

NOTE: This draft agreement (dated 12-14-15) has not been considered by the Town Council (which is the only entity with authority to approve this agreement) and is a non-binding proposal for further discussion.

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

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**AMENDED AND RESTATED
DEVELOPMENT AGREEMENT,
RESTRICTIVE COVENANT, AND
RELEASE**

=====

BETWEEN:

**TOWN OF PARADISE VALLEY, ARIZONA,
AN ARIZONA MUNICIPAL CORPORATION;
AND FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY.**

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DECEMBER 17, 2015

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**AMENDED AND RESTATED DEVELOPMENT AGREEMENT, RESTRICTIVE
COVENANT, AND RELEASE**

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT, RESTRICTIVE COVENANT, AND RELEASE (this “**Agreement**”) is made as of the ____ day of December, 2015, between the TOWN OF PARADISE VALLEY, ARIZONA, an Arizona municipal corporation (the “**Town**”), and FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC, an Arizona limited liability company (“**Five Star**”). The Town, Five Star, or their successors or assigns, are sometimes referred to in this Agreement collectively as the “**Parties**,” or individually as a “**Party**.” This Agreement amends and restates, in its entirety, the 2008 Development Agreement, as defined later in this Agreement.

RECITALS

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

A. Five Star owns fee simple title to approximately one hundred five (105) acres of real property located in the proximity of Lincoln Drive and Mockingbird Lane within the Town of Paradise Valley, Arizona, defined in Article 1 of this Agreement as the “**Property**.” The Property is described in Exhibit A.

B. The Town’s current General Plan designation for the Property is Resort/Country Club in the East Lincoln North Development Area, with such designation in the current General Plan (pursuant to Section 2.2 of the Land Use and Development section) signifying that this area is “meant to encourage new resort development and redevelopment that reflects the Town’s needs for fiscal health, economic diversification and quality of life.”

C. The Property was the subject of prior zoning actions by the Town in April 2008 enacted by Ordinance No. 603 (the “**Current Zoning**”); and the Property currently remains undeveloped.

D. The Current Zoning of the Property allows for, among other things, a resort hotel of 225 hotel units; detached and attached single-family and two-family dwellings consisting of 15 resort estates, 46 resort luxury homes and 100 resort patio homes.

E. Pursuant to and in compliance with the Town’s Zoning Ordinance, consistent with the General Plan, and concurrent with submittal of this Agreement, Five Star has submitted to the Town its application (“**2015 SUP Application**”) to rezone the Property and to obtain a major amendment to the existing special use permit (granted in conjunction with the Current Zoning) by adopting a new special use permit (designated by the Town as SUP No. 15-01), which will supersede and replace the existing special use permit, replace the Current Zoning with new zoning, be adopted by Town Ordinance No. 694, and allow for the development of the Resort and those uses shown on the Site Plan (said collective actions hereinafter called the “**2015 SUP**”).

F. Five Star's rezoning request in the 2015 SUP includes a resort/hotel use of 200 hotel rooms, with a spa, multiple restaurants, ballrooms, and meeting space (the "**Principal Resort Hotel**"); ninety-four (94) resort-related attached condominium villas ("**Resort Villas**"); sixty-six (66) resort related luxury detached single family homes ("**Resort Related Luxury Homes**"); forty-five (45) resort branded detached single family homes ("**Resort-Branded Homes**"); sixty-two (62) resort related attached residences ("**Resort Related Attached Residences**"); resort-related retail and restaurant uses ("**Area E1 Retail/Restaurant Uses**"); a future development area that may potentially include restaurants, resort-related health services, and hotels ("**Area E2**"); and private streets and rights-of-way; and areas devoted to undeveloped open space (collectively, the "**Resort**") in substantial conformance with the 2015 SUP.

G. In addition to the 2015 SUP, Five Star has also requested that certain portions of the one hundred five (105) acres constituting the Property be platted in the future as subdivisions through an expedited subdivision preliminary plat and preliminary map application, such plat and map to provide for individual lots and units (shown on the 2015 SUP and the Site Plan as the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes and Resort Related Attached Residences) that Five Star desires to sell in fee title to third parties. Five Star may sell each of the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences to individual owners or choose to retain ownership of these units or repurchase and resell them from time to time.

H. The Town believes that the Property could be used for three (3) lodging products, which would generate significantly more transaction privilege tax and bed tax revenue for the Town than the one (1) resort hotel proposed by Five Star. Accordingly, the Town would desire that the Property have three (3) lodging or hotel products on the Property and thus require that all of the proposed development units, including the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences, be mandatorily required to be used as resort hotel rooms, such that each of these units would be required to be included for rent in the Resort Hotel Rental Program or some other required mandatory short-term resort rental program.

I. Five Star recognizes that the land uses requested in the 2015 SUP are not typical uses or densities and, in part, are not permitted under the Current Zoning; and that Five Star does not desire to be obligated to have three (3) lodging products on the Property. Instead, Five Star has requested that the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences not be mandatorily required to be used as resort hotel rooms and that each of these units not be required to be included for rent in the Resort Hotel Rental Program or some other required mandatory short-term resort rental program. Five Star has requested that the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences may be sold to individual owners who may elect to occupy their unit free of such rental requirements.

J. Five Star further recognizes that allowing for such uses without zoning restrictions requiring rental of the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences as resort hotel rooms by Five Star may decrease the amount of Town transaction privilege tax and bed tax revenues that the Resort could otherwise generate if the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, {00029957}

and Resort Related Attached Residences were typical resort hotel rooms and available for rental to Resort guests. In recognition of this, the Parties agree that Five Star, and/or its successor Owner(s), shall, for a period of time, replace some of lost Town revenues that might otherwise be generated if the Property were to have three (3) lodging products as a requirement, but also allowing for an offset to the amount of lost revenues for other revenue generating sources on the Property as a whole, and in particular, the additional revenues generated through retail and restaurant sales on Area E1. The Town has suggested that the replacement of the lost revenues be made through a secured obligation. Five Star has suggested that it establish a reserve account for purposes of secured the revenue replacement payment obligation. In furtherance of this mutually agreed upon method for making revenue replacement payments, the revenue replacements shall be allocated only to certain units on the Property, that is, the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences, with such units to make an annual payment to the Town that is collected through a master association (the “**Resort Unit Revenue Replacement Payments,**” as defined below) to replace the loss of other revenue generating sources on the Property, with a credit against the amount of such annual payments based on the generation of revenue on Area E1.

K. The Town and Five Star intend that the Resort Unit Revenue Replacement Payments and the associated obligations of the Owners created by this Agreement create a real covenant that will run with the Property for a certain period of time. In connection with and in furtherance of that intent, the Town and Five Star agree and intend that this Agreement touches and concerns the Property in at least the following ways:

(i) the Property is burdened by the obligations under this Agreement, including the obligation of portions of the Property to pay the Resort Unit Revenue Replacement Payments;

(ii) the Property is benefited by that burden in that by the Town’s adoption of the 2015 SUP and the adoption of this Agreement, Five Star can proceed with the contemplated redevelopment of the Property, thereby enhancing the future Owners’ use and enjoyment of the Property and enhancing the value of the Property; and

(iii) the Property is further benefited by the Town’s maintenance of and enhancements to various sidewalks, streets, rights-of-way, medians and other infrastructure owned by the Town adjoining and servicing the Property, which will be partially funded by the Resort Unit Revenue Replacement Payments; [a portion of the Resort Unit Revenue Replacement Payments will be used for the Town’s funding of the Scottsdale Convention and Visitor’s Bureau and other mechanisms that promote tourism and for the construction and other enhancements to various sidewalks, streets, rights-of-way, landscaping, medians and other infrastructure owned by the Town adjoining and servicing the Property and the maintenance of those enhancements in perpetuity], which will further enhance the appeal of the Resort and the future Owners’ use and enjoyment of the Property and the value of the Property, including the individual Resort Villa, Resort Related Luxury Home, Resort-Branded Home, and Resort Related Attached Residence units on the Property.

L. Based on the flexible nature of the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences, the Town and Five Star acknowledge that the Resort Unit Revenue Replacement Payment for each Resort Unit will, for a period of time, provide revenue consistent with the revenues that the Town may not receive due to the flexibility in the uses of the Resort Units, and is consistent with and advances the intent and goals of the General Plan for development in Development Areas (as designated in the General Plan) to reflect the Town's needs for fiscal health, economic diversification, and quality of life.

M. Five Star and the Town intend to coordinate regarding the design and construction of certain Owner Perimeter Improvements and the Street Improvements, with each Party responsible for design, construction, and its share of costs, all as more fully described herein.

N. The Resort, the 2015 SUP Application, and the Site Plan have been extensively reviewed and considered by the Town and its representatives, consultants, agencies, and departments, and the public provided input and comment thereon to the Town and Five Star.

O. The Town has conducted duly noticed public hearings on the 2015 SUP Application and has made all the findings as required by the Town's Zoning Ordinance.

P. The Parties believe that this Agreement is consistent with the Town's General Plan, A.R.S. § 9-500.05, the Town Code, the Zoning Ordinance, and other Applicable Laws, and that this Agreement and the Resort are: (i) consistent with the objectives, policies, general land uses and programs in the General Plan applicable to the Property; (ii) compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Property is located; (iii) in conformity with public convenience, general welfare and good land use practice; (iv) will not be detrimental to the health, safety, or general welfare; and (v) will not adversely affect the orderly development of property or the preservation of property values.

Q. Five Star acknowledges that the obligations and commitments of the Town contained in this Agreement are adequate consideration for Developer's covenants and agreements contained herein.

R. Prior to or concurrently with approval of this Agreement, the Town has also approved Town Ordinance No. 694 amending the Current Zoning for the Property to the new zoning provided for in Ordinance No. 694.

S. The Town's governing body has authorized execution of this Agreement by Town Ordinance No. 696, a copy of which is attached to this Agreement as Exhibit C.

T. Five Star and Town recognize that the land uses approved in the 2015 SUP constitute a resort (or resorts), including a spa, ballrooms, and meeting space, hotel rooms, and facilities necessary for administering and servicing the facility, and on-site parking. The additional accessory uses approved in the 2015 SUP include, but are not limited to, restaurants, resort-related retail, resort-related health services, and resort-related residential uses, which are necessary for financing, administering and servicing the facility as a whole. While the primary and accessory uses can vary in scale, the Minimum Resort Hotel Improvements (as defined

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below) are sufficient to constitute the primary use. The phasing, as contemplated in the 2015 SUP and this Agreement, has been determined by the Town to comply with primary use and accessory use requirements in the Town's Zoning Ordinance.

U. Because of potential uncertainties in the approval of a development project, applicable design and development standards, approvals of subsequent phases of a project, the cost of public improvements and facilities, flexible phasing of the residential and resort components of the Resort, and other development risks that could deter the development of the Property, the Town and Five Star desire to enter into this Agreement to eliminate those uncertainties to the development of the Property over which the Town has control and to facilitate Five Star's development of the Resort on the Property on a phase by phase basis consistent with the Site Plan, the 2015 SUP, and this Agreement.

V. Five Star acknowledges that the obligations and commitments of the Town contained in this Agreement, including the allowance for certain phasing of the development of the Property requested by Five Star, are adequate consideration for Five Star's covenants and agreements contained herein. As additional consideration for the obligations and commitments provided by the Town in this Agreement, Five Star has agreed to provide for the Resort Unit Revenue Replacement Payment to the Town as reasonable compensation.

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

X. The Town acknowledges that by entering into this Agreement under A.R.S. § 9-500.05, the Town Code, and the Zoning Ordinance, it is exercising its governmental powers over development of the Property and this Agreement will bind the Town and all Town Councils now and in the future. Each Party acknowledges that the other is entitled to, and will rely on, the obligations and commitments of the other Party undertaken in this Agreement.

ARTICLE 1 -- DEFINITIONS

In this Agreement and the exhibits thereto, unless a different meaning clearly appears from the context, terms shall have the meanings set forth in this Article 1 or the meanings otherwise ascribed to such terms parenthetically or otherwise elsewhere in this Agreement (or the exhibits thereto).

"2008 Development Agreement" means the Development Agreement approved by the Town Council pursuant to Resolution No. 1164 and executed by Five Star and the Town on April 10, 2008.

"2015 SUP" means as defined in Recital E.

"2015 SUP Application" means as defined in Recital E.

"Acceptable Brand" means (i) for the time period from the Resort Opening Date to the fifth (5th) anniversary of the Resort Opening Date, one of the Opening Brands, (ii) for the time {00029957}

period from the fifth (5th) anniversary of the Resort Opening Date until the twenty-fifth (25th) anniversary of the Resort Opening Date, one of the Year 5 to 25 Brands, and (iii) for the time period after the twenty-fifth (25th) anniversary of the Resort Opening Date, one of the Year 5 to 25 Brands or a brand chosen pursuant to Section 1.3 of Exhibit D.

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

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

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

“**Approval Date**” means the date on which all of the following have occurred: the 2015 SUP is (i) approved (i.e., voted on) by the Town Council of the Town of Paradise Valley, Arizona, and (ii) signed by the Mayor.

“**Area E1 Retail/Restaurant Uses**” means as generally described in Recital F and as further described in the 2015 SUP.

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

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

“**Claims**” means as defined in Section 2.2.5.

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

“**Construction Expert**” means as defined in Section 2.3.5.10.

“**CPI**” means the Consumer Price Index compiled and published by the United States Department of Labor, Bureau of Labor Statistics, for all Urban Consumers, U.S. City Average, {00029957}

1982-1984 = 100. If at any time the CPI no longer exists, the Town shall substitute any official index published by the Bureau of Labor Statistics or by a successor or similar government agency that may be in existence and which in the Town's reasonable business judgment is most nearly equivalent. If the base period for the CPI is changed, then calculations shall be adjusted to the new base period.

“Current Zoning” means as defined in Recital C.

“Default” or **“Event of Default”** means one or more of the events described in Section 5.1 or Section 5.2 provided, however, that such events shall not give rise to any remedy until effect has been given to all grace periods, cure periods and/or periods of Enforced Delay provided for in this Agreement and that in any event the available remedies shall be limited to those set forth in Article 5.

