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Paradise Valley, Arizona 85253

DEVELOPMENT AGREEMENT FOR AREA F

BY AND BETWEEN:

**TOWN OF PARADISE VALLEY, ARIZONA,
AN ARIZONA MUNICIPAL CORPORATION;**

AND

**MTS LAND, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

APRIL 18, 2013

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DEVELOPMENT AGREEMENT FOR AREA F

THIS DEVELOPMENT AGREEMENT FOR AREA F (this "**Agreement**") is made as of the 18 day of April, 2013, by and between the TOWN OF PARADISE VALLEY, ARIZONA, an Arizona municipal corporation (the "**Town**"), and MTS LAND, LLC, a Delaware limited liability company ("**MTS Land**"). The Town and MTS Land, or their successors or assigns, are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

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 and MTS Golf, LLC, a Delaware limited liability company ("**MTS Golf**"), own fee simple title to approximately 67 acres of land and improvements located in the proximity of Lincoln Drive and 56th Street within the Town of Paradise Valley, Arizona, defined in Article 2 of this Agreement as the "**Resort Property**." An existing resort hotel (which is not currently operated for hotel purposes) known as "Mountain Shadows" is located on the Resort Property. The Resort Property also includes an 18-hole golf course, a practice facility (including outdoor putting, pitching, and driving areas), clubhouse, 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 Resort Property that includes most of the Golf Course. MTS Land owns that portion of the Resort Property that was utilized as the Resort Hotel, as well as several holes of the Golf Course.

C. On the east side of 56th Street, the Resort Property consists of Lots 1, 1A, and 1B, and a 1/60 interest in Lot 68 (described in Recital D) of "Mountain Shadow Resort Amended" recorded in Book 75, Page 34, official records of Maricopa County Recorder on January 20, 1958 (the "**Mountain Shadows East Plat**").

D. The Mountain Shadows East Plat also depicts a private road system (shown on the plat as "**Lot 68**") that provides access to a residential subdivision known as Mountain Shadows Estates East ("**Mountain Shadows East**") and portions of the Resort. As originally established, each of the owners of the 59 residential lots within Mountain Shadows East and the owner of the Resort owned a 1/60 undivided interest in Lot 68. As of the date of this Agreement, a 1/60 interest is owned by MTS Land and the remainder is owned by the Mountain Shadows Estates East Homeowners Association, Inc., and/or other lot owners in Mountain Shadows East.

E. The property that is the subject of this Agreement is a twenty (20)-foot strip of land across part of the southernmost part of Lot 1 between 56th Street and Lot 68 and a portion of Lot 68 adjacent to Lincoln Drive, defined in this Agreement as the "**Property**" and also called "**Area F**." The Property is further described on Exhibit A. The Resort Property is the subject of

another development agreement with the Town, the Amended and Restated Development Agreement (the “**2013 Development Agreement**”), approved simultaneously with this Agreement.

F. When Mountain Shadows East, the Resort Hotel, and Golf Course were originally constructed, the Property was located within an unincorporated area of Maricopa County, Arizona. In 1985 and 1992, the then-owners of portions of the Property agreed to the annexation of their portions of the Property into the Town. The annexation of the Property into the Town (the “**Annexation**”) was accomplished in two parts, by the enactment in 1985 of Ordinance No. 227 and in 1992 of Town Ordinance No. 339.

G. Ordinance No. 227 stated that the property to be annexed “shall be, and the same is hereby zoned as R-10 pursuant to the Zoning Ordinance of the Town of Paradise Valley.” R-10 zoning, in the Town’s zoning classification, essentially permits one single-family residence to be located upon approximately ten thousand (10,000) square feet of land. The portion of the Property annexed by Ordinance No. 227 has been designated as R-10 on the Town’s zoning map since 1985.

H. 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 portion of the Property annexed by Ordinance No. 339 has been designated as R-43 on the Town’s zoning map since 1992.

I. The portion of the Property annexed by Ordinance No. 339 is also 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**”). Subject to the Effective Date, the 2013 Development Agreement amends and restates in its entirety the 1992 Development Agreement.

J. 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’s position that the 1992 Development Agreement did provide for all of the uses and development set forth therein, including resort uses, on a portion of the Property.

K. MTS Land has proposed certain development upon the Property that is inconsistent with R-10 and R-43 zoning, but which is generally contemplated by the 1992 Development Agreement and the Town’s original intent that a portion of the Property be used for a resort and residential, among other uses. A portion of the Property has continued to operate with certain resort uses since the Annexation.

L. MTS Land 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, to be approved by the Town Council by the adoption of Ordinance No. 665 (the "**2013 SUP for Area F**"). At the same time, in conjunction with the 2013 Development Agreement, MTS Land and MTS Golf have also applied to the Town for a rezoning of the Resort Property 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 Resort Property.

M. On July 19, 2012, MTS Land (with MTS Golf) filed petitions in the United States Bankruptcy Court for the District of Arizona under Chapter 11 of the Bankruptcy Code. MTS Land and MTS Golf continue to operate their business and manage their 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 and MTS 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 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 to enter into and carry out this Agreement. The Town and MTS Land and MTS Golf have also negotiated and executed a "Waiver, Release and Settlement Agreement" (the "**Settlement Agreement**") which also requires approval of the Bankruptcy Court.

N. MTS Land and Town recognize that the land uses approved in the 2013 SUP, together with the 2013 SUP for Area F, 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, together with the 2013 SUP for Area F, 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 in the 2013 SUP) are sufficient to constitute the primary use. The phasing, as contemplated in the 2013 SUP, the 2013 SUP for Area F, the 2013 Development Agreement, 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 and the 2013 SUP for Area F, the benefits of the Settlement Agreement, and this Agreement, MTS Land has agreed to provide for an annual payment (as defined below, the "**In Lieu Payment**") to the Town as reasonable compensation.

O. The Town and MTS Land 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.

P. Following appropriate public hearings and other compliance with applicable Town ordinances and Arizona law, the Town Council has adopted and approved the 2013 SUP for Area F by enactment of the Town Ordinance No. 665.

Q. The Town Council has authorized execution of this Agreement by Resolution No. 1272, a copy of which is attached to this Agreement as Exhibit B.

R. 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.

S. The Town is entering into this Agreement as an administrative act to further implement the intent of Ordinance No. 227, Ordinance No. 336, the original 1992 Development Agreement, Ordinance No. 339, Ordinance No. 341, the Annexation, the 2013 SUP, the 2013 Development Agreement, and the 2013 SUP for Area F, in order to facilitate redevelopment of the Property consistent with the 2013 SUP for Area F.

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 I.

