

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. Subordination. Subject to the provisions of this NDRA, the rights of Lender in the Property pursuant to the Deed of Trust are and shall continue to be junior, inferior, subject and subordinate to the Agreements, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Non-Performance.

3.1 Lender is a "Mortgagee" under the Lease. City shall give Lender (a) all written notices as required under the Lease or hereunder (the "Notice"), and (b) sixty (60) days following the expiration of Tenant's cure period to cure any alleged non-performance under the Agreements, including but not limited to (i) any alleged Event of Default, as defined in the Lease, (ii) any alleged Default, as defined in the PADA, and (iii) any alleged failure of Tenant to meet the Resort No. 2 Minimum Requirements, as defined in the PADA (each, an "Event of Non-Performance"), prior to terminating the Agreements or invoking such other remedies as may be available to City under the Agreements.

3.2 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth above for curing an Event of Non-Performance (subject to extension as set forth hereinafter), in its sole discretion to: (a) to cure the Event of Non-Performance, in which event Tenant shall retain its position with respect to the Lease and the Lease will continue in full force and effect; (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust) to assume Tenant's Position with respect to the Lease (to "Assume" or an "Assumption"); and/or (c) to exercise its rights and remedies under the Loan Documents including its right to foreclose the Property (or Tenant's leasehold interest therein). Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender. In the event Lender elects to exercise its rights under subclause (c) above, the City shall defer exercising any of its remedies under the Lease, including any right to terminate same, for such period as is reasonably necessary to enable Lender to exercise its rights under the Loan Documents, not to exceed one hundred eighty (180) days, provided Lender promptly commences and diligently pursues such exercise.

3.3 If Lender agrees to Assume Tenant's Position, Lender and City shall execute an amendment to the Lease (an "Amendment") to memorialize such Assumption and shall cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state that Lender has fully assumed Tenant's Position with respect to the Lease, and that Lender is thereafter substituted for Tenant with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Lease following the date of the Assumption. The execution or approval by Tenant of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, City shall (i) look to Lender and/or Tenant for performance of the Obligations under the Lease from and after the date of the Assumption and (ii) make to Lender all payments, and render in favor of Lender all performance, required to be made by the City to Tenant under the Lease.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property (or Tenant's leasehold interest therein) in lieu of such foreclosure (collectively, a "Foreclosure") and (ii) the transfer of the Property (or Tenant's leasehold interest therein) to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "Purchaser"), then, at Purchaser's election, the Tenant's Position under the Lease shall accompany and be deemed covenants running with the Property, and the Purchaser shall be deemed to have assumed Tenant's Position with respect to the Lease following the date of such Assumption. Upon the acquisition of the Property by a Purchaser, and Purchaser's election to assume Tenant's Position, City shall (i) look to Purchaser and/or Tenant for performance of the Obligations under the Lease and (ii) make to Purchaser all payments, and render in favor of Purchaser all performance, required to be made by the City to Tenant under the Lease.

3.5 Unless and until an Assumption occurs, as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Obligation of Tenant under the Lease and City shall look solely to Tenant for the performance of Tenant's Obligations thereunder. Tenant shall continue to be liable for all of the Obligations thereunder and shall perform all such Obligations, shall comply with all terms and conditions of the Lease applicable to Tenant, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Lease.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Tenant of any Obligation under the Lease.

#### 4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Lease, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) hereunder:

4.1.1 City shall not interfere with or disturb Lender's rights under the Lease and this NDRA; and

4.1.2 Lender shall not be made a party to any proceeding commenced pursuant to the Lease, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust, provided that nothing herein shall prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender shall recognize the City's rights under the Lease for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

#### 5. Estoppel

5.1 City and Tenant hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

- a) There is no existing Event of Non-Performance, nor does there exist any situation or state of facts which, with the giving of notice or passage of time, would constitute an Event of Non-Performance;
- b) The Lease has not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- c) The Lease is in full force and effect; and
- d) **[IF APPROPRIATE]** "Completion of Construction", as defined in the PADA occurred on \_\_\_\_\_, 20\_\_\_\_.
- e) **[confirmation of such other factual matters under the Lease as Lender may reasonably request]**

