

## **FIRST AMENDMENT TO ESCROW HOLDBACK AGREEMENT**

THIS FIRST AMENDMENT TO ESCROW HOLDBACK AGREEMENT (this "First Amendment") is made and entered into as of the \_\_\_\_ day of July, 2020, by and among UNION MESA 1, LLC, a Delaware limited liability company ("Developer"), the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "City"), and SECURITY TITLE AGENCY ("Escrow Agent").

### **RECITALS**

- A. Developer, City and Escrow Agent entered into that Escrow Holdback Agreement dated as of September 19, 2019 (the "Holdback Agreement") pursuant to which the sum of \$1,200,000.00 ("Holdback") was retained in Escrow by Escrow Agent for the purpose of reimbursing Developer for the costs of the design and construction of certain utility relocations which are more specifically described in the Holdback Agreement. The Holdback Agreement was entered into pursuant to the terms and conditions of that Development Agreement originally executed by the City and Union Mesa Holdings, LLC, a Delaware limited liability company ("Holdings") and dated as of September 16, 2019 (the "Development Agreement").
- B. The City, Holdings and Developer are, essentially concurrently herewith, entering into a First Amendment to Development Agreement (the "First Amendment"), pursuant to which the terms and conditions set forth in the Development Agreement with respect to the City's obligation for reimbursement of the costs and expenses to be incurred by the Developer with respect to such utility relocations are being modified and amended in order to increase the maximum amount of the reimbursement to be paid by the City to the Developer. As a result of modifications and amendments to the Development Agreement as set forth in the First Amendment, the parties hereto are entering into this First Amendment to reflect the increase in the total amount of the Holdback subject to the Holdback Agreement.

**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:

### **AGREEMENT**

- 1. **Definitions.** All initial capitalized terms used in this First Amendment shall have the meanings ascribed thereto in the Holdback Agreement, unless otherwise specifically defined herein.
- 2. **Increase in Amount of Holdback.** Notwithstanding anything contained in the Holdback Agreement to the contrary, from and after the date of this First Amendment, all references in the Holdback Agreement to the amount of the Holdback are hereby increased from the amount of \$1,200,000.00 to the amount of \$2,400,000.00. From and after the date of this First Amendment, all references in the Holdback Agreement to the

amount of the Holdback shall be deemed to mean and refer to the amount of \$2,400,000.00.

3. City's Deposit of Additional Funds in Holdback Escrow. Within ten (10) days following the full execution of this First Amendment, the City shall deposit the amount of \$1,200,000.00 into the Holdback Escrow in order to increase the total amount of the Holdback from \$1,200,000.00 to \$2,400,000.00. The increased amount of the Holdback shall be deposited by Escrow Agent into an interest-bearing account maintained by Escrow Agent with an FDIC-insured bank pursuant to the provisions of the Holdback Agreement and shall be held by Escrow Agent and disbursed to the Developer and/or the City pursuant to the terms and conditions of the Holdback Agreement.
4. Release of Holdback. Half of the Holdback (\$1,200,000.00) shall be dispersed according to the requirements of Section 4 of the original Holdback Agreement. The remaining half of the Holdback (\$1,200,000.00) shall be dispersed only after satisfaction of both the requirements of Section 4 of the original Holdback Agreement and the issuance of a Certificate of Completion for the office building on Parcel A pursuant to Mesa City Code Section 4-1-6 (C).
5. No Further Modifications. Except as expressly modified or amended in this First Amendment, the terms and conditions of the Holdback Agreement are hereby ratified and affirmed by the parties thereto and shall remain in full force and effect, unchanged and unmodified in any way.
6. Counterparts; Facsimile or Electronic Signatures. This First Amendment to Holdback Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile or electronic signatures on this First Amendment shall be deemed to be as effective as if the same were original signatures.

**SIGNATURES ON NEXT PAGE**

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this First Amendment to Escrow Holdback Agreement as of the day and year first above written.

***"Developer"***

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: \_\_\_\_\_

***"City"***

CITY OF MESA, ARIZONA, an Arizona municipal corporation

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

***"Escrow Agent"***

SECURITY TITLE AGENCY

By \_\_\_\_\_  
Name Kevin Flores  
Title Assistant Vice President