“**2013 Development Agreement**” means the Development Agreement described in Recital E.

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

“**2013 SUP for Area F**” means as defined in Recital L.

“**56th Street Improvements**” means as defined in Section 3(C)(2)(b).

“**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. 227 and Ordinance No. 339, as described in Recital F.

“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.

“Approval Date” means the date on which both of the following have occurred (i) the 2013 SUP for Area F is approved (i.e., voted on) by the Town Council of the Town of Paradise Valley, Arizona and (ii) signed by the Mayor.

“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 to enter into and carry out this Agreement and the Settlement Agreement or the entry of a confirmation order in the Bankruptcy Cases by the Bankruptcy Court confirming the Plan incorporating this Agreement and the Settlement Agreement, with all such orders being Final Orders (as defined below).

“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.

“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)(1)(a).

“Demolition Schedule” means as set forth in Section 3(C)(1)(a).

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

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

“Development Area B” or **“Area B”** means as defined in the 2013 Development Agreement.

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

“Development Area F” or **“Area F”** 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 for Area F, the 2013 Development 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 (and MTS Golf, as applicable), 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 for Area F, the 2013 SUP, or the 2013 Development Agreement, as applicable) has been approved by the voters at a referendum election conducted in accordance with Applicable Laws and (ii) this Agreement, the 2013 Development 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 on the Property and the Resort Property, 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 56th 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 (1st) business day that is the fifteenth (15th) day 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)(3)(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 Approval Date or as it may be redeveloped.

“**Historical Uses**” means as defined in Section 3(B)(4).

“**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.

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

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

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

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

“**Lot 68**” means Lot 68 of the Mountain Shadows East Plat.

“**Maintenance of Historical Uses**” means as defined in 3(B)(4).

“**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).

"Mountain Shadows East Plat" means the plat "Mountain Shadow Resort Amended" recorded in Book 75, Page 34, official records of Maricopa County Recorder on January 20, 1958.

"Mountain Shadows East" means the fifty-nine (59) residential lots as depicted on the Mountain Shadows East Plat.

"Non-Obligated Unit" means as defined in Section 3(C)(3)(a).

"Obligated Unit" means as defined in Section 3(C)(3).

"Ordinance No. 227" means Town Ordinance No. 227 adopted by the Town Council on March 14, 1985.

"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.

“Owner” means MTS Land, LLC, a Delaware limited liability company, and its 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 any Resort Estates lot. 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)(3)(k).

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

“Payment Date” means as defined in Section 3(C)(3)(e).

“Payment Year” means as defined in Section 3(C)(3)(d).

“Plat/Map Procedure” means as defined in Section 3(C)(1)(c).

“Plat/Map Standards” means as defined in Section 3(C)(1)(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)).

“Prop. 207” means Arizona’s Private Property Protection Act set forth in A.R.S. §§ 12-1134 through 12-1136.

“Prop. 207 Claim” means a claim for diminution in value filed pursuant to A.R.S. § 12-1134 by an owner of Area F other than MTS Land, as described in Section 3(B)(2).

“Property” means the real property described in Exhibit A which is attached to this Agreement and incorporated into this Agreement for all purposes. The Property is comprised of approximately 0.7 acres of land.

“Public Improvements” means any improvements that an Owner is required to provide and construct under the 2013 SUP for Area F, this Agreement, and Applicable Laws, and thereafter to dedicate to the Town, subject to acceptance by the Town; Public Improvements do not include the 56th Street Improvements to be built by the Town.

“Resort” means the entire Resort Property and all facilities and other improvements existing, developed or redeveloped and used or useful on the Resort 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 Areas E and F.

“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 also may include Resort Residential, the Clubhouse (or portions thereof), and any Resort Ancillary Facilities and Uses.

“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 Property” means as defined in Recital A.

“Resort Residence Association” means as defined in Section 3(C)(1)(b).

“Resort Residential” means the Resort Units, exclusive of any Hotel Keys, located on the west side of 56th 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 may be 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)(3)(j).

“**Settlement Agreement**” means the “Waiver, Release and Settlement Agreement” entered into by, between, and among the Town, MTS Land and MTS Golf concurrently with Town’s approval of the 2013 SUP for Area F and the 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.

“**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 under this Agreement.

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

“**Zoning Ordinance**” means the Town’s zoning ordinance in effect as of the Approval Date.

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

A. Agreement. 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. It is the intent of the Parties that both this Agreement and 2013 SUP for Area F are required to be in full force and effect concurrently and that neither this Agreement nor the 2013 SUP for Area F shall have any effect in the absence of the other. Further, it is the intent of the Parties that the 2013 SUP for Area F and the 2013 Development Agreement for Area F are required to be in effect only if the 2013 SUP and 2013 Development Agreement are in effect; however, the 2013 Development Agreement and the 2013 SUP may remain effective even if this

Agreement and the 2013 SUP for Area F are not in effect. 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, except as provided in Section 3(B)(4) below.

2. If a claim is filed by an owner of Area F other than MTS Land for just compensation for diminution in value under the provisions of A.R.S. §§ 12-1134 through 12-1136 inclusive, as amended (“**Prop. 207**”), relating to this Agreement or the 2013 SUP for Area F (a “**Prop. 207 Claim**”), then the Town shall give notice to MTS Land within five (5) business days after receipt of the Prop. 207 Claim. For a period of thirty (30) days, starting on the date that the Town gives notice to MTS Land of Town’s receipt of a Prop. 207 Claim, the Town will hold in abeyance any action allowed pursuant to ARS §12-1134(E) to repeal the 2013 SUP for Area F. During the thirty (30) day period MTS Land, in its sole discretion, may elect by written notice to the Town to indemnify and defend the Town from and against all actual costs and damages incurred by the Town arising from (a) the amount of just compensation for the Prop. 207 Claim and (b) reasonable attorneys’ fees, experts’ fees, and court costs associated with the Prop. 207 Claim. During the time that MTS Land is providing such defense against a Prop. 207 Claim the Town will hold in abeyance any action to repeal the 2013 SUP for Area F. If MTS Land fails to give notice within the thirty (30) day period, MTS Land shall be deemed to have not elected the option to indemnify and defend the Town and the Town will no longer have to hold in abeyance its choice under ARS §12-1134(E) to either repeal the SUP for Area F or defend against the Prop. 207 Claim in any manner the Town deems reasonable at its own expense. If MTS Land elects the option to indemnify and defend the Town, MTS Land shall (i) defend the Town against the Prop. 207 Claim with counsel of MTS Land’s choice, reasonably satisfactory to the Town and (ii) pay in full all costs and expenses related to such defense, including any and all attorneys’ fees, experts’ fees, and court costs associated with such defense, but further provided that within ten (10) business days after MTS Land exercises its option to indemnify and defend the Town, MTS Land shall deposit into the trust account of counsel chosen in (i) the estimated amount of the such defense expenses as determined by chosen counsel, said counsel having the right to draw from this amount at least monthly to pay counsel’s attorneys’ fees and other costs of defense. Notwithstanding the foregoing, the Town shall cooperate in the defense if requested by MTS Land and shall have the right to participate through counsel of its own choosing at its own expense. MTS Land may consent to the entry of judgment or enter into any settlement with respect to the Prop. 207 Claim without the prior written consent of the Town as long as (i) MTS Land has first paid into chosen counsel’s trust account good funds in the full amount of any proposed entry of judgment or settlement amount and (ii) the judgment or proposed settlement involves only the payment of money damages in an amount equal to or less than the amount of the trust account funds (all of which shall be paid by MTS Land from the funds paid into chosen counsel’s trust account pursuant to the foregoing election by MTS Land to indemnify the Town). Chosen counsel is authorized to pay the judgment or settlement from the funds paid by MTS Land into chosen counsel’s trust account and to return any remaining funds to MTS Land. After MTS Land has elected the option to indemnify and defend the Town and for as long as MTS Land is meeting its obligation to provide a defense, the Town will not consent to the entry of any judgment or enter into any settlement with respect to the Prop. 207 Claim without the prior written consent of MTS Land.

3. As conditions precedent to the obligations of the Town arising in or out of this Agreement, it will be necessary for MTS Land, 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 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 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 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 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)(3) may be waived by the Town. Other than as set forth in this Section 3(B)(3), the obligations of the Parties under this Agreement shall become effective as of the Effective Date.

4. The Town acknowledges and agrees that the historical use of the portion of Lot 68 subject to this Agreement has included use for paved vehicular and pedestrian ingress and egress, parking, landscaping, open space, lighting, directional and parking signs, and underground utilities (the "**Historical Uses**") which are legal non-conforming uses under Applicable Laws. If this Agreement is terminated (i) due to the filing of a Prop. 207 Claim as set forth in Section 3(B)(2) above, (ii) due to the termination of this Agreement as set forth in the Settlement Agreement, or (iii) for any other reason, then the Town acknowledges and agrees that the Historical Uses may continue or be maintained under Applicable Laws pertaining to legal non-conforming uses, which may include modifications, alterations, repaving, relocation, or relocation and removal and installation of new paved areas, lighting, landscaping, underground utilities, and directional and parking signs, including the inclusion of the portion of Lot 68 subject to this Agreement in a plat for that portion of the Resort Property east of 56th Street (collectively, the "**Maintenance of Historical Uses**"). In the event the Town receives a notice of claim or is sued by any person who contends that the Town is not authorized to issue any permits or approvals related to the Maintenance of Historical Uses, MTS Land shall indemnify and defend the Town from and against all actual costs and damages incurred by the Town arising from (a) such claim or suit and (b) reasonable attorneys' fees, experts' fees, and court costs associated with such claim or suit, provided that within ten (10) business days after MTS Land receives such notice of claim or suit from the Town, MTS Land shall deposit into the trust account of counsel chosen in the following sentence the estimated amount of defense expenses as determined by chosen counsel, said counsel having the right to draw from this amount at least monthly to pay counsel's attorneys' fees and other costs of defense. If MTS Land is required to indemnify the Town against such claim or suit, MTS Land may select counsel of MTS Land's choice, reasonably satisfactory to the Town. The Town shall cooperate in the defense if requested by MTS Land and shall have the right to participate through counsel of its own

choosing at its own expense. MTS Land may consent to the entry of judgment or enter into any settlement with respect to such claim or suit without the prior written consent of the Town as long as (i) MTS Land has first paid into chosen counsel's trust account good funds in the full amount of any proposed entry of judgment or settlement amount and (ii) the judgment or proposed settlement involves only the payment of money damages in an amount equal to or less than the amount of the trust account funds (all of which shall be paid by MTS Land from the funds paid into chosen counsel's trust account pursuant to this indemnification requirement). Chosen counsel is authorized to pay the judgment or settlement from the funds paid by MTS Land into chosen counsel's trust account and to return any remaining funds to MTS Land. The provisions of this Section 3(B)(4) shall survive the termination of this Agreement.

5. This Agreement is being entered into by the Parties contemporaneously with the 2013 SUP for Area F, the 2013 Development Agreement, the 2013 SUP, and the Settlement Agreement. Although the Parties intend that the five (5) documents constitute and state an integrated and consistent relationship between them, the Parties agree that in the event of a conflict between these documents, the order of priority shall be (i) the Settlement Agreement, (ii) 2013 SUP, (iii) the 2013 Development Agreement, (iv) the 2013 SUP for Area F, and (v) this Agreement.

6. 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 Estates lot) 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 Property 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 Development Area F.

1. Development Area F – Residential Area East of 56th Street.

(a) Demolition of Existing Improvements. Demolition of any Existing Improvements (“**Demolition**”) on Development Area F shall be done in conjunction with and by the same contractor as the Demolition in Area E pursuant to the 2013 Development Agreement, shall be in accordance with the following requirements, and shall be completed prior to the issuance of any building permits for vertical construction for Area F; after Demolition is complete, the Town will issue such building permits.

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) Resort Residence Association. As provided in the 2013 Development Agreement, the Principal Resort Hotel Owner shall establish a “**Resort Residence Association**” that the then current Owners of Resort Estates lots within Development Area F 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 made 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, in their sole discretion; the terms and conditions may require payment of dues or fees for use as the Resort Hotel Owner may specify, create one or more classes of membership, 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, in its sole discretion from time to time), 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, in its sole discretion from time to time, may also establish such other clubs or associations to permit or allocate use of any of its facilities, to establish dues or fees for any such membership(s) or classes of membership(s), and to subject such membership(s) to rules and regulations established by such Owner.

(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. Any Resort Estates lot in Area F may be integrated with and platted concurrently with Resort Estates lots in Area E that are subject to the 2013 SUP. Any Resort Estates lot may be located partially in Area F and partially in Area E

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 for Area F 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 for Area F 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 for Area F and this Agreement.

iii. The Town Council shall review the preliminary plat/map for compliance with the requirements set forth in the 2013 SUP for Area F 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 for Area F 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 Director 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 for Area F 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 for Area F 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 for Area F and this Agreement.

vii. The Town Council shall review the final plat/map for compliance with the requirements set forth in the 2013 SUP for Area F 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 for Area F and this Agreement.

viii. The Town shall, within ten (10) days after written request by an Owner that is a developer of a Resort Unit intended for sale, provide written confirmation to the Arizona Department of Real Estate that no certificate of occupancy for any Resort Unit set forth in such notice will be issued until (a) completion of any Public Improvements associated with the particular unit or lot, (b) the developer of such Resort Unit or others have completed construction of all electricity, street lights, telephone, natural gas, water, sewage, access roads, and flood and drainage facilities servicing the particular unit or lot in accordance with plans on file with the Town, and (c) the developer of such Resort Unit or others have completed any swimming pool, walkway, and landscaping associated with the particular unit or lot in accordance with plans on file with the Town.

(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 for Area F and this Agreement (the "**Plat/Map Standards**"); where standards set forth in this Agreement or the 2013 SUP for Area F are different than standards set forth in the Town Code, this Agreement and the 2013 SUP for Area F provisions shall govern, it being the intent of the parties to approve plats and maps which conform to the objectives of the 2013 SUP for Area F 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 for Area F (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 for

Area F (replaces provisions in Section 6-3-2 of the Town Code) and may include the portions of Lot 68 that are subject to this Agreement;

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 for Area F (replaces Section 6-3-5 of the Town Code);

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

vi. the character of development shall be as provided in the 2013 SUP for Area F (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 for Area F (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 for Area F shall be required in any final plat or map. Construction of any Public Improvements required by the 2013 SUP for Area F east of 56th Street and all private and public utilities located within 56th Street that serve new development east of 56th 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.

(f) Other Improvements. Primary access drive connections from the Lot 68 portion of Area F to Lincoln Drive or 56th 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 for Area F. 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.

2. 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 56th Street right-of-way pursuant to the 2013 Development Agreement, but that such reconstruction should not be finalized until the Owner has completed all required utility connections or improvements in 56th Street and driveway connections to 56th Street, thus avoiding any cuts or patches in the newly reconstructed 56th

Street. Thus, the phasing of any demolition, new private drive and public road improvements, and private development within the Property shall generally be as set forth in this Agreement, the 2013 SUP for Area F, the 2013 Development Agreement, and the 2013 SUP, which allows the Property and the Resort Property to be developed in one or more phases by one or more Owners, including portions east or west of 56th Street and separate phases within each Development Area.

(b) Description of 56th Street Improvements. The public right-of-way design standards and improvements to 56th Street are described in the 2013 Development Agreement (the “**56th Street Improvements**”).

(c) Commencement and Completion of Construction. The Town shall commence and complete construction of the 56th Street Improvements as set forth in the 2013 Development Agreement.

(d) Storm Water Retention/Detention. The proposed development of the Property combined with the portion of the Resort Property east of 56th Street 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).

3. In Lieu Payments. As part of the consideration for this Agreement and the 2013 SUP for Area F, Owner agrees that the then current Owner of any Resort Estates lot within Development Area F 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 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 Hotel Keys and any common areas and amenities) be required to make In Lieu Payments. In no event shall any lot used during an entire Payment Year (defined below) 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 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 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 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 as a Non-Obligated Unit during the Payment Year in which the conversion occurred. If a lot 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 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. Any lot 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, if any, based

on taxes paid to the Town as a result of the use of the lot 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 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. Conversion of a lot 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 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 in Development Area F 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)(3)(c).

(c) 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 Fixed Amount applicable to a lot in Development Area F shall not increase during the time period that such lot is held by the same owner; for purposes of the foregoing, (a) a transfer of a lot 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 will not constitute a transfer of title that would cause an increase in the Fixed Amount, but a foreclosure or trustee’s sale would constitute a transfer that could result in an increase in the Fixed Amount. As an example of the foregoing, if an Owner acquires an Obligated Unit in Development Area F 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 will change upon such acquisition of title shall pay to the Owners Association (defined below) 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.

(d) 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 (e), below.

(e) 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 after the issuance of the certificate of occupancy for the lot or (ii) one hundred eighty (180) days after the issuance of the certificate of occupancy for the lot. 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 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**”).

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

(g) Creation of Lien. MTS Land hereby grants, conveys, assigns and transfers to the Town a security interest in and lien on each Resort Estates lot created by a recorded final plat or map in Development Area F 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 F that are subdivided into lots 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 obligated to make In Lieu Payments under this Agreement, with no lot or the Owner thereof liable for delinquent In Lieu Payments owing for another lot 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 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)(3)(e), so long as MTS Land owns a lot subject to the In Lieu Payment obligation, MTS Land shall pay, and each subsequent Owner of a lot subject to the In Lieu Payment obligation, by becoming an Owner of such lot, is deemed to covenant and agree to pay, the In Lieu Payment applicable to such lot in accordance with this Agreement. Town acknowledges that MTS Land and any subsequent Owner is released from any obligation to make In Lieu Payments that are due following MTS Land’s or the subsequent Owner’s conveyance of a lot and that such obligation will pass to the transferee of such lot. 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. The In Lieu Payment Lien shall have priority over all liens or claims except for: (a) Senior Liens (defined below); (b) liens for real estate taxes and other governmental assessments and charges against the applicable lot; (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 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 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 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 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 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)(3) 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 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.

(h) 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, 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 (i) below, the Town may proceed with recordation of the notice of non-payment against the lot owned by the delinquent Owner; such notice shall not affect any portion of the Property other than the lot to which the delinquent In Lieu Payment applies. The Town will cooperate with an Owner upon request to make corrections to any recorded notices.

(i) Remedies. The Town shall have the right, subject to the notice and cure provisions of this subsection (i), 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)(3). Notwithstanding the foregoing or any other provision of this Agreement, a breach by an Owner of its obligations under this Section 3(C)(3) 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)(3), there shall be no acceleration of In Lieu Payments for future Payment Years. Any purchaser of a lot 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 (i), the Town's remedies under this Section 3(C)(3) 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 (h) 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 purchased at such sale; if an Owners Association makes a credit bid and acquires title to any lot 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.

(j) 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 of the Property, which shall be subordinate in priority only to the liens described on Exhibit E 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 (g) above, be senior to all other monetary liens.

