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WHEN RECORDED RETURN TO:

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

WAIVER, RELEASE AND SETTLEMENT AGREEMENT

By, between and among:

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

MTS LAND, LLC,
a Delaware limited liability company;

and

MTS GOLF, LLC,
a Delaware limited liability company

April ~~18~~, 2013

WAIVER, RELEASE AND SETTLEMENT AGREEMENT

THIS WAIVER, RELEASE AND SETTLEMENT AGREEMENT (this “**Agreement**”) is made as of the 18 day of April, 2013, by, between and among the TOWN OF PARADISE VALLEY, ARIZONA, an Arizona municipal corporation (the “**Town**”); MTS LAND, LLC, a Delaware limited liability company, and its successors and assigns (“**MTS Land**”); and MTS GOLF, LLC, a Delaware limited liability company, and its successors and assigns (“**MTS Golf**”). MTS Land and MTS Golf may be referred to in this Agreement collectively as the “**Debtors**” or “**Developer**.” The Town, MTS Land and MTS Golf are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.”

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 or elsewhere in this Agreement shall have the meanings ascribed to them, parenthetically or otherwise, in this Agreement.

A. On July 19, 2012, Debtors filed petitions in the United States Bankruptcy Court for the District of Arizona (the “**Bankruptcy Court**”) under Chapter 11 of the United States Bankruptcy Code in two cases that are jointly administered and styled as *In re: MTS Land, LLC, a Delaware limited liability company*, Case No. 2:12-bk-16257-EWH, and *In re: MTS Golf, LLC, a Delaware limited liability company*, Case No. 2:12-bk-16259-EWH (the “**Bankruptcy Cases**”).

B. Debtors 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.

C. Developer owns approximately 67 acres of land and improvements located in the proximity of Lincoln Drive and 56th Street within the Town of Paradise Valley, Arizona, all as more fully described in Exhibit A (the “**Property**”). Developer also owns a 1/60 interest in Lot 68 of “Mountain Shadow Resort Amended” recorded in Book 75, Page 34, official records of Maricopa County Recorder on January 20, 1958 (“**Lot 68**”). An existing resort hotel (which is not currently operated for hotel purposes) known as “Mountain Shadows” (the “**Resort Hotel**”), is located on the Property. The 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 Resort Hotel, the Golf Course, and related facilities are collectively called the “**Resort**.” The Golf Course and other parts of the Resort continue to be operational as of the execution date of this Agreement.

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

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

F. At the time of Annexation, Section 303 of the Town’s Zoning Ordinance stated that “[a]ll territory which may hereafter be annexed to the Town of Paradise Valley, Arizona, shall automatically be placed in the (R-43) Single Family Residential District until otherwise changed by ordinance.” Town Ordinance No. 339 stated that the Property to be annexed “shall be, and the same is zoned as R-43 pursuant to the Zoning Ordinance of the Town of Paradise Valley and subject to a development agreement signed by the Town.” Ordinance No. 339 was adopted by the Town Council at a public meeting. R-43 zoning, in the Town’s zoning classification, essentially permits one single-family residence to be located upon approximately one acre (43,560 square feet) of land. The Property has been designated as R-43 on all updates to the Town’s zoning map since 1992, including when the Town adopted Ordinance No. 564 on November 3, 2005.

G. The Property also is the subject of a development agreement approved by the Town in 1992 pursuant to Town Ordinance No. 336 and Town Ordinance No. 341 (the “**1992 Development Agreement**”). Town Ordinance Nos. 336 and 341 were adopted by the Town Council at public meetings. The 1992 Development Agreement was executed by the Town and by Developer’s predecessor, Potomac Hotel Limited Partnership, and was recorded in the Official Records of Maricopa County.

H. The Town’s position is that from and after the Annexation of the Property into the Town, the Property has operated as a legal, nonconforming use -- that is, as the Resort and Golf Course -- in an R-43 zoning classification. Developer’s position is that the Property has operated as a legal use as the Resort and Golf Course pursuant to the 1992 Development Agreement. It is further the position of Developer and the Town that the Property, including the Golf Course, currently has an R-43 zoning classification, subject to Developer’s position that it has rights pursuant to the 1992 Development Agreement.

I. 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, with such zoning classifications to be reflected on the Town’s official zoning map, with “SUP District (Resort)” being the current classification applicable to properties approved for resort uses. Prior to the adoption of Ordinance 564, the Town’s official zoning map 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 a SUP for the Property. However, it is Developer’s position that the 1992 Development Agreement did provide for all of the uses set forth in the 1992 Development Agreement, including resort uses.

J. Developer has proposed certain development upon the Property that is inconsistent with R-43 zoning, but which is generally, but not in its totality, contemplated by the 1992 Development Agreement. Alternatively, in the event that the 2013 Development Agreement (as defined in Recital M) is terminated as allowed by this Agreement, Developer may

propose that all or portions of the Property be developed for use under the existing R-43 zoning classification. The Property has continued to operate with certain resort uses since the Annexation.

K. Developer asserts that the land use entitlements contained in the 1992 Development Agreement define Developer's rights to develop the Property, and that these entitlements are in addition to any rights that Developer has to alternatively develop the Property for uses available under the R-43 zoning classification. The Town asserts that a SUP must first be properly issued pursuant to Applicable Laws (defined below) before the land uses defined in the 1992 Development Agreement (that is, Developer's proposed resort development) can be implemented and that Developer, as the owner of the Property, must first apply for and be issued a SUP as only the owner of the Property can apply for the issuance of a SUP. The Town and Developer agree that the Property, including the Golf Course, can be developed for uses available under the R-43 zoning classification.

L. Developer 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 by the adoption of Ordinance No. 653 (the "**2013 SUP**"). Developer has also applied to the Town for a rezoning of adjacent property described on Exhibit B ("**Area F**"), which includes a portion of Lot 68, to further facilitate redevelopment of the Property by the adoption of Ordinance No. 665 (the "**2013 SUP for Area F**"). The 2013 SUP and the 2013 SUP for Area F are collectively called the "**2013 SUPs**." Portions of Area F were annexed into the Town with the Property pursuant to Ordinance No. 339; other portions of Area F were annexed into the Town pursuant to Ordinance No. 227 in 1985 and zoned R-10. 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.

M. Developer and the Town have agreed that the 1992 Development Agreement be amended and restated as a complement to the 2013 SUP and to facilitate the phasing and timing of the redevelopment of the Property by Developer, all in accordance with details set forth in a proposed amended and restated development agreement for the Property (the "**2013 Development Agreement**"). Developer and the Town have also agreed to enter into a Development Agreement for Area F (the "**2013 Development Agreement for Area F**") to assist further in phasing and timing of the redevelopment of Area F and the Property. The 2013 Development Agreement and the 2013 Development Agreement for Area F are collectively called the "**2013 Development Agreements**." The 2013 SUPs and the 2013 Development Agreements are collectively called the "**2013 Town Approvals**."

N. On July 20, 2012, Developer applied to the Town for two (2) building permits for construction on a portion of the Property (the "**2012 Building Permit Applications**"). It is the Town's position that unless a SUP is properly issued the 2012 Building Permit Applications should not be processed pursuant to the 1992 Development Agreement, but instead processed consistent with the current R-43 zoning classification standards.

O. Following appropriate notices and in compliance with Applicable Laws (including public hearings in the case of the 2013 SUPs) the Town Council has adopted and approved the 2013 SUPs, the 2013 Development Agreements, and this Agreement.

P. Prior to the Town Council's final vote on Developer's application for the 2013 Town Approvals, Debtors commenced the Bankruptcy Cases. The Bankruptcy Cases are currently pending and, as more fully set forth below, certain actions undertaken by the Town and Developer in regard to the Property and Area F, specifically the 2013 Development Agreements and this Agreement, require Bankruptcy Court Approval (defined below).

Q. On April 2, 2013, Debtors filed *Debtors' Third Amended Joint Plan of Reorganization as Modified* (together with any amendments or modifications thereto, the "**Plan.**")

R. The Bankruptcy Court's approval of this Agreement is a condition precedent to the effectiveness of the 2013 SUPs, the 2013 Development Agreements, and this Agreement. The 2013 SUPs and the 2013 Development Agreements shall not become effective until the "**Effective Date**" as defined in such documents. For purposes of this Agreement, whatever rights the Developer had with respect to the use and development of the Property and Area F prior to the date on which the Town approved the 2013 SUPs and the 2013 Development Agreements is referred to as the "**Existing Entitlements,**" which in any event includes R-43 zoning.

S. While both the Town and Developer believe that the 2013 Town Approvals are binding and valid, Developer is concerned that, subsequent to approval by the Town, one or more of the 2013 Town Approvals may be found, determined, or held to be invalid or unenforceable in whole or in some material respect, whether by the filing of signed petitions with the Town seeking to refer one or more of the 2013 Town Approvals (each a "**Referendum**") or by the filing of an action commenced before the Town's Board of Adjustment or in a court of competent jurisdiction that seeks to find, hold, or declare one or more of the 2013 Town Approvals invalid or unenforceable in whole or in any material part (each a "**Litigation Filing**"). A Litigation Filing may include any such action initiated prior to the execution date of this Agreement. Similarly, the Town is concerned that a Litigation Filing could lead to the Developer exercising certain rights contained herein to terminate the 2013 Development Agreements, but is also concerned that such a Litigation Filing could be made by an entity or individual related to or affiliated with the Developer, such as the Developer itself, any Developer Affiliates (as defined below) or any party or entity related to the Developer or its Affiliates, specifically including RN9, LLC, Robert Flaxman (and his spouse, if any), Jamie Sohacheski (and his spouse, if any), employees of MTS Land, MTS Golf or Crown Realty & Development, Inc., a California corporation (all of which are hereby defined as "**Related Parties**"). Any Litigation Filing made by the Developer, Developer Affiliates, or Related Parties shall not be considered a Litigation Filing for purposes of this Agreement.

T. The 2013 Town Approvals are consistent with the Town's interest in the redevelopment of the Property and Area F. Therefore, the Town supports the Bankruptcy Court's confirmation and enforcement of the entitlements provided for the Property and Area F under the 2013 Town Approvals. If the 2013 Town Approvals are held to be invalid or unenforceable in whole or in some material respect for any reason, the Town supports the Bankruptcy Court's confirmation and enforcement of Developer's right to develop the Property and Area F under the R-43 zoning classification, provided that Developer covenants to grant the Town certain assurances, releases, waivers and discharges, all as more fully set forth below in this Agreement.

U. The Parties believe that the 2013 SUP and the 2013 Development Agreement provide for effective and efficient redevelopment of the Property and intend that both should be in full force and effect concurrently. Similarly, the Parties believe that the 2013 SUP for Area F and the 2013 Development Agreement for Area F provide for effective and efficient redevelopment of Area F and intend that both should be in full force and effect concurrently. The Parties intend that if the 2013 Development Agreement is terminated, then the 2013 Development Agreement for Area F should also be terminated. Conversely, the Parties agree and acknowledge that the 2013 Development Agreement can remain in effect even if the 2013 Development Agreement for Area F is terminated.

V. Any defined terms used in this Agreement and not defined herein shall have the same meaning as in the 2013 Town Approvals.

AGREEMENTS

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.

1. Within five (5) business days following the execution of the 2013 Town Approvals and this Agreement by the Parties, the Debtors shall file with the Bankruptcy Court in the Bankruptcy Cases a motion brought pursuant to Bankruptcy Rule 9019 (the “**9019 Motion**”) to approve this Agreement and the 2013 Development Agreements, and the Town consents to an order shortening time to hear the 9019 Motion.

2. Within seven (7) business days following the filing of the 9019 Motion, the Debtors shall file an amended Plan to reflect and incorporate this Agreement and the 2013 Town Approvals.

3. Matters Relating to 2013 Town Approvals Taking Effect.

A. Bankruptcy Matters. The effectiveness of this Agreement (specifically Sections 7, 8 and 9), the 2013 SUPs, and the 2013 Development Agreements is conditioned upon the Bankruptcy Court Approval, that being the entry pursuant to Section 363 and/or 1129 of the Bankruptcy Code and Bankruptcy Rules 3020 and/or 9019, after notice and hearing, of an order or orders by the Bankruptcy Court approving and authorizing Developer to enter into and carry out this Agreement and the 2013 Development Agreement (the “**9019 Order**”) or the entry of a confirmation order in the Bankruptcy Cases by the Bankruptcy Court confirming the Plan incorporating this Agreement and the 2013 Development Agreements (the “**Confirmation Order**”), with all such orders being Final Orders (as defined below). If (i) the Bankruptcy Court does not enter the 9019 Order within ninety (90) days following the execution of the 2013 SUPs, the 2013 Development Agreements, and this Agreement by the Parties or the Confirmation Order by September 30, 2013 (or such later date as mutually agreed to by the Parties), and (ii) the 9019 Order or Confirmation Order are not Final Orders within twenty (20) business days after entry of each of the 9019 Order or the Confirmation Order, then (a) the 2013 SUPs, the 2013 Development Agreements, and this Agreement shall not become effective (as provided in each such document), (b) the Town, the Developer, Town Parties and Developer Parties shall return to their respective rights, privileges, and obligations as if the 2013 SUPs had not been granted by the Town and as if the Town and Developer had not entered into the 2013 Development

Agreements and this Agreement (except as otherwise set forth in this Agreement), (c) the Property and Area F will retain their Existing Entitlements, and (d) Developer shall be entitled and authorized to develop the Property and Area F in accordance with R-43 zoning (except as otherwise set forth in this Agreement). If this Agreement is recorded in the Official Records of Maricopa County, Arizona and does not become effective or is no longer effective for all or any portion of the Property or Area F, then the Town shall promptly record a notice that this Agreement did not become or is no longer effective with regard to all or the applicable portion of the Property or Area F.

B. Failure of Timely Effectiveness of 2013 Town Approvals. If the 2013 SUP and the 2013 Development Agreement are not effective by the date that is six (6) months after the date on which both of the following have occurred (i) the 2013 SUP is approved (i.e., voted on) by the Town Council of the Town of Paradise Valley, Arizona and (ii) signed by the Mayor (the “**Approval Date**”) because all of the conditions necessary for the “Effective Date” to have occurred have not occurred, Developer may elect to terminate the 2013 Development Agreement by written notice to the Town (a “**Termination Election**”) and the Town shall then take all actions necessary to confirm that the 2013 SUP never became effective. Similarly, if the 2013 SUP for Area F and the 2013 Development Agreement for Area F are not effective by a date that is six (6) months after the Approval Date for the 2013 SUP for Area F and the 2013 Development Agreement for Area F because all of the conditions necessary for the “Effective Date” to have occurred have not occurred, Developer may elect to terminate the 2013 Development Agreement for Area F by written notice to the Town (also a “**Termination Election**”) and the Town shall then take all actions necessary to confirm that the 2013 SUP never became effective.

C. Delays Due to Referendum. During the period between the date any person files Referendum petitions with the Town seeking to refer the 2013 SUP and/or the 2013 Development Agreement and the completion of the subsequent Referendum election (an “**Election**”), Developer may make a Termination Election for the 2013 Development Agreement and the Town shall then take all actions necessary to confirm that the 2013 SUP never became effective. Similarly, during the period between the date any person files Referendum petitions with the Town seeking to refer either of the 2013 SUP for Area F and/or the 2013 Development Agreement for Area F and the completion of the subsequent Referendum election (also, an “**Election**”), Developer may make a Termination Election for the 2013 Development Agreement for Area F and the Town shall then take all actions necessary to confirm that the 2013 SUP for Area F never became effective. The Parties acknowledge that the time for filing a Referendum for each of the 2013 SUPs shall begin on the date that each such document is approved by the Town, executed by the Mayor, and made available to a person or organization intending to file a referendum by the Town Clerk (pursuant to A.R.S. §19-142 (D)). The Parties acknowledge that time for filing a Referendum for each of the 2013 Development Agreements shall begin on the date that each resolution approving each of the 2013 SUPs is approved by the Town, executed by the Mayor, and made available to a person or organization intending to file a referendum by the Town Clerk (pursuant to A.R.S. § 19-142 (C)). If an Election is required, the Town shall schedule the Election on the next available election date, including special election dates. The Town shall be reimbursed by Developer for the direct, out-of-pocket, and reasonable costs of the Election incurred by the Town prior to the date (if any) that Developer makes a Termination Election for one or both of the 2013 Development Agreements as provided above.

4. Developer shall promptly commence and use its commercially reasonable efforts to request Bankruptcy Court Approval, provided that if Developer makes a Termination Election or if there is a Litigation Filing prior to receipt of Bankruptcy Court Approval, Developer may elect to not seek Bankruptcy Court Approval.

5. A “**Final Order**” is 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 such order was accompanied by a stay pending appeal.

6. Subject to Bankruptcy Court Approval and the other terms of this Agreement, the Parties confirm the 2013 SUPs and the 2013 Development Agreements and that they are bound by the 2013 SUPs and the 2013 Development Agreements, subject to Applicable Laws.

7. Subject to Bankruptcy Court Approval and except as otherwise specifically stated in this Agreement, the Town hereby unconditionally, irrevocably, totally, fully, finally, and forever releases, waives, settles, compromises, relinquishes, quitclaims and discharges (the “**Town Release**”). Developer and its successors, assigns, directors, officers, employees, agents, representatives, attorneys, heirs, predecessors and Developer’s Affiliates (collectively, the “**Developer Parties**”) for, from and against any and all actions, causes of action, claims, debts, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity, whether known or unknown, foreseen or unforeseen, suspected or unsuspected, accrued or not yet accrued, choate or inchoate (collectively, “**Claims**”). The Town Release applies to all Claims that the Town has against any and all of the Developer Parties for their acts or omissions prior to the date of this Agreement in respect of Developer’s ownership, operation and development of the Property and Area F, including the condition of the Property and Area F, but excluding (i) any Claims for injunctive or remedial relief relating to health or safety concerns with respect to the Property and Area F, (ii) the Town’s enforcement of any criminal law or regulation, (iii) the Town’s exercise of the power of eminent domain, and (iv) any other rights of the Town that are not waivable as a matter of law; all such rights being expressly preserved.

8. Subject to Bankruptcy Court Approval and except as otherwise specifically stated in this Agreement, Developer, on behalf of itself and the Developer’s Affiliates, hereby unconditionally, irrevocably, totally, fully, finally, and forever releases, waives, settles, compromises, relinquishes, quitclaims and discharges (the “**Developer Release**”) the Town and its Mayor (past and present), Council Members (past and present), successors, assigns, directors, officers, employees, agents, representatives, attorneys, heirs, predecessors and affiliates

(collectively, the “**Town Parties**”) for, from and against any and all Claims. The Developer Release applies to all Claims that Developer or any Developer Affiliate has against any of the Town Parties for their acts or omissions prior to the date of this Agreement in respect of (i) the Property or Area F, or the zoning or other entitlements of the Property or Area F, any act or omission of any of the Town Parties in connection with or arising out of the Property or Area F, or any act or omission of any of the Town Parties in connection with or arising out of the 1992 Development Agreement, the 2013 SUPs, the 2013 Development Agreements, or the 2012 Building Permit Applications; (ii) any and all equitable claims or rights (including but not limited to rights based upon equitable estoppel, waiver, ratification or any similar theory) alleged to exist in favor of Developer, Developer’s predecessors, any Developer Parties, or the Property or any portion of the Property or Area F, and (iii) any other act or omission of any of the Town Parties with respect to the Property or Area F.

