

WHEN RECORDED RETURN TO:

CITY OF MESA
Real Estate/Engineering
PO Box 1466
Mesa, AZ 85211-1466

**FIRST AMENDMENT
TO
AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “First Amendment”) is entered into as of this ____ day of June, 2018, by and between MHA III, LLC, an Arizona limited liability company (“MHA III”) and the City of Mesa, an Arizona municipal corporation (the “City”). MHA III and City are collectively referred to herein as the “Parties,” or individually, as a “Party.”

RECITALS

A. On December 19, 2016, the City, MHA III and Mesa Housing Associates II, LLC, an Arizona limited liability company, executed that certain Amended and Restated Development Agreement which was recorded in the Official Records of the Maricopa County, Arizona Recorder’s Office as Document No. 2016-0940132 on December 21, 2016 (“A&R Development Agreement”). Capitalized terms used herein but not otherwise defined shall have the meaning given in the A&R Development Agreement.

B. Simultaneously with the execution of the A&R Development Agreement, the City and MHA III executed that certain Addendum to Purchase and Sale Agreement and Escrow Instructions, whereby the parties amended certain provisions of the “Purchase and Sale Agreement and Escrow Instructions” (Southeast Corner of 1st Avenue and Macdonald, Mesa, AZ Lot 1- Affordable Housing Project)” dated as of February 25, 2016 (as amended, the “Purchase and Sale Agreement”) for certain real property described therein (the “Property”).

C. On July 11, 2017, MHA III timely elected to purchase the Property at the Market Rate Price pursuant to Section 4.1D of the A&R Development Agreement and Section 2.2 of the Purchase and Sale Agreement, by depositing the Earnest Money in Escrow.

D. Pursuant to Section 4.1D of the A&R Development Agreement, MHA III’s election triggered the obligation to develop the Second Market Rate Project on the Property.

E. In light of certain issues that have arisen in the design and financing of the Second Market Rate Project, including the potential phasing of the Second Market Rate Project, and to ensure that the City obtains the benefits of the Second Market Rate Project, the Parties desire to

modify and clarify certain provisions of the A&R Development and the Purchase and Sale Agreement, as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement, the Parties agree as follows:

1. Amendment of Purchase and Sale Agreement. To ensure that the Property is adequate for the development the Second Market Rate Project and to reflect the potential phasing of the Second Market Rate Project, the Parties have simultaneously entered into a “Second Amendment” to the Purchase and Sale Agreement, that revises various deadlines and dates and provides for the purchase and sale of certain additional real property (the “Additional Property”) and the development of certain additional amenities (the “Additional Amenities”). All references in this Agreement to the “Property” shall hereafter be deemed to include the Additional Property, if acquired by MHA III.

2. Scale of the Second Market Rate Project. MHA III hereby agrees to develop the Second Market Rate Project with at least 72 units in total, with at least 12 of the total units being 2-bedroom units. MHA III hereby agrees that the Second Market Rate Project will be comprised of multiple buildings, each of which will have no less than 24 units and at least three stories. The project may be developed in up to three phases with each phase consisting of at least one 3-story building with not less than 24 units, at least four of which must be 2-bedroom units. If MHA III purchases the Additional Property, MHA III also agrees to develop the Additional Amenities. The City agrees that development of the project in compliance with this paragraph, will satisfy the requirement in Section 4.1D that the Second Market Rate Project be “substantially similar in scale” to the former Affordable Housing Project.

3. Modification of Section 4.1D. The last sentence of Section 4.1D of the A&R Development Agreement is amended to state, in its entirety:

If MHA III purchases the property at the Market Rate Price, MHA III shall begin Commencement of Construction of the initial phase of the Second Market Rate Project no later than one hundred twenty (120) calendar days after the closing on the property, and shall achieve Completion of Construction for the initial phase of the Second Market Rate Project (including the Additional Amenities, if MHA III purchases the Additional Property) no later than four hundred eighty five (485) calendar days after Commencement of Construction. For each subsequent phase, MHA shall begin Commencement of Construction no later than three hundred sixty five (365) calendar days after receiving a certificate of occupancy for the prior phase, and shall achieve Completion of Construction of such subsequent phase three hundred sixty five (365) calendar days after Commencement of Construction of such phase.

All references in other sections of the A&R Development Agreement to the Commencement of Construction and Completion of Construction for the Second Market Rate Project shall be deemed references to the dates as set forth in the foregoing amended sentence.

4. Modification of Section 6.5B. Section 6.5 B of the A&R Development Agreement is amended to state, in its entirety:

MHA III shall pay liquidated damages for each calendar day past the day in which MHA III fails to meet the required Commencement of Construction date for the initial phase of the Second Market Rate Project as set forth in Section 4.1D of this Agreement. Liquidated damages shall be in the following amounts until Commencement of Construction: for the first 60 calendar days after such deadline, damages in the amount of \$100 per calendar day; for the 61st calendar day and each day thereafter, damages in the amount of \$250 per calendar day. MHA III stipulates and agrees that these liquidated damage amounts represent reasonable compensation to the City for the anticipated damages and are not a penalty; and the City would not have entered into this Agreement but for MHA III's agreement to pay such liquidated damages. This Section 6.5(B) is not subject to the notice and cure provisions of this Agreement, and the liquidated damages shall automatically begin to accrue on the day after the applicable deadline is not met.¶

5. Modification of Section 6.5E. Section 6.5E of the A&R Development Agreement is amended to state, in its entirety:

If MHA III has not begun the Commencement of Construction of the initial phase of the Second Market Rate Project within six (6) months after the required Commencement of Construction date set forth in Section 4.1D of this Agreement, City shall have, and MHA III hereby grants, an option to purchase the Property for the same price MHA III paid for the Property. Within thirty (30) days of the City giving notice of its intent to exercise this option and upon payment of the such purchase price, MHA III shall transfer the Property to the City by special warranty deed free and clear of any encumbrances that did not exist when the property was conveyed to MHA III, other than encumbrances created by any replat of the Property pursuant to the Purchase and Sale Agreement.

6. Incorporation. The terms and conditions of this First Amendment are hereby incorporated in and made a part of the A&R Development Agreement. The A&R Development Agreement, as amended by this First Amendment, is in full force and effect and all of the terms, covenants and conditions of the A&R Development Agreement, as amended by this First Amendment, are hereby ratified and confirmed. In the event of any conflict between the terms of the A&R Development Agreement and those of this First Amendment, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the date first set forth above:

“CITY”

CITY OF MESA,
an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of,
_____ 2018, by Christopher J. Brady, the City Manager for the CITY OF
MESA, an Arizona municipal corporation.

Notary Public

My Commission Expires:

APPROVED AS TO FORM

James N. Smith
City Attorney

“MHA III”

MHA III, LLC
an Arizona limited liability company

By: Urban Housing Partners VI, LLC
Its: Member

By: Marshall Urban Development Company
Its: Member

By: _____
Name: Todd Marshall
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Todd Marshall, the authorized officer of Marshall Urban Development Company, on behalf of Urban Housing Partners VI, LLC, on behalf of MHA III, LLC.

Notary Public

My commission expires:
