

WHEN RECORDED RETURN TO:
Town of Paradise Valley
Attn: Town Attorney
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

=====

**FIRST AMENDMENT TO
AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

=====

BY, BETWEEN, AND AMONG:

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

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

**MS CONDO-HOTEL OWNER, LLC,
A DELAWARE LIMITED LIABILITY COMPANY;**

AND

**MS RESORT OWNER, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

_____, 2015

=====

FIRST AMENDMENT TO

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “**Amendment**”) is made as of the ____ day of _____, 2015, by, between, and among the TOWN OF PARADISE VALLEY, ARIZONA, an Arizona municipal corporation (the “**Town**”); MTS LAND, LLC, a Delaware limited liability company (“**MTS Land**”); MS CONDO-HOTEL OWNER, LLC, a Delaware limited liability company (“**MS Condo-Hotel**”), and MS RESORT OWNER, LLC, a Delaware limited liability company (“**MS Resort**”) (collectively, MTS Land, MS Condo-Hotel, and MS Resort are called the “**Owners**”). The Town and the Owners may be referred to collectively in this Amendment as the “**Parties**.”

RECITALS

A. The Owners own certain property subject to an Amended and Restated Development Agreement recorded on April 19, 2013, as Document 2013-0359723 in the Official Records of Maricopa County, Arizona (the “**Development Agreement**”). The Owners collectively own property that constitutes the developable areas of Development Area B under the Development Agreement, as further described in Exhibit A-1 (the “**Area B Parcels**”).

B. The Owners and the Town desire to amend the Development Agreement only as the Development Agreement affects the Area B Parcels in order to clarify the intent of the Parties with respect to the applicability of the In Lieu Payment provisions of the Development Agreement as set forth in Section C(8) of Article 3 of the Development Agreement

C. The Town Council has authorized execution of this Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the Town and the Owners hereby amend the Development Agreement as it applies to the Area B Parcels as follows:

1. The first grammatical paragraph of Section C(8) of Article 3 of the Development Agreement, and Section C(8)(a) of Article 3 of the Development Agreement are deleted in their entirety, and are replaced with the following:

8. In Lieu Payments. As part of the consideration for this Agreement and the 2013 SUP, Owner agrees that the then current Owner of any Resort Estates lot within Development Area E or Resort Residential unit or Hotel Key within Development Area B that is not used for the purpose of renting for transient occupancy under agreements having individual occupancy term(s) of less than thirty (30) days (each such lot or unit constituting an “**Obligated Unit**”) shall make in lieu payments (each such payment being an “**In Lieu Payment**”) to the Town, as set forth in Section (C)(8). In no event shall (i) any portion of the Property used for non-residential use (including but not limited to the Minimum Resort Hotel Improvements, Area C Retail, Golf Course, Clubhouse, Resort Ancillary Facilities and Uses, Minimum Hotel Keys, any common areas and

amenities, and Hotel Keys owned by the Principal Resort Owner), or (ii) any lot or unit used during an entire Payment Year (defined below) exclusively for the purpose of renting for transient occupancy under agreements having individual occupancy term(s) of less than thirty (30) days (a “**Non-Obligated Unit**”), be required to make an In Lieu Payment.

(a) Applicability. All Obligated Units are subject to the requirement to make In Lieu Payments in accordance with this Agreement. If a lot or unit is converted during a Payment Year from being an exclusively Non-Obligated Unit to being fully or partially used as an Obligated Unit, the Owner of such lot or unit shall make a full annual In Lieu Payment for such Payment Year within thirty (30) days following such conversion and shall be entitled on the next Payment Date following commencement of the full or partial use of the lot or unit as a Obligated Unit to a credit against the annual In Lieu Payment then due equal to the amount of any taxes paid to the Town as a result of the use of the lot or unit as a Non-Obligated Unit during the Payment Year in which the conversion occurred. If a lot or unit is converted during a Payment Year from being an exclusively Obligated Unit to being fully or partially used as a Non-Obligated Unit, any taxes paid to the Town as a result of the use of such lot or unit as a Non-Obligated Unit during such Payment Year shall be credited toward payment of the next In Lieu Payment otherwise owing by the Owner of such lot or unit. Any lot or unit contemplated to be used only part time as a Non-Obligated Unit as of commencement of a Payment Year shall pay a full annual In Lieu Payment on the Payment Date and then be entitled to a credit against the next In Lieu Payment owing on such lot or unit, if any, based on taxes paid to the Town as a result of the use of the lot or unit as a Non-Obligated Unit during such Payment Year. In no event shall the Town have any obligation to refund any In Lieu Payments paid for a lot or unit as a result of overpayment of an In Lieu Payment, but any such overpayment will be credited to any future In Lieu Payment due for such lot or unit. Conversion of a lot or unit from an Obligated Unit to a Non-Obligated Unit and/or from a Non-Obligated Unit to an Obligated Unit will not affect the continuing lien of the Town on the lot or unit pursuant to parts (g) and (h) below, and such lien will survive any such conversion. Even though a Hotel Key may be converted from a Non-Obligated Unit to an Obligated Unit (and vice versa), it shall remain a Hotel Key.

2. The first sentence of Section C(8)(i) of Article 3 of the Development Agreement is amended to read as follows:

MTS Land/Golf hereby grants, conveys, assigns and transfers to the Town a security interest in and lien on each Resort Estates lot, Resort Residential unit or Hotel Key created by a recorded final plat or map in Development Area E and Development Area B in order to secure the payment of the In Lieu Payment for each Payment Year; provided however, that the Minimum Hotel Keys along with any additional Hotel Keys, to the extent they are owned by the Owner of a Resort Hotel shall not be subject to such lien.

3. The third sentence of Section C(8)(i) of Article 3 of the Development Agreement is amended to read as follows:

Notwithstanding the foregoing, the Town will execute any further acknowledgement that the Town's security interest and lien does not apply to a Non-Obligated Unit (but only during the time period when such lot or unit is used during an entire Payment Year for the purpose of renting under agreements having individual occupancy term(s) of less than thirty (30) days) 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.

4. Section C(8)(i) of Article 3 of the Development Agreement is amended to add a new subsection (n) at the end of Section C(8)(i) to read as follows:

(n) Lot 131 Hotel Key Inspection. Upon completion of each Resort Unit as a Hotel Key (in a manner that meets the requirements for a Hotel Key under the Development Agreement and 2013 SUP) on Lot 131 according to the plat of "Mountain Shadow Resort Unit 2 – Amended VII" ("**Lot 131**"), the owner of such unit shall give notice to the Town requesting that the Town inspect such unit for purposes of determining that the unit is a Hotel Key on the date of inspection. Each owner of a Resort Unit intended to qualify as a Hotel Key shall cooperate with the Town's inspection thereof. The Town shall inspect such unit within ten (10) business days following such request and, if the unit meets the requirements for a Hotel Key under the Development Agreement and 2013 SUP, the Town will issue a written confirmation of that fact to all parties to this Amendment.

5. Section C(3) of Article 3 of the Development Agreement is amended to add a new subsection (h) at the end of Section C(3) to read as follows:

(h) Hotel Key Restriction. MTS Land (or a successor or assign to which MTS Land has assigned its rights under this subsection (h) in writing) may elect to record in the Official Records of Maricopa County, Arizona an executed and acknowledged written notice in substantially the form attached as Exhibit J (a "**Restriction Notice**") designating which, if any, of Lots 129, 131, 132, 133, and 134 of "Mountain Shadow Resort Unit 2 – Amended VII" (each, a "Lot," as such lots may be replatted or remapped from time to time) are restricted such that no Resort Units other than Hotel Keys shall be constructed and operated on such Lot(s). The election for each Lot shall be made prior to the commencement of construction of Resort Residential units on the Lot or shall be of no force or effect as to that Lot. By executing this Amendment, MTS Land, MS Condo-Hotel, and MS Resort agree and acknowledge that such an election made prior to the commencement of construction shall be binding on them and their successors and assigns. All of the 300,000 square feet of Floor Area for Resort Residential development in Area B described in Stipulation 43 of the 2013 SUP shall be allocated only to the Lots that have not been restricted by the election set forth in this subsection (h). Any Lot that has not been restricted by the election set forth

