

Exhibit A

MEMORANDUM OF UNDERSTANDING

This is a memorandum of understanding by and between the City of San Luis, a municipal corporation and political subdivision of the State of Arizona, and San Luis Commercial Holdings, LLC, a limited liability company authorized to do business, and doing business in the State of Arizona.

I. PURPOSE

THE CITY OF SAN LUIS, AZ ("**City**") and SAN LUIS COMMERCIAL HOLDINGS, LLC, ("**Developer**") have a common interest in establishing a relationship to develop and maintain a multi-use hotel, restaurant, convenience store and gas station, as well as other uses as an economic development project within the City of San Luis, Arizona (the "**Project.**")

The purpose of this Memorandum of Understanding ("**MOU**") is to outline an understanding with respect to the Project, the participation of the City, the necessary agreements and transactions that will need to take place and establish a projected timetable. This MOU is not a formal binding contract and it is understood and agreed that formal documentation of the contemplated transactions needed for this Project will be evidenced by future written documents.

II. LOCATION OF PROJECT

A. Location. The proposed Project location will be a 5 to 8 acre site at the northwest corner of the intersection of Highway 95 and 22nd Street within the City's limits (the "**Project Site**"). It is understood the Project Site is owned by MJS Properties, LP, an Arizona limited partnership, ("**MJS**") and acquisition of the Project Site by Developer has yet to occur.

B. Survey. The Project Site has yet to be surveyed for a legal description. Upon or prior to the acquisition of the Project Site the Developer shall retain at its cost a licensed surveyor to coordinate a survey of the Project Site with MJS to determine the legal description for the Project Site. Upon completion of the survey, the Developer shall direct the surveyor to provide the legal description to City.

C. Acquisition of Project Site. Developer is to acquire the site in its own name. However, the City has offered to cooperate with Developer in utilizing the San Luis Industrial Development Authority ("**IDA**") for property acquisition as a possible development option should Developer desire it, but such cooperation shall not require the expenditure or appropriation of any funds by the City, except as expressly stated herein, or the IDA except the cost of customary staff functions of the City or the IDA.

III. CITY PARTICIPATION

City intends to participate in the following manner:

- a) City agrees to enter into an appropriate agreement or agreements to purchase from Developer two acres of land to be used for a retention basin to be used for (i) control of storm water from the Project Site and (ii) adjoining public roadways. City will pay appraised fair market value for said land. The location of the two acres will be adjacent to public right of way.
- b) The total amount that the City will pay will not exceed \$500,000, an amount comprised of the amount paid for the two acres under II.D.a inclusive of closing costs plus the costs of infrastructure in public right of way needed to support development of the project (collectively, the "Public Infrastructure Costs"). Infrastructure means either water or wastewater mains in public rights of way that will or are to become property of the City or street and road development that likewise will become property of the City of San Luis.
- c) If permitted by Title 34 of the Arizona Revised Statutes, the City may pay Public Infrastructure Costs in the form of reimbursement of amounts paid by the Developer, provided that it can be shown that this is a cost savings to the City as opposed to contracting independently using public procurement procedures.
- d) Marketing. The City further agrees to work with Developer in the marketing of the hotel and restaurant, and other project businesses, including the promotion of the hotel to governmental agencies and other businesses doing business in City.

IV. TRANSACTION PRIVILEGE TAX CREDIT

Developer intends to develop a "brand" hotel, a "brand" restaurant, a franchise convenience store and gas station, and other transaction privilege tax generating businesses on the Project Site. These businesses in addition to generating transaction privilege taxes directly to the City will indirectly benefit the City by providing employment in a City with a historically 50 percent unemployment rate, enhance property values of nearby properties, and generate other economic development in the City limits. Developer to maximize its leverage and maximize use of its development funding for actual development of the site as opposed to using those resources for land acquisition, desires to receive credit for the transaction privilege tax revenue (i.e. transaction privilege tax revenue) being generated to the City from the developed Project Site for the cost to acquire the Project Site. Having an effective tax credit where excise privilege taxes being generated are used, in part, to acquire and develop the Project Site is a material part of the transaction to Developer.

A.R.S. §9-500.11 allows a municipality to enter into a "retail tax incentive agreement" as that term is defined in that statute. By having an agreement or set of agreements which

comply with the provisions of this statute, Developer may get credit for a portion of the sales, use, or transaction privilege taxes payable to the City in connection with the construction, development, or operation of retail development activities on the Project Site by Developer or its nominee(s). Such a credit will be hereinafter referred to as the “**Retail Tax Incentive Agreement**”.

