



City Council Report

Date: January 26, 2009
To: City Council
Through: Christopher J. Brady, City Manager
From: William J. Jabjiniak, Economic Development Department Manager
Subject: Sale of Park Place Center (51 thru 55 East Main Street)
Council District # 4

Purpose and Recommendation

The purpose of this report is to consider a staff recommendation to authorize the sale of Park Place Center located at 51 thru 55 East Main Street. Staff recommends approval of the attached Resolution (see Exhibit No. 1) authorizing the sale of 51 thru 55 East Main Street. The proposed buyer of the property is Mr. Michael Harrah of Mesa Theater Arts Retail Entertainment, LLC. (Buyer).

Background

Park Place Center is a freestanding multi-tenant retail building that was built in 1989 as part of the Redevelopment Site 8 Project. In addition to this building, Site 8 also included the 5-story Mesa Public Schools/Mesa Bank office building, a movie theater, and a parking garage.

Although 51 and 55 E. Main Street were built as one contiguous building, there were separate owners for the east and west halves. In 1999, the City of Mesa purchased the 5-story office building, a movie theater, a parking garage and the west half of this building (51 E. Main Street). The east half of the retail building (55 E. Main Street) was purchased in 2000. The total purchase price of 51 and 55 East Main Street was \$1,115,000. These buildings were purchased by the City of Mesa as part of the development plans for the Mesa Arts Center. At that time, the intent was to demolish the entire building located at 51 thru 55 East Main Street. However, the building located at 51 thru 55 East Main Street was left intact, because the Mesa Arts Center (MAC) final design did not encroach into the building's footprint as originally thought.

There have been several tenants in the building since it was purchased, but they have been interim uses on month-to-month leases while the City decided the long-term fate of the building. We currently have one tenant, Southwest Shakespeare Company. The lease with Southwest Shakespeare Company is a month-to-month lease.

Discussion

The most recent appraisal for the retail center located at 51 thru 55 East Main Street was conducted in December 2005. Appraisal Technology appraised the property with an "As Is" Market Value of \$1,255,000. Staff believes that the value of Park Place Center is still in the range of \$1.2 million to \$1.8 million. The Buyer plans to renovate both the interior and exterior of the building to accommodate at least two full service restaurants.

The property was listed with Phoenix Commercial Advisors on February 13, 2007 for sale or lease, with an asking price of \$2 million. The broker placed signs on the property and advertised on LoopNet, which is a national commercial property listing service.

Key Points of the Agreement

- The negotiated sale price is \$1.8 million, which includes a \$50,000 earnest money deposit, a 180-day Feasibility Period, and a 210-day escrow period. Close of escrow is expected to be in August 2009.
- The sale includes deed restrictions that limit the use of the property to art studios, restaurants, bars, cocktail lounges, specialty retail (not including sexually oriented businesses), chartered financial institutions, professional offices, wedding and reception centers, commercial recreation and entertainment, cultural and civic halls, and dinner theaters not exceeding 50 seats.
- To assist in satisfying the Buyer's parking needs for Buyer's tenants, employees, and customers the Agreement contains a Parking Agreement with the following concessions regarding parking (see Excerpt of the Agreement labeled Exhibit No. 2):
 - a. No less than 250 free customer parking spaces (except for special events) will be available within 880 feet of 51 & 55 East Main Street for use by the businesses at this address and their customers, as well as the general public.
 - b. Twenty five (25) Event Parking Passes for employees will be made available to the Buyer at no charge. Thus, for the term of the Parking Agreement, Buyer's employees do not have to pay a parking fee during events at the MAC. Assuming the employees pay this fee for event parking (instead of parking further away for free), the fiscal impact for this concession is estimated to be \$6,250/yr (70 events/yr * 25 passes * \$5/pass).

- c. The term of the Parking Agreement is twelve (12) years from the close of escrow, with the ability to extend for an additional three (3) years for a total of fifteen (15) years.
- Within the Feasibility Period (180 days) Seller and Buyer shall negotiate an Agreement for the use of the Mesa Arts Center trash compactor, and/or for the use of City property adjacent to the Mesa Arts Center for Buyer to install its own trash compactor.

Alternatives

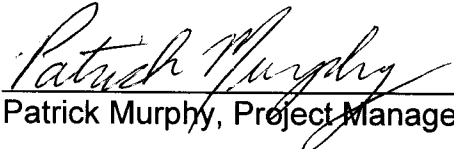
The alternative is to not authorize this sale. If this alternative is chosen, staff requests direction as to whether or not this property should remain for sale or lease.

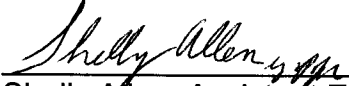
Fiscal Impact

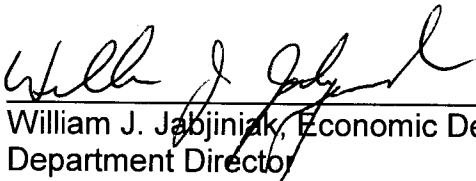
The sale price is \$1.8 million, less escrow and broker fees of approximately \$115,000.00. The revenue will be distributed to the General Fund (23.54%) and Quality of Life (76.46%).

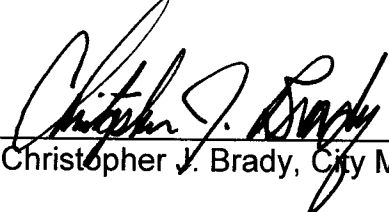
Coordinated With

The Resolution and Agreement have been reviewed regarding their legal form and content by the City Attorney's Office. Real Estate Services, Economic Development Department, Mesa Arts Center, and the Downtown Mesa Association (DMA) support the staff recommendation for Council to approve the Agreement authorizing the sale of 51 & 55 East Main Street.


Patrick Murphy, Project Manager


Shelly Allen, Assistant Economic Development Department Director


William J. Jabjiniak, Economic Development Department Director


Christopher J. Brady, City Manager

Exhibits

- Exhibit No. 1
- Exhibit No. 2

- Resolution
- Excerpt of the Agreement to Purchase Real Property and Escrow Instructions

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE
SALE OF CITY PROPERTY AND EXECUTION OF NECESSARY
DOCUMENTS**

WHEREAS, the City Council has determined that City property of approximately 24,806 square feet and generally located at 51 through 55 East Main Street in Mesa, Arizona, as described on Exhibit A attached hereto, is no longer needed, and

WHEREAS the City Manager is authorized to modify or waive the event parking fees and enter into a parking agreement as part of, and as set forth in, the contract for the sale of such property.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
MESA, MARICOPA COUNTY, ARIZONA AS FOLLOWS:**

Section 1: The City Manager, Christopher J. Brady, or his designee, is hereby authorized and directed on behalf of the City of Mesa to execute the necessary documents to transfer title for the sale of City owned property as described in Exhibit A, to modify or waive the event parking fees, and to enter into a parking agreement. The City Clerk is authorized and directed to attest to the signature of the City Manager, or his designee, thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona this _____ day of _____, 2009.

APPROVED:

Mayor

ATTEST:

City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A parcel of land located in Section 22, Township 1 North, Range 5E of the Gila and Salt River Base and Meridian Maricopa County Arizona also being a portion of Lots 6, 7 and 8 of Mesa Town site Book 3, Page 11 of the Records of Maricopa County Arizona described as follows:

Commencing for reference from the Center Quarter Corner of said Section 22 marked by a Brass cap in hand hole from which The East quarter corner bears South 89°45'24" East (Basis of Bearing):

Thence South 89° 45' 24" East along the East-West Mid Section line of said Section 22 a distance of 376.17 feet;

Thence South 0° 14' 37" West a distance of 66.00 feet to the South Right-of-Way line of Main Street and **Point of Beginning**;

Thence South 89°45'24" East along the South Right-of-Way of Main Street a distance of 224.98 feet;

Thence South 0°09'19" West a distance of 133.99 feet;

Thence North 89°50'41" West a distance of 56.18 feet;

Thence North 0°09'19" East a distance of 4.66 feet:

Thence North 89°50'41" West a distance of 9.50 feet;

Thence South 0°09'19" West a distance of 4.66 feet;

Thence North 89°50'41" West a distance of 8.06 feet:

Thence North 65°50'17" West a distance of 159.00 feet;

Thence North 0°10'18" West a distance of 9.55 feet;

Thence North 5°32'06" West a distance of 60.40 feet back to the **Point of Beginning**.

Containing 24806 square feet more or less

**AGREEMENT TO PURCHASE REAL PROPERTY
AND ESCROW INSTRUCTIONS**

EXECUTION DATE: _____, 2009

SELLER: CITY OF MESA,
an Arizona municipal corporation
Address: 20 East Main Street, Suite 650
Post Office Box 1466
Mesa, Arizona 85211-1466
Attn: Craig Crocker
Real Estate Services
Telephone: 480-644-2520
Facsimile: 480-644-3465
Email: craig.crocker@mesaaz.gov

BUYER: Mesa Theater Arts
Retail Entertainment, LLC,
a Delaware limited liability company.
Address: 1200 N. Main Street, Suite 900
Santa Ana, CA 92701
Attn: Michael F. Harrah
Telephone: 714-543-9484
Facsimile: 714-543-9972
Email: mfh@caribound.com

ESCROW AGENT: Address: First American Title Insurance Company
1660 S. Alma School Road, Suite 117
Mesa, Arizona 85210
Telephone: 480-777-0614
Facsimile: 888-279-85548
Email: mgorman@firstam.com

Escrow Number: _____

PROPERTY: The real property known as 51-55 E. Main Street, Mesa, Arizona, legally described on Exhibit A, subject to Section 4.1(a)(i) below, including all improvements located on and all rights and privileges appurtenant to the real property (the "Property").

**ARTICLE 1
AGREEMENT OF THE PARTIES**

1.1 Agreement. In consideration of the mutual promises and covenants set forth in this Agreement to Purchase Real Property and Escrow Instructions (the "Agreement"), Seller agrees

4.2 Parking Agreement. To assist in satisfying Buyer's parking needs for Buyer's tenants, employees, customers, and guests (collectively, "Buyer's Tenants") for the improvements on the Property, Seller and Buyer agree to the following:

(a) Public Parking Spaces. For the Term of the Parking Agreement (as defined below), Seller agrees that there will be not less than two hundred fifty (250) Public Parking Spaces (as defined below) within a distance equal to one Downtown City of Mesa city block (i.e., 880 feet) measured, as to each parking space, in a straight line that is the shortest distance from the nearest points on the Property's perimeter to the parking space's perimeter (rights-of-way, if any, shall be included in such measurement). "Public Parking Spaces" means that such spaces are open and available to the public, subject to limitations including, but not limited to, Mesa's City Code and Mesa's parking requirements, event fees, time restrictions, and maintenance and road work requirements.

(b) Event Parking Passes. For the Term of the Parking Agreement, so that Buyer's Tenant's employees do not have to pay an event parking fee during events at the Mesa Arts Center for which there is a specific event parking fee (i.e., the \$5 event parking fee currently in the City's Parking Fees and Charges, and as such may be amended from time to time), Seller agrees to provide to Buyer twenty five (25) parking passes (the "25 Event Parking Passes") that shall be exclusively for, and only used by, Buyer's Tenant's employees during such events at the Mesa Arts Center to park (without having to pay the event parking fee) in Public Parking Spaces only on the top level of the garage located adjacent to the Property at 40 South Surrine (the "Surrine Garage"). The issuance of the 25 Event Parking Passes shall be subject to all of Mesa's City Code and Mesa's parking requirements (which may include filling out forms and providing information normally obtained for the issuance of parking decals) and may be issued on an event-by-event, annual or other basis as determined by the City or Mesa; provided, however, that there shall be no fee for the issuance of such passes, but a fee may be charged to replace or reissue passes that are lost, stolen or destroyed.

