

When recorded, return to:  
Chandler City Attorney's Office  
City of Chandler  
Post Office Box 4008, Mail Stop 602  
Chandler, Arizona 85244  
Attn.: Thomas Allen

**DEVELOPMENT AGREEMENT**

**CITY OF CHANDLER,  
an Arizona municipal corporation**

**and**

**SPECHT COMMERCIAL PROPERTIES, LLC  
an Arizona limited liability company**

**Approved by the Chandler City Council on \_\_\_\_\_, 2021**

## **DEVELOPMENT AGREEMENT**

This development agreement (the “**Agreement**”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Chandler, an Arizona municipal corporation (“**City**”), and Specht Commercial Properties, LLC, an Arizona limited liability company (“**Developer**”). City and Developer are sometimes referred to in this Agreement collectively as the “Parties,” or individually as a “Party.”

### **RECITALS**

A. City owns real property located at 51 East Boston Street, within the City of Chandler, Arizona (the “**Property**”), totaling approximately 3,000 square feet and legally described in the attached **Exhibit A**. the Property includes a 2,000 square foot one-story building.

B. City desires to have the Property privately developed and re-purposed for a use that will complement the nearby retail, restaurant, and commercial uses in the City’s downtown area.

C. In response to a request for proposals (“**RFP**”) issued by City in December 2020, Developer submitted a written proposal to purchase and redevelop the Property for entertainment purposes, consistent with the existing zoning for the Property. Developer’s proposal was selected by City as the winning proposal.

D. City and Developer acknowledge that significant benefits will accrue from the redevelopment and re-use of the Property, including, but not limited to, creation of jobs, increased tax revenues, the stimulation of further economic development, and the provision of additional recreational amenities within the downtown area of Chandler.

E. City finds that this Agreement is consistent with Chandler’s general plan, as defined in A.R.S. § 9-461, applicable to the Property on the date this Agreement is executed.

F. This Agreement is intended to set forth certain obligations of the Parties with respect to contemplated future improvements of the Property. The Parties intend for this Agreement to meet the requirements of A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the Property, as more fully described in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **SECTION 2. EFFECTIVE DATE & TERM.**

**2.1. Effective Date.** This Agreement shall be effective as of the date that it is executed by the representative of the last Party to sign it and its recordation in the Official Records of Maricopa County, Arizona, in accordance with the requirement of A.R.S. § 9-500.05.

**2.1. Term.** The term of this Agreement (“**Term**”) shall be five (5) years from the Effective Date.

### **SECTION 3. PURCHASE AND SALE OF THE PROPERTY.**

**3.1. Purchase & Sale.** Within ten (10) days after the Effective Date of this Agreement, the Parties shall enter into a purchase agreement for the Property, which shall substantially be as set out in attached **Exhibit B** (the “**Purchase Agreement**”), pursuant to which Developer shall purchase the Property from City for the price of four hundred and sixty thousand dollars (\$460,000). If Developer is unable to secure financing and close escrow by 5:00PM on [date], this Agreement shall terminate and Developer shall forfeit its rights under this Agreement and have no recourse against City.

### **SECTION 4. COMPLETION OF DEVELOPMENT.**

**4.1** Developer shall complete all improvements and begin operation of its live comedy entertainment venue at the Property no later than December 31, 2021.

### **SECTION 5. LIMITATIONS ON USE OF THE PROPERTY.**

**5.1. Live Entertainment Uses Only.** Developer must operate a live comedy entertainment venue in substantially the format proposed in Developer’s submission to City’s RFP for the entire Term of the Agreement. This may include, but is not limited to, live performances, classes, training, and sales of food, beverages, and merchandise incidental to live comedy entertainment.

