

**MEMORANDUM OF
UNDERSTANDING**
City of Valdez, Alaska –Irwin
Development Group, LLC. And Alaska
Pacific Development INC.

This Memorandum of Understanding (this “MOU”) is dated this 19th day of October 2016, by and between the City of Valdez, Alaska, municipal corporation (“City”), and (Irwin Development Group, LLC. (IDG) and Alaska Pacific Development INC. (“APD”) as a Joint Venture (Development Joint Venture, (DJV)

WITNESSETH:

WHEREAS, the parties intend to further memorialize their agreements in a subsequent developer agreement, and appropriate financing agreement; and

WHEREAS, the City of Valdez owns certain lands that are appropriate for the development of an affordable housing project, located in the City of Valdez, Alaska, and holds such lands in the public ownership and the DJV will acquire land; and

WHEREAS, the City of Valdez has been experiencing a shortage of affordable housing and retail development throughout the region and the said lack of sufficient housing has been highlighted by a lack of sufficient rental housing and single-family homes and retail opportunities; and

WHEREAS, the 2015 Residential Rental Market Survey (“Market Survey”), authored by the Alaska Department of Labor and Workforce Development, indicated that the City of Valdez-Cordova Census Area had the second-highest medium adjusted rent. The City of Valdez’s rental housing market indicates that the City of Valdez has been experiencing a shortage of affordable housing within its jurisdiction; and

WHEREAS, the Market Survey also indicated that the City of Valdez-Cordova Census Area has the fourth -lowest vacancy rate for one bedroom apartments, and the second-lowest vacancy rate for two bedroom apartments in Alaska; and

WHEREAS, much of the available employment in the City of Valdez involve regular and recurring durations of employment, in industries such as energy and transportation, which has increased the demand for quality affordable rental accommodations for this segment of the workforce population and the City of Valdez found that the lack of affordable housing applies to all households in the area; and

WHEREAS, the City of Valdez has been proactively working on creating solutions to the shortage of affordable housing and the development of retail business; and

WHEREAS, the parties acknowledge that a possible funding solution to develop affordable housing and retail opportunities are Public Private Partnerships which can provide the City of

Valdez with private capital to assist in financing the development of an affordable housing project and retail business; and

WHEREAS, a Public Private Partnership creates an alliance with a public agency with a qualified private organization to focus on a high community priority – the public agency is the project sponsor and therefore sets the agenda, public policy and focuses the community effort, and the private organization brings needed private capital, project expertise and management capacity to the high community priority; and

WHEREAS, the parties agree that funding for the project will be provided by multiple sources including, but not limited to, Tax Credit Equity, a conventional loan, grant funds, private equity, tax-exempt housing bonds and possibly funds from the City of Valdez; and

WHEREAS, it is projected that there will be a funding gap between sources of funds available to fund the project and the costs of completing the project and the parties understanding that they will work together in good faith to find sources to fill the funding gap; and

WHEREAS, the City of Valdez will provide a suitable city-owned site for the projects, or funding for acquisition of a suitable site or the DJV will acquire land in partnership with the City; and

WHEREAS, the parties agree that City of Valdez will be the project sponsor and provide the land for the project or the DJV will acquire land in partnership with the City, and that any necessary rezoning will be processed in an expedited manner with full support of the City of Valdez; and

WHEREAS, the parties agree that the project will be new construction and consist of forty (40) to sixty (60) new housing units of various bedroom sizes, as dictated by the 2016 Market Study, and retail rental space as a mixed use project, and as approved by the City of Valdez; and

WHEREAS, the parties agree the rental rates will be affordable upon agreement by the parties;

WHEREAS, the parties agree that it is in their respective best interests to execute this MOU to outline their shared understanding of the Public Private Partnership (hereinafter referred to as “Project”), timeline, and to take responsible steps towards a (a) development of a specific project; (b) appropriate descriptions to be defined in a development agreement; (c) Public Private Financing Agreement; and (d) a Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree as follows:

Section 1. **Exclusivity.** While the parties work in good faith to determine project feasibility, the City of Valdez agrees to work exclusively with DJV as the developer of the Project, for

such time period as this Agreement remains in effect subject to the terms and conditions contained herein.

Section 2. **Foundational Agreements.**

- (a) City and DJV shall enter into a Public Private Partnership for the purpose of providing more affordable and workforce housing to the community of Valdez and retail business; and
- (b) City shall be the sponsor of the project and DJV shall be the private developer for the Project; and
- (c) City and DJV shall collaborate and work together to obtain and apply for any appropriate and applicable Tax Credits, grants, tax-exempt housing bonds and/or private equity funding, and work together to identify and obtain funding for the funding gap for the benefit of the Project; and
- (d) City and DJV shall agree upon a pre-development budget the costs of said pre-development budget will be subject to negotiation during the development agreement said costs will be split between the DJV and the City; and
- (e) Subsequent to the execution of this MOU, the parties shall enter into a Development Agreement and appropriate Public Private Financing Agreement; and
- (f) The Project will be new construction and consist of forty (40) to sixty (60) new housing units of various bedroom sizes, and retail development, and as approved by the City; and
- (g) City shall provide suitable land for the project or the DJV will acquire land in partnership with the City, meaning land that has adequate soil conditions for the development; and
- (h) City shall be responsible for completing access and utility infrastructure development in a manner sufficient to service the Project, including streets, sidewalks, curb and gutter, storm drains, water, sewer, and management of the contracts to install electric, telephone and cable; and
- (i) City shall be responsible for Site predevelopment activities including an environmental assessment, surveying, platting, subdividing, and rezoning (if applicable) in as expedited a timeline as possible; and
- (j) DJV shall be responsible for market studies and appraisals; and
- (k) Rental rates for the housing units developed in the Project shall be affordable as determined by the parties; and
- (l) The parties agree it is important to quickly provide relief to community's housing

burden and to retain the equity investors, therefore *time is of the essence* and the parties will use best efforts to meet the schedule identified in Subsection (n) *infra*; and

(m) The parties agree to use best efforts to effect the following schedule:

- a. July 2017 – Parties execute a mutually agreeable development agreement;
- b. August 2017 – Identification of Project Site;
- c. September 2017 – Site Control;
- d. October 2017 – Commitment of project funds and approval of financing plan from the parties;
- e. December 2017 – Market study, appraisal;
- f. February 2018 – Environmental site studies, site survey, subdivision and platting;
- g. April 2018 – Commence Construction; and
- h. May 2019 – Complete Construction.

(n) DJV shall be responsible for managing or retaining a third-party property manager for the Project, this means complete responsibility for the financial management and on site property management; and

(o) The parties agree that DJV will receive a 15% developer fee of all hard and soft development costs, exclusive of City contributions, based on approved Proforma, for the Project in consideration for DJV's management, development, and Project oversight; and

(p) The parties agree that DJV will receive reimbursement for any third-party costs and fees, approved by the City and outlined in the Development Agreement, based on approved Proforma, plus the applicable 3% construction management fee at the completion of the Project.

Section 3. **Miscellaneous Provisions:**

(a) The parties acknowledge and are both committed to cooperating with each other and to the Project. The DJV agrees to use local sub-contractors and local labor to the extent possible. Any additional obligations and responsibilities shall be specified in the Development Agreement and appropriate Financing Agreement; and

(b) City, to facilitate the progress and feasibility of the Project, shall use best efforts to waive fees and costs associated with building permits (excluding State Fire Marshal review and approval), expedited permitting and any rezoning (if possible), zoning changes, land use permits, and other similar City permitting fees and costs of construction; and

(c) City shall capture any real estate taxes incurred and owed to City of Valdez into a

reserve for the benefit of the Project in the event costs of development or operation exceed projections based on the approved Project. In the event said reserve is not used for the benefit of the Project, any remaining funds in said reserve shall revert to the City General Fund; and

- (d) Neither the City of Valdez nor DJV shall be deemed in violation of this MOU if it is prevented from performing any obligations hereunder by reason of strikes, boycotts, labor disputes, severe weather conditions, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began; Parties shall work together in good faith to achieve the goals of this MOU and
- (e) Any notice or other communication from any party to the other pursuant to this MOU shall be deemed sufficiently given or communicated if sent by first class mail, postage pre-paid and addressed to:

For City of Valdez:
City of Valdez

City Manager

212 Chenega Avenue.
P.O. Box 307
Valdez, AK 99686

For Alaska Pacific Development Inc. and Irwin Development Group,
LLC. As a joint Venture. (DJV)

Mark Lewis, APD

David Irwin, IDG

3003 Minnesota Drive, Suite 201
Anchorage Alaska 99503

IN WITNESS WHEREOF, this MOU is executed by the duly authorized officers or representatives of the City of Valdez, Alaska and the Alaska Pacific Development Inc. As of the day and date first above written.

THE CITY OF VALDEZ

By:

Ruth E. Knight, Mayor,

STATE OF ALASKA, SS.

At City of Valdez, Alaska, on the _____ Day of _____, 2017 personally

Appeared, _____, Mayor of the City of Valdez and acknowledges this instrument by her, sealed and subscribed to be her free act and deed, and the free act and deed of the City of Valdez, Alaska.

Before me,

Notary Public

Commission Expires

Alaska Pacific Development Inc. and Irwin Development
Group as a Joint Venture.

By: _____

Mark Lewis, APD

David Irwin, IDG

STATE OF ALASKA, SS.

At City of Valdez, Alaska, on the _____ Day of _____

, 2016, personally
Appeared, _____, and acknowledges this instrument by him, sealed and subscribed to be
his free act and deed, and the free act and deed of Pacific Development Group JV.

Before me,

Notary Public

Commission Expires

DRAFT

DRAFT