

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU" or "Memorandum"), is entered into on the day of December __, 2021 (the "Effective Date"), by and between **JF Development Group, LLC**, a Utah limited liability company ("J Fisher" or "Developer"), located at 1216 W Legacy Crossing Blvd, Centerville, Utah 84014, and **Park City Municipal Corporation**, a Utah municipal corporation, located at P.O. Box 1480, Park City, Utah 84060 ("City"). Developer and City may be referred to individually as (the "Party", or collectively, the "Parties").

1. PURPOSE AND SCOPE

The Parties hereby enter into this Memorandum to summarize their mutual agreements relating to the proposed development of a mixed-use, mixed income affordable housing development (the "Project") on the 1.86-acre property owned by the City located at 1875 Homestake Road, Park City, Utah (the "Land"). A legal description of the Land is attached hereto as "Exhibit A" and incorporated herein. This MOU reflects the Parties' negotiations and is intended to outline the terms of a potential development agreement and/or ground lease (the "Agreements"). The Agreements will include additional terms and conditions which are not set forth herein. Until the Agreements are signed by both Parties, either Party may decide not to proceed with the proposed Agreements for any reason or no reason and may terminate this Memorandum by delivering at least sixty (60) days advance written notice to the other, subject to the provisions in this Memorandum.

2. SHARED GOALS OF THE PARTIES

Developer and City desire to create high-quality housing options for the community. The Parties desire to maximize the number of units attaining average affordability of 60% of AMI. A mix of unit types is envisioned to include 2-bedroom units to accommodate some families. The Parties desire the Project to be a model of responsible design attaining high levels of resource efficiency which align with the City's sustainability and net-zero energy goals, as well as high levels of integration into the City's trails and transit plans.

3. RESPONSIBILITIES AND OBLIGATIONS OF DEVELOPER

Developer agrees that the Project would be developed under the following terms, conditions, and constraints:

- a. There would be at least 80% or more affordable units that meet the standards of the City's Housing Resolution 05-2021, which affordable units would include a range of mixed-income units at various area median income or market rate targets;
- b. Affordable units will have a minimum affordability period of (i) fifty (50) years from the certificate of occupancy, or (ii) the length of the ground lease, whichever is greater;
- c. Developer will oversee thorough assessments of the environmental, physical, and geologic conditions of the Land. All work performed pursuant to this MOU shall require City's prior written approval and City shall bear the cost of all such work.

- d. Project will comply with all local and state building codes, and will be consistent with the pillars of the Park City 2020 Vision;
- e. The project will be designed to meet PCMC Design Code and optimize allowable density on the site, and produces a high-quality, enduring living environment that promotes sustainable and environmentally friendly practices;
- f. Developer will deliver a construction plan that helps to meet the energy goals of the City and will work in good faith with the City to achieve the City's Net-Zero energy requirements as described in "Exhibit B" attached hereto and made a part hereof, including elimination of on-site combustion if reasonably achievable;
- g. Developer will present conceptual design, schematic design, design development, and final construction documents for review and approval by the City at each stage of design prior to advancing to next stage;
- h. Developer will initially provide predevelopment funding and all necessary financing to develop the Project that will not require any additional funding from the City (outside of the agreed upon ground lease for the Land), unless otherwise agreed upon between the Parties to achieve additional affordability, sustainability, or other stretch goals as determined by the City;
- i. Developer will work with the City's Transportation Planning department to design a parking plan and accessibility that includes walkability features, secured bike parking, alternative modes of transportation, and reduces residents' reliance on personal vehicle use;
- j. Developer will seek neighborhood input through community meetings and/or outreach;
- k. Developer will coordinate monthly progress meetings with a Project Management Group consisting of the Developer, Architect, General Contractor, along with the City's Housing Development Manager, and other City's designees;
- l. Developer will provide long-term operations and maintenance of the Project, including resident services programming;
- m. Developer will provide the City with quarterly operating reports including occupancy, rents, collections, maintenance activities and resident communications/complaint resolutions throughout the life of the Project; and
- n. Developer anticipates commencing development activities, as further illustrated in the milestone schedule reflected on "Exhibit C" attached hereto and incorporated herein, no later than one (1) year after the execution of the Agreements (or such other feasible date that may be agreed to by the Parties after execution of this Memorandum), subject to the satisfactory and commercially reasonable response, approval and cooperation from the City and associated approval authorities.

4. RESPONSIBILITIES AND OBLIGATIONS OF CITY

City agrees that the Project shall be developed under the following terms, conditions and constraints:

- a. City retains ownership of the Land;
- b. City will allow Developer access to Land for surveying and/or testing, as required for planning and due diligence prior to the execution of Agreements;
- c. City will negotiate in good faith a ground lease that has terms and pricing which are contingent upon the securing of all financing for the development and operation of the Project;
- d. City will provide administrative support to successfully work through the required reviews and approvals through issuance of certificate of occupancy for the Project;
- e. City will assist in engaging with the neighborhood for community meetings and/or outreach;
- f. City will use good faith, diligent efforts to cooperate with Developer in seeking its applicable entitlements, approvals, and permits for the Project; and
- g. City will work in good faith with Developer to achieve acceptable Project feasibility through appropriate support and consideration of environmental remediation, affordability, design, sustainability, transportation, and other Project requirements and preferences.

5. TERMS OF UNDERSTANDING

Subject to Section 1, the term of this Memorandum shall be for a period of two (2) years from the Effective Date and may be extended upon written mutual agreement of both Parties. Upon execution hereof, the Parties will use diligent, good faith efforts to finalize and execute the Agreements. The Agreements will supersede and terminate this Memorandum.

6. LEGAL COMPLIANCE

The Parties acknowledge and understand that they must be able to fulfill their responsibilities under this Memorandum in accordance with the terms and conditions hereof and the provisions of the law and regulations that govern their activities. Nothing in the Memorandum is intended to negate or otherwise render ineffective any such provisions or operating procedures. The Parties assume full responsibility for their performance under the terms of this Memorandum and acknowledge time is of the essence.

If at any time either Party is unable to perform their duties or responsibilities under this Memorandum as required hereunder, the affected Party shall immediately provide written notice to the other Party to establish a date for resolution of the matter.

7. LIMITATION OF LIABILITY

No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Memorandum.

8. NOTICES

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person, by email, or by certified mail, return receipt requested, to the address set forth below or to such address that has been furnished to the other in writing.

Park City Municipal Corporation
Jason Glidden
Housing Development Manager
jglidden@parkcity.org
445 Marsac Ave
Park City, Utah 84060

J Fisher
Ryan Davis
Partner
ryan.davis@jfisherco.com
1216 W Legacy Crossing Blvd, Ste 300
Centerville, UT 84014

9. GOVERNING LAW

This Memorandum shall be governed by and construed in accordance with the laws of the State of Utah.

10. COST REIMBURSEMENT

As part of its due diligence to deliver the Project, Developer may incur additional future environmental, geotechnical, civil engineering, architectural, and other predevelopment costs (“Predevelopment Costs”). In the event the City, through no fault of the Developer, elects to terminate this Memorandum pursuant to Section 1 or does not enter into the Agreements with Developer within one (1) year of the Effective Date, the City shall, within sixty (60) calendar days of written notice from Developer, reimburse Developer the actual Predevelopment Costs incurred, not to exceed FIFTY THOUSAND DOLLARS (\$50,000.00). Developer will provide invoices and documentation to support the Predevelopment Costs with written request for reimbursement.

11. CONFIDENTIALITY

To the maximum extent permitted by law, this Memorandum is strictly confidential and is submitted on the basis that this MOU, including its existence, or any of its terms and contents, together with any other confidential information disclosed by either Party to the other, may not be disclosed to anyone other than the receiving Party’s directors, officers, employees and advisers on a need-to-know basis, without first obtaining the prior written consent of the disclosing Party or otherwise required by law. This provision shall survive for twelve (12) months after any termination of this Memorandum, except to the extent caused by the execution of the Agreements.

The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code, 1953, as amended and Park City Municipal Code Title 5

("GRAMA"). All materials submitted by Developer pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure rests solely with Developer. Any materials for which Developer claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Developer of reasons supporting its claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. The City will make reasonable efforts to notify Developer of any requests made for disclosure of documents submitted under a claim of confidentiality. Developer specifically waives any claims against the City related to any disclosure of materials pursuant to GRAMA.

12. EXCLUSIVITY

The City agrees that, for two (2) years after the Execution Date, City will not enter into any binding or non-binding agreements concerning any financing, investment, operational, or business arrangements on the Land, or otherwise enter into any agreement that would preclude or materially impair the Developer from performing the responsibilities or accomplishing its obligations herein. The Parties agree to negotiate in good faith the terms and provisions of the Agreements and to use reasonable, diligent efforts to finalize and execute such Agreements.

13. AUTHORIZATION AND EXECUTION

The purpose of this Memorandum is to set forth the general description of a proposed transaction and to indicate the willingness of the Parties to continue negotiations with respect to such transaction, using good faith and to the best of their abilities, the goals and objectives stated in this MOU. The signing of this Memorandum shall not constitute a legally binding agreement between the Parties or place a legally enforceable obligation upon the Parties, except with respect to the Cost Reimbursement, Confidentiality, and Exclusivity provisions contained herein, which provisions shall survive the termination of this Memorandum.

14. ASSIGNABILITY

This Memorandum shall not be assignable by either Party without the express written consent of other Party; provided; however, that Developer may assign its interest in this Memorandum, and its rights and obligations hereunder, to an entity that controls, is controlled by, or under common control with the Developer upon written notice to the City, which notice shall include the assignee's written confirmation that it has assumed Developer's interest and rights and obligations under this Memorandum.

15. COUNTERPARTS

This Memorandum may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

16. ELECTRONIC SIGNATURES

Each party agrees that the signatures of the parties included in this Memorandum, whether affixed on an original document manually and later electronically transmitted or whether affixed by an electronic signature through an electronic signature system such as DocuSign, are intended to authenticate this writing and to create a legal and enforceable agreement between the parties hereto.

[SIGNATURE PAGE FOLLOWS]

This MOU shall be signed by Park City Municipal Corporation and JF Development Group, LLC, and shall be effective as of the date first written above.

CITY:

PARK CITY MUNICIPAL CORPORATION,
a Utah municipal corporation

By: _____
Name/Title: Andy Beerman, Mayor

DEVELOPER:

JF DEVELOPMENT GROUP, LLC,
a Utah limited liability company

By: J. FISHER COMPANIES, LLC,
a Utah limited liability company
Its: Manager

By: _____
Name/Title: Owen Fisher, its Manager

EXHIBIT A

Property Address: 1875 Homestake Road, Park City, Utah

Parcel Number: YARD-B-1AM-X

Total Acreage: 1.86

Zoning: General Commercial Zoning District

Legal Description: LOT B THE YARD SUBDIVISION FIRST AMENDED; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE. CONT 1.86 AC. 2408-4



EXHIBIT B
PARK CITY MUNICIPAL NET-ZERO POLICY

RESOLUTION 28-2017

A RESOLUTION ADOPTING NET-ZERO ENERGY PERFORMANCE REQUIREMENTS FOR ALL NEW OR RENOVATED BUILDINGS AND FACILITIES CONSTRUCTED USING FUNDS ALLOCATED BY PARK CITY, UTAH TO PROMOTE ENERGY EFFICIENCY, REDUCTION OF CARBON EMISSIONS, AND SUSTAINABLE DESIGN

WHEREAS, the City has adopted ambitious climate and energy targets to be net-zero carbon and running on 100% renewable electricity by 2022 for municipal operations and by 2032 community wide; and

WHEREAS, buildings and facilities currently account for approximately thirty-nine percent of carbon emissions from municipal operations; and

WHEREAS, the City desires to promote sound environmental practices in new construction and renovation of facilities that are funded by the City; and

WHEREAS, buildings and facilities designed and verified to be net-zero energy with the collaboration of appropriate commissioning agent(s) and energy modeler does not increase the costs of the building when taken over the lifetime of the project. Efficiency measures and on-site renewables incorporated during the design phase of the facility does not significantly increase the cost of the facility; and

WHEREAS, buildings designed for sustainability promote a healthy environment, provide long-term cost benefits through the efficient use of energy, optimize building performance, and create healthier workplaces for employees and visitors; and

WHEREAS, a strategic approach to sustainable buildings and energy management can produce twice the savings for the bottom line and the environment as typical approaches; and

WHEREAS, the International Livings Futures Institute's Energy Petal certification, a score of zero from the Zero Energy Performance Index, and Passive House certification verify a building's actual performance on an annual basis.

NOW THEREFORE, be it resolved by the City Council of Park City as follows:

SECTION 1. REQUIRE MUNICIPAL BUILDINGS AND FACILITIES TO BE VERIFIED AS NET-ZERO ENERGY.

It is the intent of the City Council of Park City that all new buildings and major renovations be designed and perform to a standard of net-zero energy on an on-site basis. That is, all new and renovated buildings and facilities must produce the same amount or more renewable energy as the facility uses on an annual basis.

According to the U.S. Department of Energy (DOE), in general, a net-zero energy building is one that balances the annual energy use with renewable energy, thereby reducing the use of non-renewable energy in the building sector. For the purposes of

this policy, the net-zero definition shall apply to any building or facility designed and constructed using Park City Municipal Corporation capital funds and refers to on-site energy usage and production.

Net-zero energy buildings use all cost-effective measures to reduce energy usage through energy efficiency and include renewable energy systems that produce enough energy to meet remaining energy needs. There are a number of long-term advantages of moving toward net-zero energy buildings, including lower operating and maintenance costs, lower environmental impacts, improved comfort levels, better resiliency to power outages and natural disasters, and improved energy security.

The measurements for Park City's net-zero buildings are through annual energy consumption minus annual on-site energy production. Related to the energy usage, the carbon emissions will also be tracked. An additional metric to determine the energy efficiency of buildings is Energy Use Intensity (EUI). Buildings should achieve an EUI of 25 or below. Emissions from construction activities are excluded.

A building that achieves the net-zero energy definition should first and foremost reduce the energy needs through all cost-effective and demand-avoidance strategies. That is, all buildings and facilities using Park City Municipal Corporation funds must be built as energy-efficient as possible. To offset the remaining energy needs of the building, use on-site installed renewable energy (preferred). If on-site renewable energy production is not possible to meet the entire energy budget of the building or facility, a plan for offsetting any remaining emissions within City boundaries must be submitted for approval by City Council.

Section 2. REQUIRE FACILITIES BE DESIGNED, COMMISSIONED, AND VERIFIED TO BE NET-ZERO ENERGY.

To ensure these project outcomes, additional specialists are required and contracted directly by the Architect/Design Team for all building projects with expected energy consumption over 1 MMBtus annually. The following personnel must work together to provide the Energy Use Intensity (EUI), annual fuel usage (in MMBtus), and annual electricity usage (kWh). In addition, expected return on investment (ROI) of installed energy efficient technologies and renewable energy installations should be submitted.

1. Energy Modeler Engineer (EME) – Works with the Architect to optimize/validate the design and confirm that energy modeling carries through as changes to the design are made; compares life cycle cost analysis (LCCA) of various equipment and design options to assist in informing value engineering and budget considerations. A specialist dedicated to energy management and energy modeling, the EME ensures that the systems designed by the Architect actually comply with the energy performance desired.
2. Building Envelope Commissioning Agent (BECxA) – The building envelope is the critical container of the energy efficiency features and largely determines operation costs and occupant comfort. The BECxA works with Architect,

EME, and Contractors to ensure that the building envelope is properly designed to achieve energy goals and that it is actually constructed as designed. Building components included in the building envelope commission include below-grade construction and foundation, exterior enclosure construction above grade, walls, claddings, fenestration, sheathing, framing, insulation, air and vapor barriers, drainage control layers, roofing, roofing insulation, skylights, hatches and any roof openings/penetrations...all of the components that impact long-term performance of the enclosure.

3. Mechanical Engineer/Commissioning Agent (CxA) – Working with the Architect, EME and Contractors, the CxA ensures that the building systems (cooling, heating, steam, air handling, plumbing, emergency power and sprinkler systems, renewable energy systems, electrical, and building automation systems) have been designed and installed to function properly together, are tested and balanced, and commissioned. Follow-up verification is conducted at 3, 6, 9 and 12 months to ensure that the building systems are performing as intended.

