
MEMORANDUM OF UNDERSTANDING
City of Mesa, Arizona | MD Management
[insert date], 2017

1. **Parties to Memorandum.** The Parties to this Memorandum of Understanding (“Memorandum”) are the City of Mesa, Arizona, an Arizona municipal corporation (“City”) and MAC DEVCO, LLC (“MD”), an Arizona limited liability company (the “Developer”).

2. **Background.** Developer desires to develop and redevelop certain improved property generally located adjacent to the Drew Street alignment and Main Street, which is depicted in the attached Exhibit “A.” The development includes Developer owned real property, which is APN 138-41-024 (the “Developer Lot”) and City-owned real property and improvements, including the Drew Street Parking Lot, which is APN 138-41-013A, 138-41-015, and 138-41-017 (the “Drew Parking Lot”). The development is intended to include commercial/retail space, restaurants, market rate/luxury apartments, boutique hotel, parking structure, and other public improvements (the Project).

3. **Memorandum of Understanding.** The Parties acknowledge that this document is a “Memorandum of Understanding,” and is neither an agreement or contract between them, nor an offer from the City that invites acceptance by Developer. It is intended to be an outline of certain terms on which the Parties have found preliminary agreement and which form the basis for further discussions and negotiations, with the Parties understanding that (a) such terms are not complete and require further detail and explication, and (b) there are material terms that are essential to any agreement between the Parties that have not been included in this Memorandum. This Memorandum is not binding upon the Parties or legally enforceable, imposes no enforceable obligations upon the Parties, and does not grant any rights to or in favor of any Party as against the other. Each Party waives any and all rights that it may have to attempt to enforce the terms of this Memorandum as an agreement or a contract against the other Party. In addition to the foregoing, Developer acknowledges that any ultimate agreement with the City requires the approval of the City Council in the form of a resolution or ordinance, which approval may be granted or withheld in the Council’s sole discretion notwithstanding any prior Council approval of this Memorandum and approval of subsequent negotiations. The approval of this Memorandum by the City Council shall not be, or be deemed to be, an approval of an agreement between the City and Developer, and does not allow Developer the right to use any of the City property including, but not limited to, the Drew Parking Lot.

4. **Outline of Certain Material Terms.** Subject to the foregoing and additional terms and conditions precedent described below, the Parties provide the following outline of certain terms to be included in an agreement between them:

A. **Developer’s Preliminary Obligations.** In conjunction with the Parties negotiating an agreement for the proposed Project, Developer will perform, obtain, and/or provide the following at Developer’s sole cost and expense:

- 1) **Business Plan.** The business plan shall include the Project’s budget and pro-forma; it will describe and demonstrate the Project’s viability, including details for the operation and management of the project after completion of construction. The plan will include a third-party market analysis of the development. The plan will also:

- a. Provide research/market demand data.
 - b. Provide details on how Developer intends to utilize the Project site and in what form of control of the site, or portion thereof, the Project requires.
 - c. Provide commitments and demonstrated interest in the hotel, retail, restaurant portions of the Project and projected rates and occupancy for the residential portion of the Project.
 - d. Provide the Project's development costs in detail and itemized, including all site acquisition, construction costs, soft costs, and contingencies.
 - e. Provide the Project's operating pro forma in detail, including all revenues, expenses, debt service, taxes, and other assessments for the same number of years for which City assistance is requested.
 - f. Provide projected commercial lease rates, apartment rental rates, and for sale prices and the basis for such rates and prices.
 - g. Provide reasonable assumptions for all costs and revenues.
 - h. As the project parameters are refined and detailed, Developer will update the Business Plan, and provide such updates to the City.
- 2) Financial Ability. Developer will provide information to the City's City Manager to demonstrate Developer's financial capacity to execute and complete the Project successfully, including:
- a. Describe a clear strategy to fund all Project costs.
 - b. Specify and describe funding sources for the Project.
 - c. Meeting with the City Manager to establish that there are lenders/investors that will fund the Project.

B. Developer's Project Requirements.

- 1) Minimum Improvements. Developer will design, obtain permits for, and construct the following minimum Project improvement (the Minimum Improvements) at Developer's sole cost and expense:
- a. On or above the Drew Parking Lot:
 - i. A minimum of a 75-room boutique hotel.
 - ii. A minimum of 75 luxury apartments.
 - iii. A multi-story, structured parking garage with improved ground floor parking, of which all the ground floor parking spaces shall be owned and controlled by the City for public or City-permit parking and certain spaces within the structured parking garage shall also be provided to the City, at no cost to the City, for public or City-permit parking. The total number of City parking spaces (ground level and within the structure) shall be 102 spaces (the "City Spaces"). At City's request and expense, developer will design and construct additional City Spaces within the structured parking garage in accordance with City requirements.
 - b. On the Developer Lot:
 - i. Tenant improvements to the existing building to include a minimum of 7,000 sq. feet of restaurant and/or retail space on or along Main Street.
 - ii. Additional restaurant/retail space, including a second story addition to the existing building for conference and meeting space, will be included in the project design in anticipation of future market demand
- 2) Permit Requirement. The Lease entered into with the City will give Developer control of the site on the lease effective date but will include deadlines, agreed upon by both Parties,

requiring Developer to obtain all approvals and permits, commence construction, and complete construction for the Minimum Improvements; City will be able to terminate the Lease if Developer defaults on a deadline, provided the default is not a result of delays caused by City.

- 3) **Property Restrictions.** The Drew Parking Lot has certain property restrictions recorded on the property, including but not limited to Gift Deed to the City of Mesa, dated April 26, 1957 and recorded as Document No. 1957-0048533 in the official records of Maricopa County, Arizona and Resolution No. 1767, adopted April 30, 1957, which provide, *inter alia*, that a certain number of parking spaces are to be available for use by certain property owners (the "Parking Restriction"). As part of the improvements to the Drew parking lot, Developer will agree in a recordable document satisfactory to both parties, at Developer's sole cost and expense, to cause the City to be released, on terms satisfactory to the City, in its sole discretion, from the Parking Restriction associated with Developer's Lot and any future lots Developer acquires that contain the Parking Restriction. The City Spaces will be used to make available parking spaces for use by the remaining property owners who have parking rights under the Parking Restriction. Developer will reimburse the City for any costs associated with the quiet title action necessary to remove the restrictions from the Drew Parking Lot.
- 4) **Lease and Option Terms.** As partial consideration for constructing the 102 City Spaces and maintaining the City Spaces not on the ground floor, Developer will pay a reduced rental amount for the air rights leased to Developer.

C. City's Project Requirements.

- 1) Subject to Developer completing the preliminary obligations (Section 4(A) above) and other conditions precedent as described above:
 - a. As partial consideration for constructing the 102 City Spaces and maintaining the City Spaces not on the ground floor, Developer will pay a reduced rental amount for the air rights leased to Developer and for the development of, and above, the Drew Parking Lot, the City will enter into a lease with Developer, with an option to purchase the air rights above the Drew Parking Lot for a reduced amount and grant an easement, at fair market value, necessary for the construction of the improvements.
 - b. All options to purchase will be subject to compliance with the terms of a development agreement and lease including but not limited to completion of the Minimum Improvements.
 - c. City and Developer may elect to enter into a lease that may qualify for tax abatement under A.R.S. § 42-6209. If the Parties so elect, City, at its expense, will engage an independent third party to perform an economic analysis as required by A.R.S. § 42-6209(C)(2).
 - d. As part of the redevelopment along, and possible realignment of, Drew Street and S. Main Alley adjacent to the Project, if City approves Developer's street cross-section and streetscape design for this property, City will construct certain public improvements within this property, at City's expense, which public improvements have been agreed upon by City and Developer. City may abandon portions of Drew Street and S. Main Alley to accommodate development of leasable ground-floor commercial space and semi-public open space.
 - e. The City Spaces will remain open for public use and/or permit parking controlled by the City of Mesa.

- f. The Development Agreement may include provisions that provide that the City will reimburse Developer for the construction of certain public infrastructure improvements, which may be subject to a cap and other restrictions and must comply with Title 34 and A.R.S. § 42-6010, to the extent applicable.
 - g. City will provide impact fee offsets, in accordance with the Mesa City Code, for previous development on the Drew Parking Lot.
 - h. City will continue to discuss the possibility of rebates of a portion of the City's Transient Occupancy Tax, which may be subject to conditions and restrictions.
 - i. Review of construction plans, applications and other submissions by or on behalf of Developer shall be in accordance with a customized review schedule, agreed upon between the City and the Developer.
 - j. To accommodate the developer's proposed project, City will initiate a rezoning case for the Drew Parking Lot consistent with the provisions of the adopted Form-Based Code. All zoning approvals are subject to approval by the City Council, in its sole discretion.
 - k. City will assign a dedicated Development Services Department Project Manager to oversee the zoning and development entitlements for the Project.
- 2) Parking Structure Redevelopment. Developer may design the parking structure to allow conversion to residential/commercial uses as the demand for parking decreases, subject to compliance with applicable codes (e.g., building codes) and payment of applicable fees, Developer will be allowed to redevelop the parking structure (above the ground level) for such uses so long as parking garage provides the minimum number of City Spaces.
- D. Use Restrictions. The Property's use will be restricted to uses consistent with the intent of the Project and uses the Parties agree that may have a deleterious impact on the Project will be prohibited.
- E. GPLET. The Project may involve a lease of property and improvements that would be subject to the State GPLET Statutes, A.R.S. § 42-6201 *et seq*, which are subject to pending litigation and legislation and may be amended from time to time by the State Legislature. Any lease will be subject to the terms and limitations of the GPLET statutes, as they may be amended. Developer will be responsible for ensuring that GPLET all taxes are paid, if and as applicable.
- F. Remedies. In addition to other remedies, the agreement will provide that if Developer fails to timely construct the Minimum Improvements, the City would be able to terminate the agreements and receive back any property transferred to Developer free and clear of any liens, subject to reasonable notice and cure provisions.
- G. Use of Drew Parking Lot and future garage. The existing ground level parking at the Drew Parking Lot will continue to be subject to the exclusive control of the City, and City will retain all revenue generated from the use of all the City Spaces. Except for the City Spaces within the parking garage, the future parking garage above the Drew Parking Lot (to be constructed by Developer) will be subject to the exclusive control of Developer, and Developer will retain all revenue generate from the use of such space. Parking revenue generated from public events will be equitably distributed based on the available spaces that may be parked for the event.
- 1) Developer will be solely responsible for all maintenance, repairs, replacement (including but not limited to structural repairs) and all other costs for the parking garage, and for the hotel, residential, and other improvements constructed above the Drew Parking Lot. Developer and City will agree to an equitable cost sharing for the maintenance cost for the ground floor

parking, but the City's cost will not exceed the costs that would be incurred for maintaining the Drew Lot as a surface parking as it exists today.

- 2) Developer will insure, indemnify, and defend the City against claims relating to the parking garage, hotel, residential, and other improvements built on or above the Drew Parking Lot, including but not limited to claims relating to the structural engineering and construction of the garage and other improvements.

H. Utilities. The Project will use City of Mesa utilities (water, sewer, electric, solid waste), and Developer will be responsible for all utility costs for all the Project Improvements. The City has certain incentive and reduced utility rates; if the Project qualifies for such rates, the Project will be able to participate in such rates. Further, the City and Developer will consider the possibility of a separate accommodation where Developer may independently purchase electric power supplies (and associated transmission to the City system) to facilitate Developer's desire for the ability to provide electricity from a renewable energy source for the Project.

I. Signs. All signage for the Project must comply with the City of Mesa sign code and Zoning Code. Signage on the Project will be allowed subject to terms to be agreed upon in a development agreement and compliance with the City of Mesa sign code and Zoning Code.

5. **Further Negotiations**. By their execution of this Memorandum, the Parties confirm that this is not an agreement between them, but are authorizing their attorneys and representatives to pursue further negotiations regarding the subject matter of this Memorandum, in accordance with the terms and conditions set forth in this Memorandum, to produce a binding agreement subject to approval by the City Council.

6. **Sunset**. This Memorandum shall be deemed automatically terminated, and without further act or notice required, on the earlier of (a) the City Council's approval of an Agreement previously executed and delivered by Developer, or (b) June 30, 2018.

MAC DEVCO, LLC, an Arizona
limited liability company

The City of Mesa, Arizona, an Arizona municipal
corporation

By: _____
Its: _____

By: _____
Its: _____