6. Miscellaneous.

6.1 This NDRA shall be binding upon and inure to the benefit of City, Tenant and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA 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 such party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City: City of Mesa  
 20 East Main Street  
 Mesa, Arizona 85211  
 Attention: City Manager  
 Fax: (480) 905-1419

With required copies to: City of Mesa  
 20 East Main Street  
 Mesa, Arizona 85211  
 Attention: City Attorney  
 Fax: (480) 905-1419

If to Tenant:  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

With required copies to:

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If to Lender:

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With required copies to:

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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. Any party may designate a different person or entity or change the place to which any notice shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and Obligations of the parties hereunder shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Lease, and supersedes all prior oral or written agreement with respect to such subordination (only to the extent, however, as would affect the priority between the Lease and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been

obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein shall have the definitions set forth in the Lease.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

**"CITY"**

CITY OF MESA, an Arizona municipal corporation

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

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

**"TENANT"**

\_\_\_\_\_,

a(n) \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**"LENDER"**

\_\_\_\_\_,

a(n) \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**Acknowledgment by City**

---

STATE OF ARIZONA )  
  )ss.  
County of Maricopa  )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_ the \_\_\_\_\_ of the City of Mesa, on behalf of the City.

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

My Commission Expires:  
\_\_\_\_\_

**Acknowledgment by Tenant**

---

STATE OF ARIZONA )  
  )ss.  
County of \_\_\_\_\_ )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_  
\_\_\_\_\_ on behalf of the \_\_\_\_\_.

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

My Commission Expires:  
\_\_\_\_\_

**Acknowledgment by Lender**

---

STATE OF ARIZONA )  
  )ss.  
County of \_\_\_\_\_ )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on  
behalf of the \_\_\_\_\_.

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

My Commission Expires:  
\_\_\_\_\_

---

**EXHIBIT "A"**

**Legal Description of Property**

**[TO BE ATTACHED UPON EXECUTION OF NDRA]**



**EXHIBIT "E"**

**(Special Warranty Deed)**

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXEMPT FROM AFFIDAVIT OF VALUE  
PURSUANT TO A.R.S. §11-1134(A)(3)

---

**SPECIAL WARRANTY DEED**

For the consideration of Ten Dollars and other valuable consideration, the CITY OF MESA, ARIZONA, an Arizona municipal corporation ("**Grantor**"), does hereby convey to \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Grantee**"), that certain real property ("**Property**") situated in Maricopa County, Arizona, legally described in Exhibit "A" attached hereto and made a part hereof, together with all improvements thereon and all rights, and privileges appurtenant thereto.

SUBJECT TO: current taxes and assessments, reservations or exceptions in patents from the United States of America or in the act or acts authorizing the issuance thereof, unpatented mining claims, water rights, and claims or title to water, and all easements, rights-of-way, encumbrances, liens, covenants, conditions and restrictions, and all other matters as may appear of record, and all matters that an accurate survey or physical inspection of the Property would reveal.

SUBJECT TO: all acts of Grantor, as Landlord named in the Development Lease, between Grantor and \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, evidenced by a Memorandum of Lease, recorded in the Official Records of Maricopa County, Arizona, at \_\_\_\_\_ (the "**Lease**"), done, performed, undertaken or completed upon request of the Tenant named in the Lease, or acts of such Tenant to which Grantor has consented pursuant to the Lease.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title, as against its own acts and none other, subject to the matters above set forth.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[SIGNATURES FOLLOW ON NEXT PAGE]

**"GRANTOR"**

CITY OF MESA, an Arizona municipal corporation

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

Name: \_\_\_\_\_

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

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA )  
  )ss.  
County of Maricopa )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ the \_\_\_\_\_ of the CITY OF MESA, ARIZONA, a municipal corporation, on behalf of the City.