9. It is a condition precedent to the effectiveness of the Release granted by the Town in Section 7, and the Town’s other obligations arising under this Agreement, that Developer provide joinders to this Agreement (for all matters set forth in Section 8 and Section 10) from MTS Beverages, LLC, a Delaware limited liability company, Cool Mountain Holdings, LLC, fka Mountain Shadows Holdings, LLC, a Delaware limited liability company, and Crown MTS Associates, LLC, a Delaware limited liability, with such joinders to be in a form attached as Exhibit C to this Agreement and delivered no later than twenty (20) business days following the Town Council’s approval of the Agreement, with the understanding that such joinders are subject to and only effective upon the Bankruptcy Court Approval. Each of the foregoing individuals or entities is referred to in this Agreement as a “**Developer Affiliate**,” and one or more Developer Affiliate may be referred to as “**Developer Affiliates**.” In addition, Developer shall provide a covenant not to sue from Robert Flaxman (and his spouse, if any), Jamie Sohacheski (and his spouse, if any), and Crown Realty & Development, Inc., a California corporation, with such covenants to be in a form attached as Exhibit D to this Agreement and delivered no later than twenty (20) business days following the Town Council’s approval of this Agreement, with the understanding that such covenants are subject to and only effective upon the Bankruptcy Court Approval.

10. In addition to the Developer Release, Developer, on behalf of itself and each of the Developer Affiliates, hereby waives any right to claim diminution in value or to claim just compensation for diminution in value under the provisions of A.R.S. §§ 12-1134 through 12-1136 inclusive, as amended, resulting from the 2013 SUPs and the 2013 Development Agreements. Developer acknowledges and agrees, on behalf of itself and each of the Developer Affiliates, that the 2013 SUPs and the 2013 Development Agreements do not diminish the fair market value of the Property or Area F.

11. The Parties agree and acknowledge that (i) if the 2013 SUPs and the 2013 Development Agreements have been approved by the Town; and (ii) if the Bankruptcy Court Approval occurs; and (iii) if any of the Town Approvals thereafter is subjected to a challenge in whole or in any material part by a Litigation Filing, then the following provisions of this Section 11 shall apply, which will be reflected in the 9019 Order or the Plan and Confirmation Order:

A. For the duration of any Litigation Filing related to the 2013 SUP and/or the 2013 Development Agreement, but subject to the limitations set forth in Section 11(B)

below, Developer may make a Termination Election for the 2013 Development Agreement. Such an election shall be effective immediately and the Town may then (i) take action pursuant to A.R.S. § 9-462.01(E) to revert the 2013 SUP so as to reinstate the Existing Entitlements for the Property (a “**Statutory Reversion**”) or (ii) rezone the Property in accordance with Applicable Laws to the R-43 zoning classification. Similarly, for the duration of any Litigation Filing related to the 2013 SUP for Area F and/or the 2013 Development Agreement for Area F, but subject to the limitations set forth in Section 11(B) below, Developer may make a Termination Election for the 2013 Development Agreement for Area F. Such an election shall be effective immediately and the Town may then (i) revert the 2013 SUP for Area F by a Statutory Reversion or (ii) rezone Area F in accordance with Applicable Laws to the R-43 zoning classification, or the R-10 zoning classification, as the case may be. Unless and until Developer makes a Termination Election for one or both of the 2013 Development Agreements as provided above, the Town and Developer shall vigorously defend, each at its own expense, the 2013 SUPs and the 2013 Development Agreements and shall support Developer’s decision to choose the jurisdiction of or removal to the Bankruptcy Court for this purpose.

B. Developer’s ability to make a Termination Election after the Effective Dates of the 2013 Development Agreements is limited as follows:

i. As set forth in Section 11(B)(ii) - (iv) a Termination Election may still result in the 2013 Development Agreements continuing to be applicable to certain portions of the Property and Area F. Those portions of the Property and Area F to which the 2013 Development Agreements continue to apply shall be referred to as the “**Vested Property**” and the portions of the Property and Area F to which the 2013 Development Agreements do not apply shall be referred to as the “**Non-Vested Property**.” For purposes of this Agreement, despite the current common law of “vesting,” the Property and Area F shall be deemed to be Vested Property or Non-Vested Property based on the provisions of this Section 11(B). For purposes of this Agreement, “**Vertical Construction**” means (i) the obtaining of a building permit for buildings over ten (10) feet in height (specifically excluding demolition, excavation, grading, street improvement, or similar permits) by Developer and (ii) the actual installation of structural elements above the slab or foundation to the point where such structural elements equal at least ten (10) feet in height. For purposes of this Section 11(B), a “**Court Decision**” is a decision issued by a trial court (such as the Bankruptcy Court, the federal District Court for the District of Arizona, or the Maricopa County Superior Court), but not a court of appeals (such as the Bankruptcy Appellate Panel, the Ninth Circuit Court of Appeals, or the Arizona Court of Appeals).

ii. Area D, Area E and Area F (“**Areas D-F**”). After Vertical Construction has begun in Area E or Area F and if there has been no Court Decision finding, holding, or declaring the 2013 Town Approvals invalid or unenforceable in whole or in any material part with respect to Areas D-F, then (a) Areas D-F shall be deemed to be Vested Property, (b) the Town shall continue to issue building permits for the remaining improvements contemplated for Areas D-F in the 2013 Town Approvals, (c) a Termination Election for the 2013 Development Agreements shall not be effective to the extent it impacts Areas D-F, and (d) the 2013 Development Agreements shall continue to apply to Areas D-F. If, as a result of any Litigation Filing or otherwise (but not due to

any defaults by Developer or for any reason within the Developer's control), the Town is not obligated to or does not continue issuing building permits for Areas D-F, then Areas D-F shall be deemed to be Non-Vested Property and a Termination Election shall apply to Areas D-F.

iii. Area B and Area C ("Areas B-C"). After Vertical Construction has begun in Areas B-C and if there has been no Court Decision finding, holding, or declaring the 2013 Town Approvals invalid or unenforceable in whole or in any material part with respect to Areas B-C, then (a) Areas B-C shall be deemed to be Vested Property, (b) the Town shall continue to issue building permits for the remaining improvements contemplated for Areas B-C in the 2013 Town Approvals, (c) a Termination Election for the 2013 Development Agreements shall not be effective to the extent it impacts Areas B-C, and (d) the 2013 Development Agreements shall continue to apply to Areas B-C. If, as a result of any Litigation Filing or otherwise (but not due to any defaults by Developer or for any reason within the Developer's control), the Town is not obligated to or does not continue issuing building permits for Areas B-C, then Areas B-C shall be deemed to be Non-Vested Property and a Termination Election shall apply to Areas B-C.

iv. Area A. For so long as Areas B-C are deemed to be Vested Property, then (a) Area A shall be deemed to be Vested Property, (b) the Town shall continue to issue building permits for the remaining improvements contemplated for Area A in the 2013 Town Approvals, (c) a Termination Election for the 2013 Development Agreements shall not be effective to the extent it impacts Area A, and (d) the 2013 Development Agreements shall continue to apply to Area A. Despite any issuance of permits or construction occurring in Area A, Area A shall be deemed to be Non-Vested Property only if Areas B-C are deemed to be Non-Vested Property. If Area A and Areas B-C are Non-Vested Property, a Termination Election shall terminate the 2013 Development Agreement as it relates to Area A and Area A shall be deemed to be Non-Vested Property.

