

Memorandum of Understanding between the City of Hendersonville and Blue Star Hospitality, LLC
April 4th, 2019

This Memorandum of Understanding (“MOU”) is effective as of the 4th day of April, 2019 (the “Effective Date”), by and between the City of Hendersonville, NC (“City”) and Blue Star Hospitality, LLC, a North Carolina limited liability company (“Developer”) (City and Developer together the “Parties”, each a “Party”), for the development of the “Project” as further described below in response to the City’s Solicitation for Development Opportunity for the Dogwood Parking Lot, which is incorporated herein by reference.

1. Purpose. It is agreed by both Parties that the purpose of this MOU is to set forth an outline of the material issues regarding the proposed development and operation of the Project. This MOU is expressly conditioned upon and subject to the parties hereto finalizing and entering into a mutually satisfactory and definitive written agreement as to all aspects of the proposed transaction. Except for Paragraph 12 pertaining to Surety, this MOU shall only establish the intent of each of the parties to (i) proceed with the development of the Project and (ii) negotiate diligently, reasonably, and in good faith a definitive written agreement between the Developer and City regarding development of the Project, in the form of a Development Agreement (“DA”) or other development services agreement, including the business terms and conditions contained herein, or as otherwise agreed by the Parties. The Parties intend for Paragraph 12, Surety, Paragraph 4, Development Plan, and the first sentence of Paragraph 6, Timing, and first two sentences of Paragraph 7, Designation of Exclusive Rights of this MOU to establish contractually binding obligations, the consideration for which is their mutuality. This MOU is intended to reflect the current understanding of the Parties, and all Parties agree that time is of the essence. Furthermore, the City is entering this MOU for the sole purpose of exercising its development powers granted by statute under North Carolina law, including, but not limited to, N.C.G.S. § 160A-458.3, § 158-7.1, and Part 3D of Article 19 of N.C.G.S. Chapter 160A, for the purpose of undertaking downtown City development projects, constructing public infrastructure, and improving the economic development of the community. The Parties acknowledge and agree that the Project terms described in this MOU are preliminary statements of intent of the Parties and are subject to any and all necessary City approval procedures, and definitive documents setting forth the complete agreement and understanding of the Parties in form and content satisfactory to the City and Developer.
2. Project Description. The City desires to redevelop the Dogwood Parking Lot site as a downtown hotel and event space (“Project”) that will function as an economic catalyst for the Main Street and Historic Seventh Avenue Municipal Service Districts (“MSDs”). As part of this commitment, the City has sought an experienced development partner to execute this redevelopment project on 1.47 acres of prime redevelopment land in the center of the City. The City developed a set of public interests expected to guide the basic vision and expected outcome of a successful Project. According to these principles, the Project should:

- Maximize public benefit and minimize public investment
- Contribute to vitality, culture and economy of City (e.g. event space)
- Respect existing City fabric (height limits, historic buildings, design aesthetics, etc.)
- Provide integration with Main Street
- Provide adequate parking resources

The Developer shall attempt in good faith to accomplish these principles with the Development Plan.

The Project will include the construction of a hotel on the existing Dogwood Parking Lot site which will include event space and sufficient parking to meet the requirements of the City of Hendersonville Zoning Ordinance. Infrastructure improvements including streets, sidewalks and landscaping will be necessary to service the Project.

