

WHEN RECORDED RETURN TO:

City of Mesa  
Attn: Real Estate  
20 East Main Street  
Mesa, Arizona 85211

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**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

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**CITY OF MESA, ARIZONA,  
an Arizona municipal corporation,**

**UNION MESA HOLDINGS, LLC,  
a Delaware limited liability company,**

**AND**

**UNION MESA 1, LLC,  
a Delaware limited liability company**

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**July \_\_, 2020**

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## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is made and entered into as of the \_\_\_\_ day of July, 2020, by and among the CITY OF MESA, ARIZONA, an Arizona municipal corporation ( "**City**"), UNION MESA HOLDINGS, LLC, a Delaware limited liability company ("**Developer**"), and UNION MESA 1, LLC, a Delaware limited liability company ("**Parcel A Owner**").

### RECITALS

A. The City and Developer entered into that Development Agreement dated as of September 16, 2019 ("**Development Agreement**"), with respect to the development of real property located in the City of Mesa, Arizona and more particularly described in the Development Agreement (the "**Project**"). The Development Agreement was recorded on September 19, 2019 as Instrument No. 2019-0736954, Official Records of Maricopa County, Arizona.

B. Pursuant to the terms and conditions of that Partial Assignment and Assumption of Development Agreement dated as of September 19, 2019 ("**Partial Assignment**"), all of the right, title and interest of Developer under the Development Agreement in and to "Parcel A" as described therein was assigned by Developer to the Parcel A Owner. The Partial Assignment was recorded on September 19, 2019 as Instrument No. 2019-0737565, Official Records of Maricopa County, Arizona.

C. Pursuant to the provisions of Section 4.8 of the Development Agreement, the Developer is required to cause certain existing utility lines and facilities to be relocated in order to permit development of the Project, which utility relocations are described in the Development Agreement as the "Relocations" or the "Relocated Utilities and Facilities."

D. Pursuant to the provisions of Section 4.12 of the Development Agreement, the City agreed to reimburse the Developer for its actual costs of the design and construction of the Relocated Utilities and Facilities (the "Reimbursable Public Improvement Costs") up to a maximum amount not to exceed \$2,400,000.00 (the "RPIC Cap"). The City's reimbursement of the Developer's Reimbursable Public Improvement Costs was to occur in two (2) separate installments, the first of which, in a maximum amount not to exceed \$1,200,000.00, was to be provided by the City in connection with the Reimbursable Public Improvement Costs incurred by the Developer with respect to the development of Phase 1, with the balance of the Reimbursable Public Improvement Costs to be reimbursed to the Developer for its costs in connection with the Relocated Utilities and Facilities constructed and installed by the Developer in connection with the development of Phase 3 of the Project.

E. As a result of its assumption of the obligations of Developer under the Development Agreement with respect to Phase 1 of the Project pursuant to the Partial Assignment, the Parcel A Owner is obligated to construct and install the Relocated Utilities and Facilities as part of the development of Phase 1 of the Project. In connection therewith, the Parcel A Owner has completed the design and bidding process for the construction of the Relocated Utilities and Facilities within Phase 1. However, as a result of additional costs in

connection with the Relocated Utilities and Facilities to be constructed as part of Phase 1 of the Project and certain other unanticipated issues which have arisen with respect to such Relocations, the Reimbursable Public Improvement Costs to be incurred by the Parcel A Owner in connection with the construction and installation of the Relocated Utilities and Facilities within Phase 1 of the Project significantly exceeds the original estimated costs thereof as contemplated by the Developer. As a result thereof, the City, Developer and Parcel A Owner have agreed to allocate the entire RPIC Cap to the Reimbursable Public Improvement Costs to be incurred by the Parcel A Owner with respect to the Relocations within Phase 1 of the Project and to eliminate any further obligation of the City to reimburse the Developer for Relocations of utilities and facilities in any subsequent Phase of the Project. For such purposes, the parties hereto are entering into this First Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

#### AGREEMENTS

1. **Definitions.** All initial capitalized terms used in this First Amendment shall have the meanings ascribed thereto in the Development Agreement, unless otherwise specifically defined herein.

2. **Reimbursable Public Improvement Costs Allocable To Phase 1.** Notwithstanding anything contained in the Development Agreement to the contrary, including without limitation, the provisions of Section 4.13 thereof, the City hereby agrees to reimburse the Parcel A Owner for the actual costs of the design and construction of the Relocated Utilities and Facilities to be incurred by the Parcel A Owner within Phase 1 of the Project in an amount not to exceed the full amount of the RPIC Cap set forth in Section 4.12 of the Development Agreement (i.e., \$2,400,000.00). In connection therewith, the Escrow Holdback Agreement shall be amended such that the amount of the funds held by the Escrow Agent under the Escrow Holdback Agreement shall be increased to the amount of \$2,400,000.00 with the City depositing with the Escrow Agent under the Escrow Holdback Agreement an amount equal to \$1,200,000.00 within ten (10) days following the full execution and recordation of this First Amendment. The right of the Parcel A Owner to withdraw funds from the Escrow Holdback Agreement in connection with the payment of the costs of the design and construction of the Relocated Utilities and Facilities within Phase 1 of the Project shall be subject to the Parcel A Owner's satisfaction of the conditions and requirements applicable thereto in the Escrow Holdback Agreement, including without limitation, compliance with Title 34 of the Arizona Revised Statutes.