v. The Town hereby consents to and supports the filing of a suit to declare or establish whether all or any portion of the Property or Area F is either Vested Property or Non-Vested Property (a "**Declaratory Judgment Action**") based on the criteria set forth in subsections i-iv above, with the further provision that the Town shall support the entry of judgment that all or any portion of the Property is Vested Property or Non-Vested Property, based on the criteria set forth in subsections i-iv above. With respect to any litigation contemplated by subsections ii and iii above, Developer and Town shall vigorously defend and pursue the validity and enforceability of the 2013 Town Approvals up to the point of having a Court Decision. Before a Termination Election is effective, Developer shall be required to first pursue the validity and enforceability of the 2013 Town Approvals up to the point of having a Court Decision on the 2013 Town Approvals, but shall not be required to appeal such decision to an appellate court. If an appeal is filed by any party from a favorable or unfavorable Court Decision, then Developer may choose to proceed with such appeal and Town shall vigorously defend, so long as a Termination Election is not exercised by Developer.

C. If the 2013 SUP is found, held, or declared to be invalid or unenforceable in whole or in any material part for all or any portion of the Property by a Litigation Filing, except as limited by Section 11(B) above, then the 2013 Development Agreement shall be of no further force or effect. If the 2013 SUP for Area F is found, held, or declared to be invalid or unenforceable in whole or in any material part for all or any portion of Area F by a Litigation Filing, except as limited by Section 11(B) above, then the 2013 Development Agreement for Area F shall be of no further force or effect. If (i) Developer makes a Termination Election for one or both of the 2013 Development Agreements pursuant to Section 3(B), 3(C), or 11(A), or (ii) just the 2013 Development Agreement is found, held, or declared to be invalid or unenforceable in whole or in any material part for all or any portion of the Property by a Litigation Filing, then, to the extent Section 11(B) does not apply, Developer consents to Town taking any Statutory Reversion action necessary to reinstate the Existing Entitlements. Any Statutory Reversion action taken by the Town to revert the 2013 SUPs and reinstate the Existing Entitlements shall have no impact on either Party's claims under Section 11(D) or 11(F). In addition to any Statutory Reversion, if necessary, Developer appoints the Town as its attorney in fact for the purposes of filing an application to rezone the Property and Area F to the R-43 zoning classification. Any action taken by the Town to rezone the Property and Area F to R-43 zoning shall have no impact on either Party's claims under Section 11(D) or 11(F). Developer waives any claims under the Arizona Private Property Rights Protection Act (*e.g.*, A.R.S. §§ 12-1134 through 12-1138) related to any actions taken by the Town, in compliance herewith, to rezone the Property and Area F to R-43 zoning (or R-10 zoning if applicable) or to revert the 2013 SUPs by a Statutory Reversion.

D. If the Town chooses as provided herein above (i) to rezone the Property or Area F (as applicable) or (ii) to take a Statutory Reversion action as contemplated by Sections 11(A), 11(C), or 11(I), the Town agrees that time is of the essence and that the Town shall commence such action not later than thirty (30) days after receipt of Developer's Termination Election or the occurrence of any other event that entitles the Town to proceed with such rezoning or Statutory Reversion. If such rezoning or Statutory Reversion is not final by the date that is six (6) months after (x) receipt of Developer's Termination Election or (y) the occurrence of any other event that entitles the Town to proceed with such rezoning or Statutory Reversion, then Developer may elect by written notice to Town to proceed to develop the Property in accordance with the 1992 Development Agreement and/or to bring suit in a court of competent jurisdiction to declare or establish Developer's rights thereunder and to pursue any and all other available remedies (including, but not limited to damages), and, if Developer so elects, the Town Release and the Developer Release will not apply. The Parties agree that Developer's application for the 2012 Building Permit Applications will be deemed automatically, and without further act required, suspended upon the Effective Date of the 2013 Development Agreement, and automatically, and without further act required, reinstated upon the date that Developer elects to proceed as contemplated in this subsection (D).

E. If Developer brings a Declaratory Judgment Action or is subject to a Litigation Filing or any other suit or action relating to Developer's rights to develop the Property and Area F in accordance with (i) the 2013 Town Approvals or (ii) whether portions of the Property are Vested or Non-Vested Property based on the criteria set forth in Section 11(B), (with Developer seeking no other relief as to the Town, including but not limited to attorneys' fees or costs in connection with such suit), then the Town shall vigorously defend (i) the 2013

Town Approvals, or (ii) whether portions of the Property are Vested or Non-Vested Property based on the criteria set forth in Section 11(B). If, in the event that the Developer is entitled to assert under the terms of this Agreement that the Property or Area F, or portions thereof, are subject to R-43 zoning, then the Town shall vigorously defend the R-43 zoning in any action filed at a trial court level, and in any appeal of such trial court decision, at the appellate court level. In all such litigation described above, Town shall support Developer's decision to choose the jurisdiction of or removal to the Bankruptcy Court. The Town Release and the Developer Release will continue in effect so long as Developer is seeking to develop the Property in accordance with the 2013 Town Approvals or R-43 zoning, or a combination thereof.

F. If R-43 zoning (on portions of the Property that is Non-Vested Property) is found, held, or declared to be invalid or unenforceable in whole or in any material part for all or any portion of the Property by a trial court ("**Court Decision on R-43**"), then Developer may elect to pursue development of the Property in accordance with the 1992 Development Agreement and/or to bring suit in a court of competent jurisdiction to declare or establish Developer's rights thereunder and to pursue any and all other available remedies (including, but not limited to damages), and, if Developer so elects, the Town Release and the Developer Release will not apply. Before pursuing this election, Developer shall be required to first pursue the validity and enforceability of the R-43 zoning up to the point of having a Court Decision on R-43, but shall not be required to appeal such decision to an appellate court. If an appeal is filed by any party from a favorable or unfavorable Court Decision on R-43, then Developer may choose to proceed with such appeal and Town shall vigorously defend, so long as Developer has not elected to pursue development of the Property in accordance with the 1992 Development Agreement. For purposes of this Section 11(F), a Court Decision on R-43 is a decision issued by a trial court (such as the Bankruptcy Court, the federal District Court for the District of Arizona, or the Maricopa County Superior Court) upon the substantive question of the R-43 zoning entitlement, but not a court of appeals (such as the Bankruptcy Appellate Panel, the Ninth Circuit Court of Appeals, or the Arizona Court of Appeals). The Parties agree that Developer's application for the 2012 Building Permit Applications will be deemed automatically, and without further act required, suspended upon the Effective Date of the 2013 Development Agreement, and automatically, and without further act required, reinstated upon the date that Developer elects to proceed as contemplated in this Section 11(F).

