

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 62.5% of 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 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 62.5% of 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 7.
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 8.
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 9. 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 10. 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 11. 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 12. 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 13.
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 25th day of February, 2015.

CITY OF MANSFIELD, TEXAS

By:


Clayton Chandler, City Manager

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

By:


Julie Short, Director

ATTEST:

By:


Vicki Collins, City Secretary