

When recorded, return to:

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

## **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

This First Amendment to Development Agreement (this “Amendment”) is made and entered into as of \_\_\_\_\_, 2018 by and between City of Mesa, a municipal corporation (“City”), and 3W Management, LLC, an Arizona limited partnership (“Developer”). City and Developer are sometimes referred to in this Amendment collectively as the “Parties,” or individually as a “Party.”

### **RECITALS**

A. City and Developer entered into that certain Development Agreement dated December 7, 2017, and recorded in the Maricopa County Recorder’s Office as Recording No. 20170915520 (the “Development Agreement”). The Development Agreement is for a mixed-use commercial and residential development that includes a minimum of 18,000 rentable square feet of commercial, retail/restaurant or office space; 180,000 square feet of apartment space; 24,200 square feet of row homes; certain described parking garage improvements; and certain required public improvements; all of which are collectively described and defined as the “Project” in the Development Agreement.

B. As set forth in the Development Agreement, upon the completion of certain conditions precedent, Developer’s permitted assignee and City are to enter into a Ground and Air Lease (the “Lease”), which is Exhibit P to the Development Agreement and are to enter into a License Agreement (the “License”), which is Exhibit B to the Lease.

C. Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) desires to attract and retain an anchor tenant in the Project that provides collaborative co-working spaces to encourage entrepreneurial endeavors (particularly emphasizing technology and innovation), such as CO+HOOTS™ (or comparable enterprise approved by City in its sole, absolute and unfettered discretion; the “Targeted Subtenant”).

D. Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) intends to enter into a sublease of not less than ten (10) years with the Targeted Subtenant for approximately 13,000 square feet of space within the Project.

E. City is willing to reduce the Lease rent paid by Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) for up to five years and reimburse certain permit fees (up to a cap) if the Targeted Subtenant (i) creates not fewer than 500 full-time jobs and 25 new businesses within ten (10) years; (ii) is open and operating in the Project for not fewer than ten (10) years; (iii) provides not fewer than fifteen

(15) scholarships per year to Mesa secondary school students for coding classes (or other educational classes) for ten (10) years; (iv) provides free public programs, workshops, or seminars to assist new businesses and entrepreneurs; (v) uses commercially reasonable, good faith efforts to enter into an agreement with a post-secondary institution located in the City of Mesa (as reasonably approved by City) to provide programming and related business technology classes and entrepreneurial courses as part of a degree and/or certificate program, in addition to other obligations of Developer as more fully set forth below, all of which are further described and subject to other requirements and terms as set forth in this Amendment.

F. The terms and requirements set forth in this Amendment affect the Development Agreement previously executed by the Parties and the Lease and License that will be executed in the future (subject to conditions precedent); accordingly, this Amendment (together with its exhibits) is intended as a first amendment to the Development Agreement and additionally provides for the amendment of the Lease and License so that, when the Lease and License are executed, the Lease and the License will include the revised language and exhibits as specifically described herein.

G. City desires to encourage and promote employment and education to create jobs, attract employers, stimulate economic activity, and improve the economic opportunities for the residents of Mesa.

H. The Parties understand and acknowledge that this Amendment is intended to promote “economic development activities” within the meaning of, and entered into accordance with, the terms of A.R.S. § 9-500.11. The actions taken by City pursuant to this Amendment are for economic development activities; and the City Council hereby finds and determines these such activities will assist in the creation and retention of jobs and will improve and enhance the economic welfare of the residents of Mesa.

I. The Parties are willing to modify the terms of the Development Agreement (including its Exhibits) as set forth in this Amendment.

## **AGREEMENT**

IN CONSIDERATION of the foregoing recitals and representations, all of which are fully incorporated into this Amendment and made a part of this Amendment for all purposes, and the mutual covenants and agreements and conditions in this Amendment, the Parties agree as follows:

1. Definitions. All capitalized words and phrases used in this Amendment will have the same meanings as set forth in the Development Agreement (and in the exhibits to the Development Agreement, as applicable), unless a different definition is set forth in this Amendment.

