

STATE OF ALABAMA  
COUNTY OF COVINGTON

ANDALUSIA, ALABAMA  
AUGUST 3, 2006

SPECIAL COUNCIL MEETING

PRESENT:

Jerry B. Andrews, Mayor  
Bridges D. Anderson, Councilman  
Michael L. Jones, Jr., Councilman  
Andy Alexander, Councilman  
Don Cotton, Councilman  
Terry Powell, Councilman  
Rick Clifton, City Attorney

ABSENT:

None

The City Council of the City of Andalusia met at City Hall at 3:00 p.m. for a special meeting for the purpose of considering a memorandum of understanding with Pacific Equity Investments.

COUNCIL APPROVES MEMORANDUM OF UNDERSTANDING WITH PACIFIC EQUITY INVESTMENTS

Mayor Andrews called the meeting to order and welcomed everyone. He then explained that the purpose of the meeting was to consider a memorandum of understanding with Pacific Equity Investments to redevelop historic downtown Andalusia. He added that it would be necessary for the council to go into executive session to discuss real estate transactions and called on City Attorney Rick Clifton to advise the council as to the procedure of going into executive session. Mr. Clifton advised the council of the reasons by which it may go into executive session and the procedure for doing so. Councilman Powell moved to take the meeting into executive session in order to discuss a potential real estate transaction. Councilman Anderson seconded the motion which passed unanimously. At 3:06 p.m. Mayor Andrews said that the council would reconvene in approximately one-half hour to one hour.

At 4:35 p.m. the council reconvened the regular meeting after completing an executive session. Mayor Andrews presented a Memorandum of Understanding with Pacific Equity to the council for its consideration.

Councilman Cotton moved to bring the Memorandum of Understanding to the floor for discussion. Councilman Alexander seconded the motion. Councilman Jones informed the council that he must abstain from voting on the memorandum of understanding. Councilman Cotton listed concerns that he had for the Memorandum of Understanding and said that he could not support it in its present form. Councilman Powell said that he also had concerns about the agreement and suggested that if the Memorandum could be amended to provide evidence of the developer's intentions and ability to carry out their plans by obtaining the approval of their construction plans, and by providing the City with evidence of secure financing for the project, he would see fit to purchase the Andala Building. Mr. Clifton then read the proposed changes to the Memorandum of understanding according to Councilman Powell's recommendations.

MEMORANDUM OF UNDERSTANDING  
DOWNTOWN IMPROVEMENTS  
*between*  
THE CITY OF ANDALUSIA  
*and*  
PACIFIC EQUITY INVESTMENTS, LLC

August 3, 2006

The City of Andalusia and Pacific Equity Investments, LLC propose the following agreement in order to improve the Andalusia downtown area and provide commercial, entertainment and professional office opportunities to the citizens of Andalusia. The parties intend this to be a cooperative effort between the City and Pacific Equity and will work together on the timing of the project as set forth below.

Pacific Equity proposes to:

Complete restoration, upgrade, and conversion of the historic First National Bank building to a contemporary "Class A" multi-use commercial project. The planned restoration will return this unique six-story building with premier views of Covington County to the commercial centerpiece of the Andalusia Public Square. The following are planned improvements to the building:

- a. Exterior Restoration: Substantial upgrade to the main entryway and lobby, revitalize exterior brick, repair and restore historic clock, window treatments, install exterior lighting at street and roof elevations.
- b. Interior Restoration: Complete upgrade and/or restoration of elevators, electrical, plumbing, fire sprinklers, heating/air conditioning, and installation of security system and high speed internet.
- c. Building layout:
  - N 1<sup>st</sup> Floor: Retail space-1-2 anchor tenants
  - N 2<sup>nd</sup> Floor: Sports Lounge-multiple satellite fed flat screen TV's, pool tables, food, private side entrance.
  - N 3rd-5th Floors: Professional office suites-(approx. 2,000 sq.ft.) private bathrooms on each floor, security system, high speed internet.
  - N 6<sup>th</sup> Floor: Restaurant-open for lunch and dinner at reasonable prices, with spectacular views of Andalusia and Covington County. May include rooftop dining.
  - N Basement: Rentable public use space-(approx. 1,400 sq.ft.) available for city/county meeting rooms, or clubs/organizations.

Complete restoration, upgrade, and conversion of the historic Andala Building to a contemporary multi-use commercial project. The planned restoration will return this unique three-story building to commercial use and further renovate the downtown area.