“Default Rate” means an interest rate that is the lesser of (i) seven percent (7%) per annum in excess of the rate of interest calculated by the Intercontinental Exchange (ICE) and published by Thomson Reuters as the Daily “LIBOR Rate (USD)”, or (ii) the maximum interest rate permitted by Applicable Laws. If such rate is no longer published, the Town shall substitute a rate published by the Wall Street Journal or a successor or similar party in existence, which in the Town's reasonable business judgment is most nearly equivalent.

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

“Designated Lenders” means as defined in Section 7.24.

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

“Development Area A1” or **“Area A1”** means that area of land depicted as such on Exhibit B.

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

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

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

“Development Area E1” or **“Area E1”** means that area of land depicted as such on Exhibit B.

“Development Area E2” or **“Area E2”** means that area of land depicted as such on Exhibit B.

“Development Areas” means the areas depicted on the Site Plan (Page D-1 of the Approved Plans attached to the 2015 SUP) attached to this Agreement as Exhibit B and which is incorporated into this Agreement for all purposes.

“Effective Date” means the date on which all of the following have occurred: (i) this Agreement and the 2015 SUP have been adopted and approved by the Town Council, executed by duly authorized representatives of the Town and Five Star, and recorded (if applicable) in the office of the Recorder of Maricopa County, Arizona; (ii) Five Star has executed and recorded a “Proposition 207” waiver acceptable to the Town that waives certain rights and remedies pursuant to A.R.S. § 12-1134; and (iii) any applicable referendum period has expired without referral, or any proposed referendum has been declared invalid in a final non-appealable judgment by a court of competent jurisdiction, or this Agreement (or the 2015 SUP, as applicable) has been approved by the voters at a referendum election conducted in accordance with Applicable Laws.

“Enforced Delay” means as defined in Section 5.8.

“Five Star Parties” means as defined in Section 2.2.5.

“Five Star Release” means as defined in Section 2.2.6.

“Floor Area” means as defined in the 2015 SUP.

“Foreclosure” means as defined in Section 7.24.

“Hotel Key” means a hotel room located in Area A, served by a single key, designed, constructed, and maintained with all furnishings, fixtures, and equipment necessary to operate as a single unit for transient occupancy use and used for transient occupancy as part of a Resort Hotel. Each Hotel Key shall have at least one five (5) fixture bathroom and a direct lockable connection from the exterior or a corridor.

“Hotel Quality Standards” means as defined in Exhibit D.

“Lender” or **“Lenders”** means as defined in Section 7.24.

“Minimum Resort Hotel Improvements” means as defined in the 2015 SUP.

“Moratorium” means as defined in Section 6.3.

“Open Space-Wash Corridor” means an area designated in the 2015 SUP as a wash and greenbelt area that is to be improved and used only for open space and shall not be otherwise developed, except as set forth in the 2015 SUP.

“Opening Brand” means one of the following brands: Ritz-Carlton, Four Seasons, Montage, or St. Regis; the Opening Brands are the Acceptable Brands from the Resort Opening Date through the fifth (5th) anniversary of the Resort Opening Date.

“Owner” means Five Star Development Resort Communities, LLC, an Arizona limited liability company and its respective successors and assigns, as well as any subsequent owner of any portion or portions of the Property, including but not limited to, an owner of a Resort Hotel, a Resort Villa, a Resort Related Luxury Home, a Resort-Branded Home, a Resort Related Attached Residence, any part of Area E1 or Area E2, or one or more combinations thereof. An Owner may be an individual, corporation, partnership, limited liability company, trust, land trust, business trust or other organization, or similar entity, which in turn may be owned by individuals, shareholders, partners, members, or benefitted parties under trust agreements, all of which may take any legal form, and may allocate interests in profits, loss, control or use.

“Owner Perimeter Improvements” means the perimeter landscaping, drainage improvements (in connection with the Open Space-Wash Corridor and perimeter rights-of-way), and perimeter walls as illustrated in the following Approved Plans attached to the 2015 SUP: Pages D-7 and D-8 (Entry Renderings on Lincoln Drive and at Mockingbird Lane); D-10 and D-11 (Road Sections for Lincoln Drive and Mockingbird Lane); G-5 and G-6 (Lincoln Drive Landscape Architecture); G-3 (Resort Wall Detail and Landscaping); H-6 (Drainage).

“Owner Representative” means as defined in Section 6.1.

“Owners Association” means as defined in Section 2.3.6.11.1.

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

“Payment Date” means as defined in Section 2.3.6.7.

“Payment Year” means as defined in Section 2.3.6.6.

“Per Square Foot Amount” means as defined in Section 2.3.6.2.

“Planning Commission” means the Planning Commission of the Town.

“Plat/Map Procedure” means as defined in Section 2.3.2.3.

“Plat/Map Standards” means as defined in Section 2.3.2.4.

“Principal Resort Hotel” means the Resort Hotel described in Recital F, which is designated as the Principal Resort Hotel, is affiliated with one of the Acceptable Brands, meets the Hotel Quality Standards, and includes the Minimum Resort Hotel Improvements. The Principal Resort Hotel shall be owned by a single legal Owner.

“Property” means the real property described in Exhibit A which is attached to this Agreement and incorporated into this Agreement for all purposes. The Property is comprised of approximately one hundred five (105) acres of land.

“Reduced Per Square Foot Amount” means as defined in Section 2.3.6.2.

“Required Owner Improvements” means any improvements that an Owner is required to provide and construct under the 2015 SUP and this Agreement; Required Owner {00029957}

Improvements may include some of the Owner Perimeter Improvements (to the extent the same will be dedicated to the Town pursuant to the 2015 SUP or are within the public right-of-way or in the easement areas adjacent thereto) but do not include Town Street Improvements.

“**Resort**” means the entire Property and all facilities and other improvements existing, developed or redeveloped and used or useful on the Property in substantial conformance with the 2015 SUP.

“**Resort Ancillary Facilities and Uses**” means as defined in the 2015 SUP.

“**Resort-Branded Homes**” means the forty-five (45) residential units in Area C described in Recital F and further described in the 2015 SUP.

“**Resort Hotel**” means the hotel to be designed and constructed within Area A. Resort Hotels provide accommodations for transient occupants (as defined in § 4A-477 of the Town Code) and related facilities and services and any Resort Ancillary Facilities and Uses. The Resort Hotel in Area A shall be the Principal Resort Hotel that at all times contains the Minimum Resort Hotel Improvements (subject to force majeure, remodeling, alteration, reconstruction, redevelopment, and similar events).

“**Resort Hotel Contract**” means the executed, “redacted” contract between the Owner of Area A and an Acceptable Brand, in its complete, accurate and current version at the time of viewing, that contains the following provisions: (i) an agreement for the branding and management operations of the Principal Resort Hotel by such Acceptable Brand, (ii) a date by which the Owner of Area A must commence construction of the Principal Resort Hotel, (iii) a date by which the Owner of Area A must complete construction of the Principal Resort Hotel, and (iv) a completion guaranty with the Acceptable Brand’s remedies in connection therewith; “redacted” means that economic and proprietary information and other information not essential to the satisfaction of the foregoing items (i) through (iv) may be removed from or made illegible in the version made available for viewing pursuant to Section 2.3.2.6.

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

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

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

“Resort Hotel Rental Program” means a rental management program offered and managed by the Owner of the Principal Resort Hotel (or Affiliate thereof) or a Resort Hotel Manager (or Affiliate thereof), which provides rental management service for a Resort Villa or Resort-Branded Home where the Owner of such Resort Villa or Resort-Branded Home elects to include its residence in the Resort Hotel Rental Program.

“Resort Opening Date” means as defined in Exhibit D.

“Resort Related Attached Residences” means the sixty-two (62) residential units in Area D described in Recital F and further described in the 2015 SUP.

“Resort Related Luxury Homes” means the sixty-six (66) residential units in Area B described in Recital F and further described in the 2015 SUP.

“Resort Residence Association” means as defined in Section 2.3.1.4.

“Resort Unit” means a residential lot or unit in Areas A1, B, C, and D.

“Resort Unit Revenue Replacement Area” means as defined in Section 2.3.6.5.

“Resort Unit Revenue Replacement Estoppel” means as defined in Section 2.3.6.11.4.

“Resort Unit Revenue Replacement Payment” means as defined in Section 2.3.6, a portion of which will be used for the Town’s funding of the Scottsdale Convention and Visitor’s Bureau to promote tourism and to maintain and enhance Town infrastructure adjoining and servicing the Property.

“Resort Villas” means the ninety-four (94) residential units in Area A1 described in Recital F and further described in the 2015 SUP.

“Scottsdale Street Improvements” means as defined in Section 2.3.5.9.

“Site Plan” means Page D-1 of the Approved Plans attached to the 2015 SUP, which is attached to this Agreement as Exhibit B.

“Street Improvements” means the Town Street Improvements and Required Owner Improvements identified on Exhibit E attached hereto; the Town is responsible pursuant to Section 2.3.5 hereof to construct the Street Improvements, subject to reimbursement as described therein.

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

“Tolling Period” means as defined in Section 6.3.

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

“**Town Code**” means the Code of the Town of Paradise Valley, Arizona, as amended from time to time, except when this Agreement specifically references ordinances or requirements in effect as of the Approval Date.

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

“**Town Manager**” means the Town Manager or his designee.

“**Town Parties**” means as defined in Section 2.2.6.

“**Town Release**” means as defined in Section 2.2.5.

“**Town Representative**” means as defined in Section 6.1.

“**Town Street Improvements**” means public right-of-way improvements as generally described on Exhibit E as Town Street Improvements, for which the Town is financially responsible.

“**Traffic Impact Analysis**” means the Master Traffic Impact Analysis prepared by CivTech, Project No. 15-360, dated November 2015.

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

“**Year 5 to 25 Brand**” means one of the following brands: Belmond, Dorchester Collection, Four Seasons, Mandarin Oriental, Ritz-Carlton, St. Regis, The Peninsula, Montage, Rosewood, Auberge, Shangri-La, Waldorf-Astoria, Park Hyatt, or Aman; the Year 5 to 25 Brands are the Acceptable Brands from the fifth (5th) anniversary of the Resort Opening Date until the twenty-fifth (25th) anniversary of the Resort Opening Date.

“**Zoning Ordinance**” means the Town’s zoning ordinance, as amended from time to time, except when this Agreement specifically references ordinances or requirements in effect as of the Approval Date.

ARTICLE 2 -- AGREEMENTS REGARDING THE DEVELOPMENT AND OPERATION OF THE PROPERTY

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

2.2 Development Agreement and 2015 SUP; Releases.

2.2.1 On the Effective Date, the 2008 Development Agreement (as originally drafted and approved) shall be deemed terminated and of no further force and effect as of the Effective Date and the 2008 Development Agreement shall be replaced in its entirety as provided in this Agreement as of the Effective Date.

2.2.2 As conditions precedent to the obligations of the Town arising in or out of this Agreement, Five Star, at its sole cost and expense, shall obtain (i) any and all consents or approvals required by or from any lender to Five Star which has a security interest in the Property on or before the date this Agreement is recorded in the Official Records of Maricopa County, under the terms of any contract or loan agreements between such parties, and (ii) subordinations from any lender to Five Star (or other person or entity) that has any security or similar interest in or to any portion of the Property (in forms satisfactory to the Town in its reasonable discretion) of their interests in the Property to the 2015 SUP and this Agreement. Five Star shall provide such lenders' consents and subordinations prior to the Effective Date.

2.2.3 This Agreement is being entered into by the Parties contemporaneously with the 2015 SUP. It is the intent of the Parties that both this Agreement and 2015 SUP take force and effect concurrently, and that neither this Agreement nor the 2015 SUP shall become effective in the absence of the other. Although the Parties intend that the two (2) documents constitute and state an integrated and consistent relationship between them, the Parties agree that in the event of an inconsistency between the 2015 SUP and this Agreement, then the 2015 SUP shall control.

2.2.4 This Agreement, as it may be amended from time to time, shall run with the land as set forth in Section 7.17 of this Agreement and any person having or subsequently acquiring title to any portion of the Property shall be subject to this Agreement, only as it applies to the portion of the Property owned by such person. Once an Owner no longer owns a portion of the Property, such prior Owner shall no longer be subject to this Agreement (with respect to such portion of the Property no longer owned) and shall have no further obligations or liabilities under this Agreement, except that such prior Owner shall remain liable to the Town with respect to its own acts or omissions during its period of prior ownership that caused a violation of this Agreement that became or becomes a Default under this Agreement. If any portion of the Resort is used in violation of the terms of this Agreement, the Town may pursue the remedies set forth in this Agreement only against the defaulting Owner. No such remedy shall be applied to any other Owner or portion of the Property (whether owned by defaulting Owner or another Owner) that is not in violation of this Agreement.

2.2.5 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 Five Star and its successors, assigns, directors, officers, members, managers, employees, agents, representatives, attorneys, heirs, predecessors, and Affiliates (collectively, the "**Five Star 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, the "**Town Claims**"), as set forth below in this Section 2.2.5 (the "**Town Release**"). The Town Release applies to all Town Claims that the Town has against any and all of the Five Star Parties for their acts or omissions up to and including the Approval Date in respect of (i) Five Star's ownership, operation, and development of the Property, (ii) the Property, the zoning or other entitlements of the Property, any act or omission of any of the Five Star Parties in connection with or arising out of the Property, or any act or omission of any of the Five Star Parties in connection with or arising out of the 2008 Development Agreement or the Current Zoning, this {00029957}

Agreement (including, without limitation, the inclusion of a Resort Unit Revenue Replacement Payment in this Agreement), the 2015 SUP, or the 2015 SUP Application; (iii) all Claims relating to the validity or enforceability of this Agreement or any provisions thereof, but not including any Claims relating to the performance of any obligations under this Agreement, (iv) 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 the Town and/or any Town Parties, and (v) any other act or omission of any of the Five Star Parties with respect to the Property; excluding (A) any Town Claims for injunctive or remedial relief relating to health or safety concerns with respect to the Property, (B) the Town's enforcement of any criminal law or regulation, (C) the Town's exercise of the power of eminent domain, (iv) any other rights of the Town that are not waivable as a matter of law, all such rights being expressly preserved, and (D) any Town Claims caused by the gross negligence and willful misconduct of the Five Star Parties.