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

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT "A"**

**[TO BE ATTACHED UPON EXECUTION OF THE DEED]**

**EXHIBIT "F"**

**(Memorandum of Lease - Resort No. 2 Property & Resort No. 2 Improvements)**

WHEN RECORDED RETURN TO:

City of Mesa  
20 East Main Street, #750  
Mesa, Arizona 85211  
Attn: Real Estate Services Director

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**MEMORANDUM OF LEASE  
(Resort No. 2 Property & Resort No. 2 Improvements )**

THIS MEMORANDUM OF LEASE constitutes constructive notice of record that there is in existence a Lease as described below. This Memorandum of Lease is executed by the Landlord and Tenant named in the Lease for recording purposes only as to the Lease hereinafter described. The Premises described below are leased from Landlord to Tenant pursuant to the Lease, and this Memorandum of Lease it is not intended to, and shall not, modify, amend, supersede or otherwise effect the terms and provisions of said Lease.

1. Name of Document: DEVELOPMENT LEASE (Resort No. 2 Property & Resort No. 2 Improvements) (the "Lease")
2. Name of Landlord: CITY OF MESA, ARIZONA, an Arizona municipal corporation
3. Name of Tenant: \_\_\_\_\_, a(n)  
\_\_\_\_\_
4. Address of Landlord: City of Mesa  
Attn: Real Estate Services Director  
20 E. Main Street  
Mesa, AZ 85211, #750
5. Address of Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Date of Lease: \_\_\_\_\_, 20\_\_\_\_  
(“Effective Date”)

- 7. **Term:** The period beginning on the Effective Date, and ending fifty (50) years from the first day of the first calendar month following the Opening Date, as defined in the Lease.
- 8. **Premises:** The certain land known as the "Resort No. 2 Property", as more particularly described on Exhibit "A" attached hereto and made a part hereof, together with the Resort No. 2 Improvements, and any and all other improvements, related rights, and appertunentances thereto.
- 9. **Purchase Option:** Landlord grants an option to the Tenant to purchase the Premises, at any time during the Term, upon the terms and conditions set forth in the Lease.
- 10. **Rent:** Tenant shall pay to Landlord rents and other amounts, as more particularly set forth in the Lease.
- 11. **Incorporation of Lease:** All of the covenants, conditions, defined terms and provisions of the Lease are, by this reference to the Lease, incorporated herein and made a part hereof, the same as though expressly set forth herein. If a conflict arises between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall prevail.

A copy of the Lease is on file with Landlord and Tenant at their respective addresses set forth above.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of this \_\_\_\_\_, 20\_\_.

**TENANT:**  
 \_\_\_\_\_, a(n)  
 \_\_\_\_\_

**LANDLORD:**  
**CITY OF MESA, ARIZONA, an**  
**Arizona municipal corporation**

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

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

**Acknowledgment by Tenant**

---

STATE OF ARIZONA)  
  )ss.  
County of \_\_\_\_\_)

The foregoing was acknowledged before me this day of \_\_\_\_\_, 200\_, by  
\_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, as \_\_\_\_\_ of  
\_\_\_\_\_, on behalf thereof.

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

My Commission Expires:  
\_\_\_\_\_

**Acknowledgment by Landlord**

---

STATE OF ARIZONA)  
  )ss.  
County of Maricopa )

The foregoing was acknowledged before me this day of \_\_\_\_\_, 200\_, by  
\_\_\_\_\_ the \_\_\_\_\_ of the CITY OF MESA, ARIZONA, an  
Arizona municipal corporation, on behalf of the City.

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

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of Resort No 2 Property**

**[TO BE ATTACHED UPON EXECUTION OF THE LEASE MEMORANDUM]**

**EXHIBIT "H"**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NON DISTURBANCE AND RECOGNITION AGREEMENT  
(Pre-Annexation Development Agreement –  
Mesa Proving Grounds -- Hospitality Facilities and Convention Center)**

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "NDRA") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) \_\_\_\_\_, a(n) \_\_\_\_\_ ("Developer"); (b) \_\_\_\_\_ ("Lender"); and (c) the City of Mesa, Arizona, an Arizona municipal corporation ("City").

1. Recitals.

1.1 Developer is a Party under a *Pre-Annexation Development Agreement (Mesa Proving Grounds – Hospitality Facilities and Convention Center)* entered into with the City, dated \_\_\_\_\_, 20\_\_, and recorded in the Official Records of Maricopa County, Arizona, at \_\_\_\_\_ (the "Agreement"), which Agreement sets forth certain rights and responsibilities of the Parties thereunder with respect to certain real property referred to in the Agreement (and herein) as the "Proving Grounds". A portion of the Proving Grounds referred to as the [Gaylord Property / Resort No. 2 Property] is the subject hereof and is more particularly described in Exhibit "A" attached hereto (the "Property"). [property description for applicable property to be attached]

1.2 The Agreement relates to the acquisition and/or development of the Property, and/or the construction and operation of improvements upon the Property, and the construction of certain **Public Improvements** by the City in and around the Property. Developer's rights under the Agreement are sometimes referred to herein as "**Developer's Position**". Developer's obligations arising under the Agreement are sometimes referred to as the "**Obligations**".

1.3 Lender has agreed to lend money or otherwise make credit available to Developer, and Developer will execute (or has executed) certain loan documents (the "**Loan Documents**") relating thereto, which may include, but are not limited to, a [*Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement*] for the use and benefit of Lender (the "**Deed of Trust**") and/or a [*Collateral Assignment of Rights under Development Agreement*] (the "**Assignment**") to secure the financing provided by Lender to Developer (the "**Loan**"). The [*Deed of Trust and/or the Assignment*] will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property and/or the Developer's Position.



1.4 Lender has certain rights and remedies under the Loan Documents, including but not limited to the right to foreclose the Deed of Trust and effectuate a transfer of the Property, and the right to acquire and/or assume Developer's rights under the Agreement.

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. Subordination. Subject to the provisions of this NDRA, the rights of Lender in the Property pursuant to the Deed of Trust are and shall continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Non-Performance.

3.1 If Lender is a "Mortgagee" under the Agreement, City shall give Lender the written notice as required by Section 7.20 of the Agreement (the "Notice") and sixty (60) days following the expiration of Developer's Cure Period to cure any alleged Event of Default or other non-performance under the Agreement, including any alleged failure of Developer to meet the [Gaylord Minimum Requirements / Resort No. 2 Minimum Requirements] (an "Event of Non-Performance"), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender shall have the option, following Lender's receipt of the Notice, and within the time period set forth above for curing an Event of Non-Performance (subject to extension as set forth hereinafter), in its sole discretion to: (a) to cure the Event of Non-Performance, in which event Developer shall retain its position with respect to the Agreement and the Agreement will continue in full force and effect; (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "Assume" or an "Assumption"); and/or (c) to exercise its rights and remedies under the Loan Documents including its right to foreclose the Property and to exercise its rights with respect to any collateral assignment of, or security interest in, the Agreement. Lender shall give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender. In the event Lender elects to exercise its rights under subclause (c) above, the City shall defer exercising any of its remedies under the Agreement, including any right to terminate same, for such period as is reasonably necessary to enable Lender to exercise its rights under the Loan Documents, not to exceed one hundred eighty (180) days, provided Lender promptly commences and diligently pursues such exercise.

3.3 If Lender agrees to Assume Developer's Position, Lender and City shall execute an amendment to the Agreement (an "Amendment") to memorialize such Assumption and shall cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment shall state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement following the date of the Assumption. The execution or approval by Developer of the Amendment shall not be necessary or required, and upon execution and recordation of the Amendment, City shall (i) look to Lender and/or Developer for performance

of the Obligations under the Agreement from and after the date of such Assumption and (ii) make to Lender all payments, and render in favor of Lender all performances, required to be made by the City to or for the benefit of Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "Foreclosure") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "Purchaser"), then, at Purchaser's election, the Developer's Position under the Agreement shall accompany and be deemed covenants running with the Property, and the Purchaser shall be deemed to have assumed Developer's Position with respect to the Agreement following the date of such Assumption. Upon the acquisition of the Property by a Purchaser, and Purchaser's election to assume Developer's Position, City shall (i) look to Purchaser and/or Developer for performance of the Obligations under the Agreement and (ii) make to Purchaser all payments, and render in favor of Purchaser all performances, required to be made by the City to Developer under the Agreement.