The Owner, design team, EME, BECxA and CxA review each design phase (concept, schematic, design development, construction documents) submittal for compliance to the selected net-zero certification. All are involved throughout the construction process and work with contractors to remedy sub-optimal performance before building completion and any deficiencies discovered after occupancy.

All new projects that are built using municipal funding must call for net-zero energy buildings and facilities, with a focus on achieving net-zero performance. Prior to the end of the Schematic Design (SD) phase, the architect and energy modeler must evaluate the feasibility of pursuing one of three net-zero building certifications:

- 1) The Living Building Challenge's Energy Petal Certification; or
- 2) The zEPI (Zero Energy Performance Index) score of 0; or
- 3) Passive House Certification, with on-site renewable systems to achieve net-zero energy performance.

In addition, all new projects that are built using municipal funding must segregate the major loads of the building (i.e. sub metering) into e.g. lighting, HVAC, plug loads.

SECTION 3. APPLY THIS RESOLUTION TO THE FOLLOWING PROJECTS.

Park City will apply this policy to the following construction projects design when the contract is first solicited after the date of this Resolution, except as exempted or waived under this Resolution: All new construction to construct buildings or facilities owned and controlled by the City, or using any City funds for construction, including all affordable housing projects developed by the City, and all major renovations of buildings owned and controlled by the City when the remaining has a useful life in excess of fifteen

years. The term "major renovation" means a construction project affecting more than 25% of the building's square footage.

SECTION 4. EXEMPT PROJECTS FROM THIS POLICY WITH CITY COUNCIL APPROVAL.

Park City will not apply this resolution to the following, and City departments are required to document the reason for the exemption:

- Buildings or facilities where on-site renewable energy production is physically impossible, cost-prohibitive, or unsafe. Note: determination of cost-prohibitive will be determined by City Council on a project-by-project basis.
- Projects where the useful life of an improvement does not justify whatever additional expense would be incurred to increase the efficiency.
- Projects where the use of net-zero will create an impediment to construction due to conflicts of laws, building code requirements, federal or state grant funding requirements, or other similar requirements.
- Process equipment for water treatment and distribution, e.g. pumps, treatment and filtration equipment, underground vaults, metering equipment.

SECTION 5. EFFECTIVE DATE. This resolution shall become effective upon adoption.

PARK CITY MUNICIPAL CORPORATION


Mayor Jack Thomas

Attest: 

Michelle Kellogg, City Recorder

Approved as to form:

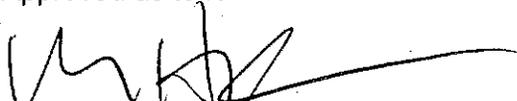

Mark D. Harrington, City Attorney

EXHIBIT C MILESTONE SCHEDULE

The dates provided herein are explicitly targets and not contractual obligations.

December 2021

- Architecture: Yield Study
- Architecture: Preliminary Concept Sketch
- Architecture: Site Analysis
- Contract: Sign MOU
- Community Engagement: Neighborhood Meetings & Public Input
- Community Engagement: Media Strategy

January 2022

- Architecture: Conceptual Design
- Planning: Initial Council Work Session

February 2022

- Architecture: Schematic Design
- Planning: Preliminary MPD & CUP Submission to Park City
- Contract: Option to Ground Lease Executed
- Contract: Begin Ground Lease Drafting

March 2022

- Planning: Planning Staff Review

April 2022

- Planning: Planning Staff Review

May 2022

- Planning: Planning Commission Work Session

June 2022

- Planning: First Planning Commission Hearing
- Architecture: Design Documents
- Contract: Ground Lease Executed

July 2022

- Planning: Second Planning Commission Hearing

August 2022

- Planning: Planning Commission Approval
- Financing: Private Activity Bond and UHC Application Deadline

September 2022

- Architecture: Construction Drawings

October 2022

- Financing: Private Activity Bond Board Meeting and Award
- Construction: Construction Bids

November 2022

- Permitting: Footing & Foundation and Building Permit
- Construction: Groundbreaking

Q1-Q2 2023

- Financing: Financial Close

Q3-Q4 2024

- Construction: Certificate of Occupancy