

**WHEN RECORDED RETURN TO:**

**Town of Paradise Valley  
Attn: Town Attorney  
6401 East Lincoln Drive  
Paradise Valley, Arizona 85253**

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**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT**

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**By, between and among:**

**TOWN OF PARADISE VALLEY, ARIZONA,  
an Arizona municipal corporation;**

**MTS LAND, LLC,  
a Delaware limited liability company;**

**and**

**MTS GOLF, LLC,  
a Delaware limited liability company**

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**April \_\_, 2013**

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## TABLE OF CONTENTS

Page

[IN PREPARATION]

### Exhibits:

- A The Property
- B Town Resolution No. 1271
- C Town's Insurance Requirements
- D The Development Area Map
- E Open Space Exhibit
- F Hotel Quality Standards
- G 56<sup>th</sup> Street Improvements
- H Property Exchange – Town to Owner
- I Senior Liens

## AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by, between and among the TOWN OF PARADISE VALLEY, ARIZONA, an Arizona municipal corporation (the “**Town**”); MTS LAND, LLC, a Delaware limited liability company (“**MTS Land**”); and MTS GOLF, LLC, a Delaware limited liability company (“**MTS Golf**”). MTS Land and MTS Golf may be referred to in this Agreement collectively as the “**MTS Land/Golf**.” The Town, MTS Land and MTS Golf, or their successors or assigns, are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.” This Agreement amends and restates, in its entirety, the 1992 Development Agreement, as defined later in this Agreement.

### ARTICLE 1 -- RECITALS

As background to this Agreement, the Parties state, recite and acknowledge the following, each of which is a material term and provision of this Agreement. All capitalized terms used in these Recitals shall have the meanings ascribed to them, parenthetically or otherwise, in these Recitals or elsewhere in this Agreement.

A. MTS Land/Golf owns fee simple title to approximately 67 acres of land and improvements located in the proximity of Lincoln Drive and 56<sup>th</sup> Street within the Town of Paradise Valley, Arizona, defined in Article 2 of this Agreement as the “**Property**.” The Property is described in Exhibit A. An existing, but now closed, resort hotel, known as “Mountain Shadows” is located on the Property. The Property also includes an 18-hole golf course, a practice facility (including outdoor putting, pitching, and driving areas), and all related facilities (the “**Golf Course**”) located on a portion of the Property. The Golf Course continues to be operational as of the date of this Agreement. The Resort Hotel (as hereinafter defined), the Golf Course, and related facilities are collectively called the “**Resort**.”

B. MTS Golf owns that portion of the Property that includes most of the Golf Course. MTS Land owns that portion of the Property that was utilized as the Resort Hotel, as well as several holes of the Golf Course.

C. When the Resort Hotel and Golf Course were originally constructed, the Property was located within an unincorporated area of Maricopa County, Arizona. In 1992, the then-owners of the Property agreed to its annexation into the Town. The annexation of the Property into the Town (the “**Annexation**”) was accomplished by the enactment in 1992 of Town Ordinance No. 339.

D. Town Ordinance No. 339 stated that the Property to be annexed “shall be, and the same is zoned as R-43 pursuant to the Zoning Ordinance of the Town of Paradise Valley and subject to a development agreement signed by the Town.” Ordinance No. 339 was adopted by the Town Council at a public meeting. R-43 zoning, in the Town’s zoning classification, essentially permits one single-family residence to be located upon approximately one acre (43,560 square feet) of land. The Property has been designated as R-43 on the Town’s zoning map since 1992.

E. The Property also is the subject of a development agreement approved by the Town in 1992 pursuant to Town Ordinance No. 336 and Town Ordinance No. 341 (the “**1992 Development Agreement**”). Town Ordinance Nos. 336 and 341 were adopted by the Town Council at public meetings. The 1992 Development Agreement was executed by the Town and by MTS Land/Golf’s predecessor, Potomac Hotel Limited Partnership, and was recorded in the Official Records of Maricopa County. Town Ordinance Nos. 336 and 341 stated that the 1992 Development Agreement was negotiated “[t]o encourage the owners of the Mountain Shadows Resort to petition for annexation.”

F. The Town’s position is that from and after the Annexation of the Property into the Town, the Property has operated as a legal, nonconforming use -- that is, for resort uses, including a golf course -- in an R-43 zoning classification. MTS Land/Golf’s position is that the Property has operated as a legal use -- that is, for resort uses, including a golf course -- pursuant to the 1992 Development Agreement.

G. Historically, zoning within the Town for commercial and resort uses has been accomplished by the Town’s special use permit (“**SUP**”) process. The Town’s current practice is to adopt certain zoning classifications for properties rezoned through the SUP process. The zoning classification SUP District (Resort) is a current classification applicable to properties approved for resort uses, although in prior years the Town did not use the SUP District (Resort) classification for resorts. Neither the current owners of the Property nor their predecessors have previously obtained from the Town an SUP for the Property; however, it is MTS Land/Golf’s position that the 1992 Development Agreement did provide for Resort uses.

H. MTS Land/Golf has proposed certain development upon the Property that is inconsistent with R-43 zoning, but which is generally contemplated by the 1992 Development Agreement and the Town’s original intent that the Property be used for a resort golf course, and residential, among other uses. The Property has continued to operate with certain resort uses since the Annexation.

I. MTS Land/Golf has applied to the Town for a rezoning of the Property, utilizing the Town’s SUP process, to change the zoning of the Property to SUP District (Resort) in order to facilitate redevelopment of the Property. MTS Land/Golf and the Town have also agreed that the 1992 Development Agreement be amended and restated so that it is consistent with the SUP to be approved by the Town Council by the adoption of Ordinance No. 653 (the “**2013 SUP**”) and so as to facilitate redevelopment of the Property.

J. MTS Land/Golf also has recently applied to the Town for two (2) building permits for construction on a portion of the Property inconsistent with MTS Land/Golf’s pending SUP application. The Parties agree that MTS Land/Golf’s application for these permits will be deemed automatically, and without further act required, withdrawn upon the Effective Date of this Agreement.

K. On July 19, 2012, MTS Land/Golf filed petitions in the United States Bankruptcy Court for the District of Arizona under Chapter 11 of the Bankruptcy Code. MTS Land/Golf continues to operate its business and manage its financial affairs and properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. On February 28, 2013, MTS Land/Golf filed *Debtors’ Third Amended Joint Plan of Reorganization*

(the “Plan”). The Chapter 11 proceedings are currently pending and any actions undertaken by the Town and MTS Land/Golf in regard to the Property, with respect to this Agreement, require the entry pursuant to Sections 363 and/or 1129 of the Bankruptcy Code and Bankruptcy Rules 3020 and/or 9019, after notice and hearing, of an order or orders of the Bankruptcy Court approving and authorizing MTS Land/Golf to enter into and carry out this Agreement. The Town and MTS Land/Golf have also negotiated and executed a “Waiver, Release and Settlement Agreement” (the “**Settlement Agreement**”) which also requires approval of the Bankruptcy Court.

L. MTS Land/Golf and Town recognize that the land uses approved in the 2013 SUP constitute a resort, including guest units and facilities necessary for administering and servicing the facility, on-site parking, and golf. The additional, accessory uses approved in the 2013 SUP include, but are not limited to, retail and residential uses, which are necessary for administering and servicing the facility as a whole. While the primary and accessory uses can vary in scale, the Minimum Resort Hotel Improvements (as defined below) are sufficient to constitute the primary use. The phasing, as contemplated in the 2013 SUP and this Agreement, has been determined by the Town to comply with primary use and accessory use requirements in the Town’s Zoning Ordinance. In consideration for the Town’s consent to the mix of uses in the 2013 SUP, the benefits of the Settlement Agreement, and this Agreement, MTS Land/Golf has agreed to provide for an annual payment (as defined below, the “**In Lieu Payment**”) to the Town as reasonable compensation.

M. The Town and MTS Land/Golf intend that the In Lieu Payment and the associated obligations created by this Agreement create a real covenant that will run with portions of the Property in perpetuity.

N. Following appropriate public hearings and other compliance with applicable Town ordinances and Arizona law, the Town Council has adopted and approved the 2013 SUP by enactment of the Town Ordinance No. 653. The 2013 SUP requires as a condition and stipulation that the Town approve an amendment and restatement of the 1992 Development Agreement. This Agreement is intended to satisfy that condition and stipulation.

O. The Town Council has authorized execution of this Agreement by Resolution No. 1271, a copy of which is attached to this Agreement as Exhibit B.

P. The Parties acknowledge that this Agreement is a “Development Agreement” within the meaning of, and entered into pursuant to the terms of A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

Q. The Town is entering into this Agreement as an administrative act to further implement the intent of Ordinance No. 336, the original 1992 Development Agreement, Ordinance No. 339, Ordinance No. 341, the Annexation, Ordinance No. 564, and the 2013 SUP, in order to facilitate redevelopment of the Property consistent with the 2013 SUP.

## **ARTICLE 2 -- DEFINITIONS**

In this Agreement, unless a different meaning clearly appears from the context, terms shall have the meanings set forth in this Article 2 or the meanings otherwise ascribed to such terms parenthetically or otherwise elsewhere in this Agreement.

“**1992 Development Agreement**” means the Development Agreement described in Recital E.

“**2013 SUP**” means as defined in Recital I.

“**56<sup>th</sup> Street Improvements**” means as defined in Section 3(C)(7)(b) and generally described on Exhibit G.

“**Affiliate**,” as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or spouse or children of such person, if such person is a natural person. For the purposes of this definition, (i) “**control**” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the beneficial ownership of voting securities, by contract or otherwise, and (ii) “**person**” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, limited liability limited partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

“**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto. References to Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Article 1 are incorporated herein by reference and form a part of this Agreement.

“**Annexation**” means the annexation of the Property approved and referred to in Town Ordinance No. 339, as described in Recital C.

“**Applicable Laws**” means all federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the Town which apply to the development of the Property as of the Effective Date.

“**Area C Retail**” means as defined in the 2013 SUP.

“**A.R.S.**” means the Arizona Revised Statutes as now or hereafter enacted or amended.

“**Bankruptcy Cases**” means the following cases being heard by the United States Bankruptcy Court for the District of Arizona: *In re: MTS Land, LLC, a Delaware limited liability company*, Case No. 2:12-bk-16257-EWH, including any appeal thereof, and *In re: MTS Golf, LLC, a Delaware limited liability company*, Case No. 2:12-bk-16259-EWH, including any appeal thereof.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Arizona hearing the Bankruptcy Cases.

**“Bankruptcy Court Approval”** means the entry pursuant to Sections 363 and/or 1129 of the Bankruptcy Code and Bankruptcy Rules 3020 and/or 9019, after notice and hearing, of an order or orders of the Bankruptcy Court approving and authorizing MTS Land/Golf to enter into and carry out this Agreement or the entry of a confirmation order in the Bankruptcy Cases by the Bankruptcy Court confirming the Plan incorporating this Agreement, with all such orders being Final Orders (as defined below).

**“Brand”** means as defined on Exhibit F. Schedule 1 of Exhibit F may be updated from time to time based on changes of the properties designated as luxury or upper upscale by the Smith Travel Report or similar rating agency.

**“Branded Residence”** means a Resort Residential unit which has been designed and finished with standards adopted by an organization which provides services for the branding of residences. Such Branded Residences are limited to Four Seasons residences, Ritz Carlton residences, St. Regis residences, or such other brands as the Town Manager approves. If the Brand selected for the Principal Resort Hotel issues a Brand Letter for its branded residences and the Brand is included on Schedule 1 of Exhibit F, the residences will be added to the list of qualified Branded Residences. While the specifications for Branded Residences may be different from Hotel Keys which comprise the Minimum Hotel Keys, they should be compatible in design with the Hotel Keys. Branded Residences may be sold and resold and or rented and re-rented through the Resort Rental Management Program or through a program adopted for their management. A Branded Residence may be uniquely customized and furnished by its owner.

**“Brand Letter”** means as defined on Exhibit F.

**“Clubhouse”** means either the golf clubhouse existing as of the Approval Date, or such golf clubhouse as remodeled, relocated and/or rebuilt, from time to time, which may be in one or more buildings. Any Clubhouse may include all facilities and uses typically found in golf clubhouses, and any use allowed in a Resort Hotel.

**“Commencement of Construction”** means both (i) the obtaining of a building, excavation, grading or similar permit by Owner for the construction of improvements, and (ii) the actual commencement of physical construction operations on the Property.

**“Completion of Construction”** means the date on which one or more temporary or final certificates of occupancy or completion have been issued by the Town for improvements in any applicable element of construction for which a building permit has been issued (but excluding installation of equipment, furniture, or fixtures) and not actual commencement of use thereof.

**“Default”** or **“Event of Default”** means one or more of the events described in Section 6(A) or 6(B) provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Enforced Delay provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Article 6.

**“Default Rate”** means 8% per annum, simple interest.

**“Demolition”** means as defined in Section 3(C)(2)(a).

**“Demolition Schedule”** means as set forth in Section 3(C)(2)(a).

**“Designated Lenders”** means as defined in Section 8(X).

**“Design Submittal”** or **“Submittal”** means as defined on Exhibit F.

**“Development Areas”** means the areas depicted on the Development Area Map (Sheet 2 of the Approved Plans attached to the 2013 SUP) attached to this Agreement as Exhibit D and which is incorporated into this Agreement for all purposes.

**“Development Area A”** or **“Area A”** means that area of land depicted on Exhibit D.

**“Development Area B”** or **“Area B”** means that area of land depicted on Exhibit D.

**“Development Area C”** or **“Area C”** means that area of land depicted on Exhibit D.

**“Development Area D”** or **“Area D”** means that area of land depicted on Exhibit D.

**“Development Area E”** or **“Area E”** means that area of land depicted on Exhibit D.

**“Effective Date”** means the date on which all of the following have occurred: (i) this Agreement, the 2013 SUP, and the Settlement Agreement have been adopted and approved by the Town Council, executed by duly authorized representatives of the Town and MTS Land/Golf, and recorded (if applicable) in the office of the Recorder of Maricopa County, Arizona, and any applicable referendum period has expired without referral, or any proposed referendum has been declared invalid in a final non-appealable judgment by a court of competent jurisdiction, or this Agreement (or the 2013 SUP, as applicable) has been approved by the voters at a referendum election conducted in accordance with Applicable Laws and (ii) this Agreement and the Settlement Agreement have received Bankruptcy Court Approval.

**“Enforced Delay”** means as defined in Section 6(H).

**“Existing Improvements”** means the presently-existing Mountain Shadows resort hotel buildings and other improvements, but expressly excludes horizontal improvements such as streets, parking areas, landscaping, lighting, utilities, slabs, foundations, the existing golf course improvements, and any other improvements Owner intends to use during or after development, such as temporary offices and facilities for construction, sales, marketing, and design (including the temporary use permit facilities currently located at the southwest corner of 56<sup>th</sup> Street and Lincoln Drive), the tennis courts and associated tennis clubhouse, and all or part of the Clubhouse.

**“Final Order”** means an order, judgment, or other decree of the Bankruptcy Court entered on the docket, that has not been reversed, reconsidered, stayed, modified, or amended, that is in full force and effect, and as to such order or judgment: (i) the time to appeal, seek review or rehearing, or petition for certiorari has expired and no timely filed appeal or petition

for review, rehearing, remand, or certiorari is pending; (ii) any appeal taken or petition for certiorari or request for reconsideration or further review or rehearing filed: (a) has been resolved by the highest court to which the order or judgment was appealed or from which review, rehearing, or certiorari was sought; or (b) has not yet been resolved by such highest court, but a stay has not been timely filed with respect to such order or, if timely filed, has been denied. Notwithstanding the foregoing, each of an order under Bankruptcy Code and Bankruptcy Rules 3020 and/or 9019 or a plan confirmation order shall specifically become a Final Order on the first (1<sup>st</sup>) business day that is fifteenth (15) days after the entry of an order of the Bankruptcy Court, either as an order under Bankruptcy Code and Bankruptcy Rules 3020 and/or 9019 or a plan confirmation order unless any appeal of any such order was accompanied by a stay pending appeal.

