

## Staff Summary Report

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**Council Meeting Date:** January 8, 2009

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request approval of a Second Addendum to the Hayden Ferry Lakeside Hotel Parcel Development Agreement to amend the Schedule of Performance.

**DOCUMENT NAME:** 20090108cdcm02 **RIO SALADO MASTER PLAN (0112-07-03)**

**SUPPORTING DOCS:** No

**COMMENTS:** Town Lake Development Partners, LLC is requesting a time extension to the existing schedule of performance, which currently requires that the Hotel commence construction on or before May 16, 2008 and that a Certificate of Completion be issued on or before June 1, 2010. The Second Addendum would require that Construction Financing Close by January 1 2010, Construction commence by June 1, 2010 and that the Hotel is open for business by June 1, 2012.

**PREPARED BY:** Chris Messer, Principal Planner (350-8562)  
Nancy Ryan, Rio Salado Project Manager (858-8096)

**REVIEWED BY:** Chris Salomone, Community Development Manager (350-8294)

**LEGAL REVIEW BY:** Cynthia McCoy, Assistant City Attorney (350-2187)

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Approval of the second addendum as presented.

**ADDITIONAL INFO:** Due to changes in market conditions, additional time is needed to perform under the development agreement. All other provisions of the agreement remain intact.

When recorded, return to:

City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281  
Attention: City Clerk

**SECOND ADDENDUM TO**  
**HAYDEN FERRY LAKESIDE**  
**PARCEL DEVELOPMENT AGREEMENT**  
**"HOTEL" PARCEL**

**THIS SECND ADDENDUM TO HAYDEN FERRY LAKESIDE PARCEL DEVELOPMENT AGREEMENT** ("Second Addendum") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2009, between the **CITY OF TEMPE**, an Arizona municipal corporation (the "City") and **TOWN LAKE DEVELOPMENT PARTNERS, LLC**, an Arizona limited liability company ("Hotel Developer").

**RECITALS:**

- A. The City and Hotel Developer are parties to that Development and Disposition Agreement, dated June 29, 2006 and recorded on September 8, 2006 as Document No. 2006-1197686 in the Official Records of Maricopa County, Arizona (the "DDA").
- B. The City administratively approved an amendment to the Schedule of Performance within the DDA, on September 13, 2007.
- C. The City and Hotel Developer are parties to that First Addendum to Hayden Ferry Lakeside Parcel Development Agreement "Hotel" Parcel, dated February 6, 2008 and recorded on March 11, 2008 as Document Number 2008-0215689, Official Records of Maricopa County, Arizona, USA (the First Addendum).
- D. The City and Developer desire to set forth their mutual agreement as to certain matters relevant to the DDA, subject to the terms and conditions set forth herein.

**AGREEMENT:**

**NOW THEREFORE**, in consideration of the forgoing and mutual obligations of the parties hereto, the City and Hotel Developer agree as set forth below:

1. **Applicability of DDA.** With the exception of the provisions stated herein, all other provisions of the DDA shall remain in full force and effect.

2. **Schedule of Performance.** Effective upon the execution of this Second Addendum, and without need for further action by any party, the Amended Schedule of Performance attached hereto as Exhibit "B-1" automatically shall be deemed to be substituted for the Schedule of Performance attached to the DDA as Exhibit "B", and all references in the DDA to the Schedule of Performance shall be deemed to refer to the Second Amended Schedule of Performance (Exhibit "B-1").

**IN WITNESS WHEREOF**, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Hotel Developer has executed and sealed the same on or as of the day and year first above written.

{Signature Pages Follow}

ATTEST:

***"CITY"***

THE CITY OF TEMPE, an Arizona  
municipal corporation

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Hugh Hallman, Mayor

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA            )  
                                          ) ss.  
COUNTY OF MARICOPA        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Hugh Hallman, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL:

\_\_\_\_\_  
Notary Public

***“Hotel Developer”***

TOWN LAKE DEVELOPMENT PARTNERS,  
LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF ARIZONA                    )  
                                                  ) ss.  
COUNTY OF MARICOPA            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, \_\_\_\_\_ personally appeared \_\_\_\_\_ who acknowledged him/herself to be the \_\_\_\_\_ of Town Lake Development Partners, LLC, an Arizona limited liability company, and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

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

NOTARY SEAL:

\_\_\_\_\_  
Notary Public

**Exhibit "B-1"**  
**Schedule of Performance**

Close on Construction Financing by	On or before January 1, 2010
Commence Hotel Construction	On or before June 1, 2010
Construction Complete – Issuance of Certificate of Completion	On or before June 1, 2012