in this subsection (h) may be used for any type of Resort Unit allowed in Area B under the 2013 SUP, subject to all other terms of the 2013 SUP and the Development Agreement. Nothing in this paragraph shall prevent the construction and use of Resort Ancillary Facilities and Uses and other uses permitted under the 2013 SUP on any Lot. At any time, MTS Land (or a successor or assign to which MTS Land has assigned its rights under this subsection (h) in writing) may record in the Official Records of Maricopa County, Arizona an executed and acknowledged written notice in substantially the form attached as Exhibit K (a “**Waiver Notice**”) waiving its rights to make elections to restrict Lots under this subsection (h). Elections pursuant to this subsection (h) made prior to the recordation of such Waiver Notice shall continue in effect but any elections made after the recordation of such Waiver Notice shall be of no force or effect. Within ten (10) days after recording a Restriction Notice or Waiver Notice, MTS Land shall provide a recorded copy of the Restriction Notice or Waiver Notice to the Town and each owner of a Lot subject to the Restriction Notice or Waiver Notice, as applicable.

6. This Amendment shall be effective on the date on which this Amendment has been adopted and approved by the Town Council, executed by duly authorized representatives of the Town and the Owners, and recorded in the Official Records of Maricopa County, Arizona. Within ten (10) days after this Amendment has been approved by the Town and executed by the Town and the Owners, the Town shall cause this Amendment to be recorded in the Official Records of Maricopa County, Arizona. This Amendment does not affect the application of the Development Agreement with regard to any real property other than the Area B Parcels, and the Development Agreement as applied to such other real property shall be interpreted as though this Amendment did not exist.

7. Except as expressly modified by this Amendment, all other terms, provisions and conditions of the Development Agreement are unchanged and remain in full force and effect. All defined terms in this Amendment shall have the same meaning as in the Development Agreement. If there is a conflict between the terms and provisions of this Amendment and the Development Agreement, the terms and provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the Town and the Owners have executed this Amendment as of the date first set forth above.

[SIGNATURES ON FOLLOWING PAGES]

MTS LAND, LLC, a Delaware limited liability company

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

By: _____
Robert Flaxman, Authorized Signatory

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, 2015, before me, Ann Marie Vera, a notary public, personally appeared Robert Flaxman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

(Place notary seal above)

MS CONDO-HOTEL OWNER, LLC, a Delaware limited liability company

By: _____
Kristopher L. Harman, Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Acknowledged before me this ____ day of _____, 2015, by Kristopher L. Harman, who acknowledged himself to be the Vice President of MS Condo-Hotel Owner, LLC, a Delaware limited liability company, for and on behalf of the limited liability company.

Notary Public

Notary Seal/Stamp

MS RESORT OWNER, LLC, a Delaware limited liability company

By: _____
Kristopher L. Harman, Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Acknowledged before me this ____ day of _____, 2015, by Kristopher L. Harman, who acknowledged himself to be the Vice President of MS Resort Owner, LLC, a Delaware limited liability company, for and on behalf of the limited liability company.

Notary Public

Notary Seal/Stamp

TOWN OF PARADISE VALLEY, ARIZONA, an
Arizona municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
Duncan Miller, Town Clerk

APPROVED AS TO FORM:

By: _____
Andrew M. Miller, Town Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Acknowledged before me this ____ day of _____, 2015, by
_____, Town _____ of the Town of Paradise Valley,
Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing
instrument on behalf of the Town.

Notary Public

Notary Seal/Stamp

EXHIBIT A-1
LEGAL DESCRIPTION OF THE AREA B PARCELS

Lots 129, 131, 132, 133, and 134 of Mountain Shadow Resort Unit 2 – Amended VII, according to Book 1232 of Maps, page 27, records of Maricopa County, Arizona.

**EXHIBIT J
FORM OF RESTRICTION NOTICE**

WHEN RECORDED RETURN TO:

RESTRICTION NOTICE

THIS RESTRICTION NOTICE (this “**Restriction Notice**”) is given as of this ___ day of _____, 20___, by MTS LAND, LLC, a Delaware limited liability company (“**MTS Land**”), pursuant to Section C(3)(h) of Article 3 of the Amended and Restated Development Agreement recorded on April 19, 2013, as Document 2013-0359723 in the Official Records of Maricopa County, Arizona, as amended by the First Amendment to Amended and Restated Development Agreement recorded on _____, 2015, as Document 2015-_____ in the Official Records of Maricopa County, Arizona (collectively, the “**Development Agreement**”).

MTS Land hereby elects to restrict the following Lot(s):

Lot(s) _____ of Mountain Shadow Resort Unit 2 – Amended VII, according to Book 1232 of Maps, page 27, records of Maricopa County, Arizona (the “**Restricted Lot(s)**”),

such that no Resort Units other than Hotel Keys shall be constructed and operated on the Restricted Lot(s). Nothing in this Restriction Notice shall prevent the construction and use of Resort Ancillary Facilities and Uses and other uses permitted under the 2013 SUP on any Restricted Lot. This Restriction Notice has been executed and recorded to provide notice of the foregoing election to all persons dealing with the Restricted Lot(s). Except for the foregoing election, which is binding on each owner of a Restricted Lot(s) and its successors and assigns, all other terms, provisions and conditions of the Development Agreement are unchanged and remain in full force and effect. Except as otherwise defined herein, all defined terms in this Restriction Notice shall have the same meaning as in the Development Agreement.

[SIGNATURES ON FOLLOWING PAGES]

MTS LAND, LLC, a Delaware limited liability company

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

By: _____
Robert Flaxman, Authorized Signatory

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, 2015, before me, Ann Marie Vera, a notary public, personally appeared Robert Flaxman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

(Place notary seal above)

**EXHIBIT K
FORM OF WAIVER NOTICE**

WHEN RECORDED RETURN TO:

WAIVER NOTICE

THIS WAIVER NOTICE (this “**Waiver Notice**”) is given as of this ___ day of _____, 20___, by MTS LAND, LLC, a Delaware limited liability company (“**MTS Land**”), pursuant to Section C(3)(h) of Article 3 of the Amended and Restated Development Agreement recorded on April 19, 2013, as Document 2013-0359723 in the Official Records of Maricopa County, Arizona, as amended by the First Amendment to Amended and Restated Development Agreement recorded on _____, 2015, as Document 2015-_____ in the Official Records of Maricopa County, Arizona (collectively, the “**Development Agreement**”).

MTS Land hereby waives its rights to make elections to restrict the following Lot(s):

Lot(s) _____ of Mountain Shadow Resort Unit 2 – Amended VII, according to Book 1232 of Maps, page 27, records of Maricopa County, Arizona.

All of the 300,000 square feet of Floor Area for Resort Residential development in Area B described in Stipulation 43 of the 2013 SUP shall be allocated only to Lot(s) _____ of Mountain Shadow Resort Unit 2 – Amended VII, according to Book 1232 of Maps, page 27, records of Maricopa County, Arizona. This Waiver Notice has been executed and recorded to provide notice of the foregoing waiver to the owners of the Area B Parcels and all other persons dealing with the Area B Parcels; the Area B Parcels are defined in the Development Agreement as Lots 129, 131, 132, 133, and 134 of Mountain Shadow Resort Unit 2 – Amended VII, according to Book 1232 of Maps, page 27, records of Maricopa County, Arizona. Except for the foregoing waiver, all other terms, provisions and conditions of the Development Agreement are unchanged and remain in full force and effect. Except as otherwise defined herein, all defined terms in this Waiver Notice shall have the same meaning as in the Development Agreement.

[SIGNATURES ON FOLLOWING PAGES]

MTS LAND, LLC, a Delaware limited liability company

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

By: _____
Robert Flaxman, Authorized Signatory

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, 2015, before me, Ann Marie Vera, a notary public, personally appeared Robert Flaxman, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary Public

(Place notary seal above)