- Notes:
  - N Start Date: Upon final approval of construction plans.
  - N Construction: It is anticipated that construction will be in stages with either the First National Building or Andala Building being Phase One, with Phase Two renovations on the other building proceeding within a reasonable time from completion and leasing of Phase One.
  - N Total Cost: Total project cost-approx. \$2 million
  - N Financing: Construction-to-permanent financing from a local financial institution.

Building layout and renovations are subject to ongoing due diligence to determine the highest and best use of the property.

Pacific Equity intends to buy the First National Bank Building as soon as possible after approval of this Memorandum.

The City of Andalusia proposes to obtain the properties as follows:

1. Simultaneously with Pacific Equity purchasing the First National Bank Building, (subject to third party approval of the terms of purchase), the City will purchase the parking lot as set forth below. Prior thereto, the City will obtain an acceptable option to purchase the Andala Building as set forth below.
2. Upon Pacific Equity obtaining approved plans for either building and submitting proof of construction financing, the City will purchase the Andala Building as set forth below.

Make the following public improvements to expand and enhance the public square area and to provide sufficient assistance to ensure the project is economically feasible.

- a. Develop a new parking lot adjacent to the Project on Coffee Street. (See below for parking allocated to the First National Bank Building and /or Andala Building).
- b. Street improvements to Coffee Street consistent with recent improvements made to Cotton Street.
- c. Reconstruct 2 street level fire exits leading to the basement of the FNB Building (construct stairs and railing in existing fire exits) situated on public property.
- d. Abate property and other taxes and fees to the extent of Alabama law and other incentives to which the Project may qualify and which the City may provide and encourage other incentives including historic restoration and other incentives as provided by the Andalusia Downtown Revitalization Authority, Historic Society, and Arts Council.
- e. Assist with and encourage private property owners in the development, upgrade and improvement of private property in the downtown area, including establishing a committee or task force to consider and implement a historic mural restoration program, thus adding a unique cultural and tourism element to the downtown area.

In furtherance of this downtown improvement project, the parties further agree as follows:

1. The City of Andalusia ("City") will purchase from John Tisdale, the Andala Building at an assigned amount of \$131,180 and the contiguous .20 acre lots at an assigned amount of \$138,820. The total purchase price for the properties (excluding roof repairs) will be \$270,000.
2. The City will set aside \$30,000 with funds to be used to pay Andala Building roof repair costs incurred by Pacific Equity.
3. Conditioned upon Pacific Equity qualifying for a 20% rehabilitation tax credit for construction costs under IRS Section 47, title of the Andala Building will be held in either the Historical Preservation Authority or the Industrial Development Board ("Title Holder"). The Title Holder will lease the Andala Building to Pacific Equity or its assigns for a period of 40 years for \$1 per year. Pacific Equity,

leaseholder, will execute a leasehold mortgage to the City in the amount of \$161,180, to be due and payable in 7 years. The Title Holder will agree to facilitate construction and permanent financing to be obtained by Pacific Equity, including execution of a non-recourse mortgage to a lender to secure financing, and subordination of the leasehold mortgage to a lender. The amount of the leasehold mortgage will be reduced by a City sales tax generated at the Andala Building and the First National Bank Building at the prevailing rate (currently 2%) during the seven year period ("Sales Tax Credit"). The Sales Tax Credit will be calculated annually for each preceding year, and will be calculated on a pro rata basis for any partial year immediately prior to exercising the option. Terms of the lease (except for the amount due the City for the Andala Building) are subject to change at the discretion of the Mayor to provide flexibility to enable Pacific Equity to qualify for the 20% rehabilitation tax credit.