### **SECTION 6. INDEMNITY; RISK OF LOSS.**

**6.1. Indemnity by Developer.** Developer shall pay, defend, indemnify and hold harmless City and its City Council members, officers and employees for, from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys’ fees, experts’ fees and court costs associated therewith) which arise from or relate in any way to any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer’s obligations under this Agreement; provided, however, that the provisions of this paragraph 5.1 shall not apply to loss or damage or claims which are attributable solely to acts or omissions of City, its agents, employees, contractors, subcontractors or representatives, and Developer shall have no defense obligation in any instance in which a claim is asserted based solely upon an act or omission of City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

**6.2. Risk of Loss.** Developer assumes the risk of any and all loss, damage or claims to any portion of the improvements to be constructed on the Property.

## **SECTION 7. EVENTS OF DEFAULT; REMEDIES.**

**7.1. Events of Default.** It shall be a default hereunder if either Party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting Party specifying in reasonable detail the nature of the failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the defaulting Party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion within ninety (90) days.

**7.2. Remedies.** In the event of a default hereunder and failure by the defaulting Party to timely cure the default as provided in paragraph 7.1, the non-defaulting Party shall have all remedies available to it at law or in equity. City or Developer, or any successor-in-interest or assignee, may institute a legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided, however, that claims for damages shall be limited to actual damages. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary or any other damages other than actual damages for a breach of this Agreement by either Party.

**7.3. Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing.

**7.4. Rights and Remedies Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

## **SECTION 8. MISCELLANEOUS PROVISIONS.**

**8.1. Notices.** Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To Developer: Specht Commercial Properties, LLC  
1728 W. Lark Drive  
Chandler AZ 85286  
Attention: David Specht  
Phone: (480) 699-4598

To Chandler: City of Chandler  
Cultural Development Director  
Mail Stop 416, Post Office Box 4008  
Chandler, Arizona 85244-4008  
Attn.: Kim Moyers  
Phone: (480) 782-3045  
Fax: (480) 782-2209

With a copy to: City of Chandler  
City Attorney's Office  
P. O. Box 4008  
Chandler, AZ 84244-4008  
Phone: (480) 782-4643  
Fax: (480) 782-4652

**8.2. Effective Date of Notices.** All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice sent by fax machine shall be deemed effective upon confirmation of the successful transmission by the sender's fax machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. **Any communication made by e-mail or similar method shall not constitute notice pursuant to this Agreement.**

**8.3. Waiver of Right to Trial by Jury.** The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.

**8.4. Attorneys' Fees.** In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, costs of transcript preparation, and other reasonable and necessary direct and incidental costs of such dispute.

**8.5. Amendment.** No change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona.

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

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

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

**8.9. Further Assurances.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (i) this Agreement as in full force and effect, and (ii) the performance of the obligations hereunder at any time.

**8.10. No Partnerships, Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Developer and City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

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

**8.12. Entire Agreement.** This Agreement and the Exhibits hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, and understandings of the Parties, oral or written, are hereby superseded and merged herein.

**8.13. Additional Provisions.** Developer agrees to and does knowingly waive any and all rights to compensation for diminution in value pursuant to A.R.S. § 12-1134 that may now or in the future exist as a result of the approval or performance of, and all conditions, terms and agreements contained in this Agreement.

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IN WITNESS WHEREOF, City has caused this Agreement 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,  
an Arizona municipal corporation

By:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney TA

STATE OF ARIZONA       )  
                                          ) ss.  
County of Maricopa       )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Kevin Hartke, Mayor of City of Chandler, an Arizona municipal corporation, on behalf of the municipal corporation.

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

My Commission Expires:

\_\_\_\_\_

**DEVELOPER:**

Specht Commercial Properties, LLC  
an Arizona limited liability company

By: Specht Commercial Properties

Name: David Specht

Its: JMS

STATE OF ARIZONA           )  
                                          ) ss.  
County of Maricopa        )

The foregoing Agreement was acknowledged before me this 3rd day of May, 2021, by David M. Specht, the owner of Specht Commercial Properties, LLC, an Arizona limited liability company, on behalf of the limited liability company.

My Commission Expires:

03-31-2024

Jessica Sweet  
Notary Public