3. Site. The designated area for the Project represents approximately 1.47 acres of land owned by the City of Hendersonville along Church Street between 5th Avenue West and 4th Avenue West (as defined in Exhibit A).
4. Development Plan. By December 1st, 2019 the Developer will provide the City with drafts of an updated development plan ("Development Plan") which is generally consistent with the description of the City's vision and objectives for the Site as presented in the Solicitation for Development Program. The City will facilitate community and stakeholder interests with the Developer and, in the drafting of the Development Plan, the Developer will make a good faith effort to address the community's interests.
5. Infrastructure: It is understood that streetscape improvements will need to be made to connect the Site to Main Street in order to service the Project. Specific plans for the financing and construction of all infrastructure including but not limited to streets, sidewalks, curbing, public space, water, sewer, and additional utilities including expectation for City participation will be incorporated within the Development Agreement.
6. Timing. The Developer shall have until March 1st, 2020 to diligently, reasonably and in good faith negotiate and attempt to finalize a Development Agreement or DA with the City and otherwise pursue the development of the Project, including site investigations and securing entitlements and financing commitments.
 - a. City Termination Clause. City will have the right to terminate the MOU at any time if Developer has committed a Breach of this MOU. If City elects to terminate the MOU prior to the end of the Evaluation Period, then Paragraph 12, Surety of this MOU shall have no effect and the Surety Amount shall be returned to Developer.
 - b. Developer Termination Clause. Developer will have the right to terminate the MOU at any time if City has committed a Breach of this MOU, except for Paragraph 12 Surety of this MOU, the terms of which will survive any termination of this MOU.
 - c. Extension. This MOU may be extended for up to one-hundred and twenty (120) days upon the written request of Developer with City approval not to be

unreasonably withheld. Any further extensions on the request of Developer may be granted or withheld by City in its sole and absolute discretion, as set forth in a written notice from City to Developer, provided prior to the expiration of the then current term.

7. Designation of Exclusive Rights. City agrees that, until this MOU is terminated, it will negotiate in good faith with Developer and with no other prospective developer. Developer agrees to negotiate in good faith with the City. If the Parties have not executed the DA by the expiration of the Evaluation Period, this MOU and any other agreements between the Parties regarding the Project will terminate.
 - a. Insurance. It is not anticipated that Developer will engage in any construction, demolition or site work during the Evaluation Period of this MOU and therefore no insurance will be required during the Evaluation Period. However, the Developer shall obtain and maintain (at its sole expense), or cause to be maintained, at all times, adequate insurance with respect to the construction and development of the Project.
 - b. Transfer of Rights. Developer shall not Transfer all or any portion of its interest in, title to, or rights or obligations under this MOU without the City's prior written consent.
8. Obligations of Parties.
 - a. City is responsible for cooperating with Developer in the performance of its obligations hereunder. Included in these obligations is the development of preliminary plans and specifications for pedestrian and landscaping improvements between the project site and Main Street. The final scope of work for pedestrian and landscaping improvements will be negotiated as part of the DA. The Hendersonville City Manager shall serve as the designated liaison for communications pertaining to this MOU. The City will provide the Developer with a final copy of an environmental assessment (phase I) report, boundary survey report, and geotechnical report.
 - b. Developer is responsible for coordinating all work and services required by this MOU, with cooperation of City and its agencies. Developer shall provide a final copy of the feasibility report to the City in place of any surety payment. Developer shall designate a liaison who shall be the primary point of contact for communications pertaining to this MOU. Until further notice, such designated liaison on behalf of Developer is Satis Patel on behalf of Blue Star Hospitality, LLC, and such other persons as he may designate from time to time in a written notice to City.
9. Undertakings during the Evaluation Period. The Parties agree that certain actions must be taken by one or both of the Parties hereto during the Evaluation Period of the MOU, including the evaluation of the Property and built environment, analysis of City development requirements, and opportunities for collaboration and potential funding resources. In general, each party will take such steps as are reasonably necessary to create a DA. Developer acknowledges that the City has architectural review rights and the design and architecture of the Project shall be subject to City approval (which approval shall not be

unreasonably withheld). The Evaluation Period shall begin on the date of execution of this document and end upon the execution of the formal DA or 12:00 noon on March 1st, 2020, whichever occurs first.

10. Development Agreement. It is agreed by both Parties that the DA will cover task areas such as but not limited to: (a) site investigation and analysis of existing conditions, (b) building evaluation, (c) site and infrastructure planning, (d) land use programming and completion of a redevelopment plan in concert with the City's vision, (e) plan for re-platting of Property boundaries, if necessary, (f) financing, including both public and private sources, (g) agreement on terms for purchase and transfer of property and (h) a development budget that shall include detailed Sources and Uses (with uses segregated by public improvements and private improvements), Operating Expenses and Income, and specific budgeted costs for legal, financing, closing, cost of labor, equipment, supplies, materials, transportation, services, travel, insurance, taxes, permit fees, developer's general overhead and all other costs of development. The DA will more fully delineate the steps and responsibilities required to execute the Development Plan. Specific goals related to the drafting of a DA are outlined in Exhibit B: Development Agreement Timeline.
11. Land Purchase. Parties agree to explore the most advantageous methods of ownership, recognizing that both parties have certain objectives and needs to achieve. The City may condition the Purchase effective to the Developer upon closing on financing for the construction of the Project, or, if required by lender, sooner, with a recapture right in the event Developer does not complete the Project. The City is presenting the Property "as is". Both Parties acknowledge that certain environmental risks may exist in regards to development of the site. The advertised land acquisition cost is \$1,098,000. The recapture right will be further defined in the DA and will be subject to other liens on the Property including but not limited to lenders and investors.
12. Cooperation and Information Exchange. Both parties agree to meet regularly and no less than monthly (which may be implemented by conference calls among all participants) to advise each regarding progress on any one or more of the undertakings required during the Evaluation Period. Developer agrees to share with City such information as may be developed regarding financing, marketing, land-use issues, design questions and construction of the Project. City shall provide copies of all reports, design studies, as-builts, traffic studies, environmental assessments, building evaluations and engineering reports, geotechnical assessments, ownership and property tax information and similar materials in its possession pertaining to the Project.
13. Expenses. Each party will be responsible for its own expenses incurred in connection with the performance of any obligations required by this MOU. Except as otherwise provided herein, during the term of this MOU no party will be responsible for the expenses of any other party.
14. Confidentiality. Each party agrees to maintain in confidence information regarding the Project received by that party that is not otherwise publicly available, subject to disclosure required by any applicable law or regulation or mandates of any court. Such information

may be shared with members of each party's advisory team, including lawyers, accountants, lenders, investors and other consultants. City acknowledges that Developer may be providing preliminary or incomplete reports and studies as part of its undertakings hereunder, and that Developer does not assume any responsibilities for the accuracy of such information. However, Developer agrees that to the extent that it has information contained in reports, studies and such similar undertakings, it will furnish to City the complete information that is held by Developer. The Parties acknowledge that the information relating to the Project is subject to disclosure under the N.C. Public Records Act, Chapter 132 of the North Carolina General Statutes, except any such information that the City is not required or authorized to disclose pursuant to N.C.G.S. § 132-1.2. It is understood, however, that nothing in this MOU shall preclude either party from discussing the substance or any relevant details of the transaction described in this MOU with any of its attorneys, accountants, professional consultants or potential lenders, as the case may be, or prevent the holding of public City Board meetings in compliance with applicable laws.

15. Publicity Coordination. Each Party agrees to coordinate any public statements with the other party. Neither Party shall issue any written press release, advertisement or other formal communication (individually and collectively) to any media outlet (including, but not limited to, newspapers, radio and television stations and websites) relating to the Project, unless it has received the agreement by the other Party to such release. Unless otherwise required by law or court mandate, all press releases and public announcements regarding the Project will be made by mutual consent. Notwithstanding the foregoing, the Parties may make known its selection hereunder where it deems necessary or appropriate and may re-distribute any previously issued news reports, press releases or other publicly available information about the Project.
16. Representations. Each party represents to the other parties that is has all necessary authority to enter into this MOU, to execute and deliver this MOU to the other parties, and to perform its obligations hereunder.
17. Notices. All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by overnight courier, or by fax, with evidence of delivery, to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of delivery. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand, or other communication. By giving prior written notice thereof, any party, from time to time, may change its address for notices hereunder.

a. City of Hendersonville: 145 5th Avenue East
Hendersonville, NC 28792
Attn: John Connet

b. Blue Star Hospitality, LLC: P.O. Box 759
Fletcher, NC 28732

Attn: Satis Patel

18. Force Majeure. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay (i) is beyond the reasonable control of that party, (ii) materially affects the performance of any of its obligations under this agreement, and (iii) could not reasonably have been foreseen or provided against, but does not include general economic or other conditions affecting financial markets generally.
19. Modifications. This MOU can only be modified in a writing signed by both Parties.
20. Counterparts. This MOU may be signed in counterparts; each counterpart shall be considered an original.
21. No Partnership. Nothing contained in this MOU shall be deemed or construed to create a partnership or joint venture between City and Developer, or to cause City or Developer to be responsible in any way for the debts or obligations of each other.

BLUE STAR HOSPITALITY, LLC

By: _____ (SEAL)

Satis Patel, Managing Member

State of North Carolina

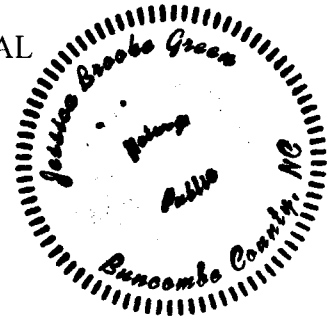
County of Henderson

I, Jessica Brooke Green, a Notary Public of County and State aforesaid, certify that Satis Patel, a Managing Member of Blue Star Hospitality, LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 24th day of April, 2019.

Jessica Brooke Green Notary Public

My commission expires:

SEAL



CITY OF HENDERSONVILLE

By: Barbara Volk
Barbara Volk, Mayor

Attest: Tammie K. Drake

Tammie K. Drake, MMC, Hendersonville City Clerk

State of North Carolina

County of Henderson

I, Samuel H. Fritschner, a Notary Public of the County and State aforesaid, certify that Barbara Volk in her capacity as Mayor of the City of Hendersonville and Tammie K Drake, in her capacity as Hendersonville City Clerk, appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 12 day of April, 2019.

Samuel H. Fritschner
Samuel H. Fritschner, Notary Public

SEAL

My commission expires: 3 August 2023

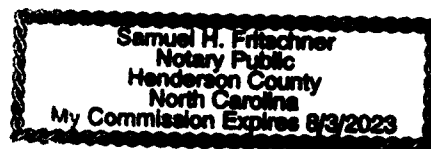


Exhibit A: Project Site

Tract 1:

PIN #9568783304: Being all of those tracts as found in Deed Book 556 at page 205 of the Henderson County Registry.

Tract 2:

PIN #9568784147: Being all of tract 1 and tract 2 as found in Deed Book 405 at page 209 of the Henderson County Registry.

Tract 3:

PIN #9568782188: Being all of that land described in Deed Book 405 at page 103 of the Henderson County Registry.

Exhibit B: Development Agreement Timeline

This exhibit establishes the following goals and timeline for completion as it relates to pre-development work in the drafting of a Development Agreement (DA), as defined in Section 10 of this document:

By June 1st, 2019

- Feasibility Study conclusions with economic viability of the project's program
- Identify Hotel Brand options

By September 1st, 2019

- Preliminary City Council approval of hotel exterior design
- Design drawings submitted for cost estimates
- Final environmental, geotechnical, and boundary survey reports
- Initial report from Real Estate Consultant regarding the potential tenants
- Initial conclusions on parking breakdown for hotel and public parking spaces
- Initial conclusions on what improvements the City may provide to the project
- Study presented by the Real Estate Consultant on the viability of the project program

By December 1st, 2019

- Detailed cost estimate provided by the contractor
- City cost estimates and design for any public infrastructure improvements
- Study presented on the viability of the parking space allocation and final agreement on parking space management and allocations
- Identify all legal documents needed for closing
- Update on lender and investor commitments

By March 1st, 2020

- Building concept design finalization
- Updated cost estimates
- Final agreements for City provided improvements
- Final report from Real Estate Consultant
- Final legal documents for closing
- Final evidence of lender and investor commitments for project