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MEMORANDUM **Economic Development – Council Memo ED14-003**

DATE: DECEMBER 12, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PATRICK MCDERMOTT, ASSISTANT CITY MANAGER *PM*

FROM: CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR *CM*

SUBJECT: FIRST AMENDMENT - ROCKEFELLER DEVELOPMENT
 AGREEMENT

RECOMMENDATION: Staff recommends approval of Resolution No. 4733 authorizing the First Amendment to the Development Agreement between the City of Chandler and RG-101, LLC and authorize the Mayor to sign the Development Agreement and related documents as approved by the City Attorney.

BACKGROUND/DISCUSSION: On November 17, 2011, Chandler City Council approved a Development Agreement for a project known as Chandler 101, which supported two development options. One is approximately 820,000 square feet of office space and the second includes 725,000 square feet of office space that would include a hotel/conference center, both options include a parking structure, incidental retail and public infrastructure improvements in an extension of Coronado Street. Prior to the 2009 zoning case, this site was the former location of Gould Electronics from 1977 to 2007, a 68,640 square foot industrial facility that has since been closed and demolished.

As part of the demolition of the existing structures, Gould selected to “crush” the existing building and place it back into the base hole left by the former tenant. This action, along with a number of other items put in place by the previous owner, has made this site incredibly challenging to develop in accordance with the approved Planned Area Development and Preliminary Development Plan that exist on the site today. These items include removal of the former building and its infrastructure, removal of underground components such as a previous waste treatment facility and concrete pylons, and completion of a roadway that was never finished.

Due to the challenges faced on this site for future development, as identified by a third party independent analysis, City Council approved a Redevelopment Area on this site in 2011, which was approved for three years.

Traffic counts at the Loop 101 Freeway and Chandler Boulevard are high based upon the existing infrastructure. Staff concluded that additional traffic from the new proposed development would require additional improvements. The extension and completion of Coronado Street will assist in the maintaining acceptable service levels of traffic in the area. This plan was approved by both the Transportation Commission and Chandler City Council in 2007. As part of this Development Agreement, RG-101, LLC will construct future Coronado Street as part of the first phase of this development.

The City of Chandler and RG-101, LLC continue to work on acquisition of the permits and property needed to complete the Coronado Street ring road. RG-101, LLC has requested a three year extension to the Redevelopment Area in order to allow for completion of the acquisition and construction of Coronado Street. As part of this construction, RG-101, LLC has agreed to commence construction of Coronado Street within 6 months of the effective date of this agreement or 30 days after approval of final requirements (permits, property acquisition, etc.) of all items necessary to build Coronado Street.

FINANCIAL IMPLICATIONS: There are no additional financial requirements above those outlined in the original Development Agreement, except a three year extension of the Redevelopment Area.

PROPOSED MOTION: Move to adopt Resolution No. 4733 authorizing the First Amendment to the Development Agreement between the City of Chandler and RG-101, LLC and authorize the Mayor to sign the Development Agreement and related documents as approved by the City Attorney.

Attachments: Resolution No. 4733
First Amendment to the Development Agreement

RESOLUTION NO. 4733

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHANDLER AND RG-101, LLC, DATED NOVEMBER 17, 2011.

WHEREAS, the City of Chandler and RG-101, LLC, entered into a development agreement dated November 17, 2011, and recorded in the Official Records of Maricopa County on February 17, 2012, as Document Number 20120132261; and

WHEREAS, the parties to the development agreement desire to enter into a First Amendment to Development Agreement for the purpose of extending some of the deadlines set out in the original document, and to make other minor changes consistent with the extension of the deadlines; and

WHEREAS, the City and Developer will mutually benefit from extending such deadlines as provided for in the First Amendment to Development Agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona hereby approves the First Amendment to Development Agreement between the City of Chandler and RG-101, LLC, with such terms, conditions and deadline extensions as are contained in the First Amendment in the form as approved by the Chandler City Attorney, and authorizes the Mayor to execute the First Amendment to Development Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

GAB

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4733 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2013, and that a quorum was present thereat.

CITY CLERK

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (“**Amendment**”) is made by and between the CITY OF CHANDLER, ARIZONA, an Arizona municipal corporation (“**Chandler**”) and RG-101, LLC, a Delaware limited liability company (“**Developer**”). Chandler and Developer shall be referred to in this Agreement, collectively as “**Parties**,” and individually as “**Party**.”

RECITALS

A. Developer is the owner of approximately twenty-four (24) acres of land, legally described on **Exhibit A** (the “**Property**”). The Property is located within the corporate limits of Chandler.

B. Chandler and Developer entered into that certain Development Agreement dated November 17, 2011 (the “**Agreement**”), recorded in the Official Records of Maricopa County as Document Number 20120132261.

C. The Agreement contemplated the construction, in and around the Property, of certain commercial buildings and public improvements to serve regional needs, and for the acquisition of property required for certain of these public improvements.

D. Pursuant to Section 11.7 of the Agreement, the Agreement may be amended by written agreement executed by Chandler and Developer.

E. The Parties wish to amend the Agreement as set forth in this Amendment.

NOW, THEREFORE, of the foregoing recitals and representations and the mutual covenants and conditions in this Amendment, the Parties agree as follows

1. Recitals. All Recitals in this Amendment are incorporated herein by this reference and the truth and accuracy of the Recitals is hereby acknowledged by Chandler and Developer.

2. Defined Terms. Capitalized terms used in this Amendment and not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

3. Preliminary Development Plan, Site Plans, and Subdivision Plats. Section 2.4 of the Agreement is hereby amended as follows:

- a. In the eighth and fourteenth lines of Section 2.4 of the Agreement, the phrase “seven (7)” is deleted in its entirety and replaced with the phrase “ten (10)” and
- b. In the ninth line of Section 2.4 of the Agreement, the phrase “five (5)” is deleted in its entirety and replaced with the phrase “eight (8).”

4. Coronado Street. A new Section 3.10 is hereby added to the Agreement as follows:

Coronado Street Construction. Developer shall commence construction of the Coronado ROW improvements required under the Agreement by the later of:

- A. six (6) months after the Effective Date of this Amendment, or
- B. thirty (30) days from the last to occur of:
 - i. Chandler's acquisition of Parcels 2 and 3 as provided in Section 3.2;
 - ii. approval from SRP and other utility providers with respect to the removal, relocation, installation or other modification of utilities improvements as may be required for the Coronado ROW improvements;
 - iii. issuance of all governmental permits for the Coronado ROW improvements;
 - iv. Chandler obtaining all Temporary Construction Rights for the Coronado ROW improvements pursuant to Section 3.5; and
 - v. Chandler's grant of construction rights for the Coronado ROW improvements pursuant to Section 3.9.

5. Substantial Action Requirement. Section 8.2(B) of the Agreement is hereby amended as follows:

- a. In the third, fifth and eleventh lines of Section 8.2(B) of the Agreement, the phrase "three (3)" is deleted in its entirety and replaced with the phrase "six (6);"
- b. In the sixth and fifteenth lines of Section 8.2(B) of the Agreement, the phrase "five (5)" is deleted in its entirety and replaced with the phrase "eight (8);"
- c. In the ninth and tenth lines of Section 8.2(B) of the Agreement, the phrase "third (3rd)" is deleted in its entirety and replaced with the phrase "sixth (6th)" and
- d. In the fifteenth line of Section 8.2(B) of the Agreement, the phrase "fifth (5th)" is deleted in its entirety and replaced with the phrase "eighth (8th)."

6. Ratification. In case of any conflict between this Amendment and the Agreement the terms of this Amendment shall control. Except as modified by this Amendment, the Agreement is hereby ratified and confirmed in all respects by the Parties.

7. Recordation. This Amendment shall be recorded in its entirety in the Official Records of Maricopa County, Arizona not later than ten (10) days after execution of this Amendment by the Parties.

8. Authority. Each of the Parties represents and warrants to the other that the persons executing this Amendment on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each such individual, in his/her official capacity, is signing.

9. Governing Law. This Amendment shall be governed by and construed under the laws of the State of Arizona, including the applicability of A.R.S. § 38-511.

10. Severability. If any provision of this Amendment is declared void or unenforceable, such provision shall be severed from this Amendment, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses Chandler from undertaking any contractual commitment to perform under any provision hereunder, the remaining portions of this Amendment shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Amendment as may be necessary to achieve the original intent of this Amendment, notwithstanding such invalidity or unenforceability.

11. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all so executed shall constitute one Amendment, binding on the Parties.

12. Entire Agreement. This Amendment constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, pertaining to the subject matter hereof are hereby superseded and merged herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Chandler has caused this Amendment to be duly executed in its name and behalf by its Mayor, and Developer has signed the same, on or as of the day and year first above written.

CHANDLER:

CITY OF CHANDLER, ARIZONA
an Arizona municipal corporation

By: _____

Name: _____

Its: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CHANDLER CITY ATTORNEY *GAB*

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing Amendment was acknowledged before me this ____ day of _____, 2013, by _____, _____ of City of Chandler, Arizona, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

EXHIBIT A

Property

Lot 1 of Minor Land Division for GOULD, a subdivision as set forth in Book 902 of Maps, page 20, records of Maricopa County, Arizona