3. **Utility Relocations within Phase 3.** As a result of the reallocation of the full amount of the RPIC Cap to Phase 1 of the Project, the City, Developer and the Parcel A Owner hereby acknowledge and agree that, notwithstanding the terms and conditions of the Development Agreement to the contrary, including without limitation, the provisions of Section 4.13 thereof, the City shall have no further obligation to reimburse the Developer for the costs of construction of the Relocated Utilities and Facilities in any subsequent Phases of the Project and, specifically, Developer shall not be entitled to reimbursement for costs of Relocations incurred by the Developer in connection with the development of Phase 3 of the Project. As a result

thereof, all provisions of Section 4.13 of the Development Agreement relating to the Phase 1 RPIC Rollover Funds and the amount of the RPIC Cap allocable to Phase 3 are hereby deleted and shall be of no further force or effect. In addition, as a result of the fact that the costs of the Relocations of existing utilities and facilities to be performed by Developer in Phase 3 of the Project will not be Reimbursable Public Improvement Costs, Developer shall not be required to comply with Title 34 of the Arizona Revised Statutes in connection with the design and construction of the Relocated Utilities and Facilities within Phase 3 of the Project.

4. **Amendment to Escrow Holdback Agreement.** The parties hereto hereby acknowledge and agree that, as a result of the amendments and modifications of the Development Agreement with respect to the Reimbursable Public Improvement Costs allocated to Phase 1 of the Project, the City, Parcel A Owner and the Escrow Agent under the Escrow Holdback Agreement shall enter into a modification and amendment of the Escrow Holdback Agreement to reflect the amendments and modifications as set forth in this First Amendment.

5. **No Further Modifications.** Except as expressly modified and amended pursuant to the terms and conditions of this First Amendment, the terms and conditions of the Development Agreement are hereby ratified and affirmed by the parties thereto and shall remain in full force and effect.

6. **Recordation.** Within ten (10) days after this First Amendment has been approved by the City and executed by all parties hereto, the City shall cause this First Amendment to be recorded in the Official Records of Maricopa County, Arizona.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to the Development Agreement as of the day and year first above written.

**"CITY"**

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

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 this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ the \_\_\_\_\_ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

Description of document this notarial certificate is being attached to:	
Type/Title	First Amendment to Development Agreement
Date of Document	
Number of Pages	
Add'l Signers <i>(other than those named in this notarial certificate)</i>	

**"DEVELOPER"**

UNION MESA HOLDINGS, LLC, a Delaware limited liability company

BY: UNION MESA OM LLC, a Delaware limited liability company, its Operating Member

BY: LO UNION MESA LLC, a Delaware limited liability company, its Managing Member

BY: NON-MEMBER MANAGER, INC., a Texas corporation, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA       )  
                                      ) ss.  
COUNTY OF MARICOPA   )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of NON-MEMBER MANAGER, INC., a Texas corporation, the Manager of LO UNION MESA LLC, a Delaware limited liability company, the Managing Member of UNION MESA OM LLC, a Delaware limited liability company, the Operating Member of UNION MESA HOLDINGS, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

**"PARCEL A OWNER"**

UNION MESA 1, LLC, a Delaware limited liability company

BY: UNION MESA OM LLC, a Delaware limited liability company, its Operating Member

BY: LO UNION MESA LLC, a Delaware limited liability company, its Managing Member

BY: NON-MEMBER MANAGER, INC., a Texas corporation, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA        )  
                                      ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of NON-MEMBER MANAGER, INC., a Texas corporation, the Manager of LO UNION MESA LLC, a Delaware limited liability company, the Managing Member of UNION MESA OM LLC, a Delaware limited liability company, the Operating Member of UNION MESA 1, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

## ACKNOWLEDGMENT AND CONSENT OF LENDER

The undersigned, as the Beneficiary under that Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of September 12, 2019, and recorded on September 19, 2019, as Instrument No. 2019-0737568, Official Records of Maricopa County, Arizona (the "**Deed of Trust**"), hereby acknowledges and consents to the foregoing First Amendment to Development Agreement and agrees that the lien evidenced by the Deed of Trust shall be subject and subordinate to the terms and conditions of said First Amendment.

IN WITNESS WHEREOF, the undersigned has executed this Acknowledgement and Consent as of the \_\_\_\_ day of April, 2020.

U.S. BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of U.S. BANK NATIONAL ASSOCIATION, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

Notary Public

My commission expires: