



City Council

Date: September 11, 2017
To: Mayor and Council
Through: Christopher J. Brady, City Manager
From: William J. Jabjiniak, Economic Development Director
JD Beatty, Economic Development Project Manager
Subject: Amendment to the development agreement between the City of Mesa and NKS Group III Limited Partnership (incorrectly identified as NKS Group III, LLC in the Development Agreement (Gateway Super Regional Center)

Purpose and Recommendation:

To consider an amendment to the existing development agreement between the City of Mesa and NKS Group III Limited Partnership, entered into on May 21, 2007 regarding property located at the north-east side of Elliot Road and Hawes Road. This amendment would remove Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6, excepting Section 3.6.3 as it pertains to the prohibited uses.

Staff recommends that the City Council approve the following document:

1. Resolution authorizing the City Manager to enter into the first amendment to the existing development agreement between the City of Mesa and NKS Group III Limited Partnership, on the property located on the north-east corner of Elliot Road and Hawes Road.

Background:

The City of Mesa entered into a development agreement with NKS Group III Limited Partnership ("NKS Group") on May 21, 2007, aimed at developing approximately 170 acres of land at the northeast corner of the South Hawes Road and East Elliot Road (the "Property") into a regional retail shopping and mixed-use employment center, to be named the Gateway Super Regional Center.

Under this development agreement, two Performance Dates were established stating that the Owner would submit and receive Final Site Plan approval by the City Council no later than July 1, 2012, and would commence construction on the Property no later than July 7, 2014. NKS Group never developed the Property, and these performance dates were never met.

Since the execution of the development agreement in 2007, the City has designated this Property, along with others along Elliot Road, as part of the Elliot Road Technology Corridor Planned Area Development (PAD) Overlay. This PAD Overlay, passed by Mayor and City Council on November 3, 2014, is intended to stimulate the attraction of technology and advanced manufacturing companies by reducing entitlement risk, increasing site plan flexibility, establishing higher-quality design standards, and streamlining the development process.

NKS Group, in coordination with Berens, Kozub, Kloberdanz & Blonstein PLC, is in discussions with parties that are interested in developing this property, and the existing development agreement, specifically Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6, may impact their ability to move forward on the Property. Thus, in coordination with the Office of Economic Development, NKS Group and Berens, Kozub, Kloberdanz & Blonstein PLC is seeking to amend the existing development agreement to allow for the potential future development of the Property.

The southern portion of the Property is currently zoned Limited Commercial (LC), formerly known as C-2, however, the 2007 development agreement prohibits two specific uses typically allowed in LC Zoning, as per Section 3.6.3 of the development agreement, which include:

- 3.6.3.2 drive thru or “fast food” restaurants;
- 3.6.3.3 muffler shops, transmission shops, auto repair shops, body shops, parts shops or other automobile uses.

The amendment of this development agreement will exclude the removal of these uses, thus preserving these restrictions on the Property that is zoned LC. NKS Group has worked with the City of Mesa to ensure these restrictions remain in place, as per advisement from the City Attorney’s Office.

Alternatives:

If Council does not approve the resolution for the DA amendment as drafted and recommended, they may choose one of the alternatives listed below:

Not Approve Development Agreement Amendment: The Council could choose to not approve the Development Agreement Amendment. If Council chooses not to approve the DA Amendment, the 2007 development agreement will still remain in effect.

Direct Staff to Modify the Agreement: The Council could direct staff to modify the amendment agreement. This may inhibit NKS Group’s ability to develop the property, but the exact

Take No Action: The Council could choose to take no action or table the item until a future date. The impact of any delay, specifically the DA amendment, is unknown, but may preclude further development from occurring on the subject property.

Fiscal Impact:

There is no cost to amend the existing development agreement between the City of Mesa and NKS Group. The developer has requested the amendment of this development agreement.

Coordinated With:

The Office of Economic Development has worked very closely with the City Attorney’s Office, the Development Services Department, as well as the property owner, NKS Group and their attorney, Berens, Kozub, Kloberdanz & Blonstein PLC.