

WHEN RECORDED RETURN TO:

City of Mesa
Real Estate Services/Engineering
20 East Main Street, Suite 500
Mesa, Arizona 85211

DEVELOPMENT AGREEMENT

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

and

MC HOTEL–RIVER VIEW, LLC,
an Arizona limited liability company

January ____, 2019

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the ____ day of January, 2019, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the “**City**”), and MC HOTEL–RIVER VIEW, LLC, an Arizona limited liability company (“**Owner**”). The City and Owner are sometimes referred to herein collectively as the “**Parties**,” or individually as a “**Party**.”

RECITALS

A. Pursuant to a Development Agreement entered into between the City and Chicago Cubs Baseball Club, LLC, a Delaware limited liability company (“**Cubs**”), recorded in the Official Records of Maricopa County, Arizona (the “**Official Records**”) as Instrument No. 2011-1004059 on December 6, 2011 (the “**Spring Training Development Agreement**”), the City developed and constructed certain Spring Training Facilities (as defined in the Spring Training Development Agreement).

B. Pursuant to a Facilities Use Agreement entered into between the City and Cubs, recorded in the Official Records as Instrument No. 2011-1004062 (the “**FUA**”), the City leased to Cubs the Spring Training Facilities, upon terms and conditions, and with certain qualifications and limitations more fully set forth in the FUA.

C. It was intended that certain areas within the Spring Training Facilities Site (as defined in the Spring Training Development Agreement), would be developed with hospitality and retail improvements to serve visitors.

D. Based on a Development Agreement and Option Agreement entered into between BCY Limited Partnership (“**BCY**”) and the City recorded in the Official Records as Instrument No. 2014-0005363 (the “**Sheraton Hotel Development Agreement**”) and associated real estate purchase agreement, BCY became the legal owner of the real property within the Spring Training Facilities Site known as the Retail Parcel and the Hospitality Parcel (as those terms are defined in the Sheraton Hotel Development Agreement).

E. The Hospitality Parcel and the Retail Parcel were later conveyed by BCY to River View Hotel, LLC, an Arizona limited liability company (“**RVH**”), subject in all events to the Sheraton Hotel 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, on March 11, 2014, and (ii) that certain Assignment and Assumption Agreement, dated March 11, 2014 and recorded as Instrument No. 2014-0154028 in the Official Records, on March 11, 2014.

F. Owner, concurrently with its execution and delivery of this Agreement, has acquired or will acquire from the City certain real property located within the Spring Training Facilities Site consisting of the Pad (“**Pad**”) (as that term is defined in the Sheraton Hotel Development Agreement).

G. Owner will acquire a portion of the Hospitality Parcel (the “**Additional Hotel Property**”). The Additional Hotel Property, Retail Parcel and Pad are described and depicted on Exhibits A to D.

H. As a condition of this Agreement, RVH will transfer ownership of the Retail Parcel and Additional Hotel Property as set forth in Subsection 4.5. The Retail Parcel, Additional Hotel Property and the Pad are collectively the “**Property**” upon which Owner wishes to construct certain Improvements (the “**Project**”), all as more fully described in this Agreement, to benefit and enhance the Spring Training Facilities.

I. Owner’s purchase and acquisition of the Pad is subject to certain restrictions (the “**Restrictions**”) as set forth in the special warranty deed conveying the Pad from the City to Owner (the “**Deed**”), as well as a right of reverter and right of re-entry, all as more fully set forth in the Deed.

J. Owner is agreeing to construct the Project upon the Property in accordance with this Agreement, and thereafter to operate the Project in compliance with the Restrictions, all as more fully required by the Deed.

K. The City, acting through its City Council, has determined that: (i) the Project is an important addition to the Spring Training Facilities Site, and (ii) that the construction and operation of the Project by Owner or its permitted successors, are consistent with the City’s goals in developing the Spring Training Facilities Site.

L. In reliance upon the City’s approval and adoption of this Agreement and the City’s representation and covenant that it will provide and perform the undertakings set forth in this Agreement, Owner agrees, without limiting in any respect the specific provisions of this Agreement, to the undertakings set forth in this Agreement, which the City has requested or required of Owner in order to advance the City’s interests.

M. The Parties also understand and acknowledge that this Agreement is authorized by and entered into accordance with the terms of A.R.S. § 9-500.11. The actions taken by the City pursuant to this Agreement are for economic development activities as that term is used in A.R.S. § 9-500.11, will assist in the creation and retention of jobs in the City, will promote economic development within the City, will provide tangible and intangible economic benefits to the City and its residents, and in numerous other ways will improve and enhance the economic welfare of the residents of the City.

N. The City is entering into this Agreement as an administrative act to implement and to facilitate development of the Property consistent with the policies of the City reflected in the previously adopted Spring Training Development Agreement and the FUA.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** In this Agreement, unless a different meaning clearly appears from the context:

(a) **“Additional Hotel Property”** means as defined in Recital G and as described in Exhibit D and as depicted on Exhibit A.

(b) **“Affiliate”** as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition: (i) **“control”** (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise; and (ii) **“person”** means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

(c) **“Agreement”** means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through N, inclusive, are incorporated herein by reference and form a part of this Agreement, but are not intended to expand the scope, number or nature of the obligations beyond those expressly set forth in the numbered sections of this Agreement.