(k) Owners Association Management.

i. Notwithstanding that the Owner of a lot 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 subject to the In Lieu Payment obligation and will record covenants running with the lots consistent with this Section 3(C)(3) in addition to such other covenants, conditions, restrictions and easements as Owner may

desire to impose on such lots. An Owners Association in this Agreement may be part of or combined with an Owners Association described in the 2013 Development Agreement.

ii. An Owners Association shall require each Owner of a lot obligated to make In Lieu Payments to make monthly payments of one-twelfth of the In Lieu Payment required from each Obligated Unit, so that if all monthly payments are timely made, the Owners Association will have the full In Lieu Payment amount for such lot 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 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. Notwithstanding the foregoing, a transferee of a lot as a result of a trustee's sale, foreclosure sale or contract forfeiture pursuant to subsection (g) 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.

iii. Each Owner of a lot potentially obligated to make an In Lieu Payments shall certify to the Owners Association upon acquisition of the lot whether the lot 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 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 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 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, the status of each lot as a full or partial Obligated Unit or an exclusively Non-Obligated Unit, the payment status of each lot, 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 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 obligated to make In Lieu Payments, the commencement date of the In Lieu Payment obligation of the lot, the history of payment of the In Lieu Payment by the Owner of such lot, and any changes to the status of the lot or other facts, including claims of deductions for taxes paid, that affect the amount of the In Lieu Payment payable by such lot, (b) timely collect from the Owners of the lots subject to the In Lieu Payment obligation the In Lieu Payments payable by such lots, provided, however, that an Owners Association shall have no obligation to expend greater efforts to collect In Lieu Payments from Owners of lots 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, an In Lieu Estoppel containing such factual information regarding the status of the In Lieu Payment on such lot 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), 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 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 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 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 or give rise to any right or remedy by Owner against 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 or give rise to any right or remedy by Town against an Owner.

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.

ARTICLE 6 -- EVENTS OF DEFAULT AND REMEDIES

A. Events of Default by the Owner. Subject to the provisions of Section 5(B)(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 for any reason other than an Enforced Delay;

3. Such Owner breaches or fails to comply with any material provision the 2013 SUP for Area F 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 56th 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 after receipt of such notice, or, if such Default is of a nature is not capable of being cured within thirty (30) days 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)(3)(i) 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 or litigation proceeding 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 shall provide written notice to the Town with respect to the first Transfer of each part of the Property subject to this Agreement within thirty (30) days after the effective date of any such Transfer, but such Transfer shall not be subject to the Town's consent. No notice or consent is required for any subsequent assignment or transfer. This Agreement may be 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 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 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
 c/o Crown Realty & Development
 Attn: Robert Flaxman
 18201 Von Karman Avenue, Suite 950
 Irvine CA 92612

With required copies to: Jorden Bischoff & Hiser, PLC
 Attn: Doug Jorden
 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.

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 shall be read and interpreted in conjunction with the 2013 SUP for Area F, the 2013 SUP, the 2013 Development Agreement, 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 44th President of the United States, Barack Obama, 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 and the Effective Date shall be as set forth in Section 3(B)(3). After this Agreement is recorded, if this Agreement does not become effective or is not

longer effective, then the Town shall promptly record a notice that this Agreement did not become or is no longer effective.

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. Notwithstanding the foregoing, nothing herein shall obligate either Party to enter into any other agreement with any other persons or any subsequent or supplemental agreement with an Owner.

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 Estates lot(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 Estates 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)(3).

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.

CC. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement.

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Orange

On April 11, 2013 before me Ann Marie Vera, a Notary Public

personally appeared Robert A Flaxman

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement for Area F

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Individual

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

Corporate Officer — Title(s): _____

Individual

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

TOWN OF PARADISE VALLEY,
ARIZONA, an Arizona municipal
corporation

By: *Scott P Lemarr*
Its: Mayor

ATTEST:

By: *Duncan Miller*
Duncan Miller, Town Clerk

APPROVED AS TO FORM:

By: *[Signature]*
Andrew M. Miller, Town Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 13 day of April, 2013, by Scott P Lemarr, Town Mayor 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.

Duncan Miller
Notary Public

My commission expires:

1/5/2014

665 Dev Agmt 20130411 Final.docx

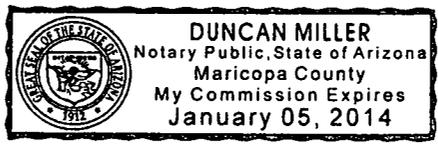


EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION

THAT PART OF LOT 68 OF "MOUNTAIN SHADOW RESORT AMENDED", BEING A SUBDIVISION RECORDED IN THE OFFICE OF THE MARICOPA COUNTY RECORDER IN BOOK 75 OF MAPS AT PAGE 34 THERE OF AND BEING SITUATED IN THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 68 WHICH IS ALSO A POINT ON THE EAST LINE OF LOT 1B OF SAID "MOUNTAIN SHADOW RESORT AMENDED";

THENCE, SOUTHEASTERLY ALONG THE ARC OF A CURVE WHICH IS CONCAVE NORTHEASTERLY, WHICH HAS A CENTRAL ANGLE OF 90° 00' 00" AND WHOSE RADIUS POINT BEARS SOUTH 89° 52' 10" EAST A DISTANCE OF 12 FEET;

THENCE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.85 FEET ALONG THE COMMON LOT LINE OF SAID LOT 68 AND SAID LOT 1 OF SAID "MOUNTAIN SHADOW RESORT AMENDED" TO A POINT OF TANGENCY;

THENCE, CONTINUING ALONG SAID COMMON LOT LINE SOUTH 89° 52' 10" EAST A DISTANCE OF 178.00 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE NORTHWESTERLY, WHICH HAS A CENTRAL ANGLE OF 90° 00' 00" AND WHOSE RADIUS POINT BEARS NORTH 00° 07' 50" EAST A DISTANCE OF 12 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE WHICH IS THE COMMON LOT LINE OF SAID LOT 68 AND SAID LOT 1 A DISTANCE OF 18.85 FEET TO A POINT OF TANGENCY;

THENCE CONTINUING ALONG SAID COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 68 NORTH 00° 07' 50" EAST A DISTANCE OF 35 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHWESTERLY, WHICH HAS A CENTRAL ANGLE OF 90° 00' 00" AND WHOSE RADIUS POINT BEARS NORTH 02° 52' 10" WEST A DISTANCE OF 12 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.85 FEET, SAID CURVE ALSO BEING A COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 68, TO A POINT WHICH IS A COMMON CORNER WITH SAID LOT 1, SAID LOT 68 AND THE SOUTH RIGHT-OF-WAY LINE OF LINCOLN DRIVE;

THENCE, SOUTH $89^{\circ} 52' 10''$ EAST A DISTANCE OF 85 FEET ALONG THE NORTH LINE OF SAID LOT 1 AND SAID SOUTH RIGHT-OF-WAY OF LINCOLN DRIVE TO A POINT OF CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHEASTERLY, WHICH HAS A CENTRAL ANGLE OF $90^{\circ} 00' 00''$ AND WHOSE RADIUS POINT BEARS SOUTH $00^{\circ} 07' 50''$ WEST A DISTANCE OF 12 FEET, SAID POINT ALSO BEING A COMMON CORNER OF SAID LOT 1 AND SAID LOT 67A OF SAID "MOUNTAIN SHADOW RESOERT AMENDED";

THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.85 FEET TO A POINT OF TANGENCY, SAID CURVE ALSO BEING A COMMON LOT LINE WITH SAID LOT 68 AND SAID LOT 67A;

THENCE, SOUTH $00^{\circ} 07' 50''$ WEST A DISTANCE OF 35 FEET ALONG THE COMMON LOT LINE OF SAID LOT 68 AND SAID LOT 67A TO THE POINT OF TANGENCY WITH A CIRCULAR CURVE WHICH IS CONCAVE NORTHEASTERLY, WHICH HAS A CENTRAL ANGLE OF $89^{\circ} 24' 15''$, AND WHOSE RADIUS POINT BEARS SOUTH $89^{\circ} 52' 10''$ EAST A DISTANCE OF 12.14 FEET;

THENCE, SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.52 FEET TO A POINT IF REVERSE CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHWESTERLY, WHICH HAS A CENTRAL ANGLE OF $15^{\circ} 37' 52''$ AND WHICH HAS A RADIUS OF 352 FEET, SAID CURVE ALSO BEING A COMMON LOT LINE OF SAID LOT 68 AND SAID LOT 67A;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 96.03 FEET;

THENCE RADIAL TO SAID CURVE, SOUTH $17^{\circ} 03' 08''$ A DISTANCE OF 32 FEET TO A POINT ON A CURVE WHICH IS CONCAVE SOUTHWESTERLY, WHICH HAS A CENTRAL ANGLE OF $17^{\circ} 12' 25''$ AND A RADIUS OF 320.00 FEET, SAID POINT ALSO BEING A POINT ON THE COMMON LOT LINES OF SAID LOT 1 AND SAID LOT 68;

THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 96.10 FEET TO A POINT OF TANGENCY WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHWESTERLY, WHICH HAS A CENTRAL ANGLE OF $90^{\circ} 00' 00''$ AND A TANGENT LENGTH OF 12 FEET, SAID CURVE ALSO BEING A COMMON LOT LINE WITH SAID LOT 1 AND SAID LOT 68;

THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.85 FEET TO A POINT OF REVERSE CURVATURE WITH A CIRCULAR CURVE WHICH IS

CONCAVE NORTHERLY, WHICH HAS A CENTRAL ANGLE OF 180° 00' 00", AND A RADIUS OF 66.50 FEET;

THENCE, SOUTHERLY, WESTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 271.75 FEET TO A POINT OF REVERSE CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHWESTERLY, WHICH HAS A CENTRAL ANGLE OF 90° 00' 00" AND A TANGENT OF 12 FEET, SAID POINT ALSO BEING A COMMON CORNER OF SAID LOT 1 AND SAID LOT 68;

THENCE, NORTHWESTERLY ALONG THE ARC OF SAID CURVE WHICH IS ALSO THE COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 68 A DISTANCE OF 18.85 FEET TO A POINT OF TANGENCY WHICH IS ALSO A COMMON CORNER OF SAID LOT 1 AND SAID LOT 68;

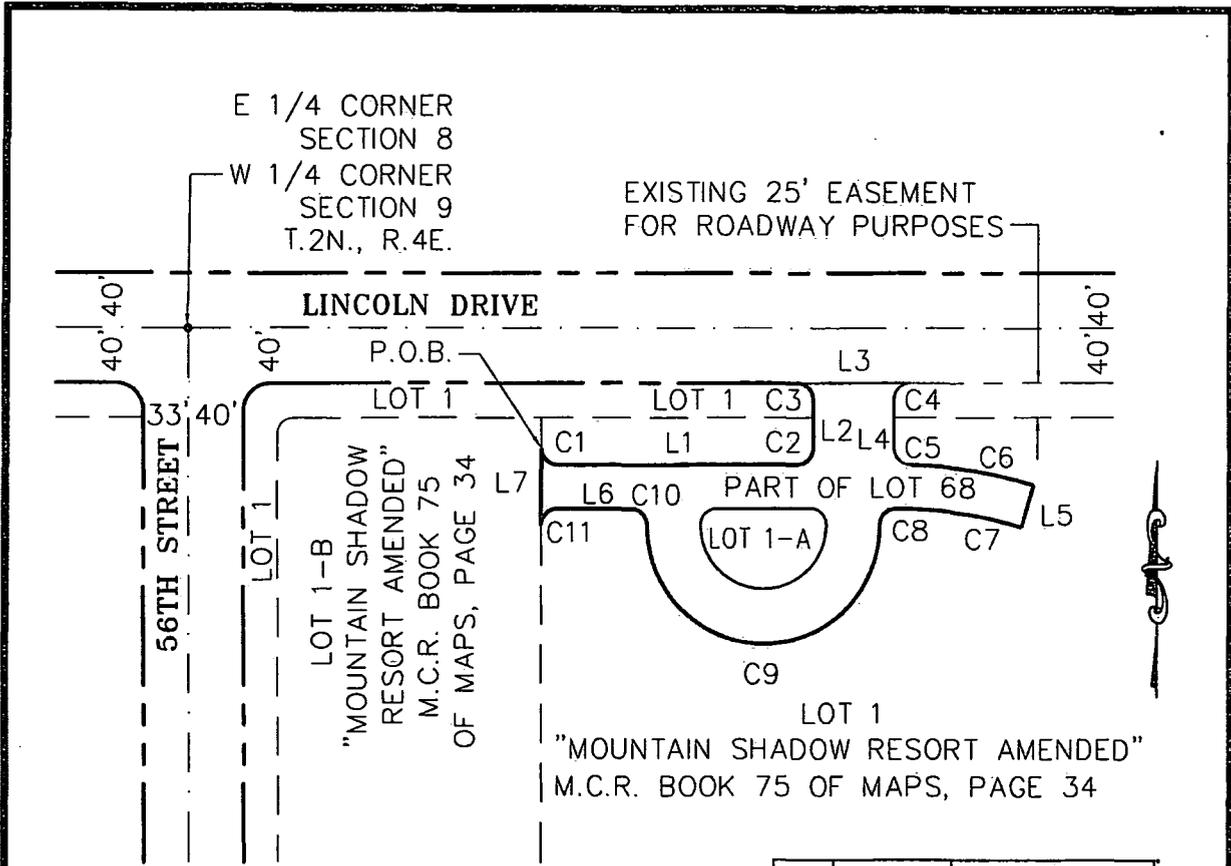
THENCE, NORTH 02° 52' 10" WEST A DISTANCE OF 55 FEET ALONG THE COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 68 TO A POINT OF CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHEASTERLY, WHICH HAS A CENTRAL ANGLE OF 90° 00' 00" AND A TANGENT OF 12 FEET, SAID POINT BEING A COMMON CORNER OF SAID LOT 1, SAID LOT 1B AND SAID LOT 68;

THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 18.85 FEET TO A POINT ON THE EAST LINE OF SAID LOT 1B, WHICH IS ALSO A CORNER OF SAID LOT 68, SAID CURVE ALSO BEING A COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 68;

THENCE, NORTH 00° 07' 50" EAST A DISTANCE OF 56 FEET ALONG THE COMMON LOT LINE OF SAID LOT 1B AND SAID LOT 68 TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

EXCEPT LOT 1A OF SAID "MOUNTAIN SHADOW RESORT AMENDED".





	LENGTH	DELTA	RADIUS	RADIUS POINT
C1	18.85'	90°00'00"	12.00'	S89°52'10"E
C2	18.85'	90°00'00"	12.00'	N00°07'50"E
C3	18.85'	90°00'00"	12.00'	N02°52'10"E
C4	18.85'	90°00'00"	12.00'	S00°07'50"W
C5	18.52'	89°24'15"	12.14'	S89°52'10"W
C6	96.03'	15°37'52"	352.00'	
C7	96.10'	17°12'25"	320.00'	
C8	18.85'	90°00'00"	12.00'	
C9	271.75'	180°00'00"	66.50'	
C10	18.85'	90°00'00"	12.00'	
C11	18.85'	90°00'00"	12.00'	

	LENGTH	BEARING
L1	178.00'	S89°52'10"E
L2	35.00'	N00°07'50"E
L3	85.00'	S89°52'10"E
L4	35.00'	S00°07'50"E
L5	32.00'	S17°03'08"E
L6	55.00'	N02°52'10"E
L7	56.00'	N00°07'50"E



Jimmy W. Springer
Expires 12/31/2014

**FLEET • FISHER
ENGINEERING INC.**
4250 EAST CAMELBACK RD., SUITE 412K
PHOENIX, ARIZONA 85018 PH. (602) 764-3335

LEGAL DESCRIPTION

THAT PART OF LOT 1 OF "MOUNTAIN SHADOW RESORT AMENDED", BEING A SUBDIVISION RECORDED IN THE OFFICE OF THE MARICOPA COUNTY RECORDER IN BOOK 75 OF MAPS AT PAGE 34 THEREOF AND BEING SITUATED IN THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1;

THENCE, ON A BEARING OF NORTH A DISTANCE OF 20 FEET ALONG THE WEST LINE OF SAID LOT 1 ALSO BEING THE EAST RIGHT-OF-WAY LINE OF 56TH STREET;

THENCE, ON A BEARING EAST A DISTANCE OF 153.24 FEET ON A LINE 20 FEET NORTH OF AND PARALLEL TO THE COMMON LOT LINE OF SAID LOT 1 AND LOT 67A OF SAID "MOUNTAIN SHADOW RESORT AMENDED";

THENCE, SOUTH 52° 44' 46" EAST A DISTANCE OF 108.87 FEET TO A POINT ON A CURVE WHICH IS CONCAVE SOUTHEASTERLY, HAS A CENTRAL ANGLE OF 11° 51' 20", WITH A RADIUS OF 97.35 FEET;

THENCE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 20.14 FEET;

THENCE, NORTH 52° 44' 46" WEST A DISTANCE OF 100 FEET ALONG THE COMMON LOT LINE OF SAID LOT 1 AND LOT 33 OF SAID "MOUNTAIN SHADOW RESORT AMENDED" TO A POINT WHICH IS A COMMON CORNER OF SAID LOT 1, SAID LOT 67A AND SAID LOT 33;

THENCE, ON A BEARING WEST A DISTANCE OF 146.44 FEET TO ALONG A COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 67A TO THE POINT OF BEGINNING OF THIS DESCRIPTION.



E 1/4 CORNER
SECTION 8
W 1/4 CORNER
SECTION 9
T.2N., R.4E.

LINCOLN DRIVE

40'

40'

33'140'

LOT 1

EXISTING 25' EASEMENT
FOR ROADWAY PURPOSES

LOT 1-B
"MOUNTAIN SHADOW RESORT AMENDED"
M.C.R. BOOK 75 OF MAPS, PAGE 34

LOT 1

56TH STREET

EXISTING 25' EASEMENT
FOR ROADWAY PURPOSES

LOT 1
"MOUNTAIN SHADOW RESORT AMENDED"
M.C.R. BOOK 75 OF MAPS, PAGE 34

EAST
153.24'

S52° 44' 46"E
108.87'

WEST
146.44'

LOT 67A

LOT 33

LOT 68

L= 20.14'

$\Delta = 11^{\circ}51'20''$

R= 97.35'



Jimmy W. Springer
Expires 12/31/2014

P.O.B.

33'140'

EXISTING 25' EASEMENT
FOR ROADWAY PURPOSES

S52° 44' 46"E
108.87'

**FLEET • FISHER
ENGINEERING INC.**

4250 EAST CAMELBACK RD., SUITE 410K
PHOENIX, ARIZONA 85018 PH. (602) 264-3335

EXHIBIT B
TOWN RESOLUTION NO. 1272

(INSERT RESOLUTION NO. 1272)

RESOLUTION NUMBER 1272

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF PARADISE VALLEY, ARIZONA;
AUTHORIZING A DEVELOPMENT AGREEMENT FOR
AREA F, WITH MTS LAND, LLC, A DELAWARE
LIMITED LIABILITY COMPANY RELATING TO
PROPOSED IMPROVEMENTS TO THE PROPERTY
LOCATED AT LINCOLN DRIVE AND 56TH STREET.**

WHEREAS, MTS Land, LLC, a Delaware Limited Liability Company (hereinafter “MTS Land”), owns approximately 0.7 acres of land and improvements located in the proximity of Lincoln Drive and 56th Street (the “Property”) within the Town of Paradise Valley, currently known as the Mountain Shadows Resort; and,

WHEREAS, MTS Land has applied to the Town of Paradise Valley (“Town”) for a rezoning of the Property to change the zoning of the Property to SUP District (Resort) in order to facilitate redevelopment of the Property (the “2013 SUP for Area F”); and,

WHEREAS, MTS Land and the Town have agreed that a development agreement, subject to the terms of a Waiver, Release and Settlement Agreement agreed upon by MTS Land and the Town, is necessary to facilitate the orderly redevelopment of the Property and provide for the phasing and timing of the redevelopment of the Property to be coordinated with the 2013 SUP for Area F, including the Town’s abandonment of certain portions of 56th Street rights-of-way or roadway easements and Town’s reconstruction of 56th Street; and,

WHEREAS, The Town Council desires to adopt the Development Agreement attached hereto and incorporated herein by this reference (the “2013 Development Agreement for Area F”) and acknowledges that the 2013 Development Agreement for Area F constitutes a development agreement within the meaning of A.R.S. §9-500.05.