(c) Term of the Parking Agreement. The term (the "Term of the Parking Agreement") for all the terms, conditions and requirements of this Section 4.2 (the "Parking Agreement") shall be for twelve (12) years from the Close of Escrow; provided, however, Seller (through its City Manager) and Buyer, in each of their sole and absolute discretion, may agree in writing within one year of the expiration of the Term of the Parking Agreement to extend the Term of the Parking Agreement, as to all or part of the terms of the Parking Agreement, for an additional three (3) years, and in such case the Term of the Parking Agreement shall be for a total of fifteen (15) years from the Close of Escrow. Upon the expiration of the Term of the Parking Agreement, the Parking Agreement shall expire and be of no force or effect.

(d) Modifying Hourly Parking. From time to time, and as permitted in the Mesa City Code and City of Mesa's parking requirements, the City of Mesa's City Traffic Engineer may review and modify the hourly restrictions for on-street parking. City of Mesa staff will meet with Buyer to seek input from Buyer regarding such modifications.

(e) Parking Subject to City Code & Availability. Notwithstanding anything in this Agreement to the contrary, Buyer and Buyer's Tenants and their employees are subject to compliance with the applicable parking provisions of the Mesa City Code and City of Mesa's parking requirements, and the Parking Agreement is not intended to modify or amend in anyway the Mesa City Code. Further, parking availability (and Buyer's rights hereunder) shall be subject to, inter alia, maintenance, road work, construction, and (as to the Serrine Garage and adjacent lot) construction for expanding the Serrine Garage. Buyer further acknowledges and agrees that this Parking Agreement does not entitle Buyer to rope off, place signage on, restrict, or reserve in anyway the Public Parking Spaces.

(f) Remedy. In the event of a breach or threatened breach of this Parking Agreement by Buyer or Seller and the failure to cure such breach within 10 calendar days following written notice from the non-breaching party, the non-breaching party's remedies shall be limited to specific performance and injunctive relief, and Buyer and Seller waives any right to actual, consequential, punitive, exemplary or any other damages; provided, however, such limitations for remedies provided herein shall not in any way affect, or apply to, Seller's (as the City of Mesa) ability to enforce the Mesa City Code and City of Mesa's parking requirements. Further, the Parking Agreement does not convey any interest in any property owned in fee by Seller or any rights-of-way and shall not be recorded on any such property owned or held by Seller.

(g) Survival. The Parking Agreement shall survive Closing for a period of twelve (12) years from Closing; further provided, however, that if the Buyer and Seller mutually agree to extend the Term of the Parking Agreement, as provided in Section 4.2(c), the Parking Agreement shall survive Closing for a period of fifteen (15) years from the Closing.

4.3 Trash Compactor Agreement. Within the Feasibility Period, Seller and Buyer shall mutually agree to the terms of an agreement (the "Trash Compactor Agreement") for the use of the existing Mesa Arts Center's trash compactor (the "MAC Compactor") and/or for the use of City property adjacent to the MAC Compactor for Buyer to install its own trash compactor. If the terms of the Trash Compactor Agreement are not resolved and mutually approved by Seller and Buyer (in Seller's and Buyer's sole and absolute discretion) within the Feasibility Period, either party may terminate this Agreement by delivery of written notice to the other party, and the parties shall have no further obligations to each other pursuant to this Agreement except to the extent this Agreement expressly states that an obligation herein shall survive such termination.

4.4 Retained Rights for Public Improvements. Buyer acknowledges that Seller is a governmental entity that has, or may have, public utility improvements, public utility easements, and/or may have permitted other utilities and telecom providers to place public improvements (the "Public Improvements") (such as pipes, conduits, utility lines, cable lines and other public infrastructure) on, over, under and across the Property. Buyer agrees that all existing easements for Public Improvements (the "Existing Easements") shall not merge with the provisions of any closing documents and that all such easements shall survive the Closing. Buyer further agrees that, if there are no easements for such existing Public Improvements, Seller shall be entitled to