

RESOLUTION NO. 19-_____

RESOLUTION DIRECTING DEPOSIT OF CONDITIONAL USE PERMIT PURSUANT TO
CONSENT STAY PENDING APPEAL TO THE NORTH CAROLINA SUPREME COURT

WHEREAS, pursuant to the City's February 14, 2017 findings of fact and conclusions of law, the Asheville City Council voted to deny a request by PHG Asheville, LLC ("PHG") for a conditional use permit ("CUP") to construct an eight-story, 178,412 square foot hotel and on-site parking structure on 2.05 acres of land (PIN 9649-20-1616) located at 192 Haywood Street; and

WHEREAS, PHG sought judicial review of the City Council's denial of the CUP, and the Buncombe County Superior Court on November 2, 2017 reversed the City Council's decision and remanded with an order for the City Council to issue the CUP; and

WHEREAS, the City timely appealed the Superior Court order to the North Carolina Court of Appeals; and

WHEREAS, pursuant to a December 6, 2017 agreement, the City and PHG agreed that PHG would not seek to enforce the Superior Court order during the appeal to the North Carolina Court of Appeals, and that the City would not issue the CUP before a final decision by that court; and

WHEREAS, on November 6, 2018, the North Carolina Court of Appeals affirmed the Superior Court order and remanded the case to Buncombe County Superior Court for further remand to the City to issue the CUP to PHG (the "COA Opinion"); and

WHEREAS, on November 14, 2018, legal counsel for the City notified legal counsel for PHG that the City intended to file a petition for discretionary review ("PDR") with the North Carolina Supreme Court, which would seek review of the COA Opinion; and

WHEREAS, on November 26, 2018, PHG initiated enforcement proceedings in Buncombe County Superior Court for the purpose of obtaining the permit notwithstanding the City's PDR; and

WHEREAS, in response to PHG's initiation of enforcement proceedings, the City on December 6, 2018 filed a motion with the Buncombe County Superior Court to stay or enjoin enforcement during the pendency of the City's PDR; and

WHEREAS, in an effort to avoid further litigation between the parties about the status of the CUP while the City's PDR is pending with the Supreme Court, and to avoid unnecessary costs and expenses, the City and PHG have mutually agreed to a stay of the enforcement proceedings initiated by PHG, and the City has agreed to deposit the CUP with the Buncombe County Clerk of Superior Court pursuant to N.C. Gen. Stat. § 1-291 while the City's PDR is pending before the North Carolina Supreme Court;

NOW, THEREFORE, the City Council hereby issues the CUP for the sole purpose of depositing it with the Buncombe County Clerk of Superior Court pursuant to N.C. Gen. Stat. § 1-291, and pursuant to the following agreement between the City and PHG:

- (1) If the City's PDR is denied by the Supreme Court, the CUP will be immediately released to PHG;
- (2) If the City's PDR is granted by the Supreme Court, the CUP shall remain with the Clerk of Superior Court pending a final decision from the Supreme Court, and upon a final decision from the Supreme Court, either party may petition the Buncombe County Superior Court for the release or revocation of the CUP.

Read, approved and adopted this the 8th day of January, 2019

City Clerk

Mayor

Approved as to form:

Assistant City Attorney