(d) **“Applicable Laws”** means as defined in Subsection 3.2(a).

(e) **“A.R.S.”** means the Arizona Revised Statutes as now or hereafter enacted or amended.

(f) **“BCY”** means as defined in Recital D.

(g) **“City”** means the Party designated as City on the first page of this Agreement.

(h) **“City Code”** means the Code of the City of Mesa, Arizona, as amended from time to time.

(i) **“City Council”** means the City Council of the City.

(j) **“Commencement of Construction”** means both: (i) the obtaining of a building excavation, grading or similar permit by Owner for the construction of the Improvements, and (ii) the actual commencement of physical construction operations on the

Property in a manner necessary to achieve timely Completion of Construction of the Improvements.

(k) **“Completion of Construction”** means the date on which one or more temporary or final certificates of occupancy have been issued by the City for the Improvements.

(l) **“Construction Holiday”** means as defined in Subsection 4.1.

(m) **“Cubs”** means as defined in Recital A.

(n) **“Deed”** means as defined in Recital I.

(o) **“Default”** or **“Event of Default”** means one or more of the events described in Subsections 9.1 or 9.2; provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Enforced Delay provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Section 9.

(p) **“Effective Date”** means the date on which all of the following has occurred: (i) the City Council has authorized its City Manager to execute this Agreement; (ii) this Agreement has been executed by the City Manager of the City and by a duly authorized representative of the Owner; and (iii) this Agreement has been recorded in the Official Records.

(q) **“Enforced Delay”** means as defined in Subsection 9.5.

(r) **“FUA”** means as defined in Recital B.

(s) **“General Plan”** means the City’s General Plan, as required by statute, and as required, from time to time, by the City.

(t) **“Hospitality Parcel”** means as defined in Recital D and as described in Exhibit C and as depicted on Exhibit A.

(u) **“Hotel”** means as defined in Subsection 4.2(a).

(v) **“Improvements”** means the improvements proposed to be constructed on the Property as defined in Subsection 4.2.

(w) **“Official Records”** means as defined in Recital A.

(x) **“Owner”** means the Party designated as Owner on the first page of this Agreement, and its successors and assigns that conform with the requirements of this Agreement.

(y) **“Pad”** means that real property legally described in Exhibit B, consisting of approximately 0.28 acres, and as generally depicted on Exhibit A.

(z) **“Party”** or **“Parties”** means as designated on the first page of this Agreement.

(aa) **“Plans”** means as defined in Subsection 3.1(a).

(bb) **“Project”** means as defined in Recital H.

(cc) **“Property”** means as defined in Recital H and as described in Exhibits B to D and as depicted on Exhibit A.

(dd) **“Restrictions”** means as defined in Recital I.

(ee) **“Retail Parcel”** means as defined in Recital D and as described in Exhibit C and as depicted on Exhibit A.

(ff) **“RVH”** means as defined in Recital E.

(gg) **“Sheraton Hotel Development Agreement”** means as defined in Recital D.

(hh) **“Spring Training Development Agreement”** means as defined in Recital A.

(ii) **“Spring Training Facilities”** means as defined in Recital A.

(jj) **“Spring Training Facilities Site”** means as defined in Recital C.

(kk) **“Term”** means as described in Subsection 2.2.

(ll) **“Third Party”** means any person (as the term “person” is defined in Subsection 1(b) above) other than a Party, or an Affiliate of any Party.

(mm) **“Transfer”** means any actual, attempted or purported transfer, assignment, conveyance, encumbering or hypothecation of this Agreement, all or any part of Owner’s rights and obligations arising under or in respect of this Agreement, all or any portion of the Property, or any interest in Owner; provided, however that a hypothecation of this Agreement and encumbering of the Property by Owner in connection with third-party construction financing for the Improvements shall not constitute a Transfer of this Agreement; and further provided that no Transfer of Owner’s rights or obligations arising under or in respect of this Agreement may occur apart from a Transfer of the Property.

(nn) **“Zoning”** means as the City’s ordinances relating to, and regulating, zoning within the City.

2. **PARTIES AND TERM OF THIS AGREEMENT.**

2.1. **Parties to the Agreement.** The Parties to this Agreement are the City and the Owner.

(a) **The City.** The City is a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) **The Owner.** The Owner is MC Hotel–River View, LLC, an Arizona limited company, together with its successors in interest and assigns.

2.2. **Term.** Notwithstanding anything in this Agreement to the contrary, the term of this Agreement (“**Term**”) will begin on the Effective Date and shall terminate, or be deemed to terminate, on the later of: (i) the expiration of the Term (as defined in the FUA) of the FUA, as the same may be extended from time-to-time by the City in its sole election, or (ii) twenty-five (25) years from the Effective Date.

3. **SCOPE AND REGULATION OF DEVELOPMENT.**

3.1. **Plans and Specifications.**

(a) **Plans.** Development and construction of the Improvements shall be in accordance with plans and specifications prepared and submitted by Owner, which shall comply with the City’s General Plan and the Zoning, and which must be reviewed and approved by the City in accordance with its regular and customary procedures (“**Plans**”).