**“Fixed Amount”** means as defined in Section 3(C)(8)(b).

**“Floor Area”** means as defined in the 2013 SUP.

**“Foreclosure”** means as defined in Section 8(X).

**“Golf Course”** means the 18-hole golf course and any practice facility (including outdoor putting, pitching, and driving areas), as specified in Recital A, as it exists as of the Effective Date or as it may be redeveloped.

**“Golf Course Property”** means the real property generally depicted as Area A on Exhibit D which is attached to this Agreement and incorporated into this Agreement for all purposes and upon which the Golf Course shall be operated, subject to the terms of Section 3(C)(1) of this Agreement.

**“Hotel Key”** means a Resort Unit located in Area B, served by a single key, which is part of a Resort Hotel, designed and constructed with all furnishings, fixtures and equipment necessary to operate as a single unit for transient occupancy use as a part of such Resort Hotel. Each Hotel Key shall have at least one full bath and a direct lockable connection from the exterior or a corridor. A Hotel Key may be located in a primary Resort Hotel structure (in a building that includes guest registration, reception and other allowed uses) or in any number of other buildings (which may be across private drives from other Resort Hotel structures) integrated or associated with such Resort Hotel through landscaping or otherwise, including in a building or buildings with Resort Residential. A Hotel Key may be interconnected with another Hotel Key unit through a lockable connection, so that more than one Hotel Key may be rented as a single unit.

**“Hotel Quality Standards”** means as defined in Section 3(C)(2)(c).

**“In Lieu Area”** means as defined in Section 3(C)(8)(e).

**“In Lieu Estoppel”** means as defined in Section 3(C)(8)(m).

**“In Lieu Payment”** means as defined in Section 3(C)(8).

**“In Lieu Payment Lien”** means as defined in 3(C)(8)(i).

“**Lender**” or “**Lenders**” means as defined in Section 8(X).

“**Minimum Hotel Keys**” means the one hundred (100) Hotel Keys included as part of the Principal Resort Hotel and owned by a single legal Owner which also owns the Minimum Resort Hotel Improvements.

“**Minimum Resort Hotel Improvements**” means the minimum improvements included in the initial design and construction of the Principal Resort Hotel and including not less than all of the following elements:

(a) The Minimum Hotel Keys, provided that Hotel Keys in excess of the Minimum Hotel Keys may be owned by an Owner(s) other than the Owner of the Principal Resort Hotel.

(b) One (1) full service restaurant with seating capacity for not fewer than one hundred (100) persons which, together with other restaurants and food service areas, are collectively capable of serving three (3) daily meals and providing room service to the Minimum Hotel Keys.

(c) At least one (1) swimming pool along with facilities (which may be remote from the pool) intended to provide food and beverage service to Resort Hotel guests at the pool.

(d) At least one (1) heated whirlpool (such as a “Jacuzzi”).

(e) At least one (1) fitness area to accommodate professional-grade exercise machines and related equipment.

(f) An area or areas for providing spa services such as massage services.

(g) A dedicated reception area to accommodate guest check-in, concierge and cashier.

(h) A dedicated area to accommodate vehicle or passenger drop off (such as valet parking services) for Resort Hotel guests.

“**Moratorium**” means as defined in Section 7(C).

“**Non-Obligated Unit**” means as defined in Section 3(C)(8)(a).

“**Obligated Unit**” means as defined in Section 3(C)(8).

“**Open Space-Area D**” means an area to be improved and used only for open space/art and shall not be otherwise developed, except for landscaping and hardscaping, including but not limited to: pathways, seat walls, benches, sculptures, gazebos, trellises, entry monument signage, water features and underground storm water retention systems. Public access to Open Space-Area D may be restricted in any manner to protect the health, safety, and the character of the Resort.

**“Ordinance No. 336”** means Town Ordinance No. 336 adopted by the Town Council on March 12, 1992.

**“Ordinance No. 339”** means Town Ordinance No. 339 adopted by the Town Council on March 26, 1992.

**“Ordinance No. 341”** means Town Ordinance No. 341 adopted by the Town Council on March 26, 1992.

**“Ordinance No. 564”** means Town Ordinance No. 564 adopted by the Town Council on November 3, 2005.

**“Owner”** means collectively or separately MTS Land, LLC, a Delaware limited liability company, and MTS Golf, LLC, a Delaware limited liability company, and their respective successors and assigns, as well as any subsequent owner of any portion or portions of the Property, including but not limited to, an owner of a Resort Hotel, any Resort Unit, any Resort Estates lot, the Golf Course, any part of Area C Retail, or one or more combinations thereof. An Owner may be an individual, corporation, partnership, limited liability company, trust, land trust, business trust or other organization, or similar entity, which in turn may be owned by individuals, shareholders, partners, members or benefitted parties under trust agreements, all of which may take any legal form, and may allocate interests in profits, loss, control or use.

**“Owner Representative”** means as defined in Section 7(A).

**“Owners Association”** means as defined in Section 3(C)(8)(m).

**“Party”** or **“Parties”** means as designated on the first page of this Agreement.

**“Payment Date”** means as defined in Section 3(C)(8)(g).

**“Payment Year”** means as defined in Section 3(C)(8)(f).

**“Per Square Foot Amount”** means as defined in Section 3(C)(8)(b).

**“Plat/Map Procedure”** means as defined in Section 3(C)(3)(c).

**“Plat/Map Standards”** means as defined in Section 3(C)(3)(d).

**“Principal Resort Hotel”** means the Resort Hotel designated as such and which includes the Minimum Resort Hotel Improvements and not less than one hundred twenty thousand (120,000) square feet of Floor Area, provided, however, in the event the Principal Resort Hotel contains not less than one hundred twenty (120) Hotel Keys which are owned by the Principal Resort Hotel Owner the minimum Floor Area shall be one hundred eight thousand (108,000). The Principal Resort Hotel shall be owned by a single legal Owner (provided Hotel Keys in excess of the Minimum Hotel Keys may be owned by another Owner(s)).

**“Property”** means the real property described in Exhibit A which is attached to this Agreement and incorporated into this Agreement for all purposes, and includes the Golf Course Property. The Property is comprised of approximately sixty-seven (67) acres of land.

**“Public Improvements”** means any improvements that an Owner is required to provide and construct under the 2013 SUP, this Agreement, and Applicable Laws, and thereafter to dedicate to the Town, subject to acceptance by the Town.

**“Resort”** means the entire Property and all facilities and other improvements existing, developed or redeveloped and used or useful on the Property in general conformance with the 2013 SUP.

**“Resort Ancillary Facilities and Uses”** means as defined in the 2013 SUP.

**“Resort Estates”** means all of the lots to be improved with residences in Development Area E.

**“Resort Hotel”** means one or more hotel(s) to be designed and constructed within Area B. At least one Resort Hotel shall be the Principal Resort Hotel that at all times contains the Minimum Resort Hotel Improvements (subject to force majeure, remodeling, alteration, reconstruction, redevelopment, and similar events). Resort Hotels provide accommodations for transient occupants and related facilities and services, and which also may include Resort Residential, the Clubhouse (or portions thereof) and any Resort Ancillary Facilities and Uses.

**“Resort Hotel Design”** means as defined in Exhibit F.

**“Resort Hotel Manager”** means the Owner of any Resort Hotel, including any Affiliate thereof or a third party hotel management company which manages any Resort Hotel. A Resort Hotel Manager may also manage any other portions of the Resort, including but not limited to the Golf Course, the Clubhouse, Resort Residential, Resort Estates, and Hotel Keys. If any Resort Hotel Manager is not the Owner of a Resort Hotel (or an affiliate of such Owner), it shall initially be a hotel management company which has not less than five (5) years’ experience managing full service hotels or resorts or which currently manages not fewer than five (5) full service hotels or resorts. If there is more than one (1) Resort Hotel, there may be more than one (1) Resort Hotel Manager. Any Resort Hotel Manager may enter into one or more agreements, and/or designate others to operate, manage, or provide services to or for one or more different parts, uses, or services within or which are a part of any Resort Hotel, including by Affiliates of such Resort Hotel Manager, or Third Party(ies).

**“Resort Hotel Owner”** means the single legal owner of each Resort Hotel.

**“Resort Rental Management Program”** means a rental management program offered and managed by the Owner of any Resort Hotel (or Affiliate thereof) or a Resort Hotel Manager (or Affiliate thereof) which provides rental management service for all Hotel Keys for such Resort Hotel and other residential properties on the Property where an Owner elects to include such residences in such Resort Rental Management Program.

**“Resort Residence Association”** means as defined in Section 3(C)(2)(d).

“**Resort Residential**” means the Resort Units, exclusive of any Hotel Keys, located on the west side of 56<sup>th</sup> Street in Development Area B.

“**Resort Unit**” means all Hotel Keys and all other residential units (including Resort Residential and Resort Estates), which may include a room or group of rooms which can be locked and served by a single key (or multiple keys). A Resort Unit may be served by one or more bathrooms, and may be with or without cooking facilities or kitchens. Except for the requirement that the Minimum Hotel Keys be owned by the Principal Resort Hotel Owner, a Resort Unit may, subject to the 2013 SUP, be owned by either an Owner or a Third Party and may be sold, resold, or may be rented and re-rented from time to time, including for transient occupancy; and provided further that, except for the requirement that the Minimum Hotel Keys be owned by the Principal Resort Hotel Owner and managed by the Resort Hotel Manager thereof, a Resort Unit may only, subject to the 2013 SUP, be used for any type of residential occupancy (including transient occupancy) and created as separate legal units through one or more plats or horizontal property regimes through one or more maps.

“**Senior Liens**” means as defined in Section 3(C)(8)(I).

“**Settlement Agreement**” means the “Waiver, Release and Settlement Agreement” entered into by, between and among the Town, MTS Land and MTS Golf concurrently with such Parties’ entering into this Agreement.

“**Term**” means the period commencing on the Effective Date and running in perpetuity.

“**Third Party**” means, with respect to a good faith transaction, any individual or entity other than a Party, an Affiliate of any Party, a principal of a Party or an Affiliate of a principal of any Party, and a spouse, parent, child of a principal of a Party or of an Affiliate of any Party.

“**Tolling Period**” means as defined in Section 7(C).

“**Town**” means the Party designated as Town on the first page of this Agreement.

“**Town Code**” means the Code of the Town of Paradise Valley, Arizona, in effect as of the approval date of the 2013 SUP.

“**Town Council**” means the Town Council of the Town.

“**Town Representative**” means as defined in Section 7(A).

“**Transfer**” means a transfer, assignment, or conveyance, directly or indirectly, of any, all, or any part of the rights or obligations of MTS Land or MTS Golf under this Agreement.

“**U.S. Bank**” means U.S. Bank, N.A. or any Affiliates following a foreclosure of the Property.

“**Vacation Club**” means the ownership of a group of Resort Units, with such group of units designed and constructed with all furnishings, fixtures, and equipment necessary to operate as single units for transient occupancy by a recognized operator of vacation clubs or an entity controlled and/or managed thereby. A recognized operator of vacation clubs is limited to Hilton

Grand Vacations, Hyatt Vacation Club, Marriott Vacation Club International, or such other operator as the Town Manager approves. The foregoing definition is not intended to affect the right of an Owner(s) of a Resort Unit(s) to place such Resort Unit(s) in a Resort Rental Management Program.

“**Zoning Ordinance**” means the Town’s zoning ordinance in effect as of the approval date of the 2013 SUP.

**ARTICLE 3 -- AGREEMENTS REGARDING THE DEVELOPMENT AND  
OPERATION OF THE PROPERTY**

A. In consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as more fully set forth below.

B. Development Agreement and Special Use Permit.

1. Subject to the Settlement Agreement, and upon execution and recordation of this Agreement, execution and delivery of the Settlement Agreement, and the concurrent approval of the 2013 SUP by the Town Council, the 1992 Development Agreement (as originally drafted and approved) shall be deemed terminated and of no further force and effect as of the Effective Date and the 1992 Development Agreement shall be amended and restated in its entirety as provided in this Agreement.

2. Notwithstanding the foregoing, and further notwithstanding the amendment and restatement of the 1992 Development Agreement, nothing in this Agreement shall be deemed to effect or invalidate the Annexation.

3. It is the intent of the Parties that both this Agreement and 2013 SUP are required to be in full force and effect concurrently, and that neither this Agreement nor the 2013 SUP shall have any effect in the absence of the other.

4. If notice terminating this Agreement is delivered pursuant to the Settlement Agreement, then this Agreement shall be terminated and of no further force and effect.

5. As conditions precedent to the obligations of the Town arising in or out of this Agreement, it will be necessary for MTS Land/Golf, at its sole cost and expense, to obtain (i) Bankruptcy Court Approval, (ii) any and all consents or approvals required by or from any lender to MTS Land or MTS Golf which has a security interest in the Property, including the Senior Liens, under the terms of any contract or loan agreements between such parties, unless otherwise ordered in a final unappealable judgment by a court of competent jurisdiction (which can be through a plan confirmation order, for which the Effective Date has occurred, and no stay has been timely issued, despite appeal), and (iii) subordinations from any lender to MTS Land or MTS Golf (or other person or entity) that has any security or similar interest in or to any portion of the Property, including the Senior Liens, (in forms reasonably satisfactory to the Town), or a court order accompanying such subordination, or a final unappealable judgment of a court of competent jurisdiction (which can be through a plan confirmation order, for which the Effective

Date has occurred, and no stay has been timely issued, despite appeal) of their interests in the Property. MTS Land/Golf shall promptly use its commercially reasonable efforts to request Bankruptcy Court Approval and the lenders' consents (or in lieu of such consent a court order) described in subsection (ii) above. In the event that each of these conditions precedent has not been satisfied by June 30, 2014, then in such event this Agreement, upon written notice from either Party to the other prior to the satisfaction of each of these conditions, shall be terminated and of no force and effect, the Town and MTS Land/Golf shall return to their respective rights, privileges and obligations as if the Parties had not entered into this Agreement. Each and every requirement of this Section 3(B)(6) is for the benefit of, and may be waived by, the Town.

6. Even though MTS Land and MTS Golf are separate legal entities, they operate as a consolidated joint entity, under common/ownership and control, with the continued joint purpose of operating as a single resort and working toward redeveloping the existing hotel and Golf Course as a single property or project. In addition, pursuant to a "Contribution Agreement" dated January 1, 2010, between and among, inter alia, MTS Land and MTS Golf, MTS Land and MTS Golf have agreed to remain mutually dependent for integrated operations and unified businesses and to be jointly and severally liable for all liabilities arising from, or relating to, this Agreement, the 2013 SUP, or the Settlement Agreement. Accordingly, MTS Land and MTS Golf are jointly and severally liable for all of the obligations of MTS Land/Golf arising in and under this Agreement.

7. This Agreement is being entered into by the Parties contemporaneously with the 2013 SUP and the Settlement Agreement. Although the Parties intend that the three (3) documents constitute and state an integrated and consistent relationship between them, the Parties agree that (i) in the event of an inconsistency between the 2013 SUP and either this Agreement or the Settlement Agreement, then either the 2013 SUP or the Settlement Agreement (as applicable) shall control; and (ii) in the event of an inconsistency between this Agreement and the Settlement Agreement, then the Settlement Agreement shall control.

8. This Agreement, as it may be amended from time to time, shall run with the land as set forth in Section 8(Q) of this Agreement and any person having or subsequently acquiring title to any portion of the Property shall be subject to this Agreement, only as it applies to the portion of the Property owned by such person. Once an Owner (including without limitation any owner of a Resort Unit (including each Resort Residential unit or Resort Estate lot), Resort Hotel, Area C Retail or any other Owner) no longer owns a portion of the Property, such prior Owner shall no longer be subject to this Agreement with respect to such portion of the Property no longer owned, but the then current Owner shall be subject to this Agreement. If any portion of the Resort is used in violation of the terms of this Agreement, the Town may pursue the remedies set forth in this Agreement. No such remedy shall be applied to any other Owner or portion of the Property that is not in violation of this Agreement.

C. Agreements Regarding Specific Development Areas.

1. Development Area A -- Golf Course.

(a) Design and required construction. A portion of the existing Golf Course on the Property may be used, operated, repaired, maintained, replaced, and renovated in accordance with the 2013 SUP. Subject to subsection (c) below and the 2013 SUP, the Golf

Course shall be and remain an 18-hole course as long as it is operating as a golf course. Design and layout of the redesigned Golf Course shall be in accordance with the terms of the 2013 SUP and the exhibits thereto. Renovation shall occur in accordance with the schedule provided in the 2013 SUP.

(b) Construction Assurances. If requested by the Town, prior to the Commencement of Construction of the alterations to the Golf Course specified in the 2013 SUP, Owner shall provide the Town with reasonable evidence of financial ability sufficient to cause the Completion of Construction of the Golf Course, as determined by the Town Manager.

(c) Covenant to Operate Golf Course. Notwithstanding anything in this Agreement to the contrary, Owner covenants to operate the Golf Course in a manner consistent with a typical par 3 golf course in Maricopa County, or existing and historical operations, for the benefit of guests and invitees of the Resort Hotel and members of the Resort Residence Association, for a minimum period of seven (7) years from and after the Effective Date, whether or not Owner performs the renovation permitted under the 2013 SUP. During this seven (7)-year period, Owner may temporarily discontinue operation of the Golf Course (i) during periods of repair or renovation, (ii) during periods of Enforced Delay, or (iii) for a period of up to one (1) year as determined by Owner. If, during the seven (7)-year period golf course operations are discontinued for reasons other than those listed in the preceding sentence, the sole and exclusive remedy shall be for Owner to pay to the Town, as liquidated damages and not as a penalty, six hundred twenty-five dollars (\$625.00) for each continuous 24-hour period that the Golf Course is not operating; the Parties acknowledging and agreeing that computation of the Town's actual damages in the event of such a breach are difficult to determine with precision and that the foregoing provision reflects a reasonable estimate of such damages. After this seven (7)-year period, Owner may either continue to operate the Golf Course or at any time cease operating the Golf Course as a golf course upon not less than sixty (60) days written notice to the Town. Nothing in this Agreement shall limit the right of Owner to establish one or more classes of membership, rules and regulations, dues and fees for use of the Golf Course as a golf course as Owner may promulgate in its sole discretion from time to time. This covenant runs with the Golf Course Property and unconditionally binds Owner or its successors (including assignees and mortgagees) with respect to any legal or beneficial interest held by any of them with respect to all or any portion of the Golf Course Property. No person or entity shall be a third party beneficiary of this covenant, which can only be enforced by the Town.

(d) Golf Course Conversion to Open Space. If Owner elects to cease golf course operations on a permanent basis, Owner shall thereafter maintain the Golf Course Property as landscaped open space, which may include some or all of the landscape elements which exist at the time of such cessation. As part of the implementation of conversion to landscaped open space, the Owner may undertake such renovation as it determines to reduce the use of water for irrigation (such as removal of turf and replacement with desert landscape). The exact plans for such conversion shall be subject to the reasonable approval of the Town Manager. A conversion similar to the landscape elements, existing as of the approval date of the 2013 SUP, contained in the open space areas of Mountain Shadows East's former golf course area (located on Lot 67A of the plat of Mountain Shadow Resort Amended, a subdivision recorded in Book 75 of Maps, page 34, records of Maricopa County, Arizona) as further described on Exhibit E is deemed acceptable. If and when a conversion of the Golf Course Property to open space

(pursuant to the stipulations of the 2013 SUP and as contemplated herein) occurs for any reason, the cost of such conversion shall be at the sole cost and expense of Owner provided, however, that the Town will assist in and facilitate such conversion provided that there is no expense to the Town other than the expense associated with providing the assistance of Town employees in reviewing and commenting on the plans for the conversion. Nothing in this Agreement shall limit the right of Owner to establish one or more classes of membership, rules and regulations, dues and fees for use of the open space as Owner may promulgate in its sole discretion from time to time.

2. Development Area B – Resort Hotel.

(a) Demolition of Existing Improvements. Demolition of the Existing Improvements (“**Demolition**”) on Development Areas B, C, D, and E shall be done by a single contractor and shall be in accordance with the following requirements and shall be completed prior to the issuance of any building permits for vertical construction for Areas B, C, D, and E:

i. Permit applications and a dust mitigation plan in accordance with Maricopa County air quality regulations, along with a plan to fence and screen affected areas, said plan to be approved by the Town Manager, must be submitted to the Town for the applicable work within sixty (60) days after the Effective Date;

ii. Demolition must be commenced within the later of sixty (60) days after permits have been issued to Owner or within sixty (60) days after approval of the demolition by the Bankruptcy Court, if such approval is required;

iii. Demolition must be completed within two hundred and forty (240) days after issuance of the permits. Notwithstanding anything in this Agreement to the contrary, if U.S. Bank takes possession of the Property before demolition is complete, U.S. Bank shall have not less than one hundred and twenty (120) days after taking possession before the time periods applicable to i, ii, or iii (the stage of Demolition at the date of possession), start to run.

iv. If requested by the Town, prior to the commencement of Demolition, an Owner, other than U.S. Bank, shall provide the Town with reasonable evidence of financial ability sufficient to cause the completion of Demolition, as determined by the Town Manager.

The foregoing provisions in subsections (i) through (iv), inclusive, may be referred to in this Agreement as the “**Demolition Schedule.**”

v. The Town Manager may extend any phase of the Demolition Schedule, upon written request of Owner, by up to ninety (90) days, in his sole discretion.

(b) Principal Resort Hotel Standards: The Principal Resort Hotel shall be constructed and outfitted with the Minimum Resort Hotel Improvements along with a requirement that each Hotel Key, as designed and built, shall be a minimum of three hundred

fifty (350) square feet, and that the average size of the Hotel Keys within the Principal Resort Hotel shall be four hundred (400) square feet, as measured from interior walls. The determination by the Town that the Minimum Resort Hotel Improvements have been met will occur at or before issuance of building permits for the Principal Resort Hotel based upon the physical aspects (as reflected in submitted plans) of the proposed Principal Resort Hotel. Town will review the Principal Resort Hotel plans for determination of satisfaction at any stage of design (conceptual design, schematic design, design development or construction documents) or at multiple stages upon one (1) or more requests by Owner and will issue a written response stating that the proposed Principal Resort Hotel complies with the Minimum Resort Hotel Improvements or stating any deficiencies needed to be met in order to comply. Owner may make changes to the proposed Principal Resort Hotel following any determination by the Town that the proposed Principal Resort Hotel complies with the Minimum Resort Hotel Improvements and the Principal Resort Hotel shall remain in compliance as long as the Minimum Resort Hotel Improvements continue to be satisfied after such change. Components of the Minimum Resort Hotel Improvements may be located in one or more buildings (including across private drives or parking areas) provided that taken as a whole the Minimum Resort Hotel Improvements requirement is satisfied.

(c) Hotel Quality Standards: Any Resort Hotel shall be constructed and outfitted with standards of development consistent with the criteria set forth in Exhibit F or any Resort Hotel Design once approved by the Town Manager (the “**Hotel Quality Standards**”). The Hotel Quality Standards shall be reviewed and approved in two stages. First, prior to the issuance of a building permit for any Resort Hotel, Owner shall submit a “Resort Hotel Design” for approval as specified in Exhibit F. Second, in connection with review and approval of final construction plans upon which building permits will be issued, said plans shall be reviewed for compliance with the approved “Resort Hotel Design” as specified in Exhibit F. The parties agree that final construction documents upon which building permits shall be issued for a Resort Hotel may come in multiple phases, including but not limited to grading and other site work, buildings, plumbing, electrical, mechanical, and finish schedules. As such, permits will be issued in such phase, and reviewed for compliance with an approved Resort Hotel Design only to the extent such a component thereof is partially or fully reflected therein. Changes in Resort Hotel Design may occur at any stage of the design, permitting, or construction process and the Town Manager shall review and approve (such approval shall not be unreasonably withheld or delayed) such requested change within ten (10) business days if such request is made prior to Commencement of Construction for any Resort Hotel, and within three (3) business days following such request if Commencement of Construction has occurred. Any such change that is accompanied by a Brand Letter shall be deemed approved. Minor changes which do not materially alter the scope of a required component set forth in Exhibit F shall not require approval.

(d) Resort Residence Association. The Principal Resort Hotel Owner shall establish a “**Resort Residence Association**” that the then current Owners of Resort Residential units within Development Area B and Resort Estate lots within Development Area E are required to be a part of during their ownership. Membership in the Resort Residence Association will not be severable from the residence and will transfer with the residence. The Principal Resort Hotel Owner may allow members of the Resort Residence Association to use some or all of the amenities of the Principal Resort Hotel that are generally available to Principal

Resort Hotel guests without additional fee, other than Hotel Key rental rate (including but not limited to certain swimming pools, spas, fitness centers, the Clubhouse, and the Golf Course, all of which may be modified, added to, or discontinued from time to time), all on such terms and conditions as may be specified in the organizational documents of the Resort Residence Association, as amended from time to time, or otherwise established from time to time by the Principal Resort Hotel Owner or Principal Resort Hotel Manager; the terms and conditions may require payment of fees for use as the Resort Hotel Owner may specify and establish rules and regulations. The Owner of any common use amenities, subject to use by Resort Residence Association members, shall have the right to restrict or deny use to effect the orderly and viable operation of the Principal Resort Hotel (as determined by its Owner), such as the right to allow the exclusive use of areas by certain guests, Owners, invitees, or groups from time to time. Any Resort Hotel, Golf Course or Clubhouse Owner may also establish such other clubs or associations to permit or allocate use of any of its facilities, to establish fees for any such membership(s), and to subject such membership(s) to rules and regulations established by such Owner from time to time.

3. Development Area B -- Residential Areas West of 56<sup>th</sup> Street.

(a) Use restrictions. Resort Residential units within Development Area B may be used only for those uses or purposes provided for in the 2013 SUP.

(b) Resort Residence Association. All Owners of Resort Residential units in Development Area B are required to be members of the Resort Residence Association which may be provided for in one or more conditions, covenants, and restrictions or membership agreements or contracts.

(c) Subdivision Plats/Maps Procedure. Any subdivision preliminary and final plats and/or maps (including any maps within platted lots) shall be processed by the Town according to the following procedures (the “**Plat/Map Procedure**”), rather than Article 6-2 of the Town Code. Because the current Town Code does not address map approval, maps shall be processed under the same procedures as plats.

i. The submittal for a preliminary plat/map application shall include (a) a water service impact study prepared by a registered civil engineer that analyzes water flow and pressure in the immediate area and the appropriate infrastructure or other water system improvements necessary to assure adequate flow and pressure to meet Town Code standards, (b) twenty (20) copies of the preliminary plat/map, and (c) a completed application form and required application fee; there shall be no other requirements.

ii. A preliminary plat/map submittal shall be reviewed by the Town’s Planning Commission to determine compliance with the requirements set forth in the 2013 SUP and this Agreement. The Planning Commission shall act on the preliminary plat/map application within forty (40) days after receipt of a complete submittal. Following action of the Planning Commission, one (1) copy of the preliminary plat/map, together with a written report, shall be returned to Owner describing any changes required based solely upon requirements set forth in the 2013 SUP or this Agreement and stating the action of the Planning Commission. Reconsideration may be requested by Owner or, if the preliminary plat/map is rejected and

Owner elects not to modify it to secure Planning Commission approval, Owner may appeal the rejection to the Town Council, which may affirm, reverse, or modify the action of the Planning Commission, or remand the matter to the Planning Commission for further proceedings. The Planning Commission shall submit the preliminary plat/map to the Town Council with a recommendation for approval if the preliminary plat/map meets the requirements set forth in the 2013 SUP and this Agreement.

iii. The Town Council shall review the preliminary plat/map for compliance with the requirements set forth in the 2013 SUP and this Agreement and shall act to affirm, reverse, or modify the recommendation of the Planning Commission within (40) days after the Planning Commission's recommendation. The Town Council shall affirm (or reverse if necessary) the recommendation of the Planning Commission if the preliminary plat/map meets the requirements set forth in the 2013 SUP and this Agreement.

iv. A final plat/map and six (6) paper prints thereof shall be presented to the Planning Commission for consideration within twenty-four (24) months from date of preliminary plat/map approval by the Town Council based on the Town Council's current finding that an extension from the typical twelve (12) month time period is appropriate. If a final plat/map is not submitted within twenty-four (24) months, such preliminary approval shall become null and void unless an extension of time is granted by the Council. Owner may refile a preliminary plat/map application at any time after the twenty-four month or other extended time period has expired.

v. Owner shall meet and confer with the Community Development Department regarding the proposed final plat/map prior to submission to the Planning Commission to ensure that the final plat/map complies with the requirements set forth in the 2013 SUP and this Agreement.

vi. The Planning Commission shall review a final plat/map for comparison with the preliminary plat/map as approved and to insure that final plat/map complies with requirements set forth in the 2013 SUP and this Agreement. The Planning Commission shall approve or deny a final plat/map within forty (40) days after submission by the Owner. The Planning Commission shall submit the final plat/map to the Town Council with a recommendation for approval if the final plat/map complies with the requirements set forth in the 2013 SUP and this Agreement.

viii. The Town Council shall review the final plat/map for compliance with the requirements set forth in the 2013 SUP and this Agreement and shall act to affirm, reverse, or modify the recommendation of the Planning Commission within (40) days after the Planning Commission's recommendation. The Town Council shall affirm (or reverse) the recommendation of the Planning Commission if the final plat/map meets the requirements set forth in the 2013 SUP and this Agreement

(d) Subdivision Plats/Maps Standards. Any subdivision preliminary and final plats and/or maps (including any maps within platted lots) shall be processed subject to the standards and requirements in Chapter 6 of the Town Code as modified by the 2013 SUP and this Agreement (the "**Plat/Map Standards**"); where standards set forth in this Agreement or the

2013 SUP are different than standards set forth in the Town Code, this Agreement and the 2013 SUP provisions shall govern, it being the intent of the parties to approve plats and maps which conform to the objectives of the 2013 SUP and this Agreement even if they are inconsistent with the Town Code. Because the current Town Code does not address map approval, maps shall be processed under the same standards as plats. For example, the following is a nonexhaustive list of some specific instances where a different standard applies in place of the standards of design in Article 6-3 of the Town Code:

i. the ingress and egress plan (Sheet 3) in the 2013 SUP (replaces provisions in Section 6-3-1 of the Town Code);

ii. the width of all private rights-of-way and streets shall be a minimum of thirty (30) feet (or more if determined by Owner) as set forth in the 2013 SUP (replaces provisions in Section 6-3-2 of the Town Code);

iii. private easements for utilities shall be in such locations and of such widths as required by the utility providing the service (replaces Section 6-3-3 of the Town Code);

iv. lots and lot arrangement may exist in any configuration as long as they comply with standards set forth in the 2013 SUP (replaces Section 6-3-5 of the Town Code);

v. the building lines (i.e., setbacks) shall be as required in the 2013 SUP, with no setbacks required between adjacent lots or between adjacent Areas except as otherwise provided in the 2013 SUP (replaces Section 6-3-6 of the Town Code);

vi. the character of development shall be as provided in the 2013 SUP (replaces Section 6-3-10 of the Town Code); and

vii. signs, walls, and fences shall be allowed to be built according to provisions of the 2013 SUP (replaces Section 6-3-11 and Section 6-3-12 of the Town Code).

(e) Public Improvements. Only Public Improvements required by the 2013 SUP shall be required in any final plat or map. Construction of any Public Improvements required by the 2013 SUP west of 56<sup>th</sup> Street and all private and public utilities located within 56<sup>th</sup> Street that serve new development west of 56<sup>th</sup> Street shall be performed by the Owner, or the appropriate utility, as the case may be prior to the issuance of any certificates of occupancy for Area B.

(f) Other Improvements. Primary access drive connections from Area B to Lincoln Drive and 56<sup>th</sup> Street shall be constructed by the Owner prior to the issuance of any certificates of occupancy for Area B. During construction, Owner may utilize temporary curb cuts as provided in the 2013 SUP. In conjunction with construction of such primary access drive connections, Owner may need to alter existing right-of-way improvements within Lincoln Drive (such as medians or landscaping) to accommodate final driveway locations, among other

things. Plans for such modifications shall be reviewed by the Town Engineer prior to submission of the final plat/map to the Planning Commission. In connection with completing any such alterations, Owner shall restore affected areas to the same quality of improvements that existed prior to such alteration.

(g) Phasing. After Demolition and the requirements in subsections (e) and (f) are complete, the Town will issue building permits for vertical construction for up to, but not more than, one hundred fifty thousand (150,000) square feet of Floor Area of Resort Residential units in Area B (the foregoing 150,000 is tabulated based on the actual Floor Area of the Resort Residential units and not the Floor Area of any other allowed elements of the Resort, including, but not limited to, any Resort Hotel, Hotel Keys, Clubhouse, or Resort Ancillary Facilities and Uses) until the Principal Resort Hotel construction requirements (described below) have been completed. Once the Principal Resort Hotel construction requirements have been completed (as provided below), the Town will recommence the issuance of building permits for vertical construction for the balance of allowed Floor Area for Resort Residential in Area B. The foregoing requirement limiting the building permits for Resort Residential units to one hundred fifty thousand (150,000) square feet of Floor Area until the completion of the Principal Resort Hotel construction requirements set forth below, shall not apply to Resort Residential units which will be constructed as Vacation Club, or Branded Residence units. Notwithstanding the foregoing, the Town shall not issue building permits for any Vacation Club units until the Owner has satisfied the requirements of Section 3(C)(3)(g)(i) below. Vacation Club units as allowed by the 2013 SUP shall be initially branded and operated by the initial brand of the Principal Resort Hotel or an affiliate or licensee thereof. The Principal Resort Hotel construction requirements are:

i. Owner has provided to the Town Manager and Town Attorney an executed contract for construction of the Principal Resort Hotel between Owner and one or more general contractors for the construction of the Principal Resort Hotel that includes the Minimum Resort Hotel Improvements; and, has also provided either: (a) reasonable evidence of construction financing necessary to construct the Principal Resort Hotel; or (b) satisfactory evidence of other third-party funding sources; or (c) a completion bond between Owner and Owner's contractors in an amount sufficient to complete construction of the Principal Resort Hotel. Evidence of source of funding shall be in the form of a letter from a lender, a copy of loan documents, or other documentation as mutually acceptable to Owner and the Town; and

ii. Building permits have been issued for the Principal Resort Hotel sufficient to commence foundations and framing for substantially all of the Minimum Resort Hotel Improvements (for which foundation or framing is a part) and the rough framing inspection is complete (this includes any necessary height certification(s) and the inspection of the walls, floors, roof, and roof sheathing, but need not include the completion or inspection of rough mechanical, plumbing, and electrical components) for all of the Minimum Resort Hotel Improvements.

4. Development Area C – Retail/Restaurant.

(a) Demolition. Demolition of Existing Improvements within Development Area C shall be in accordance with the Demolition Schedule and shall be completed prior to the issuance of any building permits for vertical construction for Area C.

(b) Commencement/completion requirements. Commencement of Construction for Area C Retail improvements on Development Area C shall not commence until the Commencement of Construction of the Principal Resort Hotel. The foregoing shall not affect the commencement of construction within Area C of grading, utilities, parking facilities, other site improvements (including landscape and lighting), and the erection, maintenance, or operation of temporary facilities.

(c) Completion requirements. Completion of Construction of the exterior shell of all Area C Retail buildings on Development Area C must occur no later than eighteen (18) months from issuance of permits for the construction of such improvements, subject to Enforced Delay.

(d) Subdivision Plats/Maps. Any subdivision preliminary and final plats and/or maps (including any maps within platted lots) shall be processed and approved by the Town in accordance with the Plat/Map Procedure and subject to the Plat/Map Standards.

(e) Public Improvements. Only Public Improvements required by the 2013 SUP shall be required in any final plat or map. Construction of any Public Improvements required by the 2013 SUP west of 56<sup>th</sup> Street and all private and public utilities located within 56<sup>th</sup> Street that serve new development west of 56<sup>th</sup> Street shall be performed by the Owner, or the appropriate utility, as the case may be prior to the issuance of any certificates of occupancy for Area C.

5. Development Area D -- open space corner.

(a) Demolition. Demolition of Existing Improvements within Development Area D shall be in accordance with the Demolition Schedule.

(b) Commencement/completion requirements. Completion of Construction of Development Area D shall be concurrent with the Completion of Construction of the required final plat/map improvements for Development Area E.

(c) Covenant to Maintain Development Area D as Open Space in Perpetuity. Owner covenants that, once the final plat/map for Area E is approved, and Completion of Construction for Area D has occurred, Development Area D shall be maintained in accordance with this Agreement and the 2013 SUP, in perpetuity, by the homeowners' association required to maintain the private streets and common areas within Area E or, at Owner's election, the Owners of Area E and other Areas as determined through associations created by Owner. This covenant runs with the land, is in favor of the Town, and is enforceable by the Town. The recordation of this Agreement shall provide constructive notice of this covenant to all subsequent purchasers of any legal or equitable interest in all or any portion of Development Area D.

6. Development Area E -- Residential Area East of 56<sup>th</sup> Street.

(a) Resort Residence Association. All Owners of Resort Residential units in Development Area E are required to be members of the Resort Residence Association which may be provided for in one or more conditions, covenants, and restrictions or membership agreements or contracts.

(b) Demolition. Demolition of Existing Improvements within Development Area E shall be in accordance with the Demolition Schedule and shall be completed prior to the issuance of any building permits for vertical construction for Resort Estate lots.

(c) Subdivision Plats/Maps. Any subdivision preliminary and final plats and/or maps (including any maps within platted lots) shall be processed and approved by the Town in accordance with the Plat/Map Procedure and subject to the Plat/Map Standards.

(d) Public Improvements. Only Public Improvements required by the 2013 SUP shall be required in any final plat or map. Construction of any Public Improvements required by the 2013 SUP east of 56<sup>th</sup> Street and all private and public utilities located within 56<sup>th</sup> Street that serve new development east of 56<sup>th</sup> Street shall be performed by the Owner, or the appropriate utility, as the case may be, prior to the issuance of any certificates of occupancy for Resort Estates lots.

(e) Other Improvements. Primary access drive connections from Area E to Lincoln Drive and 56<sup>th</sup> Street shall be constructed by the Owner prior to the issuance of any certificates of occupancy for Resort Estates lots. During construction, Owner may utilize temporary curb cuts as provided in the 2013 SUP. In connection with construction of such primary access drive connections, Owner may need to alter existing right-of-way improvements within Lincoln Drive (such as medians or landscaping) to accommodate final driveway locations, among other things. Plans for such modifications shall be reviewed by the Town Engineer prior to submission of the final plat/map to the Planning Commission. In connection with completing any such alterations, Owner shall restore affected areas to the same quality of improvements that existed prior to such alteration.

7. Improvements to 56th Street and Related Phasing of Development Issues.

(a) Phasing of Development. It is the intent of the Parties that the Town shall reconstruct the improvements to the 56<sup>th</sup> Street right-of-way, but that such reconstruction should not be finalized until the Owner has completed all required utility connections or improvements in 56<sup>th</sup> Street and its driveway connections to 56<sup>th</sup> Street, thus avoiding any cuts or patches in the newly reconstructed 56<sup>th</sup> Street. Thus, the phasing of the demolition, new private drive and public road improvements, and private development within the Property shall generally be as set forth in this Agreement and the 2013 SUP, which allows the Property to be developed in one or more phases by one or more Owners, including portions east or west of 56<sup>th</sup> Street and separate phases within each Development Area.

(b) Description of 56<sup>th</sup> Street Improvements. The public right-of-way design standards and improvements to 56<sup>th</sup> Street are generally described on Exhibit G (the "56<sup>th</sup>

**Street Improvements**”). The final specifications and scope of the 56<sup>th</sup> Street Improvements shall be determined by the Town, but shall generally conform to Exhibit G.

(c) Cost. Owner shall pay to the Town, prior to the recordation of any final plat or map or the issuance of any permits for the construction of building improvements, the fixed amount of one million six hundred thousand dollars (\$1,600,000.00) to reimburse the Town for a portion of the design and construction costs for the 56<sup>th</sup> Street Improvements to thereafter be constructed by the Town and the Town shall pay for any remaining portion. The Town shall make no refund to Owner with respect to construction of the 56<sup>th</sup> Street Improvements, except as provided in the Settlement Agreement.

(d) Commencement and Completion of Construction. The Town shall commence construction of the 56<sup>th</sup> Street Improvements within twelve (12) months after receipt of payment required in subsection (c) above, but no sooner than six (6) months after the Town’s receipt of written notification by Owner of the location of the final curb cuts on the east and west side of 56<sup>th</sup> Street. The Town shall complete construction of the 56<sup>th</sup> Street Improvements, except the final lift of asphalt, within twelve (12) months after commencement of such construction. The final lift of asphalt shall be laid after the Owner has notified the Town that it has completed all Owner-required utility connections in 56<sup>th</sup> Street and Owner’s driveway connections to 56<sup>th</sup> Street.

(e) Exchange of Property. Owner and the Town agree that there shall be a property exchange between the Town and Owner for property or property rights required by the other as follows: (i) the Town agrees to abandon to Owner a seven (7)-foot strip of public right-of-way on the west side of 56<sup>th</sup> Street and the twenty-five (25) foot roadway easement on the east side of 56<sup>th</sup> Street (both as described on Exhibit H); and (ii) Owner agrees to grant to the Town and the Town agrees to accept from Owner a portion of its Property for use as public right-of-way in 56<sup>th</sup> Street (and which shall be part of the 56<sup>th</sup> Street Improvements) from Lincoln Drive to primary access curb cuts to Development Areas B, C, and E as chosen by Owner (as generally depicted on Exhibit H); and (iii) an open space covenant for Development Area D, as described in the 2013 SUP. The Parties agree that this exchange is a fair and equitable exchange and that no further monetary compensation shall be required by either Party. Prior to the recordation of any final plat or map, the Town will process and approve abandonment applications with respect to the seven (7)-foot right-of-way and a twenty-five (25)-foot easement described in (i). Any preliminary or final plat/map shall be approved reflecting the abandonments referenced in (i).

(f) Storm Water Retention/Detention. The proposed development of the Property will retain the difference between the pre-development (assuming an undeveloped desert lot) and post-development stormwater runoff, in accordance with the Town Storm Drain Design Manual (Subdivision Drainage Design). The calculations for runoff shall be done separately for the Property east and west of 56<sup>th</sup> Street. The calculations for the west side of the Property shall include the entire west side, including all Golf Course areas.

8. In Lieu Payments. As part of the consideration for this Agreement and the 2013 SUP, Owner agrees that the then current Owner of any Resort Estate lot within Development Area E or Resort Residential unit within Development Area B that is not used as a

Hotel Key or otherwise used exclusively for the purpose of renting under agreements having an occupancy term of less than thirty (30) days (such lot or unit constituting an “**Obligated Unit**”) shall make in lieu payments (each such payment being an “**In Lieu Payment**”) to the Town, as follows:

(a) Applicability. All Obligated Units are subject to the requirement to make In Lieu Payments in accordance with this Agreement. In no event shall any portion of the Property used for non-residential use (including but not limited to any Resort Retail, Resort Hotel, Golf Course, Clubhouse, Resort Ancillary Facilities and Uses, and Hotel Keys) be required to make In Lieu Payments. In no event shall any lot or unit used during an entire Payment Year exclusively for the purpose of renting under agreements having individual occupancy term(s) of less than thirty (30) days or as a Hotel Key (a “**Non-Obligated Unit**”) be required to make an In Lieu Payment. If a lot or unit is converted during a Payment Year from being an exclusively Non-Obligated Unit to being fully or partially used as an Obligated Unit, the Owner of such lot or unit shall make a full annual In Lieu Payment for such Payment Year within thirty (30) days following such conversion and shall be entitled on the next Payment Date following commencement of the full or partial use of the lot or unit as a Obligated Unit to a credit against the annual In Lieu Payment then due equal to the amount of any taxes paid to the Town as a result of the use of the lot or unit as a Non-Obligated Unit during the Payment Year in which the conversion occurred. If a lot or unit is converted during a Payment Year from being an exclusively Obligated Unit to being fully or partially used as a Non-Obligated Unit, any taxes paid to the Town as a result of the use of such lot or unit as a Non-Obligated Unit during such Payment Year shall be credited toward payment of the next In Lieu Payment otherwise owing by the Owner of such lot or unit. Any lot or unit contemplated to be used only part time as a Non-Obligated Unit as of commencement of a Payment Year shall pay a full annual In Lieu Payment on the Payment Date and then be entitled to a credit against the next In Lieu Payment owing on such lot or unit, if any, based on taxes paid to the Town as a result of the use of the lot or unit as a Non-Obligated Unit during such Payment Year. In no event shall the Town have any obligation to refund any In Lieu Payments paid for a lot or unit as a result of overpayment of an In Lieu Payment, but any such overpayment will be credited to any future In Lieu Payment due for such lot or unit. Conversion of a lot or unit from an Obligated Unit to a Non-Obligated Unit and/or from a Non-Obligated Unit to an Obligated Unit will not affect the continuing lien of the Town on the lot or unit pursuant to parts (g) and (h) below, and such lien will survive any such conversion.

(b) Amount of Payment. The amount of the In Lieu Payment for a lot or unit in Development Area B subject to the In Lieu Payment obligation shall be is \$1.10 per square foot (the “**Per Square Foot Amount**”) multiplied by the In Lieu Area (defined below) of the lot or unit, subject to future adjustments as provided for in Section 3(C)(8)(c). The amount of the In Lieu Payment for a lot in Development Area E subject to the In Lieu Payment obligation shall be the fixed amount of three thousand six hundred dollars (\$3,600.00) per lot per year until the first transfer of such lot after June 30, 2045; and shall be in the fixed amount of six thousand dollars (\$6,000.00) per lot per year after such transfer (each a “**Fixed Amount**”), subject to the transfer provisions in Section 3(C)(8)(d).

(c) Adjustments in Payment Amount. The Per Square Foot Amount (for a lot or unit in Development Area B) shall automatically increase, subject to the transfer

provisions in Section 3(C)(8)(d), to the amounts shown on the following table for each full or partial Obligated Unit upon any transfer of title to the Obligated Unit occurring after the date shown in the following table:

<u>Change Date</u>	<u>Per Square Foot Amount</u>
July 1, 2035	\$1.50
July 1, 2050	\$2.10
July 1, 2065	\$2.90

(d) Transfer Provisions. There shall be no increases other than the foregoing unless otherwise agreed in writing by an amendment to this Agreement signed by the Owner whose property will be bound by such amendment. The Per Square Foot Amount applicable to a lot or unit in Development Area B or the Fixed Amount applicable to a lot in Development Area E shall not increase during the time period that such lot or unit is held by the same owner; for purposes of the foregoing, (a) a transfer of a lot or unit from a person to his or her spouse or to a trust for the benefit of the trustor and/or his/her spouse or (b) a transfer of legal title to the trustee of a deed of trust or to a mortgagee in connection with the creation of a loan secured by the lot or unit will not constitute a transfer of title that would cause an increase in the Per Square Foot Amount or the Fixed Amount, but a foreclosure or trustee's sale would constitute a transfer that could result in an increase in the Per Square Foot Amount or the Fixed Amount. As an example of the foregoing, if an Owner acquires an Obligated Unit in Development Area B on January 1, 2029 and conveys the Obligated Unit on November 1, 2036 to a new Owner, the Per Square Foot Amount for such Obligated Unit would increase from \$1.10 to \$1.50 on November 1, 2036. As a further example, if an Owner acquires an Obligated Unit in Development Area E on January 1, 2040 and conveys the Obligated Unit on November 1, 2051 to a new Owner, the Fixed Amount for such Obligated Unit would increase from three thousand six hundred dollars (\$3,600.00) to six thousand dollars (\$6,000.00) on November 1, 2051. An Owner acquiring title to an Obligated Unit for which the Fixed Amount or the Per Square Foot Amount, as applicable, will change upon such acquisition of title shall pay to the Owners Association concurrently with such acquisition of title (i) such amount as may be required to pay any increase in the In Lieu Payment for the remainder of such Payment Year (which amount shall be forwarded by the Owners Association to the Town following receipt) and (ii) such amount as will, when combined with the prior months payments by the prior Owner and remaining monthly payments that will be required from the new Owner prior to the next Payment Date, allow the Owners Association to collect the full amount of the next In Lieu Payment due to the Town prior to the next Payment Date.

(e) Calculation of In Lieu Area. The “**In Lieu Area**” of a lot or unit in Development Area B subject to the In Lieu Payment obligation shall be the square footage of the interior air conditioned area of the residential improvements, excluding courtyards, garages, attics, common areas (including but not limited to corridors, stairs, elevators, common use facilities such as restrooms, lounges, reception areas, recreation areas, and pool houses) and basements. Square footage shall be measured from the exterior of exterior walls and from the midpoint of any wall not constituting an exterior wall (e.g. from the midpoint of a common wall separating two units). The In Lieu Area for a lot or unit shall be determined at the time a building permit is issued for a structure. The plans for a structure on a lot in Development Area B, whether or not such lot or unit is initially intended to be a Hotel Key, shall include a

calculation of the In Lieu Area for the structure within the lot or unit with a statement substantially similar to: “The In Lieu Area of [Lot \_\_][Unit \_\_] for the purposes of calculating the In Lieu Payment under the Development Agreement affecting the property is \_\_\_\_\_ square feet.” Once the In Lieu Area is approved by the issuance of a building permit, such In Lieu Area shall be the basis for all future In Lieu Payments for that lot or unit unless the structure is altered to change the In Lieu Area at some future time. Future plans that change the In Lieu Area shall also include a statement of the square footage constituting the revised In Lieu Area to be used for calculating the future In Lieu Payment. The Parties acknowledge that determination of the In Lieu Area of a lot or unit does not obligate such lot or unit to make In Lieu Payments and that determination of lots or units obligated to make In Lieu Payments shall be pursuant to subsection (a) above.

(f) Payment Year. The payment year for In Lieu Payments shall run from July 1 to June 30 (the “**Payment Year**”); provided however that the first year may be more than twelve (12) months as set forth in subsection (g), below.

(g) Time for Payments. The In Lieu Payment obligation shall commence on the first day of the first full calendar month after the earlier of (i) the first transfer of a lot or unit after the issuance of the certificate of occupancy for the lot or unit or (ii) one hundred eighty (180) days after the issuance of the certificate of occupancy for the lot or unit. The first In-Lieu Payment is due upon the first July 1 following the commencement of the In Lieu Payment obligation and shall be in an amount equal to the sum of (i) the annual In Lieu Payment amount multiplied by a fraction having a numerator equal to the number of days during the Payment Year after the commencement of the In Lieu Payment obligation for the lot or unit and a denominator equal to the total number of days in such Payment Year and (ii) the annual In Lieu Payment amount required for the next full Payment Year. Each subsequent In Lieu Payment shall be due in advance on July 1 of each calendar year (the “**Payment Date**”).

(h) Obligation Runs with the Land. The obligation of each lot or unit required to make In-Lieu Payments is appurtenant to such lot or unit, runs with the title to the lot or unit, and binds and is assumed by each future Owner of such lot or unit, in perpetuity.

(i) Creation of Lien. MTS Land/Golf hereby grants, conveys, assigns and transfers to the Town a security interest in and lien on each Resort Estate Lot or Resort Residential unit created by a recorded final plat or map in Development Area E and Development Area B in order to secure the payment of the In Lieu Payment for each Payment Year; provided however, that the Minimum Hotel Keys along with any additional Hotel Keys, to the extent they are owned by the Owner of a Resort Hotel shall not be subject to such lien. Only those portions of Development Area B or Development Area E that are subdivided into lots, units or other parcels capable of separate ownership by a plat, map or otherwise, and intended to contain Resort Units shall be subject to security interest and lien and the security interest and lien shall thereafter apply individually to each lot or unit obligated to make In Lieu Payments under this Agreement, with no lot or unit or the Owner thereof liable for delinquent In Lieu Payments owing for another lot or unit or by another Owner. Notwithstanding the foregoing, the Town will execute any further acknowledgement that the Town’s security interest and lien does not apply to a Non-Obligated Unit (but only during the time period when such lot or unit is used during an entire Payment Year for the purpose of renting under agreements having individual

occupancy term(s) of less than thirty (30) days or as a Hotel Key) as may be reasonably requested from time to time in connection with recordation of plats or maps or by any title insurance company, government official, lender or purchaser. Such lien shall be a realty mortgage and shall be enforceable pursuant to and enforceable in the manner provided by law from time to time for enforcement of realty mortgages, which the parties acknowledge is currently governed by A.R.S. § 33-701 et. seq. Subject to the provisions of Section 3(C)(8)(g), so long as MTS Land/Golf owns a lot or unit subject to the In Lieu Payment obligation, MTS Land/Golf shall pay, and each subsequent Owner of a lot or unit subject to the In Lieu Payment obligation, by becoming an Owner of such lot or unit, is deemed to covenant and agree to pay, the In Lieu Payment applicable to such lot or unit in accordance with this Agreement. Town acknowledges that MTS Land/Golf and any subsequent Owner is released from any obligation to make In Lieu Payments that are due following MTS Land/Golf's or the subsequent Owner's conveyance of a lot or unit and that such obligation will pass to the transferee of such lot or unit. If any In Lieu Payment is not paid within thirty (30) days after it becomes due, such past due amount shall bear interest from the due date at the Default Rate. The In Lieu Payment, together with interest at the Default Rate and reasonable attorneys' fees incurred by the Town in collecting any delinquent In Lieu Payment, shall be a continuing lien (the "**In Lieu Payment Lien**") upon the applicable lot or unit. The In Lieu Payment Lien shall have priority over all liens or claims except for: (a) Senior Liens; (b) liens for real estate taxes and other governmental assessments and charges against the applicable lot or unit; (c) the lien of a recorded first mortgage, a seller's interest in a recorded first contract (as defined in A.R.S. § 33-741(2)) for sale or a recorded first deed of trust, provided that the recording of the applicable mortgage, contract or deed of trust occurred prior to the due date of the In Lieu Payment that is delinquent, and (d) any other liens granted priority by Applicable Laws. Notwithstanding the provisions of part (c) of the preceding sentence, although a transferee of a lot or unit at a trustee's sale, foreclosure sale or contract forfeiture shall not be responsible for In Lieu Payments accruing for time periods prior to such trustee's sale, foreclosure sale or contract forfeiture, such lot or unit and the transferee thereof will be liable for In Lieu Payments accruing from and after the date of such trustee's sale, foreclosure sale or contract forfeiture to the same extent as if such transferee had acquired the lot or unit by consensual deed from the prior Owner thereof; no such trustee's sale, foreclosure sale or contract forfeiture shall terminate the In Lieu Payment Lien on such lot or unit for In Lieu Payment amounts accruing after the date of such trustee's sale, foreclosure sale or contract forfeiture. Each In Lieu Payment, together with interest at the Default Rate and reasonable attorneys' fees incurred by the Town in collecting delinquent In Lieu Payment(s), shall also be the personal obligation of the individual or entity that is the Owner of the lot or unit to which the In Lieu Payment obligation pertains at the time when the In Lieu Payment became due. Notice to an Owner shall be deemed given under this Section 3(C)(8) three (3) business days following the sending of such notice by certified mail to the Owner at (a) the address for such Owner on the records of the Maricopa County, Arizona Assessor, if any, (b) any address of the lot or unit owned by such Owner, if such addresses exist, and (c) if the notice is sent by an Owners Association, at the address(es) for such Owner shown on the records of the Owners Association.

(j) Recordation. The recording of this Agreement constitutes record notice and perfection of the In Lieu Payment Lien. The Town may, at its option, record an additional notice of non-payment of any delinquent In Lieu Payment on the delinquent lot or unit, setting forth the name of the delinquent Owner, the amount claimed to be past due as of the

date of the recording of such notice of non-payment, and any other information deemed appropriate by the Town. Before recording any such notice of non-payment, the Town shall make a written demand for payment to the delinquent Owner. If the amounts specified in such demand are not paid within the cure period provided for in subsection (k) below, the Town may proceed with recordation of the notice of non-payment against the lot or unit owned by the delinquent Owner; such notice shall not affect any portion of the Property other than the lot or unit to which the delinquent In Lieu Payment applies. The Town will cooperate with an Owner upon request to make corrections to any recorded notices.

(k) Remedies. The Town shall have the right, subject to the notice and cure provisions of this subsection (k), but not subject to the mediation provisions of Article 7, to enforce collection of any delinquent In Lieu Payment by and in any manner allowed by law including, but not limited to, (a) commencing an action against the Owner obligated to pay the delinquent In Lieu Payment (and such action may be brought without waiving the In Lieu Payment Lien); (b) commencing an action to foreclose the In Lieu Payment Lien against the real property to which the In Lieu Payment Lien applies in the manner provided by law for the foreclosure of a realty mortgage; or (c) any other action deemed appropriate by the Town to declare or enforce its rights under this Section 3(C)(8). Notwithstanding the foregoing or any other provision of this Agreement, a breach by an Owner of its obligations under this Section 3(C)(8) shall not constitute a breach of this Agreement by any other person or entity, including without limitation any other Owner or lienholder of any portion of the Property not encumbered by the In Lieu Payment Lien for the delinquent In Lieu Payment; without limitation of the foregoing, the Town will not undertake any remedy against or withhold any action otherwise required by this Agreement regarding any Owner as a result of a delinquent In Lieu Payment owing by any other Owner, including without limitation withholding, conditioning, or delaying issuance of a building permit, certificate of occupancy or any other permit, approval or action contemplated by this Agreement. In any action brought or maintained under this Section 3(C)(8), there shall be no acceleration of In Lieu Payments for future Payment Years. Any purchaser of a lot or unit subject to an In Lieu Payment Lien, including any purchaser at a foreclosure sale held pursuant to the In Lieu Payment Lien, shall take its interest in such property subject to this Agreement and the continuing In Lieu Payment Lien for future Payment Years' In Lieu Payment obligation. It shall be a condition of any foreclosure sale to collect any delinquent In Lieu Payment, and any judgments or orders related to that sale, that: (i) such foreclosure sale shall be only for the delinquent In Lieu Payment obligation that is the subject of such sale, (ii) the In Lieu Payment Lien shall continue to bind the Property for all other and future In Lieu Payment obligations, including those arising after such foreclosure sale, and (iii) any purchaser at the foreclosure sale shall take its interest in the property sold subject to this Agreement and the continuing In Lieu Payment Lien for In Lieu Payment obligations. Except as stated in this subsection (k), the Town's remedies under this Section 3(C)(8) shall be cumulative and not exclusive. The Town shall not pursue any remedy for non-payment of an In Lieu Payment, or record the notice of non-payment contemplated by subsection (j) above, until (i) thirty (30) days after the delinquent Owner receives written notice of nonpayment of an In Lieu Payment required under this Agreement, during which thirty-day period the delinquent Owner may cure any nonpayment or other nonperformance under this Agreement and (ii) if applicable, the notice and cure rights of a Lender as provided in Section 8(X) have been satisfied. The written notice contemplated by the preceding sentence shall describe in reasonable detail the facts supporting the claim of nonpayment under this Agreement. The Town or an Owners Association shall have

the power to bid (including, but not limited to, a credit bid in the amount of any unpaid In Lieu Payment and all other permitted costs and expenses in connection with such unpaid In Lieu Payment (or Payments), or additional “cash” bids in excess of such amounts) at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey the lots or units purchased at such sale; if an Owners Association makes a credit bid and acquires title to any lot or unit pursuant to such credit bid, the Owners Association shall pay to the Town the portion (if less than all) of the credit bid representing amounts owing to the Town for delinquent In Lieu Payments.

(l) Priority of Liens. Owner agrees and acknowledges that initially the In Lieu Payment Lien created by this Agreement shall constitute a lien on the applicable lot or unit of the Property, which shall be subordinate in priority only to the liens described on Exhibit I attached hereto (the “**Senior Liens**”). In the event the Senior Liens are paid and discharged, or are made subordinate to the In Lieu Payment Lien established and granted by this Agreement, then the In Lieu Payment Lien created by this Agreement shall, subject to the provisions of subsection (i) above, be senior to all other monetary liens.

(m) Owners Association Management.

i. Notwithstanding that the Owner of a lot or unit obligated to make an In Lieu Payment has a direct obligation to make the In Lieu Payment to the Town, the Owner will form one or more non-profit corporations (each, an “**Owners Association**”) to act as an association of owners for each portion of the Property that contains lots or units subject to the In Lieu Payment obligation and will record covenants running with the lots or units consistent with this Section 3(C)(8) in addition to such other covenants, conditions, restrictions and easements as Owner may desire to impose on such lots or units.

ii. An Owners Association shall require each Owner of a lot or unit obligated to make In Lieu Payments to make monthly payments of one-twelfth of the In Lieu Payment required from such Unit, so that if all monthly payments are timely made, the Owners Association will have the full In Lieu Payment amount for such lot or unit available to pay the Town on the next Payment Date. All monthly In Lieu Payment amounts shall be due and payable concurrently with monthly Owners Association assessments. Concurrently with an Owner’s acquisition of a lot or unit obligated to make In Lieu Payments, such Owner shall be required to pay to the Owners Association an amount that, when added to the monthly In Lieu Payments due from such Owner prior to the next Payment Date, will allow the Owners Association to fully pay the In Lieu Payments due on such lot or unit. Notwithstanding the foregoing, a transferee of a lot or unit as a result of a trustee’s sale, foreclosure sale or contract forfeiture pursuant to subsection (i) above shall be required to pay to the Owners Association within thirty (30) days following acquisition of title only an amount, that when added to the monthly In Lieu Payments due from such transferee prior to the next Payment Date, will allow the Owners Association to pay from the funds collected from such transferee the In Lieu Payment allocable from the date of such transferee’s acquisition of title through the end of the Payment Year in which such transferee acquired title and the next due full annual payment of the In Lieu Payment; such transferee will not be liable for pre-acquisition In Lieu Payment obligations of the prior Owner. All In Lieu Payment amounts collected by an Owners Association shall be held by the Owners Association in trust for the Town and not used for

payment of any other Owners Association expenses; all such collected amounts shall be paid to the Town on the next Payment Date, except to the extent that an Owner has overpaid such amounts for any reason, in which event the overpayment shall be held by the Owners Association and credited toward future In Lieu Payments owing on the lot or unit.

iii. Each Owner of a lot or unit potentially obligated to make an In Lieu Payments shall certify to the Owners Association upon acquisition of the lot or unit whether the lot or unit will be used fully or partially as an Obligated Unit or exclusively as a Non-Obligated Unit. Each Owner will update such certification (in a form reasonably acceptable to the Town) to the Owners Association within thirty (30) days following any change in the use of the lot or unit that would alter such certification; the Owners Association and the Town will be entitled, but not required, to rely on the most recent certification provided by the Owner until receipt of an updated certification. All such certifications shall also state that they are made for the benefit of and may be relied upon by the Town. An Owners Association shall be entitled to rely on an Owner's certification in attempting to collect monthly In Lieu Payments unless the Town gives notice to the Owners Association and the affected Owner that the Town has determined that a lot or unit claimed by an Owner to be a Non-Obligated Unit is in fact an Obligated Unit, in which event the Owners Association shall include the In Lieu Payment amount for such lot or unit in the monthly bills to such Owner, but the Owners Association shall not be required to defend or enforce the Town's determination in any court action. The Owners Association shall provide an annual statement to the Town on or prior to each Payment Date that states the name and address of each owner of a lot or unit, the status of each lot or unit as a full or partial Obligated Unit or an exclusively Non-Obligated Unit, the payment status of each lot or unit, and any other information reasonably requested by the Town in connection with In Lieu Payments, which statement shall be accompanied by any In Lieu Payments then due to the Town that have been collected by the Owners Association. If the Owners Association receives delinquent In Lieu Payments or portions thereof following a Payment Date, the Owners Association will remit such amounts to the Town within thirty (30) days following receipt together with a statement showing the source of such funds.

iv. An Owner of a lot or unit entitled to a credit for taxes paid to the Town pursuant to subsection (a) above shall provide to the Owners Association documentation reasonably acceptable to the Owners Association reflecting the date, amount and type of taxes so paid. If such information is provided on or prior to the due date of an In Lieu Payment amount due to the Owners Association, the Owner shall be entitled to deduct the amount of such tax payments from the amount otherwise due to the Owners Association and to carry forward any unused amount as a deduction against future In Lieu Payment amounts. Any Owner unable or unwilling to provide documentation reasonably acceptable to the Owners Association regarding taxes paid to the Town shall not be entitled to credit for such taxes. If the Town gives notice to an Owners Association and the affected Owner that the Town has determined that all or any portion of a deduction hereunder was improper, the Owners Association shall adjust its books to reflect the Town's determination, but the Owners Association shall not be required to defend or enforce the Town's determination in any court action.

v. Each such Owners Association shall use reasonable efforts to (a) maintain books and records regarding the lots and units obligated to make In Lieu

Payments, including without limitation the amount of the In Lieu Area of the lot or unit, the commencement date of the In Lieu Payment obligation of the lot or unit, the history of payment of the In Lieu Payment by the Owner of such lot or unit, and any changes to the status of the lot or unit or other facts, including claims of deductions for taxes paid, that affect the amount of the In Lieu Payment payable by such lot or unit, (b) timely collect from the Owners of the lots or units subject to the In Lieu Payment obligation the In Lieu Payments payable by such lots or units, provided, however, that an Owners Association shall have no obligation to expend greater efforts to collect In Lieu Payments from Owners of lots or units than the Owners Association expends to collect association assessments owing by the Owners to the Owners Association, (c) pay to the Town all In Lieu Payments collected by the Owners Association on or prior to the due date of the In Lieu Payments, and (d) provide to escrow agents, title insurance companies, lenders, purchasers and other persons reasonably requesting an estoppel certificate (an “**In Lieu Estoppel**”) regarding the status of the In Lieu Payment on any lot or unit, an In Lieu Estoppel containing such factual information regarding the status of the In Lieu Payment on such lot or unit as such person may reasonably request, including without limitation the amount of the In Lieu Payment, the date through which the In Lieu Payment has been made, and any amounts past due. In order to relieve the Town of the burden of providing In Lieu Estoppels to third parties and to allow In Lieu Estoppels provided by an Owners Association to be relied upon by third parties, the Town agrees that the Town will be bound by any statements in an In Lieu Estoppel provided by the Owners Association to any third party, (excluding the Owner of the lot or unit), who in good faith relies on the accuracy of such statements.

vi. An Owners Association shall indemnify, defend and hold the Town harmless from any damages, liabilities or obligations arising as a result of negligence or intentional misconduct by the Owners Association in connection with In Lieu Payments, including without limitation payment by the Owners Association to the Town of any In Lieu Payments not paid to the Town as a result of any errors in an In Lieu Estoppel negligently issued by the Owners Association.

vii. An Owners Association may, but shall have no legal obligation to do so, take any action permitted to be taken by the Town under this Agreement or by law to enforce the In Lieu Payment Lien and/or the personal obligation of an Owner to make an In Lieu Payment, including without limitation the giving any notices, foreclosing the In Lieu Payment Lien, or seeking a judgment against the responsible Owner; if an Owners Association elects to take any such action, any funds collected by the Owner’s Association shall be applied to pay the Owners Association’s court costs and attorneys’ fees in such action and any remainder shall be paid to the Town. Except as specified in the preceding sentence, as otherwise required by law, or as otherwise specified in writing by or on behalf of an Owner at the time of making a payment to an Owners Association, an Owners Association collecting In Lieu Payments on behalf of the Town shall apply any funds received by the Owners Association from or on behalf of an Owner of lot or unit obligated to make In Lieu Payments first to any delinquent In Lieu Payments owing by such Owner at the time such payment is made, with delinquent monthly payments of the In Lieu Payment due from an Owner to the Owners Association being considered delinquent In Lieu Payments for such purpose, and then to any amounts owing by such Owner to the Owners Association. If an Owners Association receives or holds funds, other than funds held in trust for the Town pursuant to subsection (ii) above, from or on behalf of an Owner and no In Lieu Payment is then due to the Town and no amount is then due to the Owners

Association, such funds shall be applied to In Lieu Payments and amounts owing to the Owners Association in the order in which payment is due, with amounts due to the Town and the Owners Association on the same day being applied first to an In Lieu Payment to the Town and with monthly payments of the In Lieu Payment to the Owners Association being considered for this purpose to be then due to the Town.

viii. Notwithstanding an Owners Association's management and collection of In Lieu Payments on behalf of the Town, an Owners Association is not a guarantor of the obligation of the In Lieu Payment obligation of any lot or unit required to make an In Lieu Payment; the Town acknowledges that, except for the Town's right to enforce the In Lieu Payment Lien, the only person liable for a delinquent In Lieu Payment is the Owner of the lot or unit giving rise to the delinquent In Lieu Payment obligation.

#### **ARTICLE 4 –INDEMNITY, RISK OF LOSS AND INSURANCE**

A. Indemnity. To the extent permitted by law, Owner shall defend, indemnify and hold harmless the Town and its Town Council members, officers and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated) which arise from or relate in any way to an Event of Default or an intentional or grossly negligent act by Owner, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Owner's obligations under this Agreement. To the extent permitted by law, the Town shall defend, indemnify and hold harmless Owner, its agents, employees, contractors, subcontractors or representatives from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated) which arise from or relate in any way to an Event of Default or any intentional or grossly negligent act by Town, or its Town Council members, officers, employees contractors, subcontractors, agents or representatives, undertaken in fulfillment of the Town's obligations under this Agreement. The foregoing indemnity obligations of Owner and Town shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

B. Risk of Loss. Owner will assign to the Town any unexpired warranties relating to the design, construction and/or composition of the Public Improvements, which shall consist of a two (2) year warranty of workmanship, materials and equipment, in form and content reasonably acceptable to the Town; provided, however, that such warranty or warranties may be provided by Owner's contractor or contractors directly to the Town, provided, however, if the Owner's contractors will not provide such warranties, then the Owner shall provide same, and that any such warranties shall extend from the date of final completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

C. Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, Owner will obtain and provide the Town with proof of payment of premiums and certificates of insurance showing that Owner is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit C to this Agreement. Such policies of

insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the Town, and will name the Town as an additional insured on such policies.

## **ARTICLE 5 -- REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

A. **Town's Representations.** The Town represents and warrants to Owner that:

1. The Town has the authority to enter into and perform this Agreement and each of Town's obligations and undertakings under this Agreement, and the Town's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Town Code and Arizona law.

2. All Town consents and Town approvals necessary to the execution, delivery and performance of this Agreement by the Town have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

3. The Town will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

4. The Town believes that this Agreement (and each undertaking of the Town contained herein), constitutes a valid, binding and enforceable obligation of the Town, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. The Town will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation against the Town and arising from this Agreement or which challenges the authority of the Town to enter into or perform any of its obligations hereunder and will cooperate with Owner in connection with such action or any other action by a Third Party in which Owner is a party and the benefits or any other aspect of this Agreement to Owner are challenged. Notwithstanding the foregoing, a determination by a court of competent jurisdiction that this Agreement is invalid or unenforceable shall not constitute a breach of, or default under, this Agreement by the Town.

5. The execution, delivery and performance of this Agreement by the Town is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the Town is a party.

6. The Town has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

B. **MTS Land's Representations.** MTS Land represents and warrants to the Town that:

1. Subject to obtaining required approvals from the Bankruptcy Court and any Lenders, MTS Land has the authority to enter into and perform this Agreement and each of the obligations and undertakings of MTS Land under this Agreement, and the execution, delivery

and performance of this Agreement by MTS Land have been duly authorized and agreed to in compliance with the organizational documents of MTS Land.

2. Subject to the satisfaction of the conditions precedent set forth in Section 5(B)(4), all consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance. Without limiting the foregoing, all required lender approvals or consents have been obtained.

3. MTS Land will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

4. This Agreement (and each undertaking of MTS Land contained herein) constitutes a valid, binding and enforceable obligation of MTS Land, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. MTS Land will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names MTS Land as a party or which challenges the authority of MTS Land to enter into or perform any of its obligations hereunder and will cooperate with the Town in connection with such action or any other action by a Third Party in which the Town is a party and the benefits of this Agreement to the Town, or any other aspect of this Agreement, are challenged. Notwithstanding the foregoing, a determination by a court of competent jurisdiction that this Agreement is invalid or unenforceable shall not constitute a breach of, or default under, this Agreement by MTS Land.

5. The execution, delivery and performance of this Agreement by MTS Land is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which MTS Land is a party or to which MTS Land is otherwise subject.

6. MTS Land has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

7. MTS Land has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

C. **MTS Golf's Representations.** MTS Golf represents and warrants to the Town that:

1. Subject to obtaining required approvals from the Bankruptcy Court and any Lenders, MTS Golf has the authority to enter into and perform this Agreement and each of the obligations and undertakings of MTS Golf under this Agreement, and the execution, delivery and performance of this Agreement by MTS Golf have been duly authorized and agreed to in compliance with the organizational documents of MTS Golf.

2. Subject to the satisfaction of the conditions precedent set forth in Section 5(C)(4), all consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

3. MTS Golf will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

4. This Agreement (and each undertaking of MTS Golf contained herein) constitutes a valid, binding and enforceable obligation of MTS Golf, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. MTS Golf will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names MTS Golf as a party or which challenges the authority of MTS Golf to enter into or perform any of its obligations hereunder and will cooperate with the Town in connection with such action or any other action by a Third Party in which the Town is a party and the benefits of this Agreement to the Town, or any other aspect of this Agreement, are challenged. Notwithstanding the foregoing, a determination by a court of competent jurisdiction that this Agreement is invalid or unenforceable shall not constitute a breach of, or default under, this Agreement by MTS Golf.

5. The execution, delivery and performance of this Agreement by MTS Golf is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which MTS Golf is a party or to which MTS Golf is otherwise subject.

6. MTS Golf has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

7. MTS Golf has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

## **ARTICLE 6 -- EVENTS OF DEFAULT AND REMEDIES**

A. Events of Default by the Owner. Subject to the provisions of Section 5(B)(4) and Section 5(C)(4) of this Agreement, "**Default**" or an "**Event of Default**" by an Owner under this Agreement shall mean one or more of the following:

1. Any representation or warranty made in this Agreement by such Owner was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

2. Such Owner fails to comply with the dates established in this Agreement for any specific activity, including the Commencement of Construction or the Completion of Construction, for any reason other than an Enforced Delay;

3. Such Owner breaches or fails to comply with any material provision the 2013 SUP or the Settlement Agreement; or

4. Such Owner fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

B. Events of Default by the Town. Subject to the provisions of Section 5(A)(4) of this Agreement, Default or an Event of Default by the Town under this Agreement shall mean one or more of the following:

1. Any representation or warranty made in this Agreement by the Town was materially inaccurate when made or shall prove to be materially inaccurate during the Term;

2. The Town fails to comply with the dates established in this Agreement for any specific activity, including the construction of 56<sup>th</sup> Street improvements, for any reason other than an Enforced Delay; or

3. The Town fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.

C. Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from the other Party, proceed to cure or remedy such Default and, in any event, such Default shall be cured within thirty (30) days (or ninety (90) days if the Default relates to the date for Completion of Construction) after receipt of such notice, or, if such Default is of a nature is not capable of being cured within thirty (30) days (or ninety (90) days if the Default relates to the date for Completion of Construction) shall be commenced within such period and diligently pursued to completion.

D. Consequences of Default. An Owner is responsible only for an Event of Default pertaining to its obligations for the portion of the Property it owns. The Town may exercise its remedies only against a defaulting Owner and each Owner may individually exercise its remedies against the Town. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the non-performing Party in accordance with Section 6(C) of this Agreement, the other Party may take any of one or more of the actions set forth in Section 6(E) or Section 6(F):

E. Remedies of the Town. The Town's exclusive remedies for an Event of Default by Owner shall consist of, and shall be limited to the following:

1. For a failure to make an In Lieu Payment, the Town shall have only the rights and remedies provided in Section 3(C)(8)(k) of this Agreement;

2. For an Event of Default other than the failure to make an In Lieu Payment, the Town shall have all rights and remedies available at law, in equity or under any provision of this Agreement; and

3. For an Event of Default other than the failure to make an In Lieu Payment, at any time the Town may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Owner to undertake and to fully and timely

address a public safety concern, to enjoin any construction or activity undertaken by Owner that is not in accordance with the terms of this Agreement, or to undertake and to fully and timely perform its obligations under this Agreement. In no event, and notwithstanding any provision in this Agreement to the contrary, shall the Town have the right to terminate this Agreement for an Event of Default.

F. Remedies of Owner. Owner's exclusive remedies for an Event of Default by the Town shall consist of and shall be limited to the following:

1. At any time, Owner may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring the Town to undertake and to fully and timely address a public safety concern, to enjoin any construction or activity undertaken by Town that is not in accordance with the terms of this Agreement, or to undertake and to fully and timely perform its obligations under this Agreement; and

2. Owner shall have all rights and remedies available at law, in equity, or under any provision of this Agreement.

In no event, and notwithstanding any provision in this Agreement to the contrary, shall the Owner have the right to terminate this Agreement for an Event of Default.

G. Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Event of Default by the other Party shall not be considered as a waiver of rights with respect to any other Event of Default by the performing Party or with respect to the particular Event of Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Event of Default involved.

H. Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section. Neither the Town nor Owner, as the case may be, shall be considered to have caused an Event of Default with respect to its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") due to actual or threatened causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes or strikes or interruptions, unavailability of supplies or materials or labor, unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property

(whether permanent or temporary) by any public, quasi-public or private entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project, nor from the unavailability for any reason of any particular network, partnerships, contractors, subcontractors, vendors, investors or lenders desired by Owner in connection with the Project (as opposed to the general unavailability of any of the same), it being agreed that Owner will bear all risks of delay, other than the Town's breach of this Agreement, which are not Enforced Delay. Periods during which the Parties are seeking a decision regarding mediation pursuant to Section 7(C) of this Agreement shall be considered periods of Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

I. Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by any Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Event of Default by another Party.

## **ARTICLE 7 -- COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.**

A. Representatives. To further the cooperation of the Parties in implementing this Agreement, the Town and Owner each shall designate and appoint a representative to act as a liaison between the Town and its various departments and Owner. The initial representative for the Town shall be its Town Manager or his designee identified in writing from time to time (the "**Town Representative**") and the initial representative for Owner shall be the CEO of Crown Realty & Development, as identified by Owner in writing from time to time (the "**Owner Representative**"). The Town's and Owner's Representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

B. Review Process. The Parties agree that it is desirable for Owner to proceed rapidly with the implementation of this Agreement and the redevelopment of the Property. The Town acknowledges the necessity for a priority review by the Town of all plans and other materials submitted by the Owner to the Town hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable but diligent efforts to accomplish such a priority review of all plans and submittals. To expedite review and upon the request of Owner, Town will select and retain third-party plan reviewers, inspectors, and other relevant professionals. These third-party contractors shall be funded by the Owner. Such third-party contractors shall work for the Town and report to the Town.

C. Mediation. If there is a dispute hereunder, other than a dispute as to the failure to make a required In Lieu Payment, that the parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) business day moratorium (a "Moratorium") on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The running of all applicable statutes of limitations,

whether set forth in A.R.S. § 12-821 *et seq.* (including but not limited to A.R.S. § 12-821.01) or otherwise, for filing a notice of claim or for commencement of a civil action relating to this Agreement shall be tolled from the beginning of a Moratorium until ten (10) business days after the latter of (a) the conclusion of a Moratorium or (b) the effective date of written notice from one Party to the other that this tolling period has concluded (the “Tolling Period”). The Parties agree that all periods of limitation or defenses based on delay of any nature, whether statutory, common law, laches, legal, equitable or otherwise, affecting this Agreement shall be tolled during the Tolling Period and, accordingly, that the Parties will not assert, plead, argue or raise any defense or avoidance based upon the running of any statute(s) of limitations (or any other time bar) as a result of the accrual of time during the Tolling Period. However, the Tolling Period shall not serve to revive, renew, or reinstate any claim or cause of action that is barred or otherwise precluded by any statute of limitations, statute, or other legal or equitable doctrine (by way of example only, laches, waiver or estoppel) on the date that any Moratorium begins. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the Town and Owner. The matter in dispute shall be submitted to a mediator mutually selected by Owner and the Town. If the Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Town and Owner shall request that the American Arbitration Association (in Phoenix, Arizona) appoint the mediator. The mediator selected shall have at least five (5) years of experience in mediating disputes relating to commercial property. The cost of any such mediation (mediator fees and administrative charges, if any) shall be divided equally between the Town and Owner. The mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the forty-five (45) day moratorium on litigation. The mediation shall be completed in one (1) day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238. The foregoing moratorium on litigation shall not apply to (i) a situation where there is a reasonable chance of harm to the public health or safety or damage to property if a Party were to wait for mediators to act, or (ii) any other situation in which a Party reasonably believes that an immediate remedy is necessary to protect that Party’s rights. In such situations, a Party may pursue emergency relief, which includes a temporary restraining order, preliminary injunction or any other provisional remedy in which time is of the essence and speedy action is necessary to protect a Party’s material rights.

## **ARTICLE 8 -- MISCELLANEOUS PROVISIONS.**

A. Governing Law. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles).

B. Assignment and Transfer.

1. Notice of Transfer. As set forth in Section 8(Q), this Agreement runs with the land and MTS Land/Golf shall provide written notice to the Town with respect to the first assignment or transfer of each part of the Property subject to this Agreement within thirty (30) days after the effective date of any assignment or transfer, but such assignment or transfer shall not be subject to the Town’s consent. No notice is required for any subsequent assignment or transfer. This Agreement may be assigned or transferred to one or more parties and may

thereafter be reassigned or transferred to one or more subsequent parties. Obligations under this Agreement that apply to a certain portion of the Property may be assigned or transferred with the applicable portion of the Property and then become the sole responsibility of the assignee or transferee. If portions of the Property are assigned or transferred to different owners, an Event of Default by one owner shall not affect owners of other portions of the Property and the Town may exercise its remedies only against the defaulting owner.

2. Transfers by Town. The Town's rights and obligations under this Agreement shall be non-assignable and non-transferable, without the prior express written consent of Owner, which consent may be given or withheld in Owner's sole and unfettered description.

C. Severability. The Town and Owner each believes that the execution, delivery and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared invalid or unenforceable (or is construed as requiring the Town to do any act in violation of any Applicable Laws), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect. Furthermore, in lieu of such invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and still be valid and enforceable and this Agreement shall be deemed reformed accordingly.

D. Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

E. Notices.

1. Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to the Town:

Town of Paradise Valley  
Attn: Town Manager  
6401 East Lincoln Drive  
Paradise Valley, Arizona 85253

With required copies to: Town of Paradise Valley  
Attn: Town Attorney  
6401 East Lincoln Drive  
Paradise Valley, Arizona 85253

and

If to Owner: MTS Land, LLC and MTS Golf, LLC  
c/o Crown Realty & Development  
Attn: Robert Flaxman  
18201 Von Karman Avenue, Suite 950  
Irvine CA 92612

With required copies to: Jordan Bischoff & Hiser, PLC  
Attn: Doug Jordan  
7272 E. Indian School Road, Suite 360  
Scottsdale, AZ 85251

and

Gordon Silver  
Attn: Gerald Gordon  
3960 Howard Hughes Parkway, Suite 900  
Las Vegas, NV 89169

2. Effective Date of Notices and Payments. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

F. Payments. Without limiting the provisions of Section 8(E)(2), any required payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt by the intended recipient.

G. Time of Essence. Time is of the essence of this Agreement and each provision hereof.

H. Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

I. Attorneys' Fees and Costs. In the event of an Event of Default by any Party and commencement of a subsequent legal action in an appropriate forum, or in the event of an action to declare the respective rights of any of the Parties hereunder, the prevailing Party or Parties in any such dispute shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

J. Waiver. Except as otherwise expressly provided in this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

K. Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for transferees, assignees, or lenders under Section 8(B) to the extent that they assume or succeed to the rights and/or obligations of Owner under this Agreement, and except that the indemnified individuals and entities referred to in the indemnification provisions of Section 4(A) (or elsewhere in this Agreement) and all insured individual and entities under Section 4(C) (or elsewhere in this Agreement) shall be third party beneficiaries of such indemnification and assurance provisions, and further except that the Town may enforce the covenant of operation of Owner (and its successors, assigns and mortgagees) set forth in Section 3(C)(1)(c) and the beneficiaries of any recorded deed restriction or similar covenant may enforce such restrictions; provided, however, that only the Town may seek liquidated damages pursuant to Section 3(C)(1)(c), if applicable.

L. Exhibits. Without limiting the provisions of Article 2 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

M. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. Notwithstanding the foregoing, this Agreement should be read and interpreted in conjunction with the 2013 SUP and the Settlement Agreement.

N. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

O. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

P. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, and without unreasonable delay or conditions, unless this Agreement expressly provides otherwise.

Q. Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement shall run with the Property (or, where applicable, portions thereof) and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

R. Perpetuities Savings Clause. It is the intention of the Parties that any and all covenants set forth in this that violate the rule against perpetuities be minimally reformed to cure the violation, rather than be terminated. In this regard, if a court of competent jurisdiction determines, in a final and non-appealable judgment, that any covenant set forth in this Agreement violates the rule, then upon the petition of any interested Party, the court shall reform the covenant (or covenants) either to vest, if at all, or terminate, twenty-one (21) years after the death of the last survivor of all lineal descendants of the 43rd President of the United States, George W. Bush, living at the date of recordation of this Agreement. In determining whether a covenant violates the rule and in reforming the covenant, the period of perpetuities will be measured by actual rather than possible events.

S. Recordation. Within ten (10) days after this Agreement has been approved by the Town and executed by the Parties the Town shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona, but effectiveness shall be subject to all conditions to effectiveness set forth herein.

T. Subagreements. The Town and Owner hereby acknowledge that the development of the Property may be accomplished by Owner through a series of sales, leases, joint ventures, and/or other agreements and arrangements with other experienced developers, investors, and owners of real property. In connection therewith, it is anticipated and contemplated by the Parties that such developers, investors, or owners may desire to negotiate and enter into separate and subordinate development agreements with the Town and/or Owner with respect to infrastructure, improvements, uses, plan approvals, and other similar matters which may be the subject of separate agreements between such developers, investors, and owners and the Town and/or the initial Owner. The Parties hereby agree that any and all development agreements entered into with any such developer, investor, or owner of any portion of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control. Only the parties to a certain subagreement are responsible for performing the obligations under that subagreement.

U. Amendment. No change or addition is to be made to this Agreement except by written amendment, which may concern all or any portion of the Property, executed by the Town and the Owner of the portion of the Property directly affected by the amendment; the approval by other Owners of unaffected portions of the Property shall not be required. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to “Agreement” or “Development Agreement” shall mean the Agreement as amended by any subsequent, duly processed amendment. The effective date of any duly processed amendment shall be the date on which the last representative for the Parties executes the Amendment and the Amendment has been recorded. If, after the effective date of any amendment(s), the parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

V. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time or approval, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

W. Survival. All indemnifications, deed restrictions and operating covenants contained in this Agreement shall survive the execution, delivery and performance of this Agreement unless otherwise specified in this Agreement or other applicable document.

X. Rights of Lenders. The Town is aware that an Owner may obtain bridge, term, or permanent financing or refinancing for acquisition, development, construction of all or any portion of the Property and/or improvements to be constructed on all or a portion of the Property, including but limited to with respect to any or a group of each Resort Estate lot(s), Resort Residential unit(s), Resort Hotel(s), any Development Area(s), or part thereof, in whole or in part, from time to time, by one or more Third Parties (individually a “**Lender**”, and collectively the “**Lenders**”). In the event of an Event of Default by an Owner, the Town shall provide notice of such Event of Default, at the same time notice is provided to the affected Owner, to such Lender or Lenders (i) as previously designated by any Owner to receive such notice for all or a portion of the Property affected by the Event of Default (the “**Designated Lenders**”) whose names and addresses were provided by written notice to the Town in accordance with Section 8(E) or (ii) who previously gave Town notice pursuant to Section 8(E) that such Lender(s) is a Designated Lender, included the Lender(s) name(s) and address(es) in such notice, and provided Town with a copy of and/or the recording information for the instruments pursuant to which such Lender(s) hold a lien on any portion of the Property. Owner or Town may provide notices to other Lenders. After the applicable time for Owner to cure an Event of Default, each Lender shall have an additional sixty (60) days to cure, in addition to the time period including delay allowed for the Owner to cure, the Event of Default and/or to assume Owner’s position with respect to this Agreement provided, however, that (x) if a Lender commences an action to foreclose on the Lender’s lien, records a notice of trustee’s sale, or otherwise takes action to enforce the Lender’s lien within such sixty (60) day period (collectively, a “**Foreclosure**”), the

sixty (60) day period available for Lender to cure shall be automatically extended until sixty (60) days following the completion or termination of the Foreclosure and (y) if the Lender is legally prohibited from commencing, continuing or completing a Foreclosure because of any law or legal action (e.g. an automatic stay in a bankruptcy or reorganization proceeding), the sixty (60) day period available for Lender to cure shall be automatically extended until sixty (60) days following the termination of such prohibition. If title to any portion of the Property is transferred as a result of any Foreclosure, including without limitation any transfer by foreclosure, trustee's deed or deed in lieu of foreclosure, the new owner of such portion of the Property shall have sixty (60) days following such transfer of ownership to cure any Event of Default pertaining to such owner's portion of the Property. The Town acknowledges that there may be one or more Lenders for separate portions of the Property, each with rights to cure with respect to an Event of Default affecting the portion of the Property that secures its loan. The Town agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner under this Agreement pertaining to the portion of the Property encumbered by such Lender's lien. For purposes of enforcement of the Town's remedies, the Town agrees that an Event of Default as to any portion of the Property not encumbered by a particular Lender's lien shall not affect any right, title or interest of such Lender or its borrower as to the portion of the Property encumbered by such Lender's lien, and the Town will treat the portion of the Property encumbered by such Lender's lien as though no Event of Default then existed, even if the Lender's borrower is also the owner of the portion of the Property to which the Event of Default pertains. The Town shall, within ten (10) days after written request by any Owner (except the Owner of an individual Resort Residential or Resort Estate lot), provide to Owner or any Lender, buyer or other Third Party seeking or holding an interest in any portion of the Property an estoppel certificate or other document evidencing (with respect to the applicable portion of the Property) that (a) this Agreement is unmodified and in full force and effect or is in full force and effect as modified and stating the modifications, (b) whether such portion of the Property is required to make In Lieu Payments hereunder and, if so, the amount and due dates of any In Lieu Payment that is past due, (c) the date and amount of the last In Lieu Payment to the Town, (d) the payment period covered by such In Lieu Payment, (e) any amount which may be credited against future In Lieu Payments, and (f) specifying the nature and duration of any Event of Default hereunder on the part of any Owner which has not been cured and/or any event or circumstance with respect to which following the passing of time, giving of notice, or both would constitute an Event of Default hereunder by the Owner. Any such document may be relied upon by any such purchaser, assignee or Lender, and the Town shall be estopped from asserting any position to the contrary. The Town's failure to timely execute and deliver such statement within the time required shall be conclusive upon the Town that: (i) this Agreement is in full force and effect and has not been modified except as represented by the Owner; (ii) no In Lieu Payment is past due; and (iii) no Event of Default has occurred by such Owner which has not been cured and no event or circumstance exists which would constitute an Event of Default by such Owner with the passing of time, giving of notice, or both hereunder. The provisions of this Section shall not apply to an In Lieu Estoppel request, breach or default under Section 3(C)(8).

Y. Nonliability of Town Officials, Etc., and of Employees, Members and Partners, Etc. of Owner. No member, official, representative, agent, attorney or employee of any Party, including a Town Council member, shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Event of Default or

for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the Parties under the terms of this Agreement including, without limitation, for any award of costs or attorneys' fees which may be entered against a Party. Further, in no event may any claim or action arising from or relating to this Agreement be commenced or maintained against any member, official, agent, attorney, employee, or representative of any Party in his or her personal (as opposed to official capacity).

Z. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the Town in accordance with, the provisions of A.R.S. §38-511.

AA. Prohibition of Doing Business with Sudan and Iran. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, Owner hereby certifies to the Town that Owner does not have "scrutinized" business operations, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran. Owner acknowledges that, in the event the certification to the Town by Owner contained in this paragraph is determined by the Town to be false, the Town may terminate this Agreement and exercise other remedies as provided by law, in accordance with A.R.S. §§ 35-391.06 and 35-393.06.

BB. Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. §41-4401, Owner warrants to the Town that Owner is in compliance with all Federal immigration laws and regulations that relate to Owner's employees and with the E-Verify Program under A.R.S. §23-214(A). Owner acknowledges that a breach of this warranty by Owner is a material breach of this Agreement, subject to penalties up to and including termination of this Agreement. The Town retains the legal right to inspect the papers of any employee of Owner who performs work pursuant to this Agreement, to ensure compliance with this warranty.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

MTS LAND, LLC, a Delaware limited liability company

By: COOL MOUNTAIN HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

MTS GOLF, LLC, a Delaware limited liability company

By: COOL MOUNTAIN HOLDINGS, LLC, a Delaware limited liability company, its sole member

By: \_\_\_\_\_  
Its: \_\_\_\_\_

TOWN OF PARADISE VALLEY, ARIZONA, an Arizona municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Duncan Miller, Town Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Andrew M. Miller, Town Attorney

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, Town \_\_\_\_\_ of the Town of Paradise Valley, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of the Town.

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

My commission expires:

\_\_\_\_\_

=====

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, the \_\_\_\_\_ of COOL MOUNTAIN HOLDINGS, LLC, the sole member of MTS LAND, LLC, a Delaware limited liability company.

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

My commission expires:

\_\_\_\_\_

=====

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, the \_\_\_\_\_ of COOL MOUNTAIN HOLDINGS, LLC, the sole member of MTS GOLF, LLC, a Delaware limited liability company.

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

My commission expires:

\_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

EAST OF 56<sup>TH</sup> STREET - LOT I, LOT 1-A AND LOT 1-B OF "MOUNTAIN SHADOW RESORT AMENDED", BOOK 75 PAGE 34, M.C.R.

WEST OF 56<sup>TH</sup> STREET - LOT 128, LOT 130-A AND LOT 131 OF "MOUNTAIN SHADOW RESORT UNIT TWO-AMENDED", BOOK 95 PAGE 3, M.C.R. AND LOT 132 OF MOUNTAIN SHADOW RESORT UNIT TWO-AMENDED II" BOOK 940 PAGE 7, M.C.R. AND LOT 128-A AND LOT 129 OF "MOUNTAIN SHADOW RESORT UNIT TWO-AMENDED III", BOOK 1110 PAGE 37, M.C.R.

(Assessor's Parcel Numbers 169-30-063, 169-30-070, 169-30-071, 169-30-074, 169-30-073, 169-30-067A, 169-30-068A, 169-30-068B, 169-30-067B, 169-30-072, 169-43-004C, 169-43-005, 169-43-006)

But excluding Lot 68, Book 75 of Maps, Page 34, M.C.R., if inadvertently included within the foregoing description.

**EXHIBIT B**  
**TOWN RESOLUTION NO. 1271**

**(Insert Resolution No. 1271)**

**EXHIBIT C**  
**TOWN'S INSURANCE REQUIREMENTS**

All contractors engaged by Owner to construct the Public Improvements within the Town's rights-of-way and roadway easement areas shall secure and maintain, during the life of the contract with the Owner (herein the "**Contract**"), the following insurance:

- a. Compensation Insurance: During the life of the contract, workmen's compensation insurance for all employees at the site of the project, and in case any of the work is sublet, each Subcontractor shall similarly provide Workmen's Compensation Insurance for its employees unless such employees are covered by the Contractor. In the event any class of employees engaged in the work under the contract at the site of the project is not protected by Workmen's Compensation Statute, the Contractor shall provide and similarly shall cause each Subcontractor to provide special insurance for the protection of such employees not otherwise provided.
- b. Public Liability and Property Damage Insurance: The Contractor shall take out, and maintain during the life of the Contract, such public liability and property damage insurance, both general and automobile liability, as shall protect him, any subcontractor performing work under the Contract, and the Town of Paradise Valley from all claims for bodily injury, including accidental death, as well as for all claims for property damage arising from operations under this contract, whether such operations by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. The contractor agrees to include the Town of Paradise Valley as an additional insured in all the insurance policies required under the Contract and such insurance shall be primary.
- c. The minimum limits required are for all insurance are:
  - a. Workmen's Compensation Insurance shall be secured and maintained in accordance with the Workmen's Compensation Law of Arizona, as revised.
  - b. Comprehensive General Liability Insurance including broad form property damage, premises-operations, independent contractors, contractual, and automobile liability shall be secured and maintained in an amount not less than \$5,000,000 combined single limit.
  - c. The general contractor subletting any part of the work awarded to him shall provide a contingent liability policy in the same amount as provided for his public liability insurance.
- d. All Policies Shall Include Coverage For:
  - 1) Damage caused by blasting.
  - 2) Damage caused by collapse or structural injury.
  - 3) Damage to underground facilities.
  - 4) Liability assumed in construction agreements and other types of contracts or agreements in effect in connection with subject insured operations.
  - 5) All owned, hired or non-owned automotive equipment used in connection with the insured operation.

