

ORDINANCE NO. O2017-048

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, APPROVING THE TERMS AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE YUMA RIVERFRONT MODIFICATION AGREEMENT WITH KESARI HOSPITALITY LLC AND CLARK-LANKFORD LLC; A THIRD AMENDMENT TO YUMA RIVERFRONT DEVELOPMENT FIRST PHASE LAND AND IMPROVEMENTS LEASE WITH KESARI HOSPITALITY LLC; AND A NON-DISTURBANCE AND RECOGNITION AGREEMENT BETWEEN WELLS FARGO BANK, THE CITY OF YUMA, AND KESARI HOSPITALITY LLC

WHEREAS, on June 16, 2005, the City of Yuma (City) as landlord and Clark-Lankford LLC as tenant, entered into the Yuma Riverfront Development First Phase Land and Improvements Lease (2005 First Phase Lease) recorded at Fee No. 2005-27767; and,

WHEREAS, the 2005 First Phase Lease was revised and amended on May 26, 2010 (First Amendment to 2005 First Phase Lease), recorded at Fee No. 2010-13304, and on June 13, 2011 (Second Amendment to 2005 First Phase Lease), recorded at Fee No. 2011-14281; and,

WHEREAS, in this ordinance, the 2005 First Phase Lease, as amended, is referred to as the “First Phase Lease;” and,

WHEREAS, each of the amendments to the First Phase Lease furthers the original purpose of the First Phase Lease; and,

WHEREAS, on January 21, 2009 the City and Clark-Lankford LLC entered into an Amended and Restated Yuma Riverfront Master and First Phase Development and Disposition Agreement recorded at Fee No. 2009-03198 (2009 DDA) which amended and restated in the entirety, an earlier document recorded at Fee No. 2005-02309, which replaced the document recorded at Fee No. 2004-44007; and,

WHEREAS, the 2009 DDA was subsequently amended as follows: March 17, 2009 (First Amendment to 2009 DDA) recorded at Fee No. 2009-08128; May 26, 2010 (Second Amendment to 2009 DDA) recorded at Fee No. 2010-13305; May 19, 2011 (Third Amendment to 2009 DDA) recorded at Fee No. 2011-14282; March 31, 2016 (Fourth Amendment to 2009 DDA) re-recorded at Fee No. 2016-22363; and October 10, 2017 (Fifth Amendment to 2009 DDA) recorded at Fee No. 2017-25413; and,

WHEREAS, in this ordinance, the 2009 DDA, as amended, is referred to as the “Master DDA;” and,

WHEREAS, each of the amendments to the Master DDA furthers the original purpose of the Master DDA; and,

WHEREAS, Clark-Lankford LLC, seeks to assign all of its rights, title and interest in the First Phase Lease to Kesari Hospitality LLC; and,

WHEREAS, to give effect to the assignment, the Master DDA requires certain modifications agreed to by the City, Clark-Lankford LLC, and Kesari Hospitality LLC, as well as the consent of the Phase Two Component Developer, Yuma Riverview Apartments, LLC; and,

WHEREAS, in order to eliminate the cross default provisions in the First Phase Lease with the Master DDA and preserve the elements and provisions in the Master DDA that implement the goals and objectives of the Riverfront Redevelopment Plan and the policy and purposes already declared by the City for the North End Redevelopment Area, the First Phase Lease requires a third amendment agreed to by the City and Kesari Hospitality LLC; and,

WHEREAS, Kesari Hospitality LLC is also seeking to refinance the leasehold interest which will require a Non-Disturbance and Recognition Agreement between the lender, Wells Fargo Bank, the City of Yuma, and Kesari Hospitality LLC; and,

WHEREAS, the City has determined that it is in the public interest of the City and would be a public benefit to: (i) modify or delete from the Master DDA certain provisions relating the Hotel and Conference Center, and to provide that any breach or default under the Master DDA will not constitute a breach or default by the tenant under the Phase I Lease; (ii) modify the Phase I Lease to include in the Phase I Lease certain provisions contained in the Master DDA as they relate to the Hotel and Conference Center; (iii) to limit the Phase I Lease to the Hotel and Conference Center; and (iv) to substitute Kesari Hospitality LLC in place of Clark-Lankford LLC as the City's tenant under the Phase I Lease and terminate all of Clark-Lankford LLC's right, title and interest in and to the Phase I Lease; and,

WHEREAS, such modifications of the Master DDA and the Phase I Lease will further the original purpose of the Phase I Lease and the Master DDA,

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Yuma as follows:

SECTION 1: The terms of the Yuma Riverfront Modification Agreement (Exhibit A), the Third Amendment to Yuma Riverfront Development First Phase Land and Improvements Lease (Exhibit B), and the Non-Disturbance and Recognition Agreement (Exhibit C) are approved.

SECTION 2: Each of Exhibits A, B and C are made a part of this ordinance by this reference.

SECTION 3: The City Administrator is authorized to execute the Third Amendment to Yuma Riverfront Development First Phase Land and Improvements Lease, the Yuma Riverfront Modification Agreement, and the Non-Disturbance and Recognition Agreement on behalf of the City of Yuma, and to perform all actions consistent with the terms therein.

Adopted this _____ day of _____ 2017.

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney