THENCE N 04° 51' 57" E 80.00 feet, along the East right-of-way line of Second Avenue (a 50 foot wide public right-of-way), and the West boundary line of said Block 28, to a ½" iron rod marked "Brittain & Crawford" set, at the Northwest corner of said City of Mansfield Tract, being the Southwest corner of a tract of land conveyed to Delia G. Rall, by the deed recorded in Volume 11613, Page 1277, of the Deed Records of Tarrant County, Texas;

THENCE S 85° 08' 03" E 85.00 feet, along the North boundary line of said City of Mansfield Tract and the South boundary line of said Rall Tract, to a ½" iron rod marked "Brittain & Crawford" set, at the Northeast corner of said City of Mansfield Tract, lying in the West boundary line of aforesaid Tract I;

THENCE N 04° 51' 57" E 5.00 feet, along the West boundary line of said Tract I and the East boundary line of said Rall Tract, to a ½" iron rod marked "Brittain & Crawford" set, at the Northwest corner of aforesaid Tract I, being the Southwest corner of a tract of land conveyed to Candelario Lira, by the deed recorded in Volume 15242, Page 386, of the Deed Records of Tarrant County, Texas;

THENCE S 85° 08' 03" E 165.00 feet, along the South boundary line of said Lira Tract and the North boundary line of said Tract I, to a ½" iron rod found, at the Northeast corner of said Tract I, lying in the West right-of-way line of aforesaid First Avenue;

THENCE S 04° 51' 57" W 85.00 feet, along the East boundary line of said Tract I and the West right-of-way line of First Avenue, to the POINT OF BEGINNING containing 0.478 acre (20,825 square feet) of land.