2.2.6 Except as otherwise specifically stated in this Agreement, Five Star, on behalf of itself and the Five Star Parties, hereby unconditionally, irrevocably, totally, fully, finally, and forever releases, waives, settles, compromises, relinquishes, quitclaims and discharges 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 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, the "**Five Star Claims**"), as set forth below in this Section 2.2.6 (the "**Five Star Release**"). The Five Star Release applies to all Five Star Claims that Five Star or any Five Star Affiliate has against any of the Town Parties for their acts or omissions up to and including the Approval Date in respect of (i) the Property, the zoning or other entitlements of the Property, any act or omission of any of the Town Parties in connection with or arising out of the Property, or any act or omission of any of the Town Parties in connection with or arising out of the 2008 Development Agreement or the Current Zoning, this Agreement (including, without limitation, the inclusion of a Resort Unit Revenue Replacement Payment in this Agreement), the 2015 SUP, or the 2015 SUP Application; (ii) any Five Star Claims relating to the validity or enforceability of this Agreement or any provisions thereof, but not including any Five Star Claims relating to the performance of any obligations under this Agreement; (iii) 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 Five Star, Five Star's predecessors, any Five Star Parties, or the Property or any portion of the Property, and (iv) any other act or omission of any of the Town Parties with respect to the Property. Five Star shall include a release in favor of the Town as a third party beneficiary substantially in conformance with the Five Star Release applicable to the master association and all of the Owners of property governed by the master association in the conditions, covenants, and restrictions applicable to such property; excluding any Five Star Claims caused by the gross negligence and willful misconduct of the Town Parties.

2.2.7 The Parties confirm that they are bound by this Agreement and the 2015 SUP; further, the Parties agree that their agreements in this Agreement and the 2015 SUP and their execution thereof shall not be deemed to be or construed as an act of "gross negligence or

willful misconduct” for purposes of Section 2.2.5 and 2.2.6 above. In addition, the Parties acknowledge that the inclusion of a Resort Unit Revenue Replacement Payment will provide revenue consistent with the revenues that the Town will not receive due to the proposed uses of the Resort Units, is consistent with and advances the intent and goals of the General Plan, and is consistent with Applicable Laws. The Town shall have no obligation to indemnify or defend Five Star from any Third Party claims against Five Star relating to the imposition of and requirement of the Resort Unit Revenue Replacement Payment.

2.3 Agreements Regarding Specific Development Areas.

2.3.1 Development Area A – Principal Resort Hotel.

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

2.3.1.2 Hotel Quality Standards. The Principal Resort Hotel shall comply with standards of development consistent with the criteria set forth in Exhibit D. Such criteria shall be reviewed and approved in two stages. First, prior to the issuance of a building permit for any Resort Hotel, Owner shall submit a “**Resort Hotel Design**” for approval that includes a Brand Letter as specified in Exhibit D. Second, in connection with review and approval of final construction plans upon which building permits will be issued, said plans shall be reviewed for compliance with the approved “**Resort Hotel Design**” as specified in Exhibit D. The Parties agree that final construction documents upon which building permits shall be issued for a Resort Hotel may come in multiple phases, including but not limited to grading and other site work, buildings, plumbing, electrical, mechanical, and finish schedules. As such, permits will be issued for each phase, and reviewed for compliance with an approved Resort Hotel Design only to the extent such a component thereof is reflected therein. Changes in Resort Hotel Design may occur at any stage of the design, permitting, or construction process and the Town Manager shall approve or disapprove (such approval shall not be unreasonably withheld or delayed) such requested change within ten (10) business days. Any such change that is accompanied by a Brand Letter and meets the criteria on Exhibit D shall be approved. Minor changes that do not materially alter a required component set forth in Exhibit D shall not require approval.

2.3.1.3 Covenant to Operate Principal Resort Hotel. After the Resort Opening Date, the Owner of the Principal Resort Hotel covenants that any operation of the Principal Resort Hotel shall be in a manner that continues to meet the Hotel Quality Standards. Notwithstanding the foregoing, a temporary closure of the Principal Resort Hotel or any of the Minimum Resort Hotel Improvements in the ordinary course of business or as a result of casualty (including, without limitation, repair, replacement, remodeling, prevention of adverse possession, emergency) as long as the closure lasts no longer than the reasonable amount of time required to address the business or casualty and the Owner of the Principal Resort Hotel notifies the Town in advance of any closure that lasts longer than twenty-four (24) hours shall not be a default under this Section 2.3.1.3; if advance notice is not possible due to the nature of the temporary closure, then the notice shall be given to the Town as soon as reasonably possible.

2.3.1.4 Resort Residence Association. The Principal Resort Hotel Owner shall establish a “**Resort Residence Association**” that the then current Owners of Resort Units in Areas A1 and C are required to be a part of during their ownership. Membership in the Resort Residence Association will not be severable from the residence and will transfer with the residence. The Owner of any common use amenities subject to use by Resort Residence Association members shall have the right to restrict or deny use to effect the orderly and viable operation of the Principal Resort Hotel (as determined by its Owner, in its sole discretion from time to time), such as the right to allow the exclusive use of areas by certain guests, Owners, invitees, or groups from time to time. Any Resort Hotel Owner, in its sole discretion from time to time, may also establish such other clubs or associations to permit or allocate use of any of its facilities, to establish dues or fees for any such membership(s) or classes of membership(s), and to subject such membership(s) to rules and regulations established by such Owner.

2.3.2 Development Areas A1, B, C, and D – Resort Units.

2.3.2.1 Use restrictions. Resort Units within Development Areas A1, B, C, and D may be used only for those uses or purposes provided for in the 2015 SUP and this Agreement. At all times, the Resort Units in Areas A1 and C shall carry the same Acceptable Brand that was approved for the Principal Resort Hotel. The Resort Units within Development Areas A1 and C may participate in any Resort Hotel Rental Program, if available, subject to any additional terms and conditions of the Owner of the Principal Resort Hotel (or Affiliate thereof) or the Resort Hotel Manager (or Affiliate thereof).

2.3.2.2 Resort Residence Association. All Owners of Resort Units in Development Areas A1 and C are required to be members of the Resort Residence Association which may be provided for in one or more conditions, covenants, and restrictions or membership agreements or contracts.

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

2.3.2.3.1 The submittal for a plat/map application shall include the following; there shall be no other requirements

2.3.2.3.1.1 Submittal of a Town pre-application for preliminary plat/map, with an option as determined by the Town Community Development Director or designee to waive the pre-application submittal for final plat/map;

2.3.2.3.1.2 Submittal of a completed plat/map application form, application fee, plat/map sheets, and required copies;

2.3.2.3.1.3 Submittal of correspondence from the utility companies they will serve the development with the preliminary plat/map application;

2.3.2.3.1.4 Submittal of correspondence from the utility companies that the utility is acceptable to the locations and widths of the utility easements with the final plat/map application;

2.3.2.3.1.5 Submittal of the Certificate of Assured Water Supply from the Arizona Department of Water Resources with the preliminary plat/map application; and

2.3.2.3.1.6 Submittal of a water service impact study with the preliminary plat/map that is to be prepared by a registered civil engineer that analyzes water flow and pressure in the immediate area and the appropriate infrastructure or other water system improvements necessary to assure adequate flow and pressure to meet Town Code standards.

2.3.2.3.2 The Planning Commission shall act on the preliminary plat/map application within forty (40) calendar days from when staff deems the application complete. A preliminary plat/map application request shall be approved by the Planning Commission if it is determined to comply with the requirements set forth in the 2015 SUP and this Agreement. The Planning Commission study session and action will be in two separate meetings. No Town Council approval is required for the preliminary plat/map.

2.3.2.3.3 Owner(s) shall comply with applicable notice requirements of the Community Development Department, as the same may be amended from time to time.

2.3.2.3.4 The Town Council shall act on the final plat/map application within forty (40) calendar days from when staff deems the application complete. A final plat/map application request shall be approved by the Town Council if it is determined to comply with the stipulations of the preliminary plat/map approved by the Town's Planning Commission, along with the requirements set forth in the 2015 SUP and this Agreement. It shall be the discretion of the Town Manager or designee to hold a Town Council study session on a separate date from the meeting date of the action, or combine the study session and action on the same meeting date. No Planning Commission approval is required for the final plat/map, unless staff determines that the final plat/map does not comply with the stipulations of the preliminary

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plat/map approved by the Town’s Planning Commission or contains substantial difference from such preliminary plat/map. If staff so determines, then the Planning Commission shall act on the final plat/map at its first scheduled meeting but no later than fourteen (14) days after staff deems the application complete.

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

2.3.2.4 Subdivision Plats/Maps Standards. Any subdivision preliminary and final plats and/or maps (including any maps within platted lots) shall be processed subject to the standards and requirements in Chapter 6 of the Town Code, as modified by the 2015 SUP and this Agreement (the “**Plat/Map Standards**”); where standards set forth in this Agreement or the 2015 SUP are different than standards set forth in the Town Code, this Agreement and the 2015 SUP provisions shall govern, it being the intent of the Parties to approve plats and maps which conform to the requirements of the 2015 SUP and this Agreement even if they are inconsistent with the Town Code. Because the current Town Code does not address map approval, maps shall be processed under the same standards as plats. For example, the following is a non-exhaustive list of some specific instances where a different standard applies in place of the standards of design in Article 6-3 of the Town Code:

2.3.2.4.1 the road sections plan on Page D-12 of the Approved Plans attached to the 2015 SUP (replaces provisions in Section 6-3-1 of the Town Code);

2.3.2.4.2 the width of all private rights-of-way and streets shall be as set forth in the 2015 SUP (replaces provisions in Section 6-3-2 of the Town Code);

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

2.3.2.4.4 lots and lot arrangements may exist in any configuration as long as they comply with standards set forth in the 2015 SUP (replaces Section 6-3-5 of the Town Code);

2.3.2.4.5 the building lines (i.e., setbacks) shall be as required in the 2015 SUP (replaces Section 6-3-6 of the Town Code);

2.3.2.4.6 the character of development shall be as provided in the 2015 SUP (replaces Section 6-3-10 of the Town Code); and

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2.3.2.4.7 where provided for in the 2015 SUP, signs, walls, and fences shall be allowed to be built according to provisions of the 2015 SUP (replaces Section 6-3-11 and Section 6-3-12 of the Town Code).

2.3.2.5 Public Improvements. The Required Owner Improvements shall be the only public improvements required in any final plat or map. Construction of any public improvements required by the 2015 SUP and this Agreement, and all private and public utilities located within the adjoining public streets that serve new development shall be performed by the Owner or the appropriate utility, as the case may be, for each of Areas A, A1, B, C, D, E1 and E2 prior to the issuance of any certificates of occupancy in each such Area. Owner shall use its best efforts to coordinate the timing of the Required Owner Improvements (and underground utilities in particular) so that they will not cause delay to the construction of the Street Improvements.

2.3.2.6 Phasing. The phasing of construction in Areas A and E1 shall be in accordance with the 2015 SUP; there is no additional restriction in this Agreement on the Town's issuance of building permits or certificates of occupancy therefor or thereon. For Areas A1 and C, the Owner(s) thereof hereby agree that the Town may withhold issuance of certificates of occupancy (but not building permits) until all structures in Area A have received certificates of occupancy. For Areas B and D, the Owner(s) thereof hereby agrees that the Town may withhold issuance of building permits (but not certificates of occupancy after building permits are issued) until the primary building of the Principal Resort Hotel (the building that houses the lobby and ballroom) is framed and studs are attached around the spaces for doors and windows; if frame construction is not used, the milestone for purposes of this Section 2.3.2.6 shall be the functional equivalent of the foregoing. Notwithstanding the foregoing, the Owner(s) of Areas B and D may obtain building permits (and subsequently the Owner(s) of Area B may obtain certificates of occupancy for Area B), prior to the foregoing milestones if: (i) the Owner of Area A makes the Resort Hotel Contract available for viewing by the Town Manager, Town Attorney, and the Town's designated expert at such Owner's office during normal business hours, upon advance written notice; the Town Manager, Town Attorney, and the Town's designated expert viewing the Resort Hotel Contract shall keep the contents and the terms thereof confidential, except to confirm that the requirements of the Resort Hotel Contract (as listed in its definition) are satisfied; (ii) major grading of the Open Space-Wash Corridor is completed; and (iii) the Owner of Area A pays the Town three million dollars (\$3,000,000.00), which may be partially refunded by the Town to the Owner of Area A as follows: if certificates of occupancy have been issued for all structures in Area A within five (5) years after the first building permit has been issued for Area B or D, then the Town shall refund two million dollars (\$2,000,000.00) to the Owner and the Town shall keep the remaining one million dollars (\$1,000,000.00); and if certificates of occupancy have not been issued for all structures in Area A within five (5) years after the first building permit has been issued for Area B or D, then the Town shall keep the entire three million dollars (\$3,000,000.00). The Town shall apply such funds to the Town Street Improvements. If building permits have been issued in Area D pursuant to the immediately preceding sentence, the Owner(s) of Area D may subsequently obtain certificates of occupancy for Area D upon issuance of a building permit for the primary building of the Principal Resort Hotel.

2.3.3 Open Space-Wash Corridor. Development of the Open Space-Wash Corridor shall comply with the 2015 SUP.

2.3.3.1 Commencement/completion requirements. Completion of Construction of the Open Space-Wash Corridor shall occur in accordance with the phasing requirements of the 2015 SUP.

2.3.3.2 Covenant to Maintain Open Space-Wash Corridor as Open Space in Perpetuity. Owner covenants that, once the final plats/maps for Areas B and C are approved, and Completion of Construction for Areas B and C have occurred, the Open Space-Wash Corridor shall be maintained in accordance with this Agreement and the 2015 SUP, in perpetuity, by the Owners Association. This covenant runs with the land, is in favor of the Town, and is enforceable by the Town. The recordation of this Agreement shall provide constructive notice of this covenant to all subsequent purchasers of any legal or equitable interest in all or any portion of the Open Space-Wash Corridor.

2.3.4 Development Area E1 – Retail/Restaurant. Development in Area E1 shall comply with the 2015 SUP.

2.3.5 Improvements to Streets. It is the intent of the Parties that the Town and Five Star shall coordinate and share the costs to design, construct, and install the Street Improvements.

2.3.5.1 Town’s Responsibilities. The Town shall procure design of the Street Improvements, up to and including construction documents, as provided in this Agreement.

2.3.5.2 Construction. The Town shall commence and complete construction and installation of the Street Improvements as provided in this Agreement; where, for purposes of this Section 2.3.5, “completion” means the closing out of the related construction contract(s).

2.3.5.3 Use of Public Funds. Because public funds will be used for construction of the Street Improvements, Five Star understands and agrees that this work must be put to public competitive bid and that the construction is to be delivered in accordance with A.R.S. Title 34, including requirements for contractors selected pursuant to this process to post performance and payment bonds and to procure right-of-way work permits from the Town.

2.3.5.4 Commencement and Completion of Design. The Town shall cause design work to begin promptly upon the Town’s issuance of a building permit to an Owner for non-grading improvements on the Property, and shall use its best efforts to cause final construction documents to be completed no later than three hundred sixty (360) days after such date; provided, however, the Town may, subject to the reimbursement provisions of Section 2.3.5.6, begin design work on an earlier date. The Town shall provide copies of all design drawings and construction documents to Five Star for Five Star’s approval, which shall not be unreasonably withheld, conditioned, or delayed. Five Star shall provide its written approval or disapproval with specific comments within ten (10) days of receipt of the design drawings or

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construction documents; Five Star's failure to respond within the foregoing ten (10)-day period shall be deemed approval of the design drawings or construction documents. The Town and Five Star will work together in good faith with the Town's engineers to revise the design drawings and/or construction documents in response to Five Star's disapproval. The final specifications of the Street Improvements shall be determined by the Town and approved by Five Star in its reasonable discretion in the manner provided in this Section 2.3.5.4, but shall generally conform to Exhibit E and depictions on Pages D-7, D-8, D-9, D-10, D-11, G-5, and G-6 of the Approved Plans.

2.3.5.5 Commencement and Completion of Street Improvements. The Town shall commence bidding of the Street Improvements within four (4) months after receipt of final construction drawings and shall: (i) complete the Street Improvements concerning Lincoln Avenue within eighteen (18) months after such receipt; and (ii) except as provided in subsection (i) above, use its best efforts to complete construction of the Street Improvements within eighteen (18) months after such receipt; provided, that any delay in the Town's completion of the Street Improvements caused by Owner's failure to coordinate construction of Owner's Perimeter Improvements that are not Street Improvements shall result in a day for day extension of the time permitted in this Section 2.3.5.5 for the Town's completion of the same.

2.3.5.6 Costs. The Town and Five Star shall allocate the design and construction costs incurred by the Town in connection with the Street Improvement as set forth on Exhibit E. If the construction work is managed by the Town (and therefore not included in the costs incurred by the Town), then Owner's share of the design and construction costs shall increase by ten percent (10%), which shall be paid by Five Star to the Town as the Town's management fee. Five Star shall make progress payments in accordance with the applicable contracts as design and construction work proceeds and shall make such payments (and the Town's management fee, if applicable) within thirty (30) days after receipt of an invoice from the Town; provided that, notwithstanding the foregoing, Five Star's obligation to reimburse the Town for costs incurred under this Section 2.3.5 in connection with the Street Improvements shall not begin until after Five Star has acquired its first building permit for non-grading improvements. Subject to the foregoing, all amounts not paid within thirty (30) days are subject to interest at the Default Rate.

2.3.5.7 Deed of Right-of-Way. Concurrent with the first plat of the Property on Lincoln Drive after the Effective Date, Owner agrees to deed to the Town and the Town agrees to accept from Owner a twenty-five (25)-foot strip of its Property adjacent to Lincoln Drive (as generally depicted on Exhibit F) for use as public right-of-way. The deed shall be a special warranty deed conveying fee simple title to the Town, free and clear of all monetary liens and encumbrances (except for taxes and assessments, if any, not yet due and owing) and subject only to the usual exceptions, conditions, stipulations, and other matters affecting title.

2.3.5.8 Storm Water Retention/Detention. The proposed development of the Property will retain the difference between the pre-development (assuming an undeveloped desert lot) and post-development stormwater runoff, in accordance with the Town Storm Drain Design Manual (Subdivision Drainage Design) and the stormwater master plan submitted by the Owner to the Town and accepted by the Town Engineer.

2.3.5.9 Scottsdale Street Improvements. Five Star shall make good faith efforts to get approved and construct the street improvements located within the City of Scottsdale as listed in Exhibit E (the “**Scottsdale Street Improvements**”), which were recommended by the Traffic Impact Analysis. Five Star and the Town acknowledge that Five Star’s ability to complete the Scottsdale Street Improvements is dependent upon the City of Scottsdale’s approval.

2.3.5.10 Expert Determination. To provide an expedited procedure for resolving disputes regarding the Street Improvements, the Parties shall use the following process rather than the dispute resolution procedures in Article 6 of this Agreement. If the Parties disagree about any aspect of the Street Improvements (including, but not limited to, design issues or cost allocation), a Party may give the other Party written notice (stating the Party’s position on the subject matter of the disagreement in reasonable detail). If the Parties fail to resolve the matter within ten (10) business days following such notice, then the Parties shall submit the dispute to an independent engineer or other expert with at least ten (10) years of experience with the type of improvement at issue (the “**Construction Expert**”), which shall be chosen by the mutual agreement of the Parties with instructions for the Construction Expert to use its best efforts to provide a written determination of the issue within ten (10) business days. If the Parties are unable to agree upon a Construction Expert, then each Party shall appoint a Construction Expert, and the appointed Construction Experts shall agree upon a third Construction Expert, and the mutual agreement of two out of the three Construction Experts shall determine the issue. The Parties shall promptly furnish the Construction Expert(s) such plans, reports, and other information relating to the dispute as requested by the Construction Expert and are available to the Parties. The determination by the Construction Expert(s) shall be final, binding, and conclusive on the Parties. If there is one Construction Expert, the costs of the Construction Expert shall be paid by the nonprevailing Party, which is the Party whose position in the dispute is furthest from the Construction Expert’s determination. If there are three Construction Experts, then each Party shall pay the costs of its own Construction Expert and the costs of the third Construction Expert shall be paid by the nonprevailing Party.

2.3.5.11 Owner Improvements. The Owner of Area A shall complete the Owner Perimeter Improvements (but excluding any Required Owner Improvements that are included in the Street Improvements), including the design, installation, and maintenance of perimeter landscaping on the Property immediately parallel thereto, upon substantial completion of, or in conjunction with, the Street Improvements. Upon written request by the Owner of Area A, the Town shall grant temporary construction easements, in a form reasonably acceptable to Town and the Owner of Area A, as necessary to such Owner to fulfill and discharge its rights and obligations in this Section 2.3.5.11.

2.3.5.12 Maintenance of Owner Perimeter Improvements. The Town shall maintain the Street Improvements, except that any Street Improvements back-of-curb of the public right-of-way immediately adjacent to the Property, and on the same side of the right-of-way as the Property, shall be maintained by the Area A Owner.

2.3.6 Resort Unit Revenue Replacement Payments. As part of the consideration for this Agreement and the 2015 SUP, Five Star agrees that all Owners of Resort Units within

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Development Areas A1, B, C, and D shall, for a period of twenty (20) years, make payments to the Town that are intended to partially replace the lost revenues resulting from not being subject to the transaction privilege taxes and bed taxes that would be paid to the Town if the Resort Units were used exclusively for the purpose of renting under agreements having an occupancy term of less than thirty (30) days (each such payment being a “**Resort Unit Revenue Replacement Payment**”). The Town shall use the Resort Unit Revenue Replacement Payments to [partially fund the maintenance of and enhancements to various sidewalks, streets, rights-of-way, landscaping, and other infrastructure owned by the Town adjoining and servicing the Property and to promote tourism through the Town’s funding of the Scottsdale Convention and Visitor’s Bureau,] which will benefit the Property. The Resort Unit Revenue Replacement Payments shall be made as follows:

2.3.6.1 Applicability. All Resort Units are subject to the requirement to make Resort Unit Revenue Replacement Payments in accordance with this Agreement. In no event shall any portion of the Property used for solely for non-residential use (including but not limited to any Resort Hotel, Resort Ancillary Facilities and Uses, Area E1 Retail/Restaurant Uses, and any common areas and amenities) be required to make Resort Unit Revenue Replacement Payments. In no event shall the Town have any obligation to refund any Resort Unit Revenue Replacement Payments paid for a Resort Unit as a result of overpayment of a Resort Unit Revenue Replacement Payment, but any such overpayment will be credited to any future Resort Unit Revenue Replacement Payment due for such Resort Unit.

2.3.6.2 Amount of Payment. The amount of the Resort Unit Revenue Replacement Payment for a Resort Unit shall be \$1.10 per square foot (the “**Per Square Foot Amount**”) multiplied by the Resort Unit Revenue Replacement Area (defined below) of the Resort Unit, subject to future adjustments as provided for in Section 2.3.6.3. The Per Square Foot Amount for a Resort Unit shall automatically decrease to \$.75 per square foot (the “**Reduced Per Square Foot Amount**”) upon the occurrence of the following: (i) a certificate of occupancy has been issued for a building in Area E1 and (ii) at least twenty-five percent (25%) of the gross leasable area of Area E1 is open for business.

2.3.6.3 Adjustments in Payment Amount. During the Term of Resort Unit Revenue Replacements Payment, the Per Square Foot Amount or Reduced Per Square Foot Amount (as applicable) for a Resort Unit shall automatically increase, subject to the transfer provisions in Section 2.3.6.4, to the amounts shown on the following table for each Resort Unit upon any Transfer of title to the Resort Unit occurring after the date shown in the following table, if applicable:

<u>Change Date</u>	<u>Per Square Foot Amount</u>	<u>Reduced Per Square Foot Amount</u>
July 1, 2035	\$1.50	\$1.02
July 1, 2050	\$2.10	\$1.43
July 1, 2065	\$2.90	\$1.97

2.3.6.4 Transfer Provisions. There shall be no increases other than the foregoing unless otherwise agreed in writing by an amendment to this Agreement signed by the Owner whose property will be bound by such amendment. The Per Square Foot Amount or Reduced Per Square Foot Amount applicable to a Resort Unit shall not increase during the time

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period that such Resort Unit is held by the same Owner; for purposes of the foregoing, (a) a transfer of a Resort Unit from a person to his or her spouse or to a trust for the benefit of the trustor and/or his/her spouse or (b) a transfer of legal title to the trustee of a deed of trust or to a mortgagee in connection with the creation of a loan secured by the Resort Unit will not constitute a transfer of title that would cause an increase in the Per Square Foot Amount or Reduced Per Square Foot Amount, but a foreclosure or trustee's sale would constitute a transfer that could result in an increase in the Per Square Foot Amount or Reduced Per Square Foot Amount. As an example of the foregoing, if an Owner acquires a Resort Unit subject to the Reduced Per Square Foot Amount on January 1, 2029 and conveys the Resort Unit on November 1, 2036 to a new Owner, the Reduced Per Square Foot Amount for such Resort Unit would increase from \$.75 to \$1.02 on November 1, 2036. An Owner acquiring title to a Resort Unit for which the Per Square Foot Amount or Reduced Per Square Foot Amount will change upon such acquisition of title shall pay to the Owners Association (defined below) concurrently with such acquisition of title (i) such amount as may be required to pay any increase in the Resort Unit Revenue Replacement Payment for the remainder of such Payment Year (which amount shall be forwarded by the Owners Association to the Town following receipt) and (ii) such amount as will, when combined with the prior months payments by the prior Owner and remaining monthly payments that will be required from the new Owner prior to the next Payment Date, allow the Owners Association to collect the full amount of the next Resort Unit Revenue Replacement Payment due to the Town prior to the next Payment Date.

2.3.6.5 Calculation of Resort Unit Revenue Replacement Area. The “**Resort Unit Revenue Replacement Area**” of Resort Unit shall be the square footage of the interior air conditioned area of the residential improvements, excluding courtyards, garages, attics, common areas (including but not limited to corridors, stairs, elevators, common use facilities such as restrooms, lounges, reception areas, recreation areas, and pool houses) and basements. Square footage shall be measured from the interior of exterior walls and from the midpoint of any wall not constituting an exterior wall (e.g. from the midpoint of a common wall separating two units). The Resort Unit Revenue Replacement Area for a Resort Unit shall be determined at the time a building permit is issued for a structure. The plans for a structure on a lot or unit that contains one or more Resort Units in Development Areas A1, B, C, or D shall include a calculation of the Resort Unit Revenue Replacement Area for each Resort Unit with a statement substantially similar to: “The Resort Unit Revenue Replacement Area of [Lot ___][Unit ___] for the purposes of calculating the Resort Unit Revenue Replacement Payment under the Development Agreement affecting the property is _____ square feet.” Once the Resort Unit Revenue Replacement Area is approved by the issuance of a building permit, such Resort Unit Revenue Replacement Area shall be the basis for all future Resort Unit Revenue Replacement Payments for that Resort Unit unless the structure is altered to change the Resort Unit Revenue Replacement Area at some future time. Future plans that change the Resort Unit Revenue Replacement Area shall also include a statement of the square footage constituting the revised Resort Unit Revenue Replacement Area to be used for calculating the future Resort Unit Revenue Replacement Payment.

2.3.6.6 Payment Year. The payment year for Resort Unit Revenue Replacement Payments shall run from July 1 to June 30 (the “**Payment Year**”); provided however that the first year may be more than twelve (12) months as set forth in Section 2.3.6.7, below.

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2.3.6.7 Time for Payments; Term of Payments. The Resort Unit Revenue Replacement Payment obligation shall commence on the first day of the first full calendar month after the earlier of (i) the first transfer of a Resort Unit after the issuance of the certificate of occupancy for the Resort Unit or (ii) one hundred eighty (180) days after the issuance of the certificate of occupancy for the Resort Unit. The first Resort Unit Revenue Replacement Payment is due upon the first July 1 following the commencement of the Resort Unit Revenue Replacement Payment obligation and shall be in an amount equal to the sum of (i) the annual Resort Unit Revenue Replacement Payment amount multiplied by a fraction having a numerator equal to the number of days during the Payment Year after the commencement of the Resort Unit Revenue Replacement Payment obligation for the Resort Unit and a denominator equal to the total number of days in such Payment Year and (ii) the annual Resort Unit Revenue Replacement Payment amount required for the next full Payment Year. Each subsequent Resort Unit Revenue Replacement Payment shall be due in advance on July 1 of each calendar year (the “**Payment Date**”). If any Resort Unit Revenue Replacement Payment is not paid within thirty (30) days after it becomes due, such past due amount shall bear interest from the due date at the Default Rate. The Resort Unit Revenue Replacements Payment obligation shall automatically terminate **as to each Resort Unit**, without any need for notice by Owner or the Town, after such Resort Unit has made Resort Unit Revenue Replacement Payments for twenty (20) full Payment Years (the “**Term of Resort Unit Revenue Replacements Payment**”).

2.3.6.8 Obligation Runs with the Land. The obligation of each Resort Unit to make Resort Unit Revenue Replacement Payments is appurtenant to such Resort Unit, runs with the title to the Resort Unit, and binds and is assumed by each future Owner of such Resort Unit, for the Term of Resort Unit Revenue Replacements Payment for such Resort Unit.

2.3.6.9 Covenant to Pay; Notice of Delinquency. Subject to the provisions of Section 2.3.6.7, so long as Five Star owns a Resort Unit, Five Star shall pay, and each subsequent Owner of a Resort Unit, by becoming an Owner of such Resort Unit, is deemed to covenant and agree to pay, the Resort Unit Revenue Replacement Payment applicable to such Resort Unit in accordance with this Agreement. Town acknowledges that Five Star and any subsequent Owner is released from any obligation to make Resort Unit Revenue Replacement Payments that are due following Five Star’s or the subsequent Owner’s conveyance of a Resort Unit and that such obligation will pass to the transferee of such Resort Unit. If an Owner of a Resort Unit fails to pay the Resort Unit Revenue Replacement Payment applicable to such Resort Unit in accordance with this Agreement, the Town may give written notice to such Owner describing in reasonable detail the facts supporting the claim of nonpayment under this Agreement. Notice to an Owner shall be deemed given under this Section 2.3.6 three (3) business days following the sending of such notice by certified mail to the Owner at (a) the address for such Owner on the records of the Maricopa County, Arizona Assessor, if any, (b) any address of the Resort Unit owned by such Owner, if such address exists, and (c) if the notice is sent by the Owners Association, at the address(es) for such Owner shown on the records of the Owners Association. The Town shall not pursue any remedy for non-payment of a Resort Unit Revenue Replacement Payment until (i) thirty (30) days after the delinquent Owner is given notice of nonpayment of a Resort Unit Revenue Replacement Payment as required under this Agreement, during which thirty (30)-day period the delinquent Owner may cure any nonpayment or other nonperformance under this Agreement and (ii) if applicable, the notice and cure rights of a Lender as provided in Section 7.24 have been satisfied. If any Resort Unit Revenue

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Replacement Payment is not paid during the applicable cure period, the Town may pursue its remedies in Section 2.3.6.10 below.

2.3.6.10 Remedies. The Town shall have the right, subject to the notice and cure provisions of this Section 2.3.6, but not subject to the mediation provisions of Article 6, as its sole and exclusive remedy at law or in equity for a Default arising from delinquency of payment of the Resort Unit Revenue Replacement Payment, to recover the delinquent Resort Unit Revenue Replacement Payment from the Resort Unit Revenue Replacement Payment (defined in Section 2.3.6.11.1 below). The Town shall deliver notice of any Default arising from delinquency of payment of the Resort Unit Revenue Replacement Payment to the Owners Association setting forth in detail the amount of delinquent payment and the identification of the delinquent Owner; the Owners Association shall, within thirty (30) days of its receipt of written notice from the Town, verify the content of the Town's notice, and, upon verification, reimburse monies from the Resort Unit Revenue Replacement Payment Fund, in the verified amount, to the Town. Any recovery by the Town of any delinquent Resort Unit Revenue Replacement Payment shall be only for the delinquent Resort Unit Revenue Replacement Payment obligation, and, the Resort Unit Revenue Replacement Payment obligation shall continue to bind the Property for all other and future Resort Unit Revenue Replacement Payment obligations, including those arising after such recovery.

2.3.6.11 Owners Association Management.

2.3.6.11.1 Notwithstanding that the Owner of a Resort Unit has a direct obligation to make the Resort Unit Revenue Replacement Payment to the Town, the Owner will form a non-profit corporation (the "**Owners Association**") to act as a master association of owners for the portions of the Property that contain Resort Units and will record covenants running with the Resort Units consistent with this Section 2.3.6 in addition to such other covenants, conditions, restrictions and easements as Owner may desire to impose on such lots or units. Five Star shall, prior to any Resort Unit Revenue Replacement Payment becoming due and payable: (i) establish a separate, interest bearing account at a banking institution (the "**Resort Unit Revenue Replacement Payment**"), and (ii) deposit \$500,000.00 in such account, (iii) keep such account open (or require the Owners Association to keep such account open); and (iv) grant the Owners Association the right to make payment to the Town pursuant to Section 2.3.6.10. Five Star shall be entitled to any interest earned on or in connection with the account. Notwithstanding the foregoing, Five Star may close the account established pursuant to this Section 2.3.6.11.1 at any time after the final Resort Unit Revenue Replacement Payment under this Agreement is due and owing and any and all unpaid Resort Unit Revenue Replacement Payments are paid in full and shall be entitled to the balance in such account at such time.

2.3.6.11.2 The Owners Association shall require each Owner of a Resort Unit to make monthly payments of one-twelfth of the Resort Unit Revenue Replacement Payment required from each Resort Unit, so that if all monthly payments are timely made, the Owners Association will have the full Resort Unit Revenue Replacement Payment amount for such Resort Unit available to pay the Town on the next Payment Date. All monthly Resort Unit Revenue Replacement Payment amounts shall be due and payable concurrently with monthly Owners Association assessments. Concurrently with an Owner's acquisition of a Resort Unit, such Owner shall be required to pay to the Owners Association an amount that, when
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added to the monthly Resort Unit Revenue Replacement Payments due from such Owner prior to the next Payment Date, will allow the Owners Association to fully pay the Resort Unit Revenue Replacement Payments due on such Resort Unit. Notwithstanding the foregoing, a transferee of a Resort Unit as a result of a trustee's sale, foreclosure sale, or contract forfeiture pursuant to Section 2.3.6.9 above shall be required to pay to the Owners Association within thirty (30) days following acquisition of title only an amount, that when added to the monthly Resort Unit Revenue Replacement Payments due from such transferee prior to the next Payment Date, will allow the Owners Association to pay from the funds collected from such transferee the Resort Unit Revenue Replacement Payment allocable from the date of such transferee's acquisition of title through the end of the Payment Year in which such transferee acquired title and the next due full annual payment of the Resort Unit Revenue Replacement Payment; such transferee will not be liable for pre-acquisition Resort Unit Revenue Replacement Payment obligations of the prior Owner. All Resort Unit Revenue Replacement Payment amounts collected by the Owners Association shall be held by the Owners Association in trust for the Town and not used for payment of any other Owners Association expenses; all such collected amounts shall be paid to the Town on the next Payment Date, except to the extent that an Owner has overpaid such amounts for any reason, in which event the overpayment shall be held by the Owners Association and credited toward future Resort Unit Revenue Replacement Payments owing on the Resort Unit.

2.3.6.11.3 The Owners Association shall provide an annual statement to the Town on or prior to each Payment Date that states the name and address of each Owner of a Resort Unit, the payment status of each Resort Unit, and any other information reasonably requested by the Town in connection with Resort Unit Revenue Replacement Payments, which statement shall be accompanied by any Resort Unit Revenue Replacement Payments then due to the Town that have been collected by the Owners Association. If the Owners Association receives delinquent Resort Unit Revenue Replacement Payments or portions thereof following a Payment Date, the Owners Association will remit such amounts to the Town within thirty (30) days following receipt together with a statement showing the source of such funds.

2.3.6.11.4 The Owners Association shall use reasonable efforts to (a) maintain books and records regarding the Resort Units, including without limitation the amount of the Resort Unit Revenue Replacement Area of the Resort Unit, the commencement date of the Resort Unit Revenue Replacement Payment obligation of the Resort Unit, the history of payment of the Resort Unit Revenue Replacement Payment by the Owner of such Resort Unit, and any changes to the ownership of the Resort Unit, or other facts that affect the amount of the Resort Unit Revenue Replacement Payment payable by such Resort Unit, (b) timely collect from the Owners of the Resort Units the Resort Unit Revenue Replacement Payments payable by such Resort Unit, provided, however, that the Owners Association shall have no obligation to expend greater efforts to collect Resort Unit Revenue Replacement Payments from Owners of Resort Unit than the Owners Association expends to collect association assessments owing by the Owners to the Owners Association, (c) pay to the Town all Resort Unit Revenue Replacement Payments collected by the Owners Association on or prior to the due date of the Resort Unit Revenue Replacement Payments, and (d) provide to escrow agents, title insurance companies, lenders, purchasers and other persons reasonably requesting an estoppel certificate (an "**Resort Unit Revenue Replacement Estoppel**") regarding the status of the Resort Unit Revenue
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Replacement Payment on any Resort Unit, a Resort Unit Revenue Replacement Estoppel containing such factual information regarding the status of the Resort Unit Revenue Replacement Payment on such Resort Unit as such person may reasonably request, including without limitation the amount of the Resort Unit Revenue Replacement Payment, the date through which the Resort Unit Revenue Replacement Payment has been made, and any amounts past due. In order to relieve the Town of the burden of providing Resort Unit Revenue Replacement Estoppels to third parties and to allow Resort Unit Revenue Replacement Estoppels provided by the Owners Association to be relied upon by third parties, the Town agrees that the Town will be bound by any statements in a Resort Unit Revenue Replacement Estoppel provided by the Owners Association to any Third Party (excluding the Owner of the Resort Unit), who in good faith relies on the accuracy of such statements.

2.3.6.11.5 The Owners Association shall indemnify, defend and hold the Town harmless from any damages, liabilities or obligations arising as a result of negligence or intentional misconduct by the Owners Association in connection with Resort Unit Revenue Replacement Payments, including without limitation payment by the Owners Association to the Town of any Resort Unit Revenue Replacement Payments not paid to the Town as a result of any errors in a Resort Unit Revenue Replacement Estoppel negligently issued by the Owners Association.

2.3.6.11.6 Except as specified in the preceding sentence, as otherwise required by law, or as otherwise specified in writing by or on behalf of an Owner at the time of making a payment to the Owners Association, the Owners Association collecting Resort Unit Revenue Replacement Payments on behalf of the Town shall apply any funds received by the Owners Association from or on behalf of an Owner of a Resort Unit first to any delinquent Resort Unit Revenue Replacement Payments owing by such Owner at the time such payment is made, with delinquent monthly payments of the Resort Unit Revenue Replacement Payment due from an Owner to the Owners Association being considered delinquent Resort Unit Revenue Replacement Payments for such purpose, and then to any amounts owing by such Owner to the Owners Association. If the Owners Association receives or holds funds, other than funds held in trust for the Town pursuant to Section 2.3.6.11.2 above, from or on behalf of an Owner and no Resort Unit Revenue Replacement Payment is then due to the Town and no amount is then due to the Owners Association, such funds shall be applied to Resort Unit Revenue Replacement Payments and amounts owing to the Owners Association in the order in which payment is due, with amounts due to the Town and the Owners Association on the same day being applied first to a Resort Unit Revenue Replacement Payment to the Town and with monthly payments of the Resort Unit Revenue Replacement Payment to the Owners Association being considered for this purpose to be then due to the Town.

2.3.6.11.7 Notwithstanding the Owners Association's management and collection of Resort Unit Revenue Replacement Payments on behalf of the Town, the Owners Association is not a guarantor of the obligation of the Resort Unit Revenue Replacement Payment obligation of any Resort Unit; the Town acknowledges that, except for its right to collect from the Resort Unit Revenue Replacement Payment Fund as provided in Section 2.3.6.10, the only person liable for a delinquent Resort Unit Revenue Replacement Payment is the Owner of the Resort Unit giving rise to the delinquent Resort Unit Revenue Replacement Payment obligation.

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2.3.7. Building Permit Fees. The Town hereby agrees to and shall waive the first \$200,000.00 in building permit fees due and owing by Five Star in connection with its application for and obtaining of building permits for improvements on the Property.

ARTICLE 3 INDEMNITY, RISK OF LOSS AND INSURANCE

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

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

3.3 Insurance. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the Public Improvements, the Owner will obtain and provide the Town with proof of payment of premiums and certificates of insurance showing that Owner is carrying, or causing its contractor(s) to carry, builder's risk insurance, comprehensive general liability and worker's compensation insurance policies in amounts and coverages set forth on Exhibit G to this Agreement. Such policies of insurance shall be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice of cancellation to the Town, and Owner will name the Town as an additional insured on such policies.

ARTICLE 4 -- REPRESENTATIONS AND WARRANTIES OF THE PARTIES

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

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

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

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

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

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

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

4.2 Five Star's Representations. Five Star represents and warrants to the Town that:

4.2.1 Five Star has the authority to enter into and perform this Agreement and each of the obligations and undertakings of Five Star under this Agreement, and the execution, delivery and performance of this Agreement by Five Star have been duly authorized and agreed to in compliance with the organizational documents of Five Star.

4.2.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance. Without limiting the foregoing, all required lender approvals or consents have been obtained.

