

Staff Summary Report

Council Meeting Date: September 11, 2008

Agenda Item Number: _____

SUBJECT: Request approval of a Fourth Addendum to the Hayden Ferry Lakeside, LLC Development and Disposition Agreement to amend the Schedule of Performance

DOCUMENT NAME: 20080911cdcm04 **RIO SALADO MASTER PLAN (0112-07-03)**

SUPPORTING DOCS: No

COMMENTS: Hayden Ferry Lakeside LLC is requesting a time extension to the existing schedule of performance, which currently requires that a Certificate of Completion be issued for at least 700,000 square feet of office space (essentially the third office tower), by December 31, 2008. The Fourth Addendum would extend the deadline to June 29, 2012.

PREPARED BY: Chris Messer, Principal Planner (350-8562)

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 fourth addendum as presented.

ADDITIONAL INFO: On April 3, 2000, the City and Hayden Ferry Lakeside LLC and Bay State/Benton-Robb LLC entered into a Development and Disposition Agreement. Since that time the Schedule of Performance has been modified three times. This is the first request to extend the Schedule of Performance for the office portion of the project.

To date, the Developer has met the original schedule of performance for the office component of the Hayden Ferry Lakeside project. The current economic market is the reason for the request to extend this schedule of performance.

**FOURTH ADDENDUM TO
DEVELOPMENT AND DISPOSITION AGREEMENT**
(Hayden Ferry Lakeside Development Project)

No. C2000-63

This FOURTH ADDENDUM TO DEVELOPMENT AND DISPOSITION AGREEMENT (“Fourth Addendum”) is entered into this ____ day of _____, 2008, by and between the CITY OF TEMPE, an Arizona municipal corporation (which, together with any successor public body or entity hereafter designated by or pursuant to law, is hereinafter called the “City”), and HAYDEN FERRY LAKESIDE, LLC, an Arizona limited liability company (hereinafter called “Developer”).

RECITALS

The City and Developer are parties to that certain Development and Disposition Agreement dated April 3, 2000 and recorded on April 5, 2000 as Document No. 00-0255087, official records of Maricopa County, Arizona, as amended by an Addendum dated September 20, 2001, a Second Addendum dated September 26, 2002, and a Third Addendum dated October 30, 2003 (the “DDA”).

D. The City and Developer desire to amend the DDA in certain respects, as more fully set forth below.

AGREEMENT

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

1. **Applicability of DDA.** Except as amended hereby, the DDA shall remain in full force and effect.
2. **Schedule of Performance.** Effective upon the execution of this Fourth Addendum, and without need for further action by any party, the Amended Schedule of Performance attached hereto as **Exhibit “D-4”** automatically shall be deemed to be substituted for the Schedule of Performance attached to the Third Addendum of the DDA as **Exhibit “D-3”**, and all references in the DDA to the Schedule of Performance shall be deemed to refer to the Fourth Amended Schedule of Performance (**Exhibit “D-4”**).

{The remainder of this page is intentionally left blank, Signature pages follow}

DATED as of the date and year first set forth above.

CITY OF TEMPE, a municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Hugh Hallman, the duly elected Mayor of the City of Tempe, State of Arizona.

Notary Public

DEVELOPER:

HAYDEN FERRY LAKESIDE LLC, an Arizona limited liability company

By: SunCor Development Company, an Arizona corporation, its managing member

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, the _____ of SunCor Development Company, an Arizona corporation whom I know personally, and in such capacity being authorized to do so, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

Notary Public

EXHIBIT "D-4"

FOURTH AMENDED SCHEDULE OF PERFORMANCE

1.	Commencement of Construction of at least 120,000 sq. ft (office/retail)	On or before September 30, 2001
2.	Commencement of Construction of at least 114-room hotel (approx. 160,000 sq. ft.	On or before September 30, 2006
3.	Certificate of Completion for at least 120,000 sq. ft. (office/retail)	On or before June 30, 2003
4.	Certificate of Completion for at least 114-room hotel	On or before June 30, 2008
5.	Commencement of Construction of at least 36 residential units	On or before December 31, 2004
6.	Certificate of Completion for at least 36 residential units	On or before June 30, 2006
7.	Certificate(s) of Completion for at least 500,000 sq. ft. of commercial development in the aggregate	On or before December 31, 2006
8.	Certificate(s) of Completion for at least 700,000 sq. ft. of commercial development in the aggregate	On or before June 29, 2012
9.	Building Permits for construction of at least eighty percent (80%) of the building square footage planned for development within Hayden Ferry Lakeside as shown on the Amended Preliminary PAD for Hayden Ferry Lakeside, as modified and amended from time to time with the approval of the City.	On or before June 30, 2017