It is understood and agreed that any structure or documentation of the transactions between the City, an IDA, and/or Developer for the Project will provide Developer the Retail Tax Incentive Agreement as set forth in this Section. Final documentation may be with a nominee or assignee of Developer. Approval of such nominee or assignee will be in accordance with the General Provisions as set forth in Section VI of this MOU.

A.R.S. §9-500.11 provides in part that for a tax credit to be provided by the Retail Tax Incentive Agreement, at all times the sales, use, or transaction privilege taxes payable to the City in connection with the construction, development, or operation of retail development activities on the Project Site must equal or exceed the amount of the credit being given to Developer or its nominee or assignee. It requires a verification by an independent third party (the “**Economic Benefit Assessment**”) that any tax incentive provided must raise more revenue than the amount of the incentive. The Economic Benefit Assessment will determine the amount of economic benefit available to the City on an annual basis (the “**Estimated Annual Economic Benefit**”). The Developer may not pay for, finance, nor have input into the selection of, the independent third party providing the Economic Benefit Assessment. Any Retail Tax Incentive Agreement between the parties hereto must be so conditioned.

Article 9 §7 of the Arizona Constitution prohibits any subdivision of the State giving or lending its credit or making any donation, grant, or subsidy to any person, association, or corporation. Arizona has recognized that if (i) the public treasury receives benefits that meet or exceed the cost to the public treasury and (ii) if the expenditure of public funds is for a public purpose, then there is consideration for the transaction and the matter is not in violation of this provision of law.

So that the City will, at all times, raise more revenue than the amount of the credit provided by the Retail Tax Incentive Agreement, it is agreed that such credit will be structured as follows.

A. Eighty percent (80%) of all transaction privilege taxes of the City as generated from businesses established on the Project Site will be rebated to Developer or its nominee or assignee until the sum of one million five hundred thousand dollars (\$1,500,000.00) is paid.

B. Payment of the rebated city transaction privilege tax will be conditioned upon a showing of a public benefit to the City of San Luis as follows. The Retail Tax Incentive Agreement will provide as a required part of the bargain that there will be employment of persons living within the effective market area of the businesses located within the municipal limits of San Luis in sufficient numbers and annual wages to offset the amount of sales tax rebate being generated annually pursuant to the Retail Tax Incentive Agreement. City shall engage an appropriate study to demonstrate the economic effect of this bargained for employment to the public treasury of the City so as to show that the benefit is roughly equivalent to the cost of the rebate of taxes. Developer shall cause the businesses located on the Project Site to report quarterly the number of employees living within the effective market area as described above as well as the amount of gross wages paid to said persons to verify the public benefit received. City shall have a reasonable right to inspect or audit records of these businesses to verify the information being reported. In the event that there are two consecutive quarters in which the benefit received by the City in connection with this employment is not equal to or greater than the Estimated Annual Economic Benefit, the amount of taxes being rebated will be reduced by an amount based on the relative difference between the actual economic benefit for the prior two consecutive quarters and the Estimated Annual Economic Benefit. By way of illustration and without limiting the generality of the preceding sentence, if the Estimated Annual Economic Benefit is \$300,000 and if the actual economic benefit for the two consecutive quarters when annualized is \$150,000 the amount of rebated sales tax will be reduced from eighty percent (80%) of all transaction privilege taxes of the City generated from businesses established on the Project Site to forty percent (40%) of all transaction privilege taxes of the City generated from businesses established on the Project Site

C. If a reduction in the percentage of transaction privilege taxes is required under Section IV.B, the Developer may request that credit be given for the cost of public infrastructure fully paid by the Developer and not subject to any lien or encumbrance, i.e. city water or wastewater mains, or public street, road and right of way developed by the Developer. The giving of this credit shall not increase the rate of rebate nor the amount of rebate as provided by subsection IV.A above. This credit shall be given upon evidence of these costs incurred by Developer in the development of the Project being presented to City. These shall be for costs not reimbursed to Developer pursuant to subsection III.b above. The value of such infrastructure and the amount available for credit to be approved/determined in the sole discretion of the Public Works Director of the City of San Luis taking into account, the availability of exceptions to public procurement permitted by Title 34 of the Arizona Revised Statutes.

D. The Retail Tax Incentive Agreement will be conditioned upon the development of and the opening of the above-described "brand" hotel and "brand" restaurant on or before January 1, 2020.

V. PARTICIPATION OF DEVELOPER

A. **New Market Tax Credits.** To develop the Project Site, Developer and/or its nominee or assignee will need to acquire financing. Developer intends to develop and finance the Project through the issuance of New Market Tax Credits ("NMTC"). The City agrees to support Developer in its efforts to procure the NMTC for the Project.

B. **City Approvals.** The City further agrees it may be necessary to split or subdivide the Project Site into separate lots or parcels to facilitate the Project. The City agrees to expedite any City review and approval necessary to for a lot split/s or subdivision of the Project Site.

D. **GPLET.** Developer is also considering the possibility of the Project Site being developed in such a manner as to qualify for the Government Property Lease Excise Tax pursuant to Arizona law ("**GPLET**"). The City agrees in the event Developer decides to develop the Project, or portion of the Project to avail of the GPLET, the City agrees to support Developer's efforts in this regard and shall enter into such agreements as deemed necessary by the parties to qualify for the GPLET.

E. **Exclusivity Period.** The City agrees from the City's approval of this MOU the City shall provide Developer the exclusive right through December 31, 2017 to put the Project together and to procure the necessary financing and "end users" for the Project (the "**Exclusivity Period**"). During the Exclusivity Period the City agrees to refer any inquiries the City receives for the development of a new "sit down" restaurant, hotel/motel or convenience store/gas station to Developer. The City further agrees during the Exclusivity Period it shall not negotiate directly or indirectly with any other party for the development of a similar project within or proximity to the City's municipal limits.

VI. CLOSING

The City and Developer acknowledge there are a number of contingencies necessary to procure the Project Site and to develop the Project.

VII. GENERAL PROVISIONS

A. **Counterparts.** This MOU may be executed in one or more counterparts and by facsimile or other means of electronic signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

B. **Headings.** The descriptive headings of the paragraphs of this MOU are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

C. **Time of the Essence.** Time is of the essence of this MOU. It is understood the City, and Developer will work together to facilitate the transactions contemplated by this understanding, including NMTC procurement and end users for the development of the Project. The parties hereto will cooperate in the execution of any and all needed and necessary documents and agreements for the transaction(s) described herein within said timeframe.

D. **No Partnership and Third Parties.** It is not intended by this MOU to, and nothing contained in this MOU shall, create any partnership, joint venture or other similar arrangement between City and Developer. No term or provision of this MOU is intended to, or shall, be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder unless an agreed to successor or nominee of Developer. City shall have a right to approve any nominee and/or successor, and such approval shall not be unreasonably withheld.

E. **Mutual Cooperation.** The City and Developer acknowledge the development of the Project is complex and that additional terms, conditions or agreements not specified or contemplated in this MOU may be necessary for the development of the Project. The City and Developer shall endeavor to mutually cooperate with each other in a timely manner to facilitate the development of the Project and to amend or supplement this MOU as is necessary to proceed with the development of the Project.

F. **Entire Agreement.** This MOU constitutes the entire current understanding between the parties hereto 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.

G. **Amendment.** No change or additions are to be made to this MOU except by a written amendment executed by the parties hereto.

H. **Governing Law.** This MOU is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this MOU is subject to the provisions of A.R.S. § 38 511. Pursuant to the provisions of A.R.S. §41-4401, Developer further agrees to warrant that it and any of its contractors or subcontractors will comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, subsection A. That a breach of this warranty shall be deemed a material breach of any agreement with City and will be subject to the penalties of A.R.S. §41-4401.A.2. That the City shall have the right to random verification of employment records of Developer, its contractors, or subcontractors to ensure compliance with this warranty. Developer shall execute a certification regarding whether it is boycotting Israel as provided by A.R.S. §35-393.01.

I. **Venue.** Any legal action relating to this MOU or the agreements contemplated herein shall be brought in either the Yuma County Superior Court at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

J. **No Personal Liability.** No member, official or employee of the City, IDA or Developer shall be personally liable to any other party or any successor or assignee, (a) in the event of any default or breach by any party, (b) for any amount which may become due to any party or its successor or assign, or (c) pursuant to any obligation of any party under the terms of this MOU or agreement that may be entered into as a result hereof.

City of San Luis

By: _____
Its: _____

Dated

San Luis Commercial Holdings, LLC

By: _____
Its: _____

Dated