4. In the event Pacific Equity does not qualify for a 20% rehabilitation tax credit pursuant to item #3 above, upon purchase of the properties, the City will convey title of the Andala Building to Pacific Equity or its assigns, and Pacific Equity or its assigns will execute a purchase money mortgage in the amount of \$161,180 payable to the City. The purchase money mortgage is payable in full seven years from the date of close of the transaction, at 0% interest, minus any City sales tax generated at the Andala Building and the First National Bank Building at the prevailing rate (currently 2%) during the seven year period ("Sales Tax Credit"). The Sales Tax Credit will be calculated annually for the preceding year and will be used to permanently credit the face amount of the purchase money mortgage. The City will agree to subordinate its purchase money mortgage in the event any construction lender and/or permanent lender require its mortgage to be in first position.
5. Property taxes on the Andala Building and the First National Bank Building are to be waived to the extent permitted by law, and property tax waivers are to be transferable to new ownership to the extent permitted by law.
6. The City will agree to a construction schedule established by Pacific Equity on the contiguous lots in order for the contiguous lots to be used as a staging area for construction activity at the Andala Building and/or the First National Bank Building. Specifically, the contiguous lots will be demolished and delivered in a finished grade condition prior to start of building construction, with completion of the lots required upon completion of building construction at the Andala Building and/or the First National Bank Building.
7. The City will maintain the parking areas. Upon their completion, the parking areas will be leased to Pacific Equity in the amount of \$100 per month for 7 years, with an option to renew for 7 years subject to a CPI rental increase. The lease is assignable to new ownership of either building at Pacific Equity's discretion. In the event the lease is not in effect at any time, the City will assign a minimum of 50% of the parking spaces to the Andala Building and/or the First National Bank Building so long as the buildings are renovated and used as anticipated.
8. During construction at the Andala Building and the First National Bank Building, the City will agree to a temporary closure only of that portion of Coffee Street that fronts the respective buildings, as permitted by the Fire Department.
9. The City will remove all demolition debris from the roadside for the Andala Building and the First National Bank Building, and will dispose the debris in the City landfill.
10. The City will waive any building permit fees for the Andala Building and the First National Bank Building.
11. The City will waive any costs associated with utility connections for water, sewer and electricity for the Andala Building and the First National Bank Building.
12. After approval by the appropriate authorities, the City will consider approval of a "on premise" beer, wine, and liquor license for the Andala Building and the First National Bank Building. It is understood the following possible uses of the Andala Building and/or the First National Bank Building may include a restaurant, sports lounge and/or bar, nightclub, retail, and office use and The City realizes the importance of this licensing and will work with Pacific Equity in this regard.
13. Pacific Equity in return agrees to make the improvements to the buildings acquired to provide for retail, office and/or residential use.
14. Pacific Equity intends to purchase the First National Bank Building and to provide further security indicating its willingness and ability to complete this project, agrees that the City will have a mortgage on the First National Bank Building to secure the \$161,180 due the City as set out under paragraphs 3 and 4 above. The City agrees to release and satisfy this mortgage when Pacific Equity obtains its construction finance commitment for Phase One of the project.
15. The Mayor will be authorized and directed to execute any and all documents deemed necessary to carry out the purpose and intent of this proposal, to include borrowing, if necessary, to finance this project.
16. It is intended that this Memo is the final agreement of the parties and supersedes and replaces all previous resolutions and agreements between the parties and related to the Project.

PACIFIC EQUITY INVESTMENTS, LLC

By: \_\_\_\_\_  
Tom Forbath

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\_\_\_\_\_  
Jeff McClure

CITY OF ANDALUSIA

By: \_\_\_\_\_  
Jerry Andrews, Mayor

Councilman Powell moved to adopt the Memorandum as amended. Councilman Anderson seconded the motion. Upon being put to a vote the council adopted the memorandum of understanding with Pacific Equity as follows:

<b><u>Yes:</u></b>	<b><u>No:</u></b>	<b><u>Abstained:</u></b>
Andrews		Jones
Anderson		
Alexander		
Cotton		
Powell		

Councilman Alexander moved to resend any and all previous agreements between the City of Andalusia and Pacific Equity Investments, LLC. Councilman Powell seconded the motion. Mayor Andrews called for a vote which produced the following results:

<b><u>Yes:</u></b>	<b><u>No:</u></b>	<b><u>Abstained:</u></b>
Andrews		Jones
Anderson		
Alexander		
Cotton		
Powell		

Mayor Andrews thanked the council for their due diligence during the long discussions which led to their deliberations and approval. He also thanked Covington County Economic Development Commission President and CEO, Tucson Roberts and Rick Clifton for their staying the course and working long hours with both parties.

**ADJOURNMENT:**

With no further business Mayor Andrews adjourned the meeting.

**THE CITY OF ANDALUSIA, ALABAMA**

BY: \_\_\_\_\_  
Jerry B. Andrews, Mayor

**ATTEST:**

\_\_\_\_\_  
John M. Thompson, City Clerk