G. The Parties agree that 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 for the Claims shall be tolled and extended from the date of this Agreement until sixty (60) days after the date that both (a) and (b), following, have occurred (the "Tolling Period"): (a) Developer elects to proceed in accordance with Section 11(D) or 11(F) and (b) Developer has given written notice to the Town that the Tolling Period is ending and that Developer elects to seek to develop the Property in accordance with the 1992 Development Agreement as described in Section 11(D) or 11(F) above. 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 the Claims 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.

H. If the 2013 Development Agreements are terminated, or are not applicable to portions of the Property or Area F as determined by the application of Section 11(B), then (i) the Town's agreement in Section 3(B)(4) of the 2013 Development Agreement for Area F shall survive; (ii) the Town shall, for Non-Vested Property only, execute, acknowledge, and record one or more documents stating that one or both of the 2013 Development Agreements have been terminated and any In Lieu Payment Lien has been released; (iii) if both Area B and Area E are not entitled to be developed pursuant to either the 2013 SUPs or the R-43 zoning (because either Section 11(D) or Section 11(F) is applicable), then any funds paid to the Town pursuant to Section 3(C)(7)(c) of the 2013 Development Agreement (that is, the one million six hundred thousand dollar (\$1,600,000) Developer contribution to pay for 56th Street improvements) shall be returned to Developer; and (iv) if there has been a termination of the 2013 Development Agreements with respect to the Non-Vested Property, and a portion of the Property and/or Area F subject to In Lieu Payments (as defined in the 2013 Development Agreements) is Vested Property, then the obligation to make In Lieu Payments on such Vested Property shall not apply from the date of the Termination Election until a Statutory Reversion or rezoning to R-43 zoning is completed on the Non-Vested Property and is final and non-appealable.

I. As stated in Recital U, the Parties intend that if the 2013 Development Agreement is terminated, then the 2013 Development Agreement for Area F should also be terminated. Therefore, if Developer makes a Termination Election for the 2013 Development Agreement or if the 2013 Development Agreement is otherwise terminated, then Developer may make a Termination Election for the 2013 Development Agreement for Area F; if Developer so elects, the Town may then (i) revert the 2013 SUP for Area F by a Statutory Reversion or (ii) rezone Area F in accordance with Applicable Laws to such zoning as existed prior to the date the 2013 SUP for Area F was approved by the Town.

12. Representations.

A. Developer. Developer represents and warrants to the Town, agreeing and acknowledging that the Town has the right to rely on this representation and warranty and that the Town shall rely on this representation and warranty, that Developer is duly authorized to enter into, execute and deliver this Agreement on behalf of Developer and to bind Developer to the terms of this Agreement, including specifically the Developer Release set forth in Section 8 and the waivers set forth in Section 10 of this Agreement, subject to Bankruptcy Court Approval.

B. Town. The Town represents and warrants to Developer, agreeing and acknowledging that Developer has the right to rely on this representation and warranty and that Developer shall rely on this representation and warranty, that the Town has followed all Applicable Laws in approving this Agreement and is duly authorized to enter into, execute and deliver this Agreement on behalf of the Town and to bind the Town to the terms of this Agreement, including specifically the Town Release set forth in Section 7 and the Town's defense agreements in Sections 11(A), 11(B), 11(E), and 11(F) of this Agreement.

MISCELLANEOUS PROVISIONS

13. Governing Law; Choice of Forum. 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). Those instances set forth in this Agreement in which the Town has indicated that it will support Developer's choice of Bankruptcy Court jurisdiction and any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained solely and exclusively in the Bankruptcy Court or in the United States District Court for the District of Arizona.

14. Assignment and Transfer. Developer shall provide written notice to the Town with respect to the first assignment or transfer of this Agreement within thirty (30) days after the effective date of any assignment or transfer, but such assignment or transfer shall not be subject to the Town's consent. No notice or consent is required for any subsequent assignment or transfer. This Agreement may be assigned or transferred to one or more parties and may thereafter be reassigned or transferred to one or more subsequent parties.

15. Severability. The Town and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all applicable federal, state, county or Town laws, statutes, ordinances, rules and regulations ("**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.

16. 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.

17 Prevailing Language. This Agreement is being entered into by the Parties contemporaneously with the 2013 Town Approvals. 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 an inconsistency between this Agreement and any of the 2013 Development Agreements, then this Agreement shall control.

18 Notices.

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

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

and

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

B. Effective Date of Notices. Any notice sent by United States Postal Service certified or registered mail shall be deemed to be effective on 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. Any Party may designate a different person or entity or change the place to which any notice shall be given as herein provided.

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

20. 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.

21. Attorneys' Fees and Costs. In the event of a breach of this Agreement 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.

22. Waiver. Except for those waivers that are expressly granted 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.

23. Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except that released individuals or entities expressly released by terms or provisions set forth in this Agreement, shall be third party beneficiaries of such release provisions.

24. Exhibits. 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.

25. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and, except as otherwise expressly provided in this Agreement, supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

26. 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.

27. 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.

28. Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the Town and Developer.

29. Nonliability of Town Officials, Etc. and of Employees, Members and Partners, Etc. of Developer. Without limiting any other provision of this Agreement, 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 breach of any term or provision of this Agreement, or with respect to any obligation of a Party 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). Without limiting the generality of the foregoing, Robert Flaxman (and his spouse, if any), Jamie Sohacheski (and his spouse, if any), and Crown Realty & Development, Inc., a California corporation, shall have no liability under this Agreement.

30. 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.

31. Prohibition of Doing Business with Sudan and Iran. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, Developer hereby certifies to the Town that Developer does not have "scrutinized" business operations, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran. Developer acknowledges that, in the event the certification to the Town by Developer 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.

32. Compliance with Immigration Laws and Regulations. Pursuant to the provisions of A.R.S. § 41-4401, Developer warrants to the Town that Developer is in compliance with all Federal immigration laws and regulations that relate to Developer's employees and with the E-Verify Program under A.R.S. § 23-214(A). Developer acknowledges that a breach of this warranty by Developer 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 Developer who performs work pursuant to this Agreement, to ensure compliance with this warranty.

33. 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.

34. 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.

MTS GOLF, LLC, a Delaware limited liability company

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

By: [Signature]
Its: authorized signatory

STATE OF _____)
) ss.
COUNTY OF _____)

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

See Acknowledgment

Notary Public

My commission expires

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: Waiver, Release + Settlement Agreement

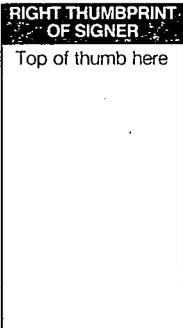
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

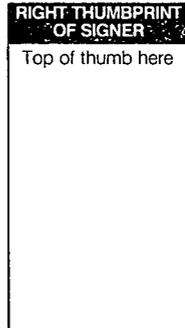
- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

TOWN OF PARADISE VALLEY, ARIZONA, an
Arizona municipal corporation

By: *Scott P. Le Marr*
Its: Mayor

ATTEST:

By: *Duncan Miller*
Town Clerk



APPROVED AS TO FORM:

By: *[Signature]*
Town Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 18 day of April, 2013, by Scott P. Le Marr, 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

Settlement 20130411 Final.docx

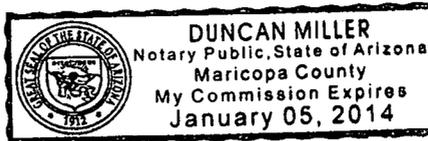


Exhibit A

Legal Description of the Property

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

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

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

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

Exhibit B

Legal Description of Area F

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 IF 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 OF 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 $180^{\circ} 00' 00''$, 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 $90^{\circ} 00' 00''$ 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;

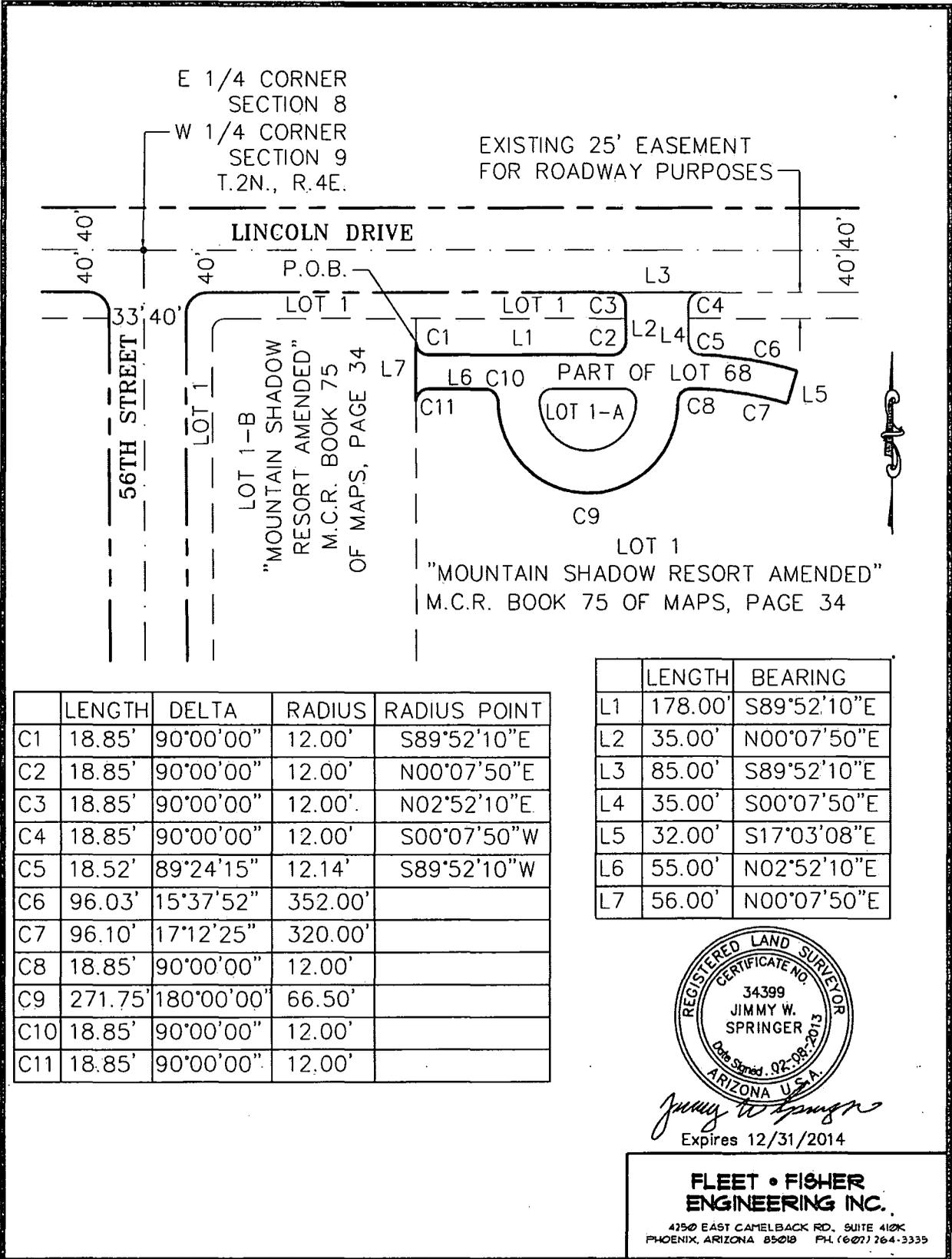
THENCE, NORTH $02^{\circ} 52' 10''$ WEST A DISTANCE OF 55 FEET ALONG THE COMMON LOT LINE OF SAID LOT 1 AND SAID LOT 68 TO A POINT OF CURVATURE WITH A CIRCULAR CURVE WHICH IS CONCAVE SOUTHEASTERLY, WHICH HAS A CENTRAL ANGLE OF $90^{\circ} 00' 00''$ AND A TANGENT OF 12 FEET, SAID POINT BEING A COMMON CORNER 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 $00^{\circ} 07' 50''$ 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.

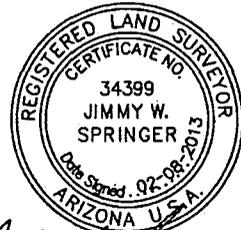
EXCEPT LOT 1A OF SAID "MOUNTAIN SHADOW RESORT AMENDED".





