

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT AND OPTION AGREEMENT WITH RIVER VIEW HOTEL, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, WHICH AMENDS THE DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF HOSPITALITY AND RETAIL IMPROVEMENTS ADJACENT TO THE CUBS SPRING TRAINING FACILITIES BY AMENDING THE RETAIL REVERTER DATE AND TERMINATING THE RIGHT OF FIRST REFUSAL.

WHEREAS, the City of Mesa (“City”) and BCY Limited Partnership, an Arizona limited partnership (“BCY”) entered into a Development Agreement and Option Agreement dated January 2, 2014 and recorded in the Official Records of Maricopa County as instrument no. 2014-005363 (the “Development Agreement”) relating to the development of hospitality and retail improvements on property adjacent to the Cubs Spring Training Facilities; and

WHEREAS, the City transferred certain real property (the “Property”) to BCY by an instrument entitled “Special Warranty Deed with Property Restriction, Rights of Reverter and Right of Re-Entry” dated as of January 2, 2014 and recorded in the Official Records of Maricopa County as Instrument No. 2014-005362 (the “Deed”) for this development; and

WHEREAS, the Property was later conveyed by BCY to River View Hotel, LLC, an Arizona limited liability company (the “Developer”), subject in all events to the Deed and the Development Agreement; and specifically by the terms of (i) that certain Special Warranty Deed, dated March 10, 2014 and recorded as Instrument No. 2014-0154020 in the Official Records of Maricopa County, on March 11, 2014; and

WHEREAS, in that certain Assignment & Assumption Agreement dated March 11, 2014 and recorded in the Official Records of Maricopa County as Instrument No. 2014-0154028, BCY assigned and conveyed all its rights and interests in the Development Agreement, Property, and Deed to Developer; and Developer assumed all the rights, interests, and obligations in the Development Agreement, Property, and Deed; and

WHEREAS, the Deed has certain reversionary provisions on the Retail Parcel, and the City and Developer have agreed to extend the Retail Reverter Date by one year, subject to certain conditions; and

WHEREAS, the Development Agreement granted certain rights of first refusal (the “ROFR”), and the City and Developer have agreed to the termination of the ROFR; and

WHEREAS, the City and Developer desire to amend the Development Agreement and the Deed as described in this Resolution and as more fully set forth in the First Amendment to Development Agreement and Option Agreement (the “First Amendment”) and the Deed Modification Agreement and Confirmation of Property Restrictions, Rights of Reverter and Right of Re-Entry (the “Deed Modification”) (collectively, the “Amendments”); and

WHEREAS, the City Council hereby determines it is appropriate to enter into the First Amendment and the Deed Modification under the terms and conditions set forth in the Amendments.

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

Section 1: That the City Manager, or his designee, is authorized and directed to execute the First Amendment and if the terms and conditions in the First Amendment are satisfied enter into and record the Deed Modification, and to execute all other documents and amendments necessary to carry out the provisions of the Agreements. The City Manager may make modifications to the Agreements so long as such modifications do not materially alter the overall agreement between the parties.

Section 2: That the City Clerk is authorized and directed to attest to the signature of the City Manager, or his designee, on all such documents.

PASSED AND ADOPTED by the Council of the City of Mesa, Maricopa County, Arizona this 12th day of December, 2016.

APPROVED:

Mayor

ATTEST:

City Clerk