(b) **Approval Process.** The process for the submittal, review and approval of the Plans, shall be in accordance with the City’s submittal, review and approval processes then in effect. Subject to Applicable Laws, the City and Owner will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Owner in connection with development of the Improvements.

(c) **Cooperation in the Implementation of the Plans.** Owner and the City shall work together using commercially reasonable best efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Plans.

3.2. **Development Regulation.**

(a) **Applicable Laws.** For purposes of this Agreement, the term “**Applicable Laws**” means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City which apply to the development of the Property as of the Effective Date.

(b) **Building Code.** The development of the Property will be subject to the Mesa City Building Regulations (Title 4, Mesa City Code) and all incorporated codes and regulations thereto and such modifications as may be adopted by the City.

(c) Fees. The building, development, plan check, permit, and other project-related fees required to be paid by Owner for the development and construction of the Improvements shall be those in effect at the time the applicable Plans are submitted for review and approval.

4. **OWNER OBLIGATIONS**. In consideration of the City's selling the Pad to Owner for the purposes of development consistent with the Recitals, Owner agrees as follows:

4.1. Commencement and Completion of Construction of Improvements. Owner shall construct, or cause to be constructed, at Owner's sole cost and expense, the Improvements in accordance with all Plans, and further achieving the following deadlines (subject to Enforced Delay):

(a) Commencement of Construction shall occur on or before June 30, 2019; and

(b) Completion of Construction shall occur on or before December 31, 2020.

(c) Notwithstanding the foregoing, Owner shall not permit any construction or related activities on the Property during the 2019 Spring Training Season (February 17, 2019 to March 30, 2019) or the 2020 Spring Training Season (February 14, 2020 to March 31, 2020 (collectively hereinafter referred to as the "**Construction Holiday**"). Owner is permitted to have construction or related activities on the Property during the Construction Holiday on days in which a Major League Baseball game is not played at the Stadium based on the following conditions: (i) Owner must ensure a well-maintained construction fence with decorative scrim is in place at all times at the Property; (ii) no deliveries will be made to the Property on days in which a Major League Baseball game is played at the Stadium; (iii) the Cubs reserve the right to prohibit construction on three (3) days (whether consecutive or not) in which a Major League Baseball game is not played at the Stadium by providing Owner with forty-eight (48) hours' notice; and (iv) the City reserves the right to prohibit construction on days in which a Major League Baseball game is not played at the Stadium by providing Owner with forty-eight (48) hours' notice. Owner agrees and acknowledges that it has taken such Construction Holiday into account in determining and agreeing to the timetables and deadlines set forth in this Agreement, and that the Construction Holiday shall not be deemed an event of Enforced Delay or shall such Construction Holiday extend any date for performance by Owner.

4.2. Improvements. The Improvements shall consist of and include all the following:

(a) A four-story, not fewer than 125-room, full-service hotel, with features, finishes and amenities consistent with a Marriott Courtyard Hotel (or a comparable flag as approved by the City in its reasonable discretion) as of the Effective Date (the "**Hotel**");

(b) Such Hotel shall include a fitness center with swimming pool and not fewer than one (1) restaurant and bar, all of which shall have and include features and finishes consistent with the quality of such amenities at a Marriott Courtyard Hotel (or a comparable flag as approved by the City in its reasonable discretion) as of the Effective Date;

(c) Such Hotel shall include and be appurtenant to a not less than 16,000 square foot retail or restaurant space that, in addition to any limitations imposed by any applicable Zoning, shall be subject to the restrictions and limitations of Exhibit F; and

(d) Such Hotel shall have no guest rooms with a direct line of site into the Stadium (as defined in the FUA).

4.3. Operation of Hotel. Following the Completion of Construction of the Improvements, and for the entire Term, Owner shall cause the Hotel to be operated as either a Marriott Courtyard Hotel, or a comparable flag as approved by the City in its reasonable discretion. Operation of the Hotel will also meet the following requirements:

(a) Owner will work with the Cubs on safety concerns related to the Stadium, including the development of a plan related to an active shooter;

(b) No activity, whether it be that of the Owner or a Third-Party, will take place on the rooftop of the Hotel or in any public space of the Hotel with a direct line of site into the Stadium during Cubs home Spring Training games at the Stadium;

(c) Owner will work with the Cubs to ensure that signage at the Project is mutually agreed upon between the Cubs and Owner to ensure no signage at the Project competes directly with signage at the Stadium; and

(d) On days in which the Cubs have home Spring Training games at the Stadium, Owner will not permit any cart sales on the Property.

4.4. Parking; Traffic Plan. Owner acknowledges that the Sheraton Hotel Development Agreement contained certain parking restrictions and required parking, specifically those set forth in Section 4 of the Sheraton Hotel Development Agreement (“**Sheraton Parking**”). To the extent Owner will rely on the Sheraton Parking in order to meet its parking obligations under Applicable Laws, Owner: (a) acknowledges the Sheraton Parking is subject to City parking requirements, including requirements set forth in the FUA, which Owner will comply with in the construction and operation of the Improvements; and (b) agrees to comply with all requirements of the Sheraton Parking for the entire Term and will sign such agreements or documents as is necessary to evidence Owner’s agreement. As a part of ensuring that the Sheraton Parking requirements are met, Owner agrees that it will work with the Cubs on a traffic plan for days in which a Major League Baseball game is played at the Stadium.

4.5. Transfer of Ownership of Retail Parcel and Additional Hotel Property; Lot Line Modification. As a condition of the closing of the sale of the Pad to Owner, RVH will transfer all of its right, title and interest to the Retail Parcel and the Additional Hotel Property to Owner. Following the transfer of ownership, Owner agrees that: (a) this Agreement will apply to and be binding upon the Pad, Retail Parcel and the Additional Hotel Property; and (b) prior to the pulling of any permits for vertical construction for the Project, Owner will make (or have made) modifications to the lot lines of the Pad, Retail Parcel and the Additional Hotel Property, as required by the City, in order to combine the Pad, Retail Parcel and Additional Hotel Property into one lot of real property upon which the Project will be developed.

5. **CITY OBLIGATIONS.** In consideration of Owner's prompt and punctilious performance of its obligations required by this Agreement including, but not limited to, the timely Completion of Construction of the Improvements, City agrees as follows:

5.1 **Customized Review Schedule.** The review and approval of all plans, applications and other submissions by or on behalf of Owner will be in accordance with a customized review schedule agreed upon by Owner and the City that will be provided at base permit fee. The customized review schedule will not result in or require the payment of an additional fee by Owner for expediting the processing and approval of Owner's submittals.

5.2 **Deed and Releasing Restrictions.** At the Close of Escrow (as that term is used in the Agreement to Purchase Real Property and Escrow Instructions executed concurrently with this Agreement), the City will issue Owner the Deed with Restrictions for the Pad. Following the Completion of Construction, the City will issue a release terminating the Restrictions on the Pad, but such release will not terminate or release any other obligations set forth in the Deed.

6. **INDEMNITY; RISK OF LOSS.**

6.1. **Indemnity by Owner.** Owner shall pay, defend, indemnify and hold harmless the City and its City Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated) which arise from or relate in any way to any act or omission by Owner, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Owner's obligations under this Agreement. The provisions of this Subsection 6.1, however, shall not apply to loss or damage or claims therefore which are attributable solely to acts or omissions of the City, its agents, employees, contractors, subcontractors or representatives. Owner shall have no defense obligation in any instance in which a claim is asserted based upon an act or omission solely of the City, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of Owner shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

6.2. **Indemnity by the City.** The City shall pay, defend, indemnify and hold harmless Owner and its Affiliates and their respective partners, shareholders, officers, managers, members, agents and representatives (and their respective partners, shareholders, officers, managers, members, agents or representatives) from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorneys' and experts' fees and court costs associated) which arise from or which relate in any way to any act or omission solely of or on the part of the City, its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of the City's obligations under this Agreement. The provisions of this Subsection 6.2 shall not apply to loss or damage or claims therefore which are attributable in whole or in part to acts or omissions of Owner and/or its Affiliates, or their respective agents, employees, contractors, subcontractors or representatives. The City shall have no defense obligation in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Owner, its employees, contractors, subcontractors, agents or representatives. The foregoing indemnity obligations of the City shall survive the

expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

6.3. Risk of Loss. Owner assumes the risk of any and all loss, damage or claims to the Project.

6.4. Insurance. During the period of any construction involving the Project, and with respect to any construction activities relating to the Project, Owner will obtain and provide the City with proof of payment of premiums and certificates of insurance showing that Owner is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit E. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the City, and will name the City as an additional insured on such policies.

7. CITY REPRESENTATIONS. The City represents and warrants to Owner that:

7.1. The City has the full right, power and authorization to enter into this Agreement, and the City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

7.3. The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4. The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Owner.

7.5. The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

7.6. The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. OWNER REPRESENTATIONS. Owner represents and warrants to the City that:

8.1. Owner has the full right, power and authorization to enter into and perform this Agreement and of the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized and agreed to in compliance with the organizational documents of Owner.

8.2. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

8.3. Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4. As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have a material adverse effect on Owner's performance under this Agreement that has not been disclosed in writing to the City.

8.5. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Owner will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Owner as a party or which challenges the authority of Owner to enter into or perform any of its obligations hereunder and will cooperate with the City in connection with any other action by a Third Party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability and reformation provisions of Subsection 10.3 shall apply in the event of any successful challenge to this Agreement.

8.6. The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which Owner is otherwise subject.

8.7. Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

8.8. Owner has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES.**

9.1. Events of Default by Owner. "Default" or an "Event of Default" by Owner under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Owner was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) Owner fails to achieve Commencement of Construction or Completion of Construction of the Improvements by the dates set forth in Subsection **Error! Reference source not found.**;

(c) Owner transfers or attempts to transfer or assign this Agreement in violation of Subsection 10.2; or

(d) Owner fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2. Events of Default by the City. Default or an Event of Default by the City under this Agreement shall mean one or more of the following:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

(b) The City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.3. Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default shall be cured within either: (i) thirty (30) days (or five (5) days in the event of a monetary Default) after receipt of such notice; or (ii) if a non-monetary Default that is of a nature such that it is not capable of being cured within thirty (30) days, then commercially reasonable efforts to cure shall be commenced within such period and the Default cured within ninety (90) days after receipt of such notice.