	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.**
4150 EAST CAMELBACK RD., SUITE 410K
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;

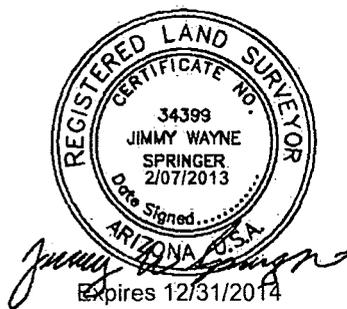
THENCE, ON A BEARING EAST A DISTANCE OF 153.24 FEET ON A LINE 20 FEET NORTH OF AND PARALLEL TO THE COMMON LOT LINE OF SAID LOT 1 AND LOT 67A OF SAID "MOUNTAIN SHADOW RESORT AMENDED";

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;

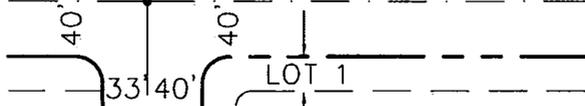
THENCE, NORTH 52° 44' 46" WEST A DISTANCE OF 100 FEET ALONG THE COMMON LOT LINE OF SAID LOT 1 AND LOT 33 OF SAID "MOUNTAIN SHADOW RESORT AMENDED" TO A POINT WHICH IS A COMMON CORNER OF SAID LOT 1, SAID LOT 67A AND SAID LOT 33;

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



EXISTING 25' EASEMENT
FOR ROADWAY PURPOSES

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

56TH STREET

EXISTING 25' EASEMENT
FOR ROADWAY PURPOSES

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



Jimmy W. Springer
Expires 12/31/2014

EAST
153.24' S52° 44' 46"E
108.87'

WEST
146.44'

LOT 68

L = 20.14'
Δ = 11°51'20"
R = 97.35'

P.O.B.

33'40'

LOT 67A

LOT 33

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

RESOLUTION NUMBER 1273

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, AUTHORIZING THE EXECUTION OF A WAIVER, RELEASE AND SETTLEMENT AGREEMENT (“AGREEMENT”) BETWEEN THE TOWN OF PARADISE VALLEY AND MTS LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND MTS GOLF, LLC, A DELAWARE LIMITED LIABILITY COMPANY; AND DECLARING AN EMERGENCY AND PROVIDING FOR THE IMMEDIATE EFFECTIVENESS OF THE AGREEMENT

BE IT RESOLVED, BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY:

WHEREAS, MTS Land, LLC, a Delaware Limited Liability Company (“MTS Land”) and MTS Golf, LLC, a Delaware Limited Liability Company (“MTS Land,” and “collectively MTS Land and MTS Golf constitute “Developer”) own approximately 67 acres of land located in the proximity of Lincoln Drive and 56th Street (the “Property”) within the Town of Paradise Valley, Arizona (“Town”), and MTS Land also owns an undivided 1/60 interest in Lot 68 of “Mountain Shadow Resort Amended” recorded in Book 75, Page 34, official records of Maricopa County Recorder on January 20, 1958 (“Lot 68”); and

WHEREAS, on July 19, 2012, Developer filed petitions in the United States Bankruptcy Court for the District of Arizona (the “Bankruptcy Court”) under Chapter 11 of the United States Bankruptcy Code in two cases that are jointly administered and styled as *In re: MTS Land, LLC, a Delaware limited liability company*, Case No. 2:12-bk-16257-EWH, and *In re: MTS Golf, LLC, a Delaware limited liability company*, Case No. 2:12-bk-16259-EWH (the “Bankruptcy Cases”); and

WHEREAS, an existing resort hotel (which is not currently operated for hotel purposes) known as “Mountain Shadows” is located on the Property, along with an 18-hole golf course, practice facility, and clubhouse, tennis courts and other related facilities (collectively the “Resort”); and,

WHEREAS, MTS Land has applied to the Town for a rezoning of the Property and a portion of Lot 68 (designated as “Area F”) to change the zoning of the Property and Area F to SUP District (Resort) in order to facilitate redevelopment of the Property and Area F; and

WHEREAS, the application to rezone the Property and Area F may be approved by the Town through two separate ordinances, designated as Ordinance No. 653 (for the Property) and Ordinance 665 (for Area F) (collectively the “Rezoning Ordinances”), which will be accompanied by two separate development agreements (the “2013 Development Agreements”) that may be adopted contemporaneously with the two ordinances; and

WHEREAS, the Town and the Developer may have differences of opinion regarding the current zoning or entitlements on the Property (the “Entitlements”), or with regard to the Developer’s ability to redevelop the Property based on provisions contained in a development agreement between the Town and the Developer’s predecessor in interest (the “1992 Development Agreement”); and

WHEREAS, the Town and the Developer desire to provide a means for resolving both the differences of opinion regarding both the Entitlements and the 1992 Development Agreement as well as resolving and settling any contention that the Town’s rezoning of the Property and Area F (by adoption of the Rezoning Ordinances) creates a claim by the Developer against the Town for breach of contract, just compensation for diminution in value under the provisions of A.R.S. §§ 12-1134 through 12-1136, or any other claims, including with such settlement appropriate waivers and releases by both Developer and Town; and

WHEREAS, the Town and the Developer also desire to provide in their settlement agreement for certain contingencies related to the Rezoning Ordinances and the 2013 Development Agreements that may arise in connection with any necessary Bankruptcy Court Approvals, any potential referendum filings, and any suits or claims made by third parties to challenge the validity or effectiveness of the Rezoning Ordinances and/or the 2013 Development Agreements; and

WHEREAS, Town and Developer have agreed to the terms of a Waiver, Release and Settlement Agreement that accomplishes the objectives noted above; and

WHEREAS, the Town Council desires to adopt a resolution authorizing the Mayor to execute the Waiver, Release and Settlement Agreement attached hereto and incorporated herein by this reference (the “Agreement”); and

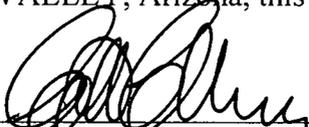
WHEREAS, Town desires to have the Agreement take effect immediately upon the execution of this resolution and the Agreement due to the need for certain filings that will need to be made in connection with the Bankruptcy Cases and the defense of certain legal positions by the Town in Bankruptcy Court, as well as to immediately resolve the likelihood that the Developer could, without this Agreement, assert and prosecute certain claims against the Town that would, if Developer prevailed on such claims, deplete the Town’s general funds and reserve accounts to the point where the Town may not be capable of funding certain basic functions that help ensure the peace, health and safety of the Town and its residents;

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

1. The Mayor is authorized to execute the Agreement attached hereto immediately upon the approval and signing of this Resolution.
2. The Town Clerk is authorized to record the Agreement in the manner provided by law.

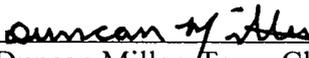
3. The immediate operation of this Resolution is necessary to protect and preserve the public peace, health, safety and welfare of the Town, thereby an emergency is declared to exist, and this Resolution shall be in full effect upon its passage and adoption.

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



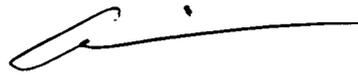
Scott P. LeMarr, Mayor

ATTEST:



Duncan Miller, Town Clerk

APPROVED AS TO FORM



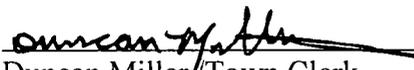
Andrew M. Miller, Town Attorney

CERTIFICATION

I, Duncan Miller, Town Clerk hereby certify that the foregoing is a full, true and correct copy of Resolution Number 1273 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