

When recorded, mail to:

MC Hotel-River View, LLC
P.O. Box 21137
Mesa, Arizona 85277
Attn: Bob Yost

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**SPECIAL WARRANTY DEED
WITH PROPERTY RESTRICTIONS, RIGHTS OF REVERTER
AND RIGHTS OF RE-ENTRY**

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For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, the CITY OF MESA, an Arizona municipal corporation ("**Grantor**"), does hereby convey to MC Hotel-River View, LLC, an Arizona limited liability company ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Maricopa County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF

SUBJECT TO all matters of record and to any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; and all applicable municipal, county, state or federal zoning and use regulations.

AND FURTHER SUBJECT TO the following terms, covenants, conditions, restrictions set forth in numbered paragraphs 1 - 10 below (collectively, the "**Restrictions**"); and further subject to the following rights of reversion ("**Reverter**") and rights of re-entry ("**Re-Entry**"):

1. **Restrictions Regarding Use of Property.** The Property shall be developed and used only as a resort and hospitality facility and related improvements, and certain retail improvements, as described in that certain Development Agreement between Grantor and Grantee, which is dated concurrently with this Special Warranty Deed ("**Deed**") and recorded in the Official Records of Maricopa County ("**Official Records**") as the next sequentially numbered instrument (the "**Development Agreement**"). Grantee agrees and acknowledges that the Restrictions have been

bargained for with Grantor, and constitute part of the consideration for the conveyance of the Property from Grantor to Grantee.

2. Duration. The Restrictions shall apply and continue to apply to the Property at all times hereafter until the later of: (i) the expiration of that certain Facilities Use Agreement entered into by and between Grantor and Chicago Cubs Baseball Club, LLC, a Delaware limited liability company, recorded in the Official Records as instrument no. 2011-1004062, as the same may be amended from time-to-time by Grantor in its sole election, or (ii) twenty-five years from the date of recordation of this Deed.

3. Reversion. If Grantee or any successor or assign of Grantee should fail at any time or times to cause the Commencement of Construction (as defined in the Development Agreement) of the Improvements (as defined in the Development Agreement) by, June 30, 2019, subject in all events to any applicable notice and cure rights granted to Grantee in the Development Agreement (the "Reverter Date"), then title to, full ownership of, and all rights and benefits incidental and appurtenant to the Property automatically shall revert to Grantor or its successors and assigns (the "Reversionary Owner") as of the Reverter Date, and Grantee shall have no further rights in or to the Property. The Reversionary Owner shall pay to or for the benefit of Grantee (or any successor or assign of Grantee then holding legal or equitable title to the Property subject to the terms of this Deed) the sum of Three Hundred Thousand and no/100 Dollars (\$300,000.00) as reimbursement in full for the cash payment made by Grantee to Grantor as the purchase price paid by Grantee for the Property (the "Reimbursement"); provided that the Reverter and payment of the Reimbursement shall not release or discharge Grantee for, from or of any of Grantee's obligations of indemnity set forth in the Development Agreement that are expressly stated to survive the termination of the Development Agreement. The Reimbursement shall be paid by the Reversionary Owner to Grantee no later than one hundred and twenty (120) days following the recordation in the Official Records by the Reversionary Owner of a notice that specifically refers to and incorporates this Section 3 of this Deed (the "Notice of Reverter"). The Reverter (and all rights incidental to the Reverter) is automatic; the recordation of the Notice of Reverter described in this Section 3 is intended solely to provide constructive (or other) notice to third parties of the Reverter and the extinguishment of the entirety of Grantee's rights in and to the Property. Notwithstanding the foregoing, upon request by Grantor, Grantee shall execute, acknowledge and deliver to the Reversionary Owner a quit-claim deed of the Property, although the execution and delivery of such quit-claim deed (or, alternately, the failure of Grantee to execute and deliver such quit-claim deed) in no way shall affect the Reverter, the extinguishment of the entirety of Grantee's rights in the Property as of the Reverter Date, or the rights of the Reversionary Owner reserved, granted by or retained in this Deed. Grantee shall not be entitled to recover or receive any monies, payment or other consideration in excess of the Reimbursement as a consequence of the Reverter, with payment of the Reimbursement reflecting and constituting a full and complete discharge of the Reversionary Owner's obligations with respect to the Reverter.

4. Right of Re-Entry. If Grantee or any successor or assign of Grantee should fail at any time or times to cause the Completion of Construction (as defined in the Development Agreement) of the Improvements by the Completion Date (as defined in the Development Agreement), subject in all events to any applicable notice and cure rights granted to Grantee in the Development Agreement (the "Re-Entry Date"), then Grantor, in its sole and absolute discretion, may exercise a right of re-entry to recover title to, full ownership of, and all rights and benefits

incidental and appurtenant to the Property upon the recordation in the Official Records by Grantor of a notice that specifically refers to and incorporates this Section 4 of this Deed (the “**Notice of Re-Entry**”). The right of Re-Entry (and all rights incidental to the right of Re-Entry) is automatic upon the recordation of the Notice of Re-Entry; the recordation of the Notice of Re-Entry described in this Section 4 is intended solely to provide constructive (or other) notice to third parties of the re-entry onto the Property by Grantor and the extinguishment of the entirety of Grantee’s rights in and to the Property. Grantor shall pay to or for the benefit of Grantee (or any successor or assign of Grantee then holding legal or equitable title to the Property subject to the terms of this Deed) an amount (the “**Re-Entry Payment**”) consisting of the total of (i) Three Hundred Thousand and no/100 Dollars (\$300,000.00) as reimbursement in full for the cash payment made by Grantee to Grantor as the purchase price paid by Grantee for the Property, plus (ii) an amount equal to the actual, out-of-pocket construction costs (labor and material) expended by Grantee directly and solely in connection with the construction of the Improvements up through and including the Re-Entry Date (which amount shall be subject to verification and approval by Grantor upon delivery to Grantor by Grantee, not more than fifteen (15) calendar days following the Re-Entry Date, of true, complete and correct originals of receipts and other evidences of payment), less an amount retained by Grantor (the “**Holdback**”) consisting of (iii) an amount reasonably determined by the Grantor required to be withheld for payments to contractors, subcontractors, materialmen and other suppliers of labor, materials or other lienable items whose work may require payment, together with a fifteen percent (15%) contingency of such amount for the payment of unknown, unforeseen or unpredicted obligations of Grantee with respect to the Project (as defined in the Development Agreement), and less (iv) the cost of demolition of all (or any portion as elected by Grantor) of the uncompleted Improvements and restoration of the Property to its pre-construction condition, if Grantor determines, in its sole discretion, that it is not economically practicable for Grantor to use, maintain, sell, complete or otherwise benefit from all (or any portion as elected by Grantor) of the uncompleted Improvements. The Re-Entry Payment (less the Holdback) shall be paid by Grantor to Grantee no later than one hundred and twenty (120) days following receipt by Grantor of all of the documents and other items described in subsection (ii) above; and any portion of the Holdback that has not been paid by Grantor on behalf of the Project (or its demolition in accordance with subsection (iv) above) within eighteen (18) months of the Re-Entry Date shall be paid promptly to Grantee by Grantor. Notwithstanding the foregoing, upon request by Grantor, Grantee shall execute, acknowledge and deliver to Grantor a quit-claim deed of the Property, although the execution and delivery of such quit-claim deed (or, alternately, the failure of Grantee to execute and deliver such quit-claim deed) in no way shall affect the Re-Entry by Grantor, the extinguishment of the entirety of Grantee’s rights in the Property, or the rights of Grantor reserved, granted by or retained in this Deed. Grantee shall not be entitled to recover or receive any monies, payment or other consideration in excess of the Re-Entry Payment as a consequence of the Re-Entry by Grantor, with payment of the Re-Entry Payment reflecting and constituting a full and complete discharge of the Grantor’s obligations with respect to the Re-Entry.

5. Covenants Running with the Land. The Restrictions, Reverter and Right of Re-Entry set forth above, and all other covenants of Grantee, shall be covenants running with the land and the breach of any of them, or the continuance of any breach which is not cured as set forth above, may be enjoined or remedied by appropriate proceedings by the Reversionary Owner, but by no other person.

6. Development Agreement. Unless expressly set forth herein or in the Development Agreement: (i) nothing in this Deed shall affect the terms and conditions of the Development Agreement; and (ii) the enforcement or release of the Right of Reverter or Right of Re-Entry by Grantor shall not release the Grantee of any of its obligations in the Development Agreement or this Deed.

7. Enforcement. In addition to the Reverter and Right of Re-Entry set forth above in Sections 3 and 4 of this Deed, Grantor shall have all remedies at law and in equity to enforce the Restrictions and any and all other rights of Grantor provided, described or granted in or by this Deed (including, but not limited to, the Reverter and the Right of Re-Entry); and Grantor may bring, but is not limited to, an action to obtain specific performance and/or injunctive relief to compel compliance with the terms of the Restrictions, the Reverter and Right of Re-Entry. The election of one remedy shall not exclude the election of another. No waiver or estoppel shall be created or exist by the failure to take enforcement action for a violation of these terms.

8. Waiver. No delay or omission on the part of Grantor in exercising any right, power or remedy provided in this Deed in the event of the breach of the Restrictions, or in taking any actions permitted by this Deed to be taken by Grantor (whether as Reversionary Owner or otherwise) shall be deemed or construed as a waiver thereof or acquiescence therein or thereto, and no right of action shall accrue in favor of, nor shall any action be brought or maintained by, anyone whomsoever against the Grantor for or on account of the Grantor's failure to bring any action on account of any breach of the Restrictions, or for imposing covenants, conditions and restrictions in this Deed which may be unenforceable by Grantor.

9. Severability. In the event any one or more of the foregoing provisions or covenants, conditions and restrictions is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgment or decree shall not in any manner whatsoever, effect, modify, change, abrogate or nullify any of the covenants, conditions, reservations, restrictions not declared to be void or unenforceable, but all of the remaining covenants, conditions, reservations and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

10. Notices. Wherever in this Deed it shall be required or permitted that notice or demand be given or served by either Grantor or Grantee to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by (i) certified or registered mail, return receipt requested and postage prepaid, or (ii) by personal delivery (which may include public or private express delivery and overnight courier services) addressed to Grantor or Grantee as follows:

If to Grantor:

City of Mesa
20 East Main Street, Suite 850
Mesa, Arizona 85211
Attn: City Attorney

If to Grantee: 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

Either Grantor or Grantee may change such address by written notice in the manner specified above for the giving of notices to the other. Notice shall be deemed delivered and received three (3) business days following deposit with the United States Postal Service if forwarded by certified or registered mail in accordance with the provisions of Section 10(i) above, or upon personal delivery if delivered by personal delivery in accordance with Section 10(ii) above. The phrase "Business day" in this Section 10 shall refer to any day that is not a Friday, Saturday, Sunday or legal holiday of the City of Mesa.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ____ day of January, 2019, and Grantee has caused this Special Warranty Deed to be executed to evidence Grantee's acceptance of the terms and conditions of this Special Warranty Deed including, but not limited to, the Restrictions, Reverter and Re-Entry, and Grantee agrees, on behalf of itself and its successors and assigns, fully to be bound by the Restrictions, Reverter and Re-Entry, by executing this Special Warranty Deed to be effective as of the same date.

[Two separate signature pages follow.]

**GRANTOR'S SIGNATURE PAGE TO SPECIAL WARRANTY DEED
WITH PROPERTY RESTRICTIONS, RIGHTS OF REVERTER
AND RIGHTS OF RE-ENTRY**

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GRANTOR:

CITY OF MESA, an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this the ____ day of January, 2019, before me, the undersigned Notary Public, personally appeared Christopher J. Brady, who acknowledged himself to be the City Manager of the CITY OF MESA, an Arizona municipal corporation and that, being authorized so to do, he executed the foregoing instrument for the purposes herein contained on behalf of the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(Seal)

**GRANTEE'S SIGNATURE PAGE TO SPECIAL WARRANTY DEED
WITH PROPERTY RESTRICTIONS, RIGHTS OF REVERTER
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GRANTEE:

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 this the ____ day of January, 2019, before me, the undersigned Notary Public, personally appeared Gaylord Bob Yost, who acknowledged himself to be the Manager of the Power Hotel Group, LLC, the General Partner of MC Hotel-River View, LLC, an Arizona limited liability company, and that, being authorized so to do, he executed the foregoing instrument for the purposes herein contained on behalf of the Grantee.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

(Seal)

EXHIBIT "A" TO SPECIAL WARRANTY DEED

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The Property consists of one parcel as described below:

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.