9.4. Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the non-performing Party in accordance with Subsection 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of the City. The City's remedies for an Event of Default by Owner shall consist of, and shall be limited to the following:

(i) If an Event of Default by Owner occurs prior to Commencement of Construction or Completion of Construction and with respect to Owner's failure to construct or develop the Improvements in accordance with the terms of this Agreement, the City may suspend any of its obligations under this Agreement; and may exercise any remedies available at law or in equity; and further may exercise any rights or remedies granted by or reserved in the Deed, including but not limited to a Reversion (as defined in the Deed) or rights of Re-Entry (as defined in the Deed).

(ii) If an Event of Default by Owner occurs with respect to any other obligation of Owner, then the City may suspend any of its obligations under this Agreement and exercise any remedies available at law or in equity.

(b) Remedies of Owner. Owner's remedies for an Event of Default by the City shall consist of and shall be limited to the following:

(i) If an Event of Default by the City occurs at any time, whether prior to or after Completion of Construction, Owner may seek special action or other similar relief

(whether characterized as mandamus, injunction or otherwise), requiring the City to undertake and to fully and timely perform its obligations under this Agreement.

(ii) In no event may Owner maintain an action for, or recover, consequential, beneficial, special, punitive, multiple or similar damages against the City as a result of an Event of Default by the City.

9.5. Enforced Delay in Performance for Causes Beyond Control of Party.

Neither the City nor Owner, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an “**Enforced Delay**”) due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the federal, state or local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular hospitality managers or tenants or purchasers of portions of the Property, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Owner in connection with the construction of the Improvements, it being agreed that Owner will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Subsection 9.5 shall, within ten (10) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party’s failure to notify the other of an event constituting an Enforced Delay shall not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party; and provided, further, that no period of Enforced Delay shall exceed a period of sixty consecutive (60) calendar days.

9.6. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. MISCELLANEOUS PROVISIONS.

10.1. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any

action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Subsection 10.1.

10.2. Restrictions on Assignment and Transfer.

(a) No Transfer Prior to Completion of Construction. Prior to Completion of Construction, no Transfer shall occur without the prior written consent of City, which consent may be given or withheld in the City's sole and unfettered discretion. The restrictions set forth in this Subsection 10.2(a) shall terminate automatically, and without further notice or action, upon Completion of Construction of the Improvements, but all other restrictions and obligations contained in this Agreement shall remain in full force and effect. Any Transfer in violation of Subsection 10.2(a) shall be void and not voidable, and no voluntary or involuntary successor in interest to Owner shall acquire any rights or powers under this Agreement, except as expressly set forth herein.

(b) Permitted One-Time Transfer. Notwithstanding the foregoing, MC Hotel-River View, as Owner, may make a one-time transfer to an entity that is owned and controlled by Gaylord Bob Yost.

(c) Transfer to Retail/Hotel Operator. Notwithstanding the foregoing, at any time following Completion of Construction of the Improvements, and with the prior written consent of the City, which consent shall not be unreasonably withheld, Owner may Transfer the Property to an experienced operator of retail/hotel projects. Any Transfer pursuant to this Subsection 10.2(c) in all respects shall be subject to all of the conditions, requirements and restrictions of this Agreement, and to the Deed including, but not limited to, all rights of reverter and re-entry retained by the grantor in such instruments, unless such have already been released pursuant to Section 5.2 above.

10.3. Limited Severability. The City and Owner each believe that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City code or City charter), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

10.4. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

10.5. Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Subsection 10.5, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the City:	City of Mesa Attn: City Manager 20 East Main Street Mesa, Arizona 85211
With a required copy to:	City of Mesa Attn: City Attorney 20 East Main Street, Suite 850 Mesa, Arizona 85211
If to Owner:	MC Hotel–River View, LLC P.O. Box 21137 Mesa, Arizona 85277 Attn: Bob Yost
With a required copy to:	Pew & Lake PLC Attn: Reese L. Anderson 1744 South Val Vista Drive, Suite 217 Mesa, Arizona 85204-7366

(b) Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt (or refusal

to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

(c) Payments. Payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt, in good and available funds, by the intended recipient.

10.6. Time of Essence. Time is of the essence of this Agreement and each provision hereof.

10.7. Section Headings. The Section and Subsection headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

10.8. Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

10.9. Waiver. Without limiting the other terms or provisions of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

10.10. Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders and except that the indemnified Parties referred to in the indemnification provisions of Subsections 6.1 and 6.2 (or elsewhere in this Agreement) shall be third-party beneficiaries of such indemnification provisions.

10.11. Exhibits. Without limiting the provisions of Section 1(c) of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

10.12. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

10.13. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

10.14. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

10.15. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

10.16. Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Property shall run with the Property and shall be binding upon, and shall inure to the benefit of, the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

10.17. Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties the City shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

10.18. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" shall mean the Agreement as amended. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

10.19. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

10.20. Survival. All indemnifications contained in Subsections 6.1 and 6.2 of this Agreement shall survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section or Subsection.

10.21. Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Owner. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner under this Agreement shall be limited solely to the assets of Owner and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Owner; (ii) the shareholders, members or managers or constituent partners of Owner; or (iii) officers of Owner.

10.22. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. § 38-511.

10.23. Waiver. Owner hereby waives and releases the City (“**Waiver**”) from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of the City’s approval of this Agreement, the City’s approval of Owner’s plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

10.24. Consent. Wherever the City’s consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by applicable law, City policy, or the City Manager, and the City Manager (or his/her designee) will enter into such amendments to this Agreement demonstrating such consent as deemed necessary or appropriate by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY:

THE CITY OF MESA, Arizona, an Arizona
municipal corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

Notary Public

My commission expires:

OWNER:

MC HOTEL-RIVER VIEW, LLC,
an Arizona limited liability company

By: Power Hotel Group, LLC, an Arizona limited
liability company, Its Manager

By: _____
Gaylord Bob Yost, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2019, before me, _____, a Notary
Public in and for said State, personally appeared Gaylord Bob Yost, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to
the within instrument and acknowledged to me that he executed the same in his/her authorized
capacity, and that by his signature on the instrument the person, or the entity upon behalf of which
the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires:

EXHIBIT A

DEPICTIONS OF “PAD”, “RETAIL PARCEL” AND “ADDITIONAL HOTEL PROPERTY”

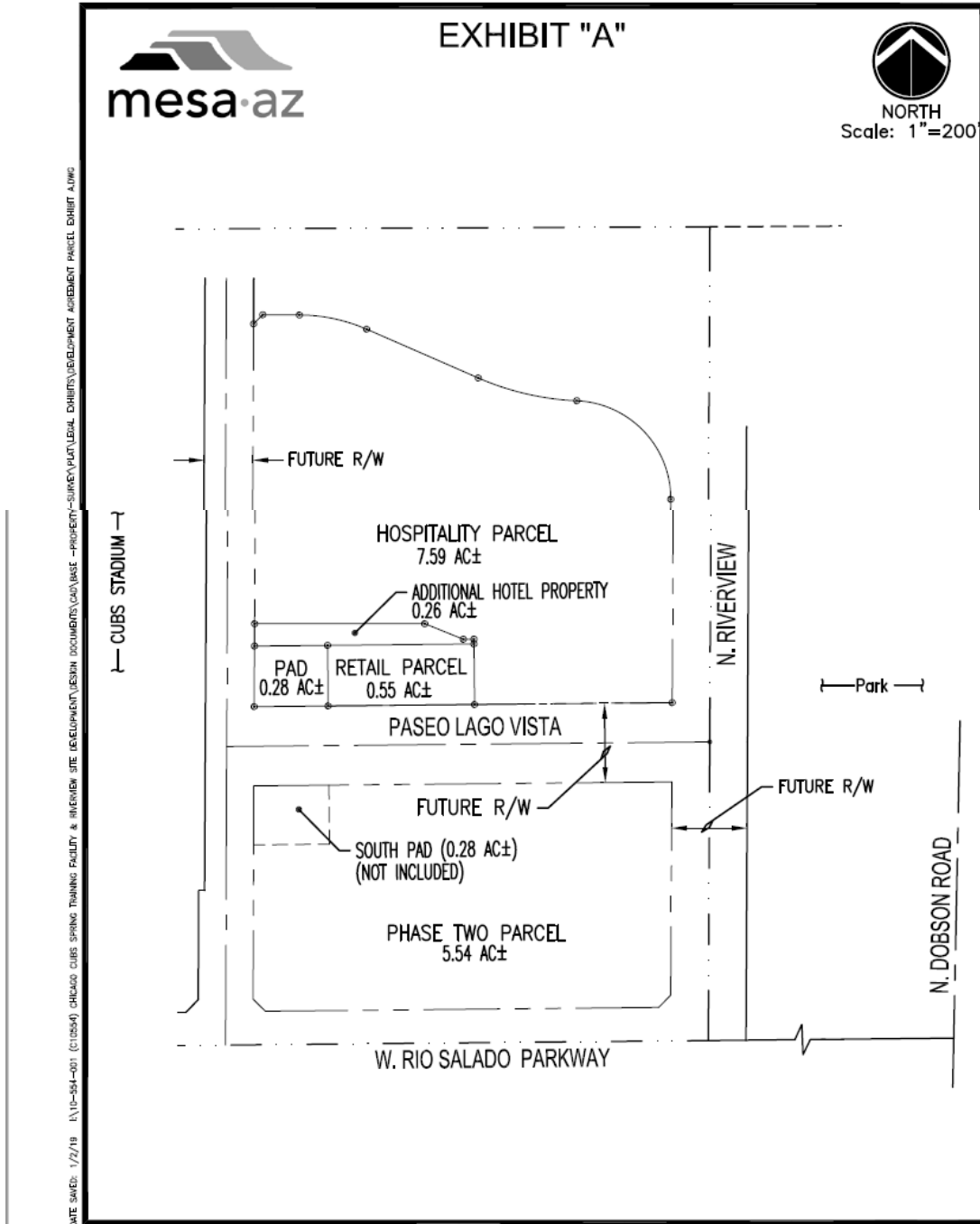


EXHIBIT B

LEGAL DESCRIPTION – “PAD”

=====

A portion of land located in the Northeast Quarter of Section 18, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing for reference from the East Quarter corner of said section 18:

Thence S 89 ° 27' 10" W, 1035.04 feet along the east-west midsection line (basis of bearing)

Thence N 0 ° 16' 58" E, 554.01 feet:

Thence N 89 ° 43' 02" W, 62.00 feet:

Thence 89 ° 27' 12" W, 565.23 feet to the Point of Beginning;

Thence S 89 ° 27' 12" W, 121.46 feet:

Thence N 0 ° 16' 58" E, 99.39 feet:

Thence N 89 ° 27' 12" E, 120.02 feet:

Thence S 0 ° 32' 48" E, 99.38 feet back to the Point of Beginning.

Containing 12,000 Square Feet or 0.28 acres, more or less.

EXHIBIT C

LEGAL DESCRIPTION – “RETAIL PARCEL”

=====

A portion of land located in the Northeast Quarter of Section 18, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing for reference from the East Quarter corner of said section 18:

Thence S 89 ° 27' 10" W, 1035.04 feet along the east-west midsection line (basis of bearing);

Thence N 0 ° 16' 58" E, 554.01 feet:

Thence N 89 ° 43' 02" W, 62.00 feet:

Thence S 89 ° 27' 12" W, 324.68 feet to the Point of Beginning;

Thence S 89 ° 27' 12" W, 240.55 feet:

Thence N 0 ° 32' 48" W, 99.38 feet:

Thence N 89 ° 27' 12" E, 240.55 feet:

Thence S 0 ° 32' 48" E, 99.38 feet back to the Point of Beginning.

Containing 23,906 Square Feet or 0.55 acres, more or less.

EXHIBIT D

LEGAL DESCRIPTION – “ADDITIONAL HOTEL PROPERTY”

LEGAL DESCRIPTION

A PORTION OF PARCEL B AS SHOWN IN A MINOR LAND DIVISION RECORDED IN BOOK 1170, PAGE 29 OF MARICOPA COUNTY RECORDS, LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA DESCRIBED AS FOLLOWS:
COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 18;
THENCE ALONG THE EAST-WEST MID SECTION LINE (BASIS OF BEARING) S89°27'10"W, A DISTANCE OF 1035.04 FEET;
THENCE ALONG THE CENTERLINE OF NORTH RIVERVIEW N00°16'58"E, A DISTANCE OF 554.01 FEET;
THENCE N89°43'02"W, A DISTANCE OF 62.00 FEET TO THE SOUTHEAST CORNER OF PARCEL B OF SAID MINOR LAND DIVISION;
THENCE ALONG THE SOUTH LINE OF SAID PARCEL B, S89°27'12"W, A DISTANCE OF 324.68 FEET TO THE SOUTHEAST CORNER OF PARCEL C OF SAID MINOR LAND DIVISION;
THENCE ALONG THE EAST BOUNDARY LINE OF SAID PARCEL C N00°32'48"W, A DISTANCE OF 99.38 FEET TO THE NORTHEAST CORNER OF SAID PARCEL C, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;
THENCE ALONG THE NORTHERN BOUNDARY LINE OF SAID PARCEL C AND PARCEL D OF SAID MINOR LAND DIVISION S89°27'12"W, A DISTANCE OF 360.57 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SHEFFIELD AVENUE;
THENCE ALONG SAID RIGHT-OF-WAY LINE N00°16'58"E, A DISTANCE OF 36.68 FEET;
THENCE DEPARTING SAID RIGHT-OF-WAY LINE S90°00'00"E, A DISTANCE OF 279.49 FEET;
THENCE S68°02'48"E, A DISTANCE OF 68.30;
THENCE N89°27'11"E, A DISTANCE OF 17.46;
THENCE S00°32'48"E, A DISTANCE OF 7.87 FEET TO THE TRUE POINT OF BEGINNING.
CONTAINING 11,344.56 SQUARE FEET OR 0.260 ACRES, MORE OR LESS.



JOB NO. 18-024-037
DESIGNED CLS
DRAWN LAS/TDB
CHECKED DCK
DATE 01-02-2019

4 OF **4** SHEETS

LEGAL DESCRIPTION

**MARRIOTT COURTYARD
NEC SHEFFIELD AVENUE AND PASEO LAGO VISTA
MESA, ARIZONA 85201**

KSE DESIGN GROUP, PLC

2525 West Greenway Road, Suite 306
Phoenix, Arizona 85023
PH (602) 347-7007 FAX (602) 249-1310

EXHIBIT E

CITY OF MESA INSURANCE REQUIREMENTS

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A. Property. During the period of any construction involving the Project, builder's risk insurance on an all-risk, replacement cost basis for the Project.

B. Liability. During the period of any construction involving the Project, insurance covering the Owner and (as an additional insured) the City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of \$5,000,000.00 per occurrence with a \$5,000,000.00 products/completed operations limit and a \$10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Project, each of the general or other contractors with which the Owner contracts for any such construction shall be required to carry liability insurance of the type and providing the minimum limits set forth below:

i) Workman's Compensation insurance and Employer's Liability with limits of \$1,000,000.00 per accident, \$1,000,000.00 per disease and \$1,000,000.00 policy limit disease.

ii) Commercial general liability insurance on a \$5,000,000.00 per occurrence basis providing coverage for:

Products and Completed Operations

Blanket Contractual Liability

Personal Injury Liability

Broad Form Property Damage

X.C.U.

iii) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Project, the Owner's architect shall be required to provide architect's or engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of construction involving the Property and the Project.

