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**MEMORANDUM OF UNDERSTANDING**  
**City of Mesa, Arizona | 3W Management**  
\_\_\_\_\_, 2017

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1. **Parties to Memorandum.** The Parties to this Memorandum of Understanding (“Memorandum”) are the City of Mesa, Arizona, an Arizona municipal corporation (“City”) and 3W Management, an Arizona limited liability company (“3W”).
2. **Background.** 3W desires to develop and redevelop certain improved and unimproved property generally located near the intersection of Mesa Drive and Main Street, which is depicted in the attached Exhibit “A.” The development includes City-owned real property and improvements, including the Pomeroy Parking Garage and surface parking lot east of Benedictine University, which is APN 138-65-006E (the “Surface Parking Lot”). The Surface Parking Lot is currently leased with an option to purchase to Benedictine University. 3W is currently negotiating with Benedictine regarding the use of the Surface Parking Lot, and any such use must be agreed to by Benedictine and City. The development is intended to include commercial/retail space, student housing, market rate/luxury apartments, row homes, parking garage expansion, 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 3W. 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, 3W 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 3W, and does not allow 3W the right to use any of the City property including, but not limited to, the Pomeroy Garage and the Surface 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. **3W’s Preliminary Obligations.** In conjunction with the Parties negotiating an agreement for the proposed Project, 3W will perform, obtain, and/or provide the following at 3W’s sole cost and expense:
    - 1) **Structural Engineering Analysis.** 3W will retain a structural engineering firm that will provide a detailed structural engineering analysis and report of the Pomeroy Garage as to

what improvements to the garage would be necessary to construct the Minimum Improvements (as defined below) above and around the garage. The report will include cost estimates for the improvements.

- 2) **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 3W intends to utilize the Project site and in what form of control of the site, or portion thereof, the Project requires.
  - c. Demonstrate anticipated tenants/buyers/operators for the completed 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. If 3W intends to seek TIFIA approval (or any other financing mechanism that requires any City involvement), describe the City's proposed role, if any, in the TIFIA (or other financing) for the Project and define how the inclusion or exclusion of TIFIA (or other financing) impacts the Project's pro-forma. The City will not finance any private improvements through TIFIA or other financing mechanism.
- 3) **Financial Ability.** 3W will provide information to the City's City Manager to demonstrate 3W'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 (e.g., equity, financing, grants).
  - c. Meeting with the City Manager to establish that there are lenders/investors that will fund the Project.
- 4) **LOI with Benedictine.** 3W will provide City with an executed Letter of Intent from Benedictine University that details the obligations of 3W and Benedictine for the development of the Project. Details of the LOI need to include: programming and building area commitments for commercial lease space, student housing bed count, operation and management responsibilities, and agreed upon material lease terms.

#### B. 3W's Project Requirements.

- 1) **Minimum Improvements.** 3W will design, obtain permits for, and construct the following minimum Project improvement (the Minimum Improvements): at 3W's sole cost and expense:
  - a. A minimum of 18,000 sq. feet of commercial and/or retail space on or along Main Street.
  - b. A minimum of 80 student housing beds.
  - c. A minimum of 190 market rate/luxury apartments.
  - d. A minimum of 14 row homes for sale.

- e. Additional parking to the Pomeroy parking garage, and residential, commercial, or retail improvements added to the garage, all as to be agreed upon.
  - f. Improvements to Gateway Park and Gateway Park Road, as to be agreed upon.
- 2) Pomeroy Garage Repair and Maintenance. 3W will be solely responsible for all structural repairs and structurally related maintenance costs for the Pomeroy Garage (the existing garage and any improvements thereto), and all repairs and maintenance costs for improvements to the existing Pomeroy Garage. The routine maintenance and repair costs to the existing Pomeroy Garage will be equitably allocated based on use. 3W will insure, indemnify, and defend the City against claims relating to the design or construction of the Pomeroy Garage or improvements thereto, including but not limited to claims relating to the structural engineering of the garage and improvements thereto. 3W will fund a capital fund to pay for future major maintenance, repair, and replacement costs.
  - 3) Permit Requirement. The Lease entered into with the City will give Developer control of the site on the effective date but will include deadlines 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.
  - 4) Lease and Option Terms. 3W will pay a reasonable rental amount for any property or air rights leased to 3W, and the rental amount may have a lower initial rental amount during the initial construction and lease out period and escalate up thereafter. The lease of the surface parking lot will include an option to purchase subject to terms and limitations including the completion of the Minimum Improvements by a certain date in order to be able to exercise the option and a market rate purchase price.
  - 5) Title 34. 3W will comply with Title 34 when applicable, including public improvements to the existing Pomeroy Parking Garage, street improvements, improvements to Gateway Park, and public improvements that 3W may be entitled to seek reimbursement from the City as may be agreed to in the development agreement.

C. City's Project Requirements.

- 1) City will obtain an ALTA survey and Phase 1 Environmental review for the City-owned property.
- 2) Subject to 3W completing the preliminary obligations (Section 4(A) above) and other conditions precedent as described above:
  - a. For the development of the Surface Parking Lot, the City will negotiate in good faith with Benedictine to amend the existing Lease Agreement with Option to Purchase between the City and Benedictine to allow 3W's Project development on the Surface Parking Lot, and to allow the City to enter into a lease with an option to purchase with 3W for the Surface Parking Lot.
  - b. For the development of and above Pomeroy Parking Garage, the City will lease to 3W, with an option to purchase, the air rights above the Pomeroy Parking Garage and lease property adjacent to the garage necessary for the Project and Minimum Improvements. Purchase price will be based on fair market value as determined by appraisal.
  - c. All options to purchase will be subject to compliance with the terms of a development agreement including but not limited to completion of the Minimum Improvements.

- d. As part of the redevelopment along, and possible realignment of, South Pomeroy Road adjacent to the Project, if City approves 3W's street cross section and streetscape design for this portion of South Pomeroy Road, City may abandon a portion of the South Pomeroy Road alignment to accommodate the development and sale of townhome units. The purchase price for this property will be based on fair market value, as determined by an appraisal. The City's transfer of this property to 3W will be subject to conditions precedent and remedies to insure the completion of construction of the townhouses.
  - e. For parking of Project tenants, residents, and visitors, there will be a long-term parking license agreement for the use of approximately 300-375 parking spaces within the Pomeroy Parking Garage, but the use of the garage (or portions of the garage) will remain open for public use and licensed parking spaces may be provided on a non-exclusive basis, as to be agreed upon.
  - f. The Development Agreement may include provisions that provide that the City will reimburse 3W 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 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).
- 3) **Parking Structure Redevelopment.** As the demand for parking decreases, subject to compliance with applicable codes (e.g., building codes) and payment of applicable fees, Developer may be provided rights to redevelop the parking structure (above the ground level) for residential/commercial uses so long as parking garage provides the minimum number of spaces required by the City for the project.
- 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 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. 3W will be responsible for ensuring that GPLET taxes are paid, if and as applicable.
- F. **Remedies.** In addition to other remedies, the agreement will provide that if 3W fails to timely construct the Minimum Improvements, the City would be able to terminate the agreements and receive back any property transferred to 3W free and clear of any liens.
- G. **Use of Parking in Pomeroy Garage.** The existing three levels of parking in the Pomeroy Garage will continue to be subject to the exclusive control of the City, except as otherwise agreed to under the license agreement (Section 4(C)(2)(e) above), and City will retain all revenue generated from the use of such space. The parking expansion of the Pomeroy Garage by 3W will be subject to the exclusive control of 3W, and 3W will retain all revenue generate from the use of such space.
- H. **Utilities.** The Project will use City of Mesa utilities (water, sewer, electric, solid waste), and 3W will be responsible for all utility costs for all the Project Improvements and the Pomeroy Garage improvements.

I. **Signs.** All signage for the Project must comply with the City of Mesa sign code and Zoning Code. Signage on the Pomeroy Garage or other city-owned property leased or licensed to 3W 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, in order 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 3W, or (b) December 31, 2017.

3W Management, an Arizona  
limited liability company

The City of Mesa, Arizona, an Arizona municipal  
corporation

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

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