4.2.3 Five Star will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

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

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

4.2.6 Five Star has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

4.2.7 Five Star has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

ARTICLE 5 -- EVENTS OF DEFAULT AND REMEDIES

5.1 Events of Default by the Owner. Subject to the provisions of Section 4.2.4 of this Agreement, "**Default**" or an "**Event of Default**" by an Owner under this Agreement shall mean one or more of the following:

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

5.1.2 Such Owner fails to comply with the dates established in this Agreement for any specific activity, for any reason other than an Enforced Delay;

5.1.3 Such Owner breaches or fails to comply with any material provision the 2015 SUP; or

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

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5.2 Events of Default by the Town. Subject to the provisions of Section 4.1.4 of this Agreement, Default or an Event of Default by the Town under this Agreement shall mean one or more of the following:

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

5.2.2 The Town fails to comply with the dates established in this Agreement for any specific activity, for any reason other than an Enforced Delay; or

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

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

5.4 Consequences of Default. An Owner is responsible only for an Event of Default pertaining to its obligations for the portion of the Property it owns. The Town may exercise its remedies only against a defaulting Owner and each Owner may individually exercise its remedies against the Town. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the non-performing Party in accordance with Section 5.3 of this Agreement, the other Party may take any of one or more of the actions set forth in Section 5.5 or Section 5.6:

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

5.5.1 For a failure to make a Resort Unit Revenue Replacement Payment, the Town shall have, solely and exclusively, the rights and remedies provided in Section 2.3.6.10 of this Agreement;

5.5.2 For an Event of Default other than the failure to make a Resort Unit Revenue Replacement Payment, the Town shall have all rights and remedies available at law, in equity or under any provision of this Agreement; and

5.5.3 For an Event of Default other than the failure to make a Resort Unit Revenue Replacement Payment, at any time the Town may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Owner to undertake and to fully and timely address a public safety concern, to enjoin any construction or activity undertaken by Owner that is not in accordance with the terms of this Agreement, or to undertake and to fully and timely perform its obligations under this Agreement.

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

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

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

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

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

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

5.8 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this Section 5.8. Neither the Town nor Owner, as the case may be, shall be considered to have caused an Event of Default with respect to its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") due to actual or threatened causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, acts of the Federal, state or local government, acts of the other Party, acts of a Third Party, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes or strikes or interruptions, unavailability of supplies or materials or labor, unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, declaration of national emergency or national alert, blockade, insurrection, riot, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Property (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Resort, nor from the unavailability for any reason of any particular network, partnerships, contractors, subcontractors, vendors, investors or lenders desired by {00029957}

Owner in connection with the Resort (as opposed to the general unavailability of any of the same), it being agreed that Owner will bear all risks of delay, other than the Town's breach of this Agreement, that are not Enforced Delay. Periods during which the Parties are seeking a decision regarding mediation pursuant to Section 6.3 of this Agreement shall be considered periods of Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this Section 5.8 shall, within thirty (30) days after such Party knows of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay.

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

ARTICLE 6 -- COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

6.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the Town, Owner, and the Owners Association each shall designate and appoint a representative to act as a liaison between the Town and its various departments and Owner. The representative for the Town shall be its Town Manager or his designee identified in writing from time to time (the "**Town Representative**") and the representative for Owner shall be the Project Manager or Owner's designee as identified by Owner in writing from time to time (the "**Owner Representative**"). After formation, the Owners Association will designate its representative. The Town's and Owner's Representatives (and the representative of the Owners Association after formation) shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

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

6.3 Mediation. If there is a dispute hereunder, other than a dispute as to the failure to make a required Resort Unit Revenue Replacement Payment or a dispute as to the Street Improvements, that the Parties cannot resolve between themselves, the Parties agree that there shall be thirty (30) business day moratorium (a "**Moratorium**") on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The running of all applicable statutes of limitations, whether set forth in A.R.S. § 12-821 *et seq.* (including but not limited to A.R.S. § 12-821.01) or otherwise, for filing a notice

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

ARTICLE 7 -- MISCELLANEOUS PROVISIONS.

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

7.2 Assignment and Transfer.

7.2.1 Notice of Transfer. As set forth in Section 7.17, this Agreement runs with the land and Five Star shall provide written notice to the Town with respect to the first Transfer of each part of the Property subject to this Agreement within thirty (30) days after the effective date of any such Transfer, but such Transfer shall not be subject to the Town’s consent. No notice or consent is required for any subsequent assignment or transfer. This Agreement may be Transferred to one or more parties and may thereafter be reassigned or transferred to one or more subsequent parties. Obligations under this Agreement that apply to a certain portion of the {00029957}

Property may be Transferred with the applicable portion of the Property and then become the sole responsibility of the assignee or transferee. If portions of the Property are Transferred to different owners, an Event of Default by one owner shall not affect owners of other portions of the Property and the Town may exercise its remedies only against the defaulting Owner.

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

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

7.4 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.

7.5 Notices.

7.5.1 Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section 7.5, 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 a required copy to: Town of Paradise Valley
Attn: Town Attorney
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

If to Owner: Five Star Development Resort Communities, LLC
Attn: Jerry C. Ayoub
6720 North Scottsdale Road, Suite 130
Scottsdale, Arizona 85253

With a required copy to: Withey Morris PLC
Attn: Jason Morris
2525 East Arizona Biltmore Circle, Suite A212
Phoenix, Arizona 85016

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

7.6 Payments. Without limiting the provisions of Section 7.5.2, any required payments shall be made and delivered in the same manner as Notices; provided, however, that payments shall be deemed made only upon actual receipt by the intended recipient.

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

7.8 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.

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

7.10 Waiver. Except as otherwise expressly provided in this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or

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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.

7.11 Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for (i) transferees, assignees, or lenders under Section 7.2 to the extent that they assume or succeed to the rights and/or obligations of Owner under this Agreement, and (ii) indemnified individuals and entities referred to in the indemnification provisions of Section 3.1 (or elsewhere in this Agreement) and all insured individual and entities under Section 3.3 (or elsewhere in this Agreement) (which shall be third party beneficiaries of such indemnification and assurance provisions); only the Town may enforce the Owner's covenant in Section 2.3.1.3.

7.12 Exhibits. Without limiting the provisions of Article 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

7.13 Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. Notwithstanding the foregoing, this Agreement shall be read and interpreted in conjunction with the 2015 SUP.

7.14 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.

7.15 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.

7.16 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.

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

7.18 Perpetuities Savings Clause. It is the intention of the Parties that any and all covenants set forth in this that violate the rule against perpetuities be minimally reformed to cure the violation, rather than be terminated. In this regard, if a court of competent jurisdiction determines, in a final and non-appealable judgment, that any covenant set forth in this Agreement violates the rule, then upon the petition of any interested Party, the court shall reform the covenant (or covenants) either to vest, if at all, or terminate, twenty-one (21) years after the death of the last survivor of all lineal descendants of the 44th President of the United States, Barack Obama, living at the date of recordation of this Agreement. In determining whether a covenant violates the rule and in reforming the covenant, the period of perpetuities will be measured by actual rather than possible events.

7.19 Recordation. Within ten (10) days after this Agreement has been approved by the Town and executed by the Parties the Town shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona, but the Effective Date shall be as defined in this Agreement. After this Agreement is recorded, if this Agreement does not become effective or is no longer effective, then the Town shall promptly record a notice that this Agreement did not become or is no longer effective.

7.20 Subagreements. The Town and Owner hereby acknowledge that the development of the Property may be accomplished by Owner through a series of sales, leases, joint ventures, and/or other agreements and arrangements with other experienced developers, investors, and owners of real property. In connection therewith, it is anticipated and contemplated by the Parties that such developers, investors, or owners may desire to negotiate and enter into separate and subordinate development agreements with the Town and/or Owner with respect to infrastructure, improvements, uses, plan approvals, and other similar matters which may be the subject of separate agreements between such developers, investors, and owners and the Town and/or the initial Owner. The Parties hereby agree that any and all development agreements entered into with any such developer, investor, or owner of any portion of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control. Only the parties to a certain subagreement are responsible for performing the obligations under that subagreement. Notwithstanding the foregoing, nothing herein shall obligate either Party to enter into any other agreement with any other persons or any subsequent or supplemental agreement with an Owner.

7.21 Amendment. No change or addition is to be made to this Agreement except by written amendment, which may concern all or any portion of the Property, executed by the Town and the Owner of the portion of the Property directly affected by the amendment; the approval by other Owners of unaffected portions of the Property shall not be required. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official {00029957}

Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to “Agreement” or “Development Agreement” shall mean the Agreement as amended by any subsequent, duly processed amendment. The effective date of any duly processed amendment shall be the date on which the last representative for the Parties executes the Amendment and the Amendment has been recorded. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.

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

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

7.24 Rights of Lenders. The Town is aware that an Owner may obtain bridge, term, or permanent financing or refinancing for acquisition, development, construction of all or any portion of the Property and/or improvements to be constructed on all or a portion of the Property, including but limited to with respect to any or a group of each Resort Unit(s), Resort Hotel(s), any Development Area(s), or part thereof, in whole or in part, from time to time, by one or more Third Parties (individually a “**Lender**”, and collectively the “**Lenders**”). In the event of an Event of Default by an Owner, the Town shall provide notice of such Event of Default, at the same time notice is provided to the affected Owner, to such Lender or Lenders (i) as previously designated by any Owner to receive such notice for all or a portion of the Property affected by the Event of Default (the “**Designated Lenders**”) whose names and addresses were provided by written notice to the Town in accordance with Section 7.5 or (ii) who previously gave Town notice pursuant to Section 7.5 that such Lender(s) is a Designated Lender, included the Lender(s) name(s) and address(es) in such notice, and provided Town with a copy of and/or the recording information for the instruments pursuant to which such Lender(s) hold a lien on any portion of the Property. Owner or Town may provide notices to other Lenders. After the applicable time for Owner to cure an Event of Default, each Lender shall have an additional sixty (60) days to cure, in addition to the time period including delay allowed for the Owner to cure, the Event of Default and/or to assume Owner’s position with respect to this Agreement provided, however, that (x) if a Lender commences an action to foreclose on the Lender’s lien, records a notice of trustee’s sale, or otherwise takes action to enforce the Lender’s lien within such sixty (60) day period (collectively, a “**Foreclosure**”), the sixty (60) day period available for Lender to cure shall be automatically extended until sixty (60) days following the completion or termination of the Foreclosure and (y) if the Lender is legally prohibited from commencing, continuing or completing a Foreclosure because of any law or legal action (e.g. an automatic stay in a bankruptcy or reorganization proceeding), the sixty (60) day period available for Lender to cure shall be automatically extended until sixty (60) days following the termination of such

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prohibition. If title to any portion of the Property is transferred as a result of any Foreclosure, including without limitation any transfer by foreclosure, trustee's deed or deed in lieu of foreclosure, the new owner of such portion of the Property shall have sixty (60) days following such transfer of ownership to cure any Event of Default pertaining to such Owner's portion of the Property. The Town acknowledges that there may be one or more Lenders for separate portions of the Property, each with rights to cure with respect to an Event of Default affecting the portion of the Property that secures its loan. The Town agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner under this Agreement pertaining to the portion of the Property encumbered by such Lender's lien. For purposes of enforcement of the Town's remedies, the Town agrees that an Event of Default as to any portion of the Property not encumbered by a particular Lender's lien shall not affect any right, title or interest of such Lender or its borrower as to the portion of the Property encumbered by such Lender's lien, and the Town will treat the portion of the Property encumbered by such Lender's lien as though no Event of Default then existed, even if the Lender's borrower is also the Owner of the portion of the Property to which the Event of Default pertains. The Town shall, within ten (10) days after written request by any Owner (except the Owner of an individual Resort Unit), provide to Owner or any Lender, buyer or other Third Party seeking or holding an interest in any portion of the Property an estoppel certificate or other document evidencing (with respect to the applicable portion of the Property) that (a) this Agreement is unmodified and in full force and effect or is in full force and effect as modified and stating the modifications, (b) whether such portion of the Property is required to make Resort Unit Revenue Replacement Payments hereunder and, if so, the amount and due dates of any Resort Unit Revenue Replacement Payment that is past due, (c) the date and amount of the last Resort Unit Revenue Replacement Payment to the Town, (d) the payment period covered by such Resort Unit Revenue Replacement Payment, (e) any amount which may be credited against future Resort Unit Revenue Replacement Payments, and (f) specifying the nature and duration of any Event of Default hereunder on the part of any Owner which has not been cured and/or any event or circumstance with respect to which following the passing of time, giving of notice, or both would constitute an Event of Default hereunder by the Owner. Any such document may be relied upon by any such purchaser, assignee or Lender, and the Town shall be estopped from asserting any position to the contrary. The Town's failure to timely execute and deliver such statement within the time required shall be conclusive upon the Town that: (i) this Agreement is in full force and effect and has not been modified except as represented by the Owner; (ii) no Resort Unit Revenue Replacement Payment is past due; and (iii) no Event of Default has occurred by such Owner which has not been cured and no event or circumstance exists which would constitute an Event of Default by such Owner with the passing of time, giving of notice, or both hereunder. The provisions of this Section 7.24 shall not apply to a Resort Unit Revenue Replacement Estoppel request, breach or default under Section 2.3.6.

7.25 Nonliability of Town Officials, Etc., and of Employees, Etc. of Owner. No member, official, representative, agent, attorney or employee of any Party, including a Town Council member, shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Event of Default or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the Parties under the terms of this Agreement including, without limitation, for any award of costs or attorneys' fees which may be entered against a Party. Further, in no event may

any claim or action arising from or relating to this Agreement be commenced or maintained against any member, official, agent, attorney, employee, or representative of any Party in his or her personal (as opposed to official capacity).

7.26 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.

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

7.28 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.

7.29 No Public Dedication. Except as otherwise expressly provided herein, the provisions of this Agreement are not intended to and do not constitute a dedication for public use of any part of the Resort. The rights herein created are private and for the benefit only of the Parties hereto, their successors and assigns.

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

FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC,
an Arizona limited liability company

By: Five Star Development Properties, LLC,
an Arizona limited liability company
Its Sole Member

By: _____
Jerry C. Ayoub
Its Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of December, 2015, by Jerry C. Ayoub, the Manager of Five Star Development Properties, LLC, an Arizona limited liability company, the Sole Member of FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC, an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

My commission expires:

TOWN OF PARADISE VALLEY, ARIZONA,
an Arizona municipal corporation

By: _____

Its: _____

ATTEST:

By: _____

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

By: _____

Andrew M. Miller, Town Attorney

STATE OF ARIZONA)

) ss.

COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of December, 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

My commission expires:

**EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY**

PARCEL NO. 2:

LOTS 1 THROUGH 149 AND TRACTS A THROUGH I, 7000 EAST LINCOLN,
ACCORDING TO BOOK 1022 OF MAPS, PAGE 23, RECORDS OF MARICOPA COUNTY,
ARIZONA;

EXCEPT THAT PORTION OF TRACT C AND G DESCRIBED IN PARCEL NO. 3.

PARCEL NO. 3:

THOSE PORTIONS OF TRACT C AND G, ACCORDING TO BOOK 1022 OF MAPS, PAGE
23, WHICH LIE WITHIN THE FOLLOWING DESCRIBED PROPERTY:

THE SOUTH 15.00 FEET OF THE NORTH 55.00 FEET OF THE NORTHWEST QUARTER
OF THE NORTHEAST QUARTER;

EXCEPT FOR THE WEST 40.00 FEET THEREOF.

TOGETHER WITH THE SOUTH 15.00 FEET OF THE NORTH 55.00 FEET OF THE WEST
HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, ALL IN
SECTION 10, TOWNSHIP 2 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER
BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2 CONTAINING 104.649 ACRES, MORE OR LESS
PARCEL NO. 3 CONTAINING 0.620 ACRES, MORE OR LESS



**EXHIBIT B
THE SITE PLAN**

**This document is on file at the Town of Paradise Valley Clerk's Office
and may be viewed during normal business hours.**

**Town Hall
6401 E. Lincoln Drive
Paradise Valley, AZ 85253**

**EXHIBIT C
TOWN ORDINANCE NO. 696**

ORDINANCE NUMBER 696

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA; AUTHORIZING A DEVELOPMENT AGREEMENT, WITH FIVE STAR DEVELOPMENT RESORT COMMUNITIES, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, THAT AMENDS AND RESTATES, IN ITS ENTIRETY, AN EARLIER DEVELOPMENT AGREEMENT APPROVED BY THE TOWN COUNCIL IN 2008 RELATING TO PROPOSED IMPROVEMENTS TO THE PROPERTY LOCATED AT LINCOLN DRIVE AND MOCKINGBIRD LANE

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

WHEREAS, Five Star Development Resort Communities, LLC (hereinafter “Five Star”), owns fee simple title to approximately 105 acres of real property located in the proximity of Lincoln Drive and Mockingbird Lane within the Town of Paradise Valley, Arizona, (the “Property”).

WHEREAS, The Property is the subject of a prior development agreement approved by the Town of Paradise Valley in 2008 pursuant to Town Resolution No. 1164 (the “2008 Development Agreement”), which was executed by the Town and Five Star; and was recorded the Official Records of Maricopa County.

WHEREAS, Five Star and the Town desire to enter into a development agreement that will restate and amend the 2008 Development Agreement, in its entirety.

WHEREAS, The Town’s current General Plan designation for the Property is Resort/Country Club, the intent of which is to accommodate resorts and country club uses and their integrated residential units and associated support facilities and to encourage the continued revitalization and improvement of the Town’s resorts while protecting the adjacent residential neighborhoods.

WHEREAS, The Property was the subject of prior zoning actions by the Town in April 2008 enacted by Ordinance No. 603 (the “Current Zoning”) and all of the Property currently remains undeveloped.

WHEREAS, The Current Zoning of the Property allows for, among other things, a resort hotel of 225 hotel units; detached and attached single-family and two-family dwellings consisting of 15 resort estates, 46 resort luxury homes and 100 resort patio homes.

WHEREAS, Concurrent with submittal of this Agreement Five Star has requested that the Town rezone the Property and approve a major amendment to the existing special use permit

(granting a change to the Current Zoning) consistent with the General Plan by adopting a new Special Use Permit (designated by the Town as SUP No. 15-01), which will supersede and replace the existing special use permit, replace the Current Zoning with new zoning, be adopted by Town Ordinance No. 694, and allow for the development of the Property and those uses identified in Ordinance No. 694 (said collective actions hereinafter called the “2015 SUP”).

WHEREAS, Five Star’s rezoning request in the 2015 SUP includes a resort/hotel use of 200 hotel rooms, with a spa, multiple restaurants, ballrooms, and meeting space; resort branded attached condominium villas; resort related luxury detached single family homes; resort branded detached single family homes; resort related attached residences; resort-related retail uses; a future development area that may potentially include restaurants, resort-related health services, and hotels; and private streets and rights-of-way; and areas devoted to undeveloped open space in accordance with and pursuant to the schematic site plan made part of the 2015 SUP (the “Site Plan”).

WHEREAS, In addition to the 2015 SUP, Five Star has also requested that certain portions of the Property be platted in the future as subdivisions through an expedited subdivision preliminary plat and preliminary map application, such plat and map to provide for individual lots and units (shown on the 2015 SUP and the Site Plan as the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences) that Five Star desires to sell in fee title to third parties.

WHEREAS, Further, in addition to the subdivision of the 105 acres owned by Five Star to allow for the sale of the Resort Villas, Resort Related Luxury Homes, Resort-Branded Homes, and Resort Related Attached Residences, Five Star has requested that the 2015 SUP allow ninety-four (94) resort-related attached condominium villas (“**Resort Villas**”); sixty-six (66) resort related luxury detached single family homes (“**Resort Related Luxury Homes**”); forty-five (45) resort branded detached single family homes (“**Resort-Branded Homes**”); sixty-two (62) resort related attached residences (“**Resort Related Attached Residences**”) to be used for land uses that are not permitted under current zoning (i.e., residential use and owner occupancy of these units). Five Star acknowledges that such uses would not be permitted without the Town first rezoning the Property by granting a 2015 SUP containing the development plan and the uses requested by Five Star.

WHEREAS, The Town Council desires to adopt the Development Agreement attached hereto and incorporated herein by this reference (the “2015 Development Agreement”) and acknowledges that the 2015 Development Agreement constitutes a development agreement within the meaning of A.R.S. § 9-500.05.

WHEREAS, Five Star and the Town have agreed that the 2008 Development Agreement needs to be amended and restated so that it is consistent with the 2015 SUP to be approved by the Town Council by the adoption of Ordinance No. 694.

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

1. Approves the 2015 Development Agreement (Exhibit “A” hereto).

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2. Authorizes the Mayor to execute the 2015 Development Agreement.
3. Authorizes the Town Clerk to record the 2015 Development Agreement in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the TOWN OF PARADISE VALLEY, Arizona, this ____ day of _____, 2015.

Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew M. Miller, Town Attorney

EXHIBIT D
HOTEL QUALITY STANDARDS

The Principal Resort Hotel shall, at all times of operation, include the Minimum Resort Hotel Improvements and shall be designed and operated to satisfy the Town’s expectation of a full service luxury resort hotel (as this term is generally used by Smith Travel) by meeting the criteria listed below in this Exhibit D (the “**Hotel Quality Standards**”). Owner shall satisfy the Hotel Quality Standards for the Principal Resort Hotel if the Principal Resort Hotel has both (i) an Acceptable Brand and (ii) a design (a “**Resort Hotel Design**”) that meets the brand standards of the Acceptable Brand and the other requirements of this Agreement and the 2015 SUP.

The Town Manager will initially review and make a determination whether the Principal Resort Hotel meets the Hotel Quality Standards based upon the following minimum components for a Resort Hotel Design submittal (“**Design Submittal**” or “**Submittal**”). The purpose of the Submittal is to provide Owner with an early determination on the Hotel Quality Standards so that, if approved, subsequent submittals for building permits will be viewed solely for the purpose of compliance with the previously approved Resort Hotel Design. Owner may make changes to any Design Submittal from time to time, and with each subsequent review the Town and Owner will rely upon a prior approval or the criteria set for this in this Exhibit D, such that Town shall only review those elements of the Submittal that have changed and not reevaluate items previously approved. The Town Manager will issue an approval or denial with respect to any Design Submittal within ten (10) business days; failure to timely issue an approval or denial will constitute approval. Any disapproval shall be accompanied by a written itemization of those specific elements of the Resort Hotel Design that do not comply with the Hotel Quality Standards and an explanation of such non-compliance. Once a Resort Hotel Design is approved, Owner may rely on such approval in proceeding toward more detailed design and/or construction documents based upon the Resort Hotel Design. A Design Submittal shall include the following:

1. A brief narrative of the Principal Resort Hotel concept and brand affiliation that includes a letter stating that the Resort Hotel Design meets its brand standards for a luxury full service resort hotel (the “**Brand Letter**”) executed by an authorized officer or representative of an Acceptable Brand, based on the following:

1.1 **Resort Opening to the Fifth Anniversary of the Resort Opening Date:**

1.1.1 At the time of commencement of resort operations as measured by the first official room booking date (the “**Resort Opening Date**”), the Principal Resort Hotel shall take and receive room bookings under one of the Opening Brands. A requested opening under other than one of the Opening Brands shall be deemed non-compliant with this Agreement and no certificate of occupancy or completion, as the case may be, shall be issued for the Principal Resort Hotel.

1.1.2 Operation under any brand other than one of the Opening Brands during the period from the Resort Opening Date to the five (5)-year anniversary of the Resort Opening Date or otherwise failing to meet the Hotel Quality Standards shall be deemed a breach of this Agreement and shall be subject to the remedies available under Section 2.3.1.3 of this Agreement and the 2015 SUP.

1.2 Fifth Anniversary to the Twenty-Fifth Anniversary:

1.2.1 From the period that is five (5) years after the Resort Opening Date to the twenty-fifth (25th) anniversary of said date, the Principal Resort Hotel shall take and receive room bookings under a Year 5 to 25 Brand and maintain compliance with the furniture, fixture and equipment requirements of the applicable Year 5 to 25 Brand (as evidenced through an inspection conducted not less than annually by an authorized officer or representative of the applicable Year 5 to 25 Brand, memorialized in writing and submitted to Town).

1.2.2 Operation under any brand other than one of the Year 5 to 25 Brands during the period from five (5) years after the Resort Opening Date to the twenty-fifth (25th) anniversary of the Resort Opening Date or otherwise failing to meet the Hotel Quality Standards shall be deemed a breach of this Agreement and shall be subject to the remedies available under Section 2.3.1.3 of this Agreement and the 2015 SUP.

1.3 The Twenty-Fifth Year Forward:

1.3.1 At any time after the twenty-fifth (25th) anniversary of the Resort Opening Date, the Owner of the Principal Resort Hotel may propose a new brand to take and receive room bookings, which may be any of the Year 5 to 25 Brands or, alternatively, a brand approved by one of methods noted below:

1.3.1.1 A brand designated as an Acceptable Brand through an amendment to this Agreement; or

1.3.1.2 The Town Manager shall hire a nationally recognized hotel consulting firm. Said firm shall identify ten (10) hotel brands considered the top luxury brands in the United States in terms of price, amenities, and ratings. The Owner of the Principal Resort Hotel shall hire a separate nationally recognized hotel consulting firm to do the same. All brands that appear on the lists of both consulting firms shall be deemed to be Acceptable Brands. Any brand not present on both lists, but present on at least one list, shall be subject to a third review by a firm mutually agreed upon by both initial consulting firms. Said firm may then approve any of the brands listed on only one list. No additional brands may be added to either list after the list is submitted to the other Party.

1.3.2 Operation under any brand other than one of the Acceptable Brands after the twenty-fifth (25th) anniversary of the Resort Opening Date or otherwise failing to meet the Hotel Quality Standards shall be deemed a breach of this Agreement and shall be subject to the remedies available under Section 2.3.1.3 of this Agreement and the 2015 SUP.

2. A site plan generally showing the approximate locations within the Resort where the Principal Resort Hotel improvements are located and identifying the approximate locations of the Minimum Resort Hotel Improvements, parking, and access drives. The site plan shall reflect building heights and number of stories, as well as a general description of the uses within each of these buildings.

3. Elevations of the primary Principal Resort Hotel structure (the structure which includes the guest registration and reception) reflecting the general architectural theme of the Principal Resort Hotel.

4. A program (i.e., a list of areas, their approximate size and function) for the Minimum Resort Hotel Improvements, along with any other elements to be initially included in the Principal Resort Hotel.

5. For the Hotel Keys, a brief description to include the number of keys, the range of sizes, number and types of the rooms (i.e., standard room, suite), along with a typical room standard description. A typical room standard description should include floor plan, type of floor covering, type and number of bath fixtures (i.e., shower, tub, toilet, sink), and hard surface finishes. Description of hard surface finishes need only include the type of finish, such as granite, marble, tile, paint or other wall finish and not a particular specified material.

6. For restaurant(s), a brief description of size of public dining areas, the location and approximate number of seats, and the meals to be served (i.e., breakfast, lunch, and/or dinner).

7. For public areas, such as reception, lobby, meeting rooms, and areas of circulation, an approximate floor plan(s) and a generic description of floor, wall, and ceiling finishes (as opposed to specific design, material, color or other design specifications).

8. A description of drive access, parking, valet, and arrival areas to include a parking study that follows the requirements of the 2015 SUP.

EXHIBIT E
STREET IMPROVEMENTS

The Town and Five Star intend to jointly develop Lincoln Drive, Mockingbird Lane, and Indian Bend Road surrounding the Resort as a unique amenity that will complement the Resort and its landscaping plans as well as serving as a gateway entry to the Town at the eastern end of Lincoln Drive. The development, implementation, and care of the pedestrian and vehicular experience are crucial to Five Star and the Town so that the unique character of these streets, along with safety, security, and the efficient movement of vehicular traffic is achieved. These distinctive characteristics will be the strongest elements in creating a sense of place and establish these streets as a Visually Significant Corridors. The scope of the Street Improvements and the relative percentage responsibility for the costs of the Street Improvements is set forth in the table below. The Scottsdale Street Improvements are also identified in this Exhibit E.

Street Improvements

Location	Improvement	Description of Work in Traffic Impact Analysis or Other Reference Document	Financially Responsible Party
2. Indian Bend cross section	<u>Required Owner Improvement</u> : Construct roadway improvements along Indian Bend Road from Mockingbird to 600 feet west of Scottsdale Road	Staff comments to match General Plan; substantial conformance with Page D-12 of Approved Plans in 2015 SUP	Five Star - 100% design & construction
5. Quail Run signal	<u>Required Owner Improvement</u> : Signalize the intersection of Quail Run Road & Lincoln Drive, which will serve as the main entrance to the Resort; modify median for 150 linear feet of storage	Roadway Improvements Page 3 - Bullet 3; "Future Roadway Improvements" Page 29; Queue Storage Lengths Page 6 - Bullet 1	Five Star - 100% design & construction
6. Lincoln & Mockingbird, westbound right turn lane	<u>Required Owner Improvement</u> : Construct a westbound right-turn lane at the intersection of Lincoln Drive and Mockingbird Lane	Roadway Improvements Page 3 - Bullet 4; "Future Roadway Improvements" Page 29	Five Star - 100% design & construction
7. Lincoln & Mockingbird, southbound right turn lane	<u>Required Owner Improvement</u> : Construct a southbound right-turn lane at the intersection of Lincoln Drive & Mockingbird Lane	Roadway Improvements Page 3 - Bullet 5; "Future Roadway Improvements" Page 29; Intersection Capacity Analysis Page 5 - Bullet 2	Five Star - 100% design & construction
9. Indian Bend traffic circle	<u>Required Owner Improvement</u> : Improve traffic circle with alternate pavement treatment	Roadway Improvements Page 3 - Bullet 8; "Future Roadway Improvements" Page 29; in substantial conformance with Page D-11 of Approved Plans in 2015 SUP	Five Star - 100% design & construction
10. Indian Bend, traffic calming	<u>Required Owner Improvement</u> : Install traffic calming elements between the Indian Bend traffic circle and Mockingbird Lane as determined by the Town if traffic from Area E1 is prioritized to use Indian Bend Road	Roadway Improvements Page 4 - Bullet 1; "Future Roadway Improvements" Page 29	Five Star - 100% design & construction
11. Mockingbird improvements, Lincoln to Indian Bend	<u>Required Owner Improvement</u> (with limited contribution to design costs by Town as provided in this row): Construct median island and roadway and setback improvements along	Staff comments to match General Plan; Queue Storage Lengths Page 7 - Bullet 1	Five Star - 100% construction; Five Star and Town – each 50% design

Location	Improvement	Description of Work in Traffic Impact Analysis or Other Reference Document	Financially Responsible Party
	Mockingbird from Lincoln to Indian Bend Road; improve Mockingbird Lane & Lincoln westbound left-turn lane to include 350 feet of storage and the removal of a center median; construct new south and westbound right-turn lanes to provide 175 feet and 150 feet of storage, respectively		
12. Mockingbird improvements, Indian Bend to Northern	<u>Town Street Improvement:</u> Construct median island and roadway and setback improvements along Mockingbird from Indian Bend Road to Northern	Town Capital Improvement Program	Town - 100% design & construction
13. Lincoln improvements, Town limits to Mockingbird, north side and medians	<u>Required Owner Improvement</u> (with limited contribution to design costs by Town as provided in this row): Construct median islands and roadway and setback improvements along north side of Lincoln to VSC standards; construct large drainage swale from Mockingbird across the Property ending at the box culvert at Scottsdale Road & Indian Bend; construct another channel along Lincoln from Mockingbird to the east Town limits; construct on-site retention basins and grading to accommodate drainage	Staff comments to match General Plan; Page G-7 & D-10 in Approved Plans in 2015 SUP; Final Drainage & Grading Master Plan	Five Star - 100% construction; Five Star and Town – each 50% design
14. Lincoln Avenue entry signs	<u>Required Owner Improvement:</u> Install Town entry signs on north and south side of Lincoln at Town limits	Staff Comments to match Page D-7 in Approved Plans in 2015 SUP	Five Star - 100% design & construction; Town responsible for acquiring land on south side
15. Lincoln improvements, Town limits to Mockingbird, south side	<u>Town Street Improvement</u> (with limited contribution to design costs by Five Star as provided in this row): Construct roadway improvements along Lincoln to VSC standards	Town Capital Improvement Program	Town - 100% construction; Five Star and Town – each 50% design
16. Lincoln & Tatum,	Town Street Improvement:	Intersection Capacity	Town - 100% design &

Location	Improvement	Description of Work in Traffic Impact Analysis or Other Reference Document	Financially Responsible Party
westbound right turn lane	Acquire right-of-way to mitigate the delay by lengthening the westbound right-turn lane	Analysis Page 5 - Bullet 1	construction

Scottsdale Street Improvements

<p>A. Indian Bend, south side</p>	<p><u>Scottsdale Street Improvement:</u> Construct half-street improvements on Indian Bend Road from Scottsdale Road to approximately 600 feet to the west</p>	<p>Roadway Improvements Page 2 - Bullet 1; "Future Roadway Improvements" Page 29</p>	<p>Five Star - 100% design & construction – Inclusion is TBD based on results of updated traffic analysis and dependent upon approval by City of Scottsdale</p>
<p>B. Indian Bend & Scottsdale Road</p>	<p><u>Scottsdale Street Improvement:</u> Add second westbound through lane along Indian Bend Road; mitigate the signalized intersection of Scottsdale Road & Indian Bend Road to include signal timing adjustments and reconfiguration of the eastbound approach to provide two left turn lanes, one through lane, and a shared through-right turn lane</p>	<p>Roadway Improvements Page 3 - Bullet 1; "Future Roadway Improvements" Page 29; Intersection Capacity Analysis Page 5 - Bullet 3</p>	<p>Five Star - 100% design & construction – Inclusion is TBD based on results of updated traffic analysis and dependent upon approval by City of Scottsdale</p>
<p>C. 6750 North & Scottsdale Road</p>	<p><u>Scottsdale Street Improvement:</u> Improve the intersection of Scottsdale Road & 6750 North to include northbound dual left-turn lanes with 115 feet of storage each, and southbound right turn lane increased to 150 feet of storage; if only a single northbound left turn lane is provided at the intersection of Scottsdale Road & 6750 North, northbound left-turn lane's storage is 132 feet and the queue for the northbound left turn lane on Scottsdale Road approaching Indian Bend Road is 309 feet.</p>	<p>Roadway Improvements Page 3 - Bullet 2; "Future Roadway Improvements" Page 29; Intersection Capacity Analysis Page 5 - Bullet 4; Queue Storage Lengths Page 6 - Bullet 1; Queue Storage Lengths Page 7 - Bullet 2</p>	<p>Five Star - 100% design & construction – Inclusion is TBD based on results of updated traffic analysis and dependent upon approval by City of Scottsdale</p>
<p>D. Lincoln & Scottsdale Road</p>	<p><u>Scottsdale Street Improvement:</u> Adjust the signal timing and add right-turn overlap periods where applicable</p>	<p>Intersection Capacity Analysis Page 6 - Bullet 2</p>	<p>Five Star - 100% design & construction – Inclusion is TBD based on results of updated traffic analysis and dependent upon approval by City of Scottsdale</p>

<p>E. Mockingbird & Indian Bend</p>	<p><u>Scottsdale Street Improvement</u>: See last column in this row for alternative improvements and allocation of costs</p>	<p>Roadway Improvements Page 3 - Bullet 7; "Regional Improvements" Page 31</p>	<p><i>If Five Star is able to improve 6750 Scottsdale with two northbound left turn lanes, Five Star and Town – each 50% design & construction – Inclusion is TBD based on results of updated traffic analysis and dependent upon approval by City of Scottsdale</i></p> <p style="text-align: center;">-or-</p> <p><i>If Five Star is unable to improve 6750 Scottsdale with two northbound left turn lanes, Five Star - 100% design & construction – Inclusion is TBD based on results of updated traffic analysis and dependent upon approval by City of Scottsdale</i></p>
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**EXHIBIT F
RIGHT-OF-WAY**

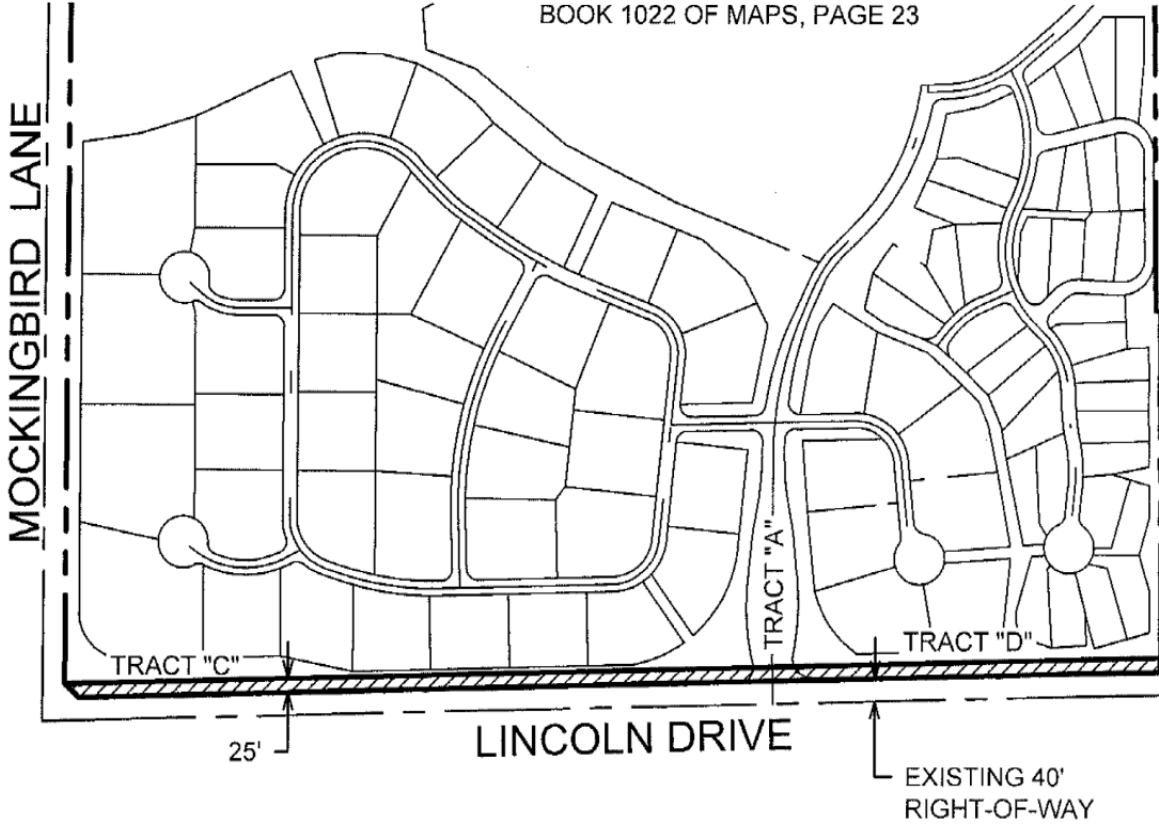
The South 25.00 feet of Tracts "A", "C" and "D" of Final Plat of 7000 East Lincoln, as recorded in Book 1022 of Maps, Page 23, Records of Maricopa County, Arizona.

Containing 1.125 Acres, more or less.



Expires 6/30/2016

7000 EAST LINCOLN
 BOOK 1022 OF MAPS, PAGE 23



= RIGHT-OF-WAY DEDICATION



SCALE 1" = 300' EXHIBIT "F"	RITZ-CARLTON RESORT RIGHT-OF-WAY DEDICATION	
4550 North 12th Street Phoenix, Arizona 85014 Phone 602-264-6831 http://www.cvlci.com		

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EXHIBIT G
TOWN'S INSURANCE REQUIREMENTS

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

1. Compensation Insurance. During the life of the contract, workmen's compensation insurance for all employees at the site of the project, and in case any of the work is sublet, each subcontractor shall similarly provide Workmen's Compensation Insurance for its employees unless such employees are covered by the contractor. In the event any class of employees engaged in the work under the contract at the site of the project is not protected by Workmen's Compensation Statute, the contractor shall provide and similarly shall cause each subcontractor to provide special insurance for the protection of such employees not otherwise provided.

2. Public Liability and Property Damage Insurance. The contractor shall secure, and maintain during the life of the Contract, such public liability and property damage insurance, both general and automobile liability, as shall protect the contractor, any subcontractor performing work under the Contract, and the Town of Paradise Valley from all claims for bodily injury, including accidental death, as well as for all claims for property damage arising from operations under this contract, whether such operations by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. The contractor agrees to include the Town of Paradise Valley as an additional insured in all the insurance policies required under the Contract and such insurance shall be primary.

3. Minimum Limits.

3.1 Workmen's Compensation Insurance shall be secured and maintained in accordance with the Workmen's Compensation Law of Arizona, as revised.

3.2 Comprehensive General Liability Insurance including broad form property damage, premises-operations, independent contractors, contractual, and automobile liability shall be secured and maintained in an amount not less than \$5,000,000 combined single limit.

3.3 The general contractor subletting any part of the work awarded to him shall provide a contingent liability policy in the same amount as provided for his public liability insurance.

4. Coverage. All policies shall include coverage for:

4.1 Damage caused by blasting.

4.2 Damage caused by collapse or structural injury.

4.3 Damage to underground facilities.

4.4 Liability assumed in construction agreements and other types of contracts or agreements in effect in connection with subject insured operations.

4.5 All owned, hired or non-owned automotive equipment used in connection with the insured operation.

5. Notice. The insurance policies secured and maintained shall provide that the policies will not be canceled or changed so as to affect the certificate until ten (10) days after written notice of such cancellation or change has been completed and/or the project has been accepted by the Town of Paradise Valley. (If a policy does expire during the life of the Contract, renewal certificates of the required coverage must be sent to the Town not less than five days prior to expiration date.)

6. Indemnification. The contractor shall also execute an agreement that states that the contractor shall indemnify, defend and save harmless the Town and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and representatives from all suits, actions, loss, damage, expense, cost or claims of any character or any nature brought on account of any injuries or damage sustained by any person or property arising out of the work done in fulfillment of the construction of the Public Improvements under the terms of the contractor's agreement with the Owner, on account of any act or omission by the contractor or his agents, or from any claims or amounts arising or recovered under Workmen's Compensation laws or any other law, by-law, ordinance, or order or decree.