

MEMORANDUM OF UNDERSTANDING

City of Peoria, Arizona

and

American Life, Inc. and Steinhauer Properties, Inc.

1. **Parties to Memorandum.** The Parties to this Memorandum of Understanding (“Memorandum”) are the City of Peoria, Arizona, an Arizona municipal corporation (“City”) and American Life, Inc. and Steinhauer Properties, Inc. (“Master Developer”).
2. **Background.** City acknowledges an interest for a Master Developer to fund, design, construct, and operate a vertical mixed-use project of approximately 1,000,000+ square feet of Class A Office, Hotel, Parking, Multifamily Residential, Public Space, Retail, Dining and Entertainment on approximately 17 acres of City owned land known as Stadium Point. The Master Developer has an interest in funding, designing, constructing, and operating the Stadium Point Project Area. The City and Master Developer are interested in memorializing their intent to collaborate in the economic development and master development of the Project Area. Therefore, the City has agreed to enter into negotiations with the Master Developer exclusively as their long-term partner in the master development of the Stadium Point site. City desires to sell or lease, and Master Developer desires to acquire (by purchase or lease) and develop certain property, which is generally described or depicted on the attached Exhibit “A” (“Project Property”). The Master Developer is a commercial and residential real estate development company with extensive experience developing commercial and residential real estate projects in irreplaceable locations. On October 31, 2019 the City issued an RFP for the master development of the Stadium Point site, and on or around March 9, 2020, the City chose American Life, Inc. and Steinhauer Properties, Inc. as the successful Master Developer. Development of the Project Property is intended to include approximately 1,000,000+ square feet of Class A Office, Hotel, Parking, Multifamily Residential, Public Space, Retail, Dining and Entertainment, to capitalize on the location of the Project Property’s proximity to the Stadium, and establish a high-density mixed use of economic activities integrated into the existing commercial area. The City and the Master Developer recognize the requirement, as set forth in prior agreements between the City and Major League Baseball (MLB), to provide adequate parking to support Spring Training parking demand.
3. **Memorandum of Understanding.** The City and Master Developer intend to negotiate a development agreement where American Life, Inc. will develop the site as the Master Developer, as agreed upon in the contemplated development agreement, with the City contributing a capital commitment that will be commensurate with the public benefit achieved by the development of the site with the Master Developer owning/leasing and

operating the Project Property in partnership with the City. However, the Parties acknowledge that this document is a “Memorandum of Understanding”, and is neither an agreement nor a contract between them, nor an offer from City that allows acceptance by Master 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 discussion and negotiations, with the Parties understanding that (a) such terms are not complete and require further detail and exploration, 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 right to or in favor of any Party as against the other. Each Party waives any and all right 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, Master Developer acknowledges that any ultimate agreement with the City requires the approval of City Council, 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 City and Master Developer, and does not allow Master Developer the right to use any of the Project Property.

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

- A. **Project Property Transaction Structure.**

The Parties are negotiating the structure of the project property transaction generally described in this Memorandum, but it may include a combination of ground leases, purchase agreements, or options to purchase. There will be a Development Agreement that includes, inter alia, obligations generally described in this Memorandum. The terms “**Agreement**” or “**Agreements**” in this Memorandum means the applicable agreement or agreements approved by the City Council and executed by the Parties. At present, the anticipated project property transaction structure will be as follows:

- i. **Land.** The Parties acknowledge that the land necessary for the development of the Project be obtained by the Master Developer through a negotiated purchase, long term ground lease or a combination of purchase and lease. The City acknowledges it is important that the City provide public improvements which provide a public benefit. Likewise, the City and Master Developer will work together to prepare the site for construction, including the option of the City bringing some sites on the Property to a construction-ready condition as negotiated and agreed upon by the parties. This transaction will involve a long-term development agreement with a lease agreement or purchase

agreement for City-owned property within the Stadium Point Project Area, which may include a lease/purchase option for the Master Developer's acquisition of the land in whole, or in part by purchase of individual pads or sub divided subparcels. The lease or purchase of the land must be completed at or near the time the Master Developer is ready to commence construction. The option to purchase the Land in part, by individual pads or sub divided parcels, will be available for the entire term of the agreement, contingent upon Master Developer meeting agreed upon deliverables and timelines. Good faith efforts will be made by both parties to utilize tax exemptions, district financing mechanisms and revenue sharing arrangements.

- ii. **Master Plan.** The City and Master Developer will discuss preparation of a master development plan, in connection to a development agreement, which will articulate the general terms for project phasing, architectural and planning specifications and infrastructure requirements. The City and Master Developer acknowledges that the primary and initial Phase 1 development will include Class A office, however market conditions may change, resulting in adjustments and/or revisions including, but not limited to, the order of the subsequent project phases; the order of the pad development; square footage of asset types and other aspects of the development that may be affected by fluctuating market conditions. Further, the Parties may consider development projects addressing singular asset classes that provide a truly unique opportunity that promotes the overall P83 experience as being distinctive and experiential. A master development plan for the Stadium Point Project Area, will be completed within twelve (12) months of approval of a development agreement.
- iii. **Public Improvements Contributions.** The City acknowledges public contributions to the project will likely be required. Contributions may be needed to address the City's existing commitments to MLB and may include additional improvements to the project area that will result in public benefit. The Master Developer and the City acknowledge that the City can provide a proportionate contribution of costs involved with the project commensurate to the public benefit.
- iv. **Future Development.** Parties may explore the possibility of the Master Developer being granted first opportunity to develop other City owned properties within the P83 district if the agreed upon benchmarks and milestones established in the development agreement for the Stadium Point development are met.

B. Master Developer Project Requirements.

- i. **Project Property Completion.** It is anticipated that the Master Developer will fund, design, obtain permits for, and construct all phases within seven (7) years subsequent to execution of the underlying development agreement with options for one-year extensions up to three years upon mutual agreement. Both the City and the Master Developer shall have the ability to terminate for non-performance under the Agreements.
- ii. **Site Development in Accordance with Development Agreement terms.** The Master Developer will develop the site in accordance with the terms of the underlying development agreement and any mutually agreed upon changes to the terms of the development agreement, specifications and phasing structure.

iii. **Phases.**

As set forth herein, the parties agree ultimate phasing may be adjusted based on available property, infrastructure assessments, and market conditions; however, the initial phasing is proposed as follows:

- a. Phase 1 – Completion of a Development Master Plan and zoning entitlements, well relocation, pad preparation and other related improvements needed to render the land construction ready.
 - b. Phase 2 – Development and construction of first parking structure which shall accommodate agreed upon parking for MLB obligations; and first office building, including retail.
 - c. Phase 3 – Development and construction of a Hotel, finalization of site improvements and commencement of construction of multifamily and retail units.
 - d. Phase 4 - Development and construction of secondary parking structure, second office building and completion of multifamily and retail units.
- iv. **Deadline Requirements.** The Development Agreement will include deadlines, agreed upon by both Parties, requiring Master Developer to obtain all approvals and permits, commence construction, and complete construction of Phases 1 through 4, with the commencement of each Phase being generally contingent upon completion of the preceding phase, although the Parties recognize that some construction activity may overlap in schedule in the case of acceleration of the project due to market conditions or other factors. The development

agreement will include deadlines, agreed upon by both parties, regarding the terms for leases and/or purchase of city owned properties. The development agreement will include provisions that allow the City to terminate the Agreements (and retain or revert entitlements, as applicable) regarding the Project Property if Master Developer defaults on a deadline or does not timely cure such default, upon reasonable notice to cure. The development agreement shall also include provisions that allow the Master Developer to terminate the development agreement subject to certain conditions.

Master Developer's consent to an established schedule of deadlines and milestones will be a material term of the final, negotiated development, and will ensure that the Project proceeds timely to completion. Therefore, Master Developer hereby agrees to the Milestone Schedule attached as Exhibit "B".

- v. **Public Bidding.** If required by law, Master Developer will comply with Title 34, including public improvements, as may be agreed to in the development agreement.
- vi. **Studies, Reports and Analysis.**
 - a. Master Developer will conduct or cause to be conducted any required traffic studies or parking studies to demonstrate adequate parking to support Spring Training parking demand.
 - b. The Master Developer will clearly define projected sources of funding, projected CapEx for the entire project broken down by asset class, and a general market analysis for each asset class. The City understands that final CapEx financial proforma figures are driven by final design, which may not occur for a period of 9-12 months after the commencement of a development agreement. With that caveat, the Master Developer will provide projected CapEx financial proforma figures based on the anticipated square footage of each asset class and the expected capital investment. The Master Developer will provide sufficient evidence in writing to support the firm's financial ability, demonstrating the viability of the source of financial resources, to execute on their proposed plan according to the timeline proposed for build out. The Parties acknowledge and agree such disclosures are necessary for the City to conduct its due diligence process, and the parties further acknowledge and agree that some information disclosed by the Master Developer to the City may be identified as confidential, agreed upon by the parties as confidential, and therefore be held as confidential as authorized by law in the best interest of the City.

C. **City Project Requirements.**

The contemplated Project Area is a commercially viable site and City participation which provides a public benefit is economically necessary to attract quality businesses and revitalize the area. The Master Developer will need tools to assist in achieving

success and sustainability in the Project Area. As such, the City will be responsible for the following:

- i. At City's sole cost and expense, City shall obtain an Economic Impact Analysis.
- ii. At the City's sole costs and expense, the City shall conduct, or cause to be conducted, an inspection and assessment of existing City water/wastewater infrastructure to the City owned property designated as part of the project. Additionally, the city will be responsible for removing and relocating the existing well located on the project site.
- iii. Provide for agreed upon investments in public infrastructure where needed in the Project Area, which shall be further detailed in the development agreement.
- iv. Subject to the other provisions of this MOU and contemplated development agreement, the City shall pursue financing options as deemed feasible and beneficial by the City (i.e., revenue, bonds, IDA, MDA, tax sharing, reimbursements or other). The City shall determine in its sole discretion the sources of revenue to support its investment; however, existing sources of revenue in the City's general fund, and other non-general fund sources are available to support its investment. Any additional agreements between the Parties for land acquisition costs, infrastructure, parking facilities and the ownership, operation, maintenance, use and occupancy of the Stadium Point Project site shall be structured in such a manner that any financing of the City investment for the Project will be on a fully tax-exempt basis. The City investment is also contingent upon the City receiving the assurances set forth in this MOU, phasing plan and the associated development agreement.
- v. The City will aid the Master Developer to identify and apply for incentives which the Master Developer might be eligible related to the development of its operation in Peoria.
- vi. The City shall provide, at no cost to Master Developer, Priority Track services for the full ten-year term of the agreement. Priority Track review shall be provided pursuant to the City's Peoria Priority Track Development Review Guidelines.
- vii. The City shall jointly market the Project with the Master Developer and the business networks of the Parties. The City's joint marketing activities shall be consistent with its current practices, specifically identification of target industries for the Project, target companies for the Project, and recruitment from target markets that are in alignment with said target industries and companies.

D. **Indemnification.** Master Developer will insure, indemnify, defend, pay and hold harmless City and City Parties for, from and against any and all claims arising out of

this Memorandum, and relating to Master Developer's (and its invitees') actions and improvements on any leased parcel, including but not limited to claims relating to the structural engineering and construction of the improvements.

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 that may produce a binding agreement subject to approval by the City Council.
6. **Sunset.** The Parties, upon City delivering all required materials to Master Developer, shall have six (6) months to negotiate the provisions of a contemplated development agreement, which said agreement will have provisions for its amendment as appropriate. This Memorandum shall have one (1) three month extension upon mutual agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Dated _____

MASTER DEVELOPER

By _____ Its _____

Dated _____

CITY OF PEORIA

Jeff Tyne, City Manager

ATTEST:

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

Vanessa P. Hickman, City Attorney

EXHIBIT A

PROJECT PROPERTY

EXHIBIT B

MILESTONE SCHEDULE

Phase 1 Design <i>(Master Plan, Well Relocation)</i>	Phase 2 Construction <i>(Class A Office, Parking, Retail, Dining,)</i>	Phase 3 Construction <i>(Hotel, Residential, Retail, Dining, Entertainment)</i>	Phase 4 Construction <i>(Class A Office, Parking, Residential)</i>	Full Project Completion Target
9-12 Months	18-24 months*	18-24 months*	18-24 months*	84 months

*Construction phases may overlap with previous phases

**Total project build out no later than 120 months.