2. Amendment to Development Agreement. The Parties now amend the Development Agreement by adding a new Section 4.17 and Section 5.11 (and all subsections

thereto) to the Development Agreement, and the Parties agree to the terms and conditions of these new Sections and subsections, which are set forth in full as follows:

4.17        Economic Development Credits and Permit Reimbursement – Developer’s Requirements.

4.17.1        Developer’s Obligations for Economic Development Credit. In order to be eligible to receive and retain the Economic Development Credit described in Section 5.11.1, Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) must satisfy, or cause the Targeted Subtenant to satisfy, all of the following requirements:

- (a) On or before May 1, 2018, the Targeted Subtenant must enter into a sublease with Developer (or its permitted assignee) for not less than 13,000 square feet of the Project’s commercial space (the “Subleased Premises”) for a sublease term of not less than ten (10) years (the “Sublease Term”); the Targeted Subtenant must be open to the public for business in the entire Subleased Premises on or before the Opening Date (as defined in Section 4.17.1(g) below); and the Targeted Subtenant must remain open to the public for business in the entire Subleased Premises for not fewer than ten (10) years from the Opening Date.
- (b) The Targeted Subtenant must provide free public programs, workshops or seminars to assist new businesses and entrepreneurs (“Public Events”) for each year for the first ten (10) years of the Sublease Term. In the first year of the Sublease Term, the Targeted Subtenant will provide not fewer than fifty (50) Public Events; in the second year of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred (100) Public Events; and in the third through tenth years, inclusive, of the Sublease Term, the Targeted Subtenant will provide not fewer than one hundred and fifty (150) Public events during each such year.
- (c) The Targeted Subtenant must provide, for each year for the first ten (10) years of the Sublease Term, not fewer than fifteen (15) scholarships per year to secondary school students residing in the City of Mesa for coding, programming and related business technology classes (or other educational classes as approved by City, through its City Manager or designee, in the Manager’s or designee’s reasonable discretion) provided by the Target Subtenant and at the Subleased Premises or at another facility within the City of Mesa.
- (d) The Targeted Subtenant must use commercially reasonable, good faith efforts to enter into an agreement with a post-secondary institution located in the City of Mesa to provide programming classes and entrepreneurial courses as part of an advanced degree or certificate program, and the Targeted Subtenant will demonstrate to Developer (or its permitted

assignee, as the Tenant named in the Lease and the Licensee named in the License) and City that the Targeted Subtenant has either entered into such an agreement with a post-secondary institution located in the City of Mesa prior to the Opening Date, or has used commercially reasonable, good faith efforts to do so.

- (e) During each year of the Sublease Term, the Targeted Subtenant will offer (and will demonstrate to Developer [or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License] and City that it has so offered) (i) assistance, including but not limited to technical support, for Qualifying Businesses within the Subleased Premises with respect to attracting investors and capital, (ii) an updated directory of investors seeking to capitalize business of the nature of the Qualifying Businesses, and (iii) events to introduce investors to Qualifying Businesses.
- (f) Within thirty (30) days of a date specific requirement in the above subsections (*i.e.*, Section 4.17.1(a) and Section 4.17.1(d) above), Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) must provide commercially reasonable evidence to Landlord establishing compliance with each requirement. Every year within sixty (60) days of the annual anniversary of a yearly requirement (*i.e.*, Section 4.17.1(b), Section 4.17.1(c), and Section 4.17.1(e) above), Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) must provide commercially reasonable evidence to Landlord establishing compliance with each annual requirement; provided further that the Parties may agree in writing upon a single annual anniversary date to establish compliance with the requirements in Section 4.17.1(b), Section 4.17(c), and Section 4.17.1(e) above.
- (g) “Opening Date” in this Agreement means the earliest of (i) the date on which the Subleased Premises is first open to the public for business, or (ii) the date on which the final certificate of occupancy is approved for the Subleased Premises, or (iii) December 31, 2020; provided that the Parties can agree in writing to different date as the Opening Date so long as such date is within three (3) months of either of the three (3) dates described in this definition.
- (h) Developer represents and warrants to City that rental rates for the Subleased Premises being paid (or to be paid) by the Targeted Subtenant reflect the economic development credits and permit reimbursements being provided to Developer by this Agreement.

4.17.2 Developer’s Obligations for Permit Reimbursement. In order to be eligible to receive and retain the Permit Reimbursement (as defined in Section

5.11.2(b)), Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) must satisfy, or cause the Targeted Subtenant to satisfy, all of the following requirements:

- (a) the Targeted Subtenant must create twenty-five (25) Qualifying New Businesses at the Project within ten (10) years of the Opening Date. To be a “Qualifying New Business” means that either of the following is satisfied: (1) it is a business that subleases (or sublicenses) office space within the Subleased Premises from the Targeted Subtenant for twelve (12) consecutive months and uses such office space as its primary professional office (including but not limited to the receipt of physical mail or other deliveries), or (2) it is a business located in the City of Mesa and started by a tenant that subleases (or sublicenses) office space from the Targeted Subtenant and is open for twelve (12) consecutive months. A Qualifying New Business expressly excludes any existing business located in the City of Mesa that relocates to office space within the Subleased Premises.
- (b) the Targeted Subtenant, or Qualifying New Businesses, must create five hundred (500) Qualifying New Jobs at the Project within ten (10) years of the Opening Date, of which Three Hundred (300) of the Five Hundred (500) Qualifying New Jobs must be filled by employees who are residents of the City of Mesa for at least twelve (12) consecutive months. To be a “Qualifying New Job” means that all of the following are satisfied: (1) the job (or position) is a paid employment position where the employee is paid for at least thirty-five (35) hours each week for twelve (12) months within any given consecutive sixteen-month period by the Targeted Subtenant or a Qualifying New Business, (2) the position must be filled by an employee (or employees) of the Targeted Subtenant or a Qualifying New Business for twelve (12) consecutive months, and (3) the principal place of work of the employee (or employees) filling the position must be within the Targeted Subtenant’s space at the Project (or within an expanded premises of the Targeted Subtenant or a Qualifying New Business that is located within the City of Mesa) for twelve consecutive months. The City Manager (or designee) will have the authority to review and reasonably determine compliance with this provision.
- (c) Within thirty (30) days of the date required for compliance with the above Section 4.17.2(a) and Section 4.17.2(b), Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) must provide commercially reasonable evidence establishing compliance with these requirements; and the Parties will agree in writing to one compliance date for both above subsections.

4.17.3 Additional Remedies, Repayment, and Extinguishment. Notwithstanding any limitation in Section 9.4 or other limitation in the Development Agreement, following additional remedies and terms will apply:

- (a) For any uncured Event of Default, the Economic Development Credits and Permit Reimbursements will be automatically deemed fully extinguished, and Developer will not be entitled to any additional or future Economic Development Credits or Permit Reimbursements.
- (b) Upon any uncured Event of Default relating to Section 4.17.1 or Section 4.17.2 relating to performance by the Targeted Subtenant, Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) will pay to City that amount of money equal to the Economic Development Credits and Permit Reimbursements received by Developer, which payments (i) will be paid as Rent under the Lease and as the License Fee under the License; (ii) will be paid in equal installments over the same period of time in which such credits and reimbursements were received by Developer; and (iii) will commence with the first payment of Rent (under the Lease) or License Fee (under the License) owing after the uncured Event of Default, as follows:

	<b>Economic Development Incentive (due back to City)</b>	<b>New Job Creation Permit Reimbursement (due back to City)</b>	
<b>Vacate Years 1-5</b>	100%	100%	
<b>Vacate Year 6</b>	50%	If 500/300* New Jobs Created: 50%	If less than 500/300* New Jobs Created: 100%
<b>Vacate Year 7</b>	40%	If 500/300* New Jobs Created: 40%	If less than 500/300* New Jobs Created: 80%
<b>Vacate Year 8</b>	30%	If 500/300* New Jobs Created: 30%	If less than 500/300* New Jobs Created: 60%
<b>Vacate Year 9</b>	20%	If 500/300* New Jobs Created: 20%	If less than 500/300* New Jobs Created: 40%
<b>Vacate Year 10</b>	10%	If 500/300* New Jobs Created: 10%	If less than 500/300* New Jobs Created: 20%

\*500 total Qualifying New Jobs, of which 300 are filled by Mesa residents

4.17.4 Additional Limitations. The Economic Development Credits and Permit Reimbursements: (i) are not transferrable (directly or by operation of law) to any leasehold mortgagee that succeeds to the interest of Developer (as Tenant) pursuant to Section 17 of the Lease, and will be deemed fully extinguished in such event; (ii) will not reduce any obligation of Developer (as Tenant or Licensee) owing to City (as Landlord or Licensor) as a result of Developer's (as Tenant or Licensee) Default under the Lease or License; and (iii) to the extent of any unutilized or unpaid portion of the Economic Development Credits and Permit Reimbursements, will not reduce the Purchase Price for the Premises in the event Developer (as Tenant) exercises its Purchase Option pursuant to the Lease.

5.11 Economic Development Credits and Permit Reimbursement – City Requirements.

5.11.1 Economic Development Credits for the Rent and License Fee. If the Targeted Subtenant is open to the public for business on or before the Opening Date and so long as Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) has complied with and remains in compliance with the requirements of Section 14.17.1, City will provide Economic Development Credits for years three (3) through seven (7), inclusive, of the terms of the Lease and License in the amount of 25% of the Base Monthly Lease Rate and 25% of the Base Monthly License Rate (the "Economic Development Credits") as more fully described and under the terms and limitations provided in Section 4.17.3 and Section 4.17.4 and in Exhibit C (Schedule of Rent) attached to the Lease (as amended) and in Exhibit D (Schedule of License Fees) attached to the License (as amended). If Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) does not comply with all the requirements of Section 4.17.1, Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) will repay City an amount equal to the Economic Development Credits City provided to Developer, subject to Section 4.17.3(b).

5.11.2 Permit Reimbursement. In order to facilitate new job and business creation, City will reimburse a portion of the City permit fees (e.g., construction permitting fees but excluding all impact fees) paid by Developer related to the construction of the Subleased Premises under the following terms and limitations:

- (a) For each new Qualifying New Job and Qualifying New Business that Developer timely establishes compliance with the requirements of this Section 5.11.2, City will reimburse Developer a portion of the permit fees paid by Developer (individually a "Permit Reimbursement"; and collectively "Permit Reimbursements") within ninety (90) days of receipt of Developer's annual submission under Section 5.11.2(a)(iii) or the additional information submission as may be required thereunder. The Permit Reimbursement will be One Thousand Dollars (\$1,000.00) for each Qualifying New Job filled by a resident of Mesa, and Five Hundred

Dollars (\$500.00) for each Qualifying New Job filled by a non-Mesa resident.

- (b) Developer will only be eligible to receive the Permit Reimbursements for each Qualifying New Job and Qualifying New Business as defined in this Agreement.
- (c) Within sixty (60) days of each annual anniversary of the Opening Date, Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License), or the Targeted Subtenant on behalf of Developer, must submit proof to City, by providing commercially reasonable evidence of compliance with all requirements and written certification of, the number of Qualifying New Jobs and Qualifying New Businesses for the twelve-month period starting from the Opening Date (and annually thereafter). Within thirty (30) days of receiving Developer's proof of such compliance, City may request, and Developer will promptly provide, additional information necessary to reasonably establish all requirements have been satisfied to qualify each Qualifying New Job or Qualifying New Business, as applicable. Developer may make only one request for reimbursement per year.
- (d) The City's total payment of Permit Reimbursements is capped at, and will not exceed, \$375,000.00.
- (e) The eligibility period for entitlement for Permit Reimbursements is ten (10) years from the Opening Date.
- (f) If Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) does not comply with all the requirements of Section 4.17.2, Developer (or its permitted assignee, as the Tenant named in the Lease and the Licensee named in the License) will repay City an amount equal to the Permit Reimbursements provided to Developer, subject to Section 4.17.3(b).

3. Amendment to Lease. The Parties amend the Lease by means of the "First Amendment to Lease" attached to this Amendment as Exhibit A (the "Lease Amendment"). Each reference in the Development Agreement to the Lease will now mean and include the Lease Amendment, and when the Parties execute and deliver the Lease, they will additionally execute and deliver the Lease Amendment.

4. Amendment to License. The Parties amend the License by means of the "First Amendment to License" attached to this Amendment as Exhibit B (the "License Amendment"). Each reference in the Development Agreement to the License will now mean and include the License Amendment, and when the Parties execute and deliver the License, they will additionally execute and deliver the License Amendment.

5. Severability. Except as expressly amended by this Amendment and its exhibits, there are no other amendments, modifications or revisions to the Development Agreement (and



its exhibits), and all terms and conditions of the Development Agreement (including its exhibits) are and remain in full force and effect.

6. Statutory Notice Requirement. The Parties acknowledge that this Amendment is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

[The signatures of the Parties are on the following two (2) pages.]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date written above.

**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 \_\_\_\_\_, 2018, 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:

\_\_\_\_\_

**DEVELOPER**

3W MANAGEMENT, LLC,  
an Arizona limited liability company

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

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

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of 3W Management, LLC, an Arizona limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

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

My commission expires:

\_\_\_\_\_

Exhibit A  
To First Amendment to Development Agreement  
“Lease Amendment”

Exhibit B  
To First Amendment to Development Agreement  
“License Amendment”