- e. The insurance policies secured and maintained shall provide that the policies will not be canceled or changed so as to affect the certificate until ten (10) days after written notice of such cancellation or change has been completed and/or the project has been accepted by the Town of Paradise Valley. (If a policy does expire during the life of the Contract, renewal certificates of the required coverage must be sent to the Town not less than five days prior to expiration date.)
  
- f. The Contractor shall also execute an agreement that states that the Contractor shall indemnify, defend and save harmless the Town and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and representatives from all suits, actions, loss, damage, expense, cost or claims of any character or any nature brought on account of any injuries or damage sustained by any person or property arising out of the work done in fulfillment of the construction of the Public Improvements under the terms of the Contractor's agreement with the Owner, on account of any act or omission by the contractor or his agents, or from any claims or amounts arising or recovered under Workmen's Compensation laws or any other law, by-law, ordinance, or order or decree.

**EXHIBIT D**  
**THE DEVELOPMENT AREA MAP**  
**(Insert Sheet 2 of the Approved Plans)**

**EXHIBIT E**  
**OPEN SPACE EXHIBIT**

Lot 67A (Parcel Number 169-43-068) of the plat of Mountain Shadow Resort Amended, owned by the Mountain Shadows Estates East Homeowners Association, Inc., as it exists on or about the approval date of the 2013 SUP, is depicted in the photos below and includes areas with sporadic desert type landscaping, vacant desert ground, and desert style mounding with patches of grassy areas.



## **EXHIBIT F HOTEL QUALITY STANDARDS**

The Principal Resort Hotel, in addition to including the Minimum Resort Hotel Improvements, shall be designed to satisfy the Town's expectation of a full service resort hotel which is likely to be positioned, following its completion and opening, in the upper-upscale or luxury segment (as this term is generally used by Smith Travel). Listed below in this Exhibit F are a set of certain criteria (the "**Hotel Quality Standards**") to be used to determine whether the Principal Resort Hotel meets the foregoing expectation of the Town using physical aspects of the Principal Resort Hotel, as opposed to service standards that are not meant to be part of the Hotel Quality Standards review. Recognizing that upper upscale and luxury hotels vary greatly in design and quality standards, many of which are subjective and can be achieved through a wide variety of solutions ("**Resort Hotel Design**"), Owner shall be allowed wide latitude in providing Resort Hotel Design alternatives to meet the Hotel Quality Standards. The Hotel Quality Standards can be achieved through a variety of solutions and the traditional allocation of space or specifications of a feature may be satisfied in a non-traditional way. As such, the failure of a Resort Hotel Design to meet a particular item set forth below shall not necessarily disqualify the entire design for approval when the entire design submittal (as herein defined) is viewed in its totality. Owner can either satisfy the Hotel Quality Standards through creative, novel, alternative, or potentially unique ways or through a more traditional brand standards approach.

The Town Manager will initially review and make a determination of approval for a Resort Hotel Design based up on the following minimum components for a submittal ("**Design Submittal**" or "**Submittal**"). The purpose of the Submittal is to provide Owner and Town an early opportunity to make a determination on Resort Hotel Design such that once approved, subsequent submittals for building permits will be viewed solely for the purpose of compliance with Resort Hotel Design previously approved. Owner may make changes to any Design Submittal from time to time, and with each subsequent review the Town and Owner will rely upon a prior approval or criteria as set for this in this Exhibit F, such that Town will only have a right to review those elements of the Submittal that have changed and not reevaluate items previously approved. The Design Submittal shall include the following:

1. A site plan generally showing the approximate locations within the Resort where the Principal Resort Hotel improvements are located and identify the approximate locations of the Minimum Resort Hotel Improvements, parking, and access drives. The site plan shall reflect building heights and number of stories, as well as a general description of the uses within each of these buildings.
2. Elevations of the primary Principal Resort Hotel structure (the structure which includes the guest registration and reception) reflecting the general architectural theme of the Principal Resort Hotel.
3. A program (i.e., a list of areas, their approximate size and function) for the Minimum Resort Hotel Improvements along with any other elements to be initially included in the Principal Resort Hotel.
4. A brief narrative of the Principal Resort Hotel concept or brand affiliation (if any).

5. For the Hotel Keys, a brief description to include the number of keys, the range of sizes, number and types of the rooms (i.e., standard room, suite) along with a typical room standard. A typical room standard description should include floor plan, type of floor covering, type and number of bath fixtures (i.e., shower, tub, toilet, sink) and hard surface finishes. Description of hard surface finishes need only include the type of finish such as granite, marble, tile, paint or other wall finish and not a particular specified material.
6. For restaurant(s), a brief description of size of public dining areas, location and approximate number of seats.
7. For public areas such as reception, lobby, meeting rooms, and areas of circulation, an approximate floor plan(s) and a generic description of floor, wall and ceiling finishes (as opposed to specific design, material, color or other design specifications).
8. A description of drive access, parking, valet and arrival areas to include a parking study which follows the requirements of the 2013 SUP. Parking may be shared with other uses as provided in the 2013 SUP.
9. As golf is a part of the Resort, it is accepted that parts of the Minimum Resort Hotel Improvements and other Principal Resort Hotel facilities may be contained in the golf Clubhouse, such as fitness, spa, meeting rooms, restaurants, Hotel Keys and other Resort Ancillary Uses and Facilities. All such areas, other than those areas dedicated solely to golf use, such as pro shop and starter areas, may be included in the minimum floor area requirements for the Principal Resort Hotel.

The Town Manager will issue an approval or denial with respect to any Design Submittal within ten (10) business days or within three (3) business days following such request if Commencement of Construction has occurred; failure to timely issue an approval or denial will constitute approval. Any disapproval shall be accompanied by a written itemization of those specific elements of the Resort Hotel Design which do not comply with the Resort Hotel Design Standards and an explanation of such non-compliance. Once a Resort Hotel Design is approved, Owner may rely on such approval in proceeding toward more detailed design and/or construction documents of the Resort Hotel Design.

A particular Resort Hotel Design will be deemed approved and in compliance herewith if it is accompanied by a letter executed by an authorized officer or representative of any national, regional or local brand who will initially brand the Principal Resort Hotel through ownership, management (i.e., the Resort Hotel Manager), franchise or affiliation (such as Leading Hotels & Resorts), stating that the Resort Hotel Design meets their brand standards for an upscale or better full service resort hotel (the “**Brand Letter**”). Attached hereto as Schedule 1 is a partial list of brands and affiliations (“**Brand(s)**”) that are deemed acceptable for the purpose of providing a Brand Letter. A Brand Letter is not required for approval of a Resort Hotel Design. A Brand which is not a Brand listed on Schedule 1, but which owns, manages, franchises or rates hotels (as in any of the recognized affiliations, such as Leading Hotels & Resorts or rating services such

as AAA, Smith Travel or Mobil) similar to any of the listed Brands, shall also qualify to issue the Brand Letter.

The following is a list of particular specifications which generally should be included in the Resort Hotel Design to meet the Hotel Quality Standards:

- A. Exterior. The dedicated area to accommodate vehicle or passenger drop off, which may include a covered canopy area for vehicles or a motor court.
  
- B. Public Areas. Public Areas include those areas of the Principal Resort Hotel which are typically used and accessible to the public as opposed to those area which are generally reserved for employees or service areas. Public Areas include the reception area, restaurant, pool, whirlpool, spa, and fitness area required as parts of the Minimum Resort Hotel Improvements, as well as the lobby, meeting areas, and public interior corridors. The following elements shall be incorporated into the Resort Hotel Design for any Public Areas included in the Principal Resort Hotel:
  - 1. Meeting Areas: One (1) or more areas for meetings, including any combination of ballroom, boardroom, breakout room or private dining area and pre-function area; at least one (1) or more of these areas shall be capable of providing banquet food and beverage service.
  - 2. Fitness/Spa Area: An area or areas provided for fitness and initially equipped with not less than five pieces of professional grade exercise machines such as state-of-the-art cardio and weight training equipment, as well as an area or areas for spa services such as massage, which may include in-room spa service.
  - 3. Restaurant: The restaurant may have a dining room and bar/lounge area, and if more than one (1) restaurant is provided, the required three (3)-meal service may be divided between the facilities (i.e., one (1) restaurant may serve breakfast and lunch, while another serves dinner).
  - 4. Gift Shop/Business Center: One (1) or more areas (which need not be separately demised spaces from other public areas) which provide for the sale of gifts and sundries and a business center capable of providing business service to multiple guests. Such areas may be commingled with areas dedicated for reception, lobby, concierge, fitness, meeting or restaurant.
  - 5. Wall, Ceiling and Floor Finishes: For the interior Public Areas, hard surface finishes such as wall, ceiling and floor should have a variety of finishes, which taken together provide an upscale design. Materials may include any combination of carpet, rugs, wood, stone, tile, metal, polished concrete, leather, fabric or paint. Ceilings should contain various forms of relief by using changes in elevation, material, soffit, recessed lighting, texture, beams, patterns, fans, sky lights or other effects at the discretion of Owner. Walls

should use a variety of paint, wall covering, paneling, wainscot or other finishes such as plaster, stone, fabric or graphics at the discretion of Owner.

6. Swimming Pool: The swimming pool shall have sufficient pool deck to accommodate guests for the Minimum Hotel Keys; the whirlpool or Jacuzzi may be at the pool or within the fitness/spa area.

C. Hotel Keys. All Hotel Keys shall have at least the following elements:

1. Each Hotel Key, as designed and built, shall be a minimum of three hundred fifty (350) square feet, with an average size of the Hotel Keys of four hundred (400) square feet, as measured from interior walls.
2. At least one (1) full bathroom with not less than one (1) toilet, one (1) sink and one (1) shower and one (1) tub or on (1) tub/shower combination unit. Toilets shall be in a separate enclosure. At least six (6) square feet of counter space should be provided at vanity or other unit.
3. At least one (1) fully enclosed closet for clothes storage and hanger space; minimum closet depth is twenty-two (22) feet and shall be capable of hanging full length apparel.
4. Heating and air conditioning system with in-room thermostat.
5. Furnishing and Equipment
  - (a) Bed(s), with headboard and frame with enhanced feature such as pillow top mattress, memory foam or adjustable comfort levels.
  - (b) At least one (1) flat panel television of thirty (30) inches; suites that have more than one room (other than bathrooms) shall have one television per room, but in no event shall a total of more than three (3) televisions per suite be required.
  - (c) Seating for three (3) guests, which may include desk chair, side chair,
  - (d) Desk with lamp and access to electrical outlets
  - (e) Window Coverings – such as blinds, shutters, sheers, fabric side panels, valance, glass treatment, or cornice shall be provided.
  - (f) Either in-room wi-fi or hard line Internet access.
  - (g) A two (2)-line telephone or separate internet capability.
6. Bathroom Finish Criteria
  - (a) Hard surface floor consisting of marble, granite or stone.
  - (b) Vanity with sink that may be in a wood cabinet with stone counter top or sink set in furniture like a free standing unit.
  - (c) Glass, porcelain, porcelain on steel or stone sink(s) with a counter enhancement such as: wall faucets or counter-mounted faucets.
  - (d) Framed mirror (minimum of three (3) feet by five (5) feet).

- (e) Tub and shower criteria:
- i. Tub may be free standing or set within an enclosure of marble, stone, granite or tile and shall be a minimum of four (4) feet long and fourteen (14) inches deep.
  - ii. Shower, if separate from tub, shall be within an enclosure of marble, granite, stone or tile. If there is no tub in a bathroom, the shower shall be at least twelve (12) sq. ft.
  - iii. Tub/shower combination marble free standing or set in an enclosure of marble, stone, granite or tile, with glass door or double curtains.
  - iv. Powder rooms do not require a tub or shower.

The Resort Hotel Owner or Resort Hotel Manager may supplement this list with such standards as are typical in the luxury or upper upscale hotels.

**SCHEDULE 1 TO EXHIBIT F  
ACCEPTABLE BRANDS**

**The following are acceptable Brands as of the Effective Date.**

<u>Luxury</u>	<u>Upper Upscale</u>
Affina	Ace Hotel
AKA	Autograph Collection
Andaz	Camino Real
Capella	Club Quarters
Conrad	Dolce
Dorchester Collection	Dream
Doyle Collection	Embassy Suites
Fairmont	Gaylord
Firmdale	Hard Rock
Four Seasons	Hilton
Grand Hyatt	Hilton Grand Vacations
Helmsley Hotel	Hyatt
InterContinental	Joie De Vivre
JW Marriott	Kimpton
Langham	Le Meridien
Loews	Marriott
Luxury Collection	Marriott Conference Center
Mandarin oriental	Marriott Executive Apartments
Mokara Hotel & Spa	Millennium
Montage	New Otani
Orient Express	Nikko
Park Hyatt	Omni
Ritz-Carlton	Pan Pacific
RockResorts	Radisson Blu
Rosewood	Red Carnation
Sofitel	Renaissance
St. Regis	Sheraton Hotel
Taj	Sonesta Hotel
The Peninsula	St. Giles Hotel
The Prince	Starhotels
Thompson Hotels	Swissotel
Trump Hotel Collection	Warwick Hotels
Viceroy	Westin
W Hotel	Wyndham
Waldorf-Astoria	

## **EXHIBIT G**

### **56<sup>th</sup> STREET IMPROVEMENTS**

The Town of Paradise Valley intends to develop the 56th Street corridor as a unique amenity that draws inspiration from our Sonoran Desert environment, rich cultural history and its unique position in between two landmark mountains. Approximately a half mile in length, the alignment has magnificent immediate views of the north face of Camelback Mountain and the south face of Mummy Mountain. The development, implementation, and care of the pedestrian and vehicular experience are crucial to the Owner and to the character of the corridor, along with safety, security and privacy of the adjacent neighboring uses. These distinctive characteristics will be the strongest elements in creating a sense of place and establish 56th Street as a Visually Significant Corridor.

The improvements the Town shall construct shall consist of a roadway that consists of two traffic lanes in each direction from Lincoln Drive to the first primary access curb cuts to Development Areas B, C, and E, at the location chosen by Owner, which shall in no event be further than four hundred (400) feet south of the south right-of-way line of Lincoln Drive, with one traffic lane in each direction for the remainder of 56<sup>th</sup> Street to McDonald Drive. The roadway from Lincoln Drive to the first primary access curb cut and along the frontage of Area D, shall incorporate ways to slow vehicular traffic with physical design methods, that may include driving surface materials, traffic circles, and/or landscaped medians. This section will also incorporate sidewalks on both sides of the roadway that will allow for the safe movement of pedestrian between east and west side. Crosswalks shall be provided across the primary access drives and to connect the east and west portions of the Resort. The remainder of the roadway from the northern most primary entry drive to McDonald Drive shall consist of one traffic lane in each direction, four (4)-foot to six (6)-foot bike lanes on both sides, a meandering roadway layout, six (6)-foot to eight (8)-foot lighted sidewalk constructed in colored concrete or decomposed granite on the west side only detached from the curb, a ten (10)-foot to twelve (12)-foot median that will consist of a combination of concrete pavers and landscaped medians and a way to slow vehicular traffic with physical design methods at McDonald Drive that may include driving surface materials, a roundabout and/or landscaped medians. The overall landscape theme for this corridor shall be consistent with the existing landscape design on Doubletree Ranch Road between Tatum Boulevard and Invergordon Road and Invergordon Road between Mockingbird Lane and Mountain View Road.

**EXHIBIT H**  
**PROPERTY EXCHANGE – TOWN TO OWNER**

See Attached Exhibit H.

**[To Come]**

**EXHIBIT I**  
**SENIOR LIENS**

U.S. Bank  
Hertz Loan