

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY MANAGER TO ENTER INTO A SECOND AMENDMENT TO A DEVELOPMENT AGREEMENT AND A GOVERNMENT PROPERTY IMPROVEMENT LEASE WITH MHA III, LLC, CONCERNING THE DEVELOPMENT OF A MARKET-RATE RESIDENTIAL APARTMENT PROJECT AT THE SOUTHEAST CORNER OF 1ST AVENUE AND MACDONALD.

WHEREAS, MHA III, LLC, an Arizona limited liability company (“Developer”) and City are parties to that certain Amended and Restated Development Agreement as amended by that certain First Amendment to Amended and Restated Development Agreement (collectively, the “Development Agreement”). Developer and City also are parties to that certain Purchase and Sale Agreement and Escrow Instructions as amended by that certain Addendum to Purchase and Sale Agreement and Escrow Instructions (collectively, the “Purchase and Sale Agreement”). The Development Agreement and Purchase and Sale Agreement related to the development of what is referred to as the First Market Rate Project (which Developer completed) and the Second Market Rate Project (which is the subject of this Resolution) for property located at the southeast corner of 1st Avenue and Macdonald and as legally described in these agreements (the “Property”). The term “Property” hereinafter refers to the property related to the Second Market Rate Project.

WHEREAS, Developer timely elected to purchase the Property at the market rate price pursuant to the Development Agreement and Purchase and Sale Agreement, by depositing earnest money in escrow, and this election triggered Developer’s obligation to develop the Second Market Rate Project on the Property.

WHEREAS, City and Developer entered into that certain Second Addendum to the Purchase and Sale Agreement, which, *inter alia*, revised various deadlines and dates and provided for the purchase and sale of certain additional real property (the “Additional Property”) and the development of certain additional amenities. The term “Property” hereinafter is intended to include the Additional Property, if acquired by Developer.

WHEREAS, Developer’s completion of the First Market Rate Project was the first market rate apartment complex completed in downtown Mesa in over three decades; and the Parties desire to have the Second Market Rate Project completed and thereby completing the entire Project.

WHEREAS, upon the completion of the development on the Second Market Rate Project, it is the desire and intention of the Developer to transfer the Property and all the improvements constructed thereon to the City, and then to lease the Property and improvements from the City pursuant to A.R.S. §§42-6201 *et seq.* (the “Lease”).

WHEREAS, the governing bodies of Mesa Community College, Mesa Public Schools, and the East Valley Institute of Technology (collectively, the “School Districts”) have been notified and received all documentation required by A.R.S. §§42-6201 *et seq.*

WHEREAS, the City Council hereby determines, as required by A.R.S. §42-6209(C)(2), that, within the term of the Lease, the economic and fiscal benefit to the State of Arizona, Maricopa County, and City will exceed the benefits received by the prime lessee as a result of the Lease on the basis of an estimate of those benefits prepared by an independent third party in a manner and method acceptable to the City Council, and that City has provided that analysis to the School Districts.

WHEREAS, the City Council further finds that the Property and improvements thereon are located in a single central business district, are located in a redevelopment area, and the improvements will result in an increase in property value of at least one hundred percent; and, thus, subject to compliance with, and limitations of, A.R.S. §§42-6201 *et seq.*, the Development Agreement and Lease, the Property and improvements will be eligible for the tax abatement under A.R.S. § 42-6209.

WHEREAS, in compliance with A.R.S. § 42-6209(G), the term of the Lease shall not exceed eight years, and upon the expiration (or earlier termination) of the Lease, City will reconvey the Property and improvements back to Developer.

WHEREAS, the City Council hereby determines and finds that the Project will improve and enhance the economic welfare of the inhabitants of the City of Mesa in accordance with A.R.S. § 9-500.11.

WHEREAS, the City Council has already authorized the sale of the Property and made findings and determinations in Resolutions Nos. 10753, 10906, and 11167 for the sale and development of the Property, including findings and determinations for the need and benefits of market rate housing in downtown Mesa, which are equally applicable to the Lease and Second Amendment to the Development Agreement, and that are hereby incorporated herein.

WHEREAS, the City Council hereby determines it is appropriate to enter into a Second Amendment to the Development Agreement (the “Second Amendment”), Lease, and other agreements and documents as contemplated therein.

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

Section 1: The City Council approves the Second Amendment and Lease, authorizes the other agreements, documents, and amendments as contemplated therein, and authorizes the execution of future documents and agreements as necessary to carry out the provisions of these agreements (all the foregoing, collectively, the “Project Documents”). The City Manager, or his designee, is authorized to execute the Project Documents. Additionally, the City Manager is authorized to approve the conveyance and reconveyance of the Property and improvements consistent with the Project Documents and may agree to and enter into, and make, amendments and modifications to the Project Documents as necessary to carry out the intent of the Project

Documents or that are necessary to facilitate the development of the project and do not materially alter the terms of the Project Documents.

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 26th day of August, 2019.

APPROVED:

Mayor

ATTEST:

City Clerk