E. Engineer. In connection with any construction involving the Project, the Owner's soils engineer or environmental contractor shall be required to provide engineer's professional liability insurance with a limit of \$1,000,000.00 per claim. This policy, or other policies, shall cover claims for a period of not less than three (3) years after the completion of the construction involving the Property and the Project.

F. CPI Adjustments. The minimum coverage limits set forth above shall be adjusted every five (5) years by rounding each limit up to the million dollar amount which is nearest the percentage of change in the Consumer Price Index (the "CPI") determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month of October in the preceding year, as shown in the column for "All Items" in the table entitled "All Urban Consumers" under the "United States City Averages" as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October one (1) year earlier.

G. Primary Coverage. Owner's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by Owner and shall not contribute to it.

H. Indemnities. Coverage provided by the Owner shall not be limited to the liability assumed under the indemnification provisions of the Agreement.

I. Waiver of Subrogation. The policies shall contain a waiver of subrogation against the City, its officers, officials, agents, and employees Property.

J. Notice of Cancellation. Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Such notice shall be sent directly to City of Mesa, Attn: City Manager, 20 East Main Street, Mesa, Arizona 85211 and shall be sent by certified mail, return receipt requested.

K. Acceptability of Insurers. Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect Owner from potential insurer insolvency.

L. Verification of Coverage. Owner shall furnish the City with original certificates of insurance (ACORD form or equivalent approved by the City) as required herein. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

All certificates are to be received and approved by the City before the Commencement of Construction. Each insurance policy must be in effect at or prior to the Commencement of Construction and must remain in effect for the duration of the Agreement. Failure to maintain the

insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

All certificates required by this Agreement shall be sent directly to City of Mesa, Attn: City Manager, 20 East Main Street, Mesa, Arizona 85211. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Insurance Exhibit at any time.

M. Approval. Any modification or variation from the insurance requirements in Insurance Exhibit must have prior written approval from the City Manager's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

N. Miscellaneous. References to Owner herein shall mean Owner and/or its general contractor(s). References herein to the Agreement shall mean the Development Agreement of which this Exhibit is a part. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect Owner from liabilities that might arise and Owner may purchase such additional insurance as Owner determines necessary.

EXHIBIT F

**PROHIBITIONS ON USE AND DEVELOPMENT
OF PHASE TWO PROPERTY AND PAD**

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CERTAIN USES ARE NOT CONSISTENT WITH THE ACTIVE, URBAN, ENTERTAINMENT AND RECREATION ENVIRONMENT ENVISIONED FOR THIS PROJECT. TO ENSURE THE OVERALL QUALITY OF THE ENVIRONMENT IN THE FUTURE, AND NOTWITHSTANDING ANY ZONING OR USE PROVISIONS TO THE CONTRARY, THE FOLLOWING LIST OF USES IS PROHIBITED:

ASSISTED LIVING

GROUP RESIDENTIAL

- **GROUP RESIDENTIAL – CORRECTIONAL TRANSITIONAL HOUSING FACILITY**
- **GROUP HOUSING**

REHABILITATION CENTER

SOCIAL SERVICE FACILITIES, INCLUDING HOMELESS SHELTER, CHARITY DINING FACILITY, BLOOD BANK OR BLOOD PLASMA CENTER, EMPLOYMENT AGENCY FOR DAY LABOR OR SIMILAR

- **AUTOMOBILE/VEHICLE SALES AND SERVICES**
- **AUTOMOBILE RENTALS**
- **AUTOMOBILE/VEHICLE SALES AND LEASING**
- **AUTOMOBILE/VEHICLE REPAIR, MAJOR AND MINOR**
- **AUTOMOBILE/VEHICLE WASHING**
- **LARGE VEHICLE AND EQUIPMENT SALES, SERVICES, AND RENTAL**
- **SERVICE STATION/GAS STATION**

BUILDING MATERIALS AND SERVICES

EATING AND DRINKING ESTABLISHMENTS WITH DRIVE-THRU FACILITIES

FUNERAL PARLORS AND MORTUARIES

LIGHT FLEET-BASED SERVICES

MAINTENANCE AND REPAIR SERVICES

NON-CHARTERED FINANCIAL INSTITUTIONS (PAYDAY LENDERS)

PLANT NURSERIES AND GARDEN CENTERS

PAWN SHOPS

“PAY-DAY,” TITLE OR SIMILAR LOAN CENTERS

TATTOO AND BODY PIERCING PARLORS

SEXUALLY-ORIENTED OR “ADULT” BUSINESS

HANDICRAFT/CUSTOM MANUFACTURING

LIGHT ASSEMBLY/CABINETRY

RECYCLING FACILITIES

WAREHOUSING AND STORAGE

- **MINI-STORAGE**
- **WHOLESALE**

HELISTOPS OR HELIPORTS

BINGO HALL

MEDICAL MARIJUANA DISPENSARIES AND SIMILAR OR RELATED FACILITIES

“BIG BOX” RETAIL