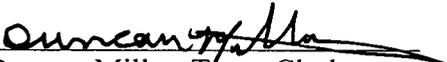
NOW, THEREFORE, BE IT RESOLVED that the Mayor and Town Council of the Town of Paradise Valley, Arizona, hereby:

1. Approves the 2013 Development Agreement for Area F (Exhibit “A” hereto).
2. Authorizes the Mayor to execute the 2013 Development Agreement for Area F.
3. Authorizes the Town Clerk to record the 2013 Development Agreement for Area F in the manner provided by law.

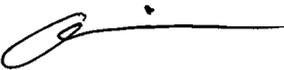
PASSED AND ADOPTED by the Mayor and Council of the TOWN OF PARADISE VALLEY, Arizona, this 18th day of April, 2013.


Scott P. LeMarr, Mayor

ATTEST:


Duncan Miller, Town Clerk

APPROVED AS TO FORM:


Andrew M. Miller, Town Attorney

CERTIFICATION

I, Duncan Miller, Town Clerk hereby certify that the foregoing is a full, true and correct copy of Resolution Number 1272 duly and regularly passed and adopted by vote of the Town Council of Paradise Valley at a meeting duly called and held on the 18th day of April, 2013. That said Resolution appears in the minutes of said meeting, and that the same has not been rescinded or modified and is now in full force and effect.

I further certify that the municipal corporation is duly organized and existing, and has the power to take the action called for by the foregoing Resolution.



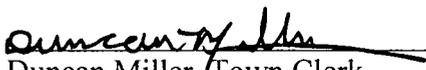

Duncan Miller, Town Clerk

EXHIBIT C
TOWN'S INSURANCE REQUIREMENTS

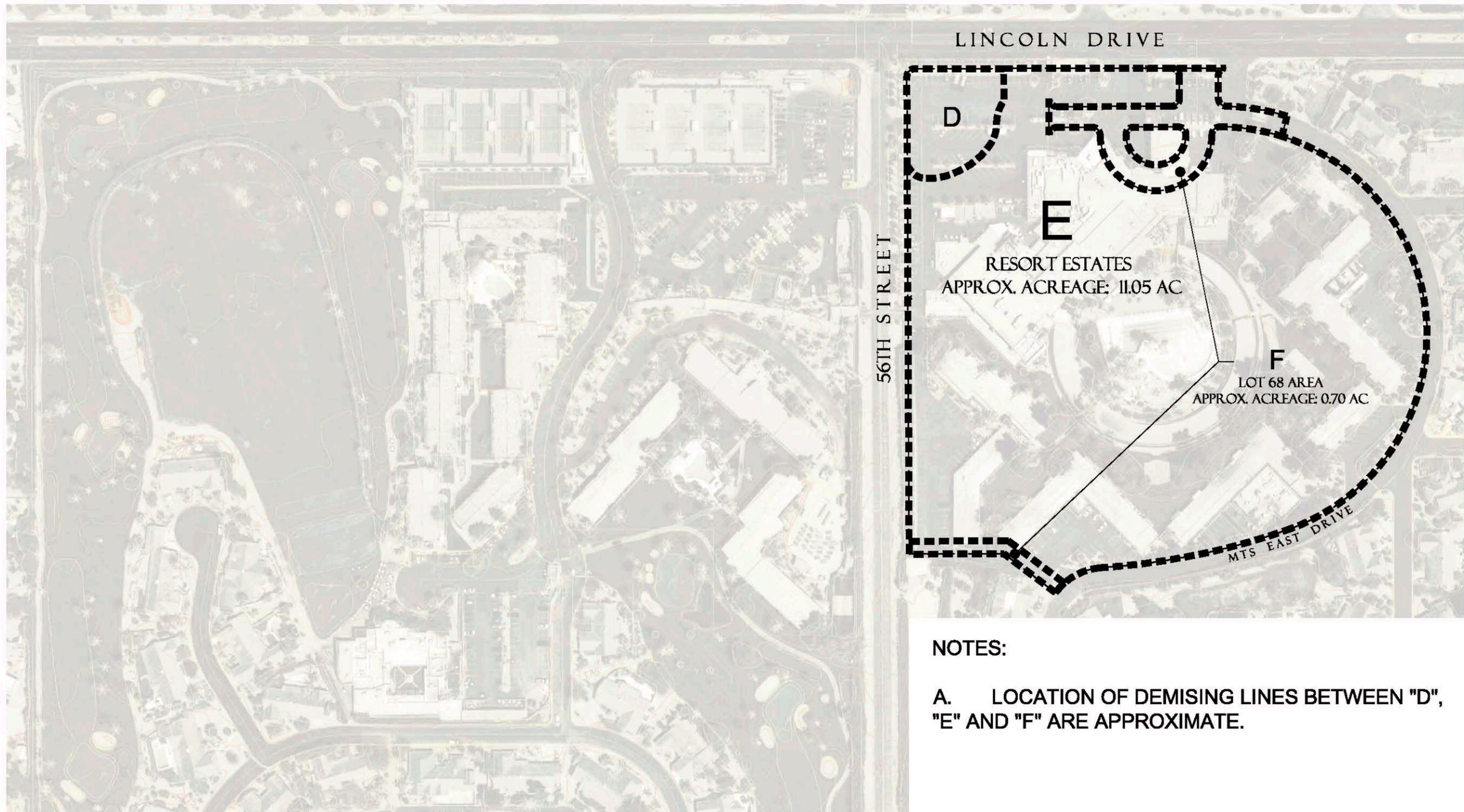
All contractors engaged by Owner to construct the Public Improvements within the Town's rights-of-way and roadway easement areas shall secure and maintain, during the life of the contract with the Owner (herein the "Contract"), the following insurance:

- 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)



MOUNTAIN SHADOWS - AREA F

LAND USE PLAN

ALL WRITTEN DIMENSIONS TAKE PRECEDENCE
OVER SCALED DIMENSIONS.



Date: FEBRUARY 22, 2013	Project #	Sheet #
Revised:	Special Use Permit	2
		AREA F

**EXHIBIT E
SENIOR LIENS**

U.S. Bank

Hertz Loan