3.5 Unless and until an Assumption occurs, as defined herein, nothing in this NDRA shall constitute an assumption by Lender of any Obligation of Developer and City shall look solely to Developer for the performance of Developer's Obligations thereunder. Developer shall continue to be liable for all of the Obligations thereunder and shall perform all such Obligations, shall comply with all terms and conditions of the Agreement applicable to Developer, and shall take such steps as may be necessary or appropriate to secure performance by the City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA shall constitute a release of Developer of any Obligation.

#### 4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) hereunder:

4.1.1 City shall not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender shall not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein shall prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender shall recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 shall automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

- a) There is no existing Event of Non-Performance, nor does there exist any situation or state of facts which, with the giving of notice or passage of time, would constitute an Event of Non-Performance;
- b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;
- c) The Agreement is in full force and effect; and
- d) **[IF APPROPRIATE]** "Completion of Construction", as defined in the Agreement occurred on \_\_\_\_\_, 20\_\_\_\_.
- e) **[confirmation of such other factual matters under the Agreement as Lender may reasonably request]**

6. Miscellaneous.

6.1 This NDRA shall be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale and any Purchaser.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA 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 such party may designate in writing pursuant to the terms of this Section, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copies to:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Developer:

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copies to:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With required copies to:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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. Any party may designate a different person or entity or change the place to which any notice shall be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreement with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-5 11.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been

obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein shall have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

**"CITY"**

CITY OF MESA, an Arizona municipal corporation

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

**"DEVELOPER"**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

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

**"LENDER"**

\_\_\_\_\_,  
a(n) \_\_\_\_\_

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



**EXHIBIT "A"**

**Legal Description of Property**

**[TO BE ATTACHED UPON EXECUTION OF NDRA]**



**SCHEDULE 2.6(c)(2)(C)(I)**

Total Promotion Cap/Hotel for Fewer Than 1500 Rooms

<b>Traditional Hotel Room Count</b>	<b>Total Promotion Cap/Hotel</b>
1200-1224	\$24,282,635
1225-1249	\$23,076,608
1250-1274	\$21,870,581
1275-1299	\$20,664,554
1300-1324	\$19,458,527
1325-1349	\$18,252,500
1350-1374	\$17,046,473
1375-1399	\$15,840,446
1400-1424	\$14,634,419
1425-1449	\$13,428,392
1450-1474	\$12,222,365
1475-1499	\$11,016,338

**SCHEDULE 2.6(c)(2)(C)(II)**

Increase in Total Promotion Cap/Hotel

Illustration: If the Hotel has 1800 Traditional Hotel Rooms, the Total Promotion Cap/Hotel will be adjusted to \$52,800,000 (i.e., the product of the quotient of 1800/1500 multiplied times \$44,000,000). The revised Total Promotion Cap/Hotel shall remain in effect even if the number of Traditional Hotel Rooms thereafter decreases subject to the provisions of Section 2.6(c)(2)(C)(II).

**SCHEDULE 2.6(c)(4)**

Tourism Promotion Amounts Payment Schedule

<b>Month</b>	<b>Monthly Bed Tax Report Due No later than:</b>	<b>Monthly Report Credited on City Books in 60 days from receipt but no later than:</b>	<b>Quarter Payment Date</b>
January	February 20	April 20	April 30
February	March 20	May 21	July 30
March	April 20	June 19	July 30
April	May 20	July 19	July 30
May	June 20	August 19	October 30
June	July 20	September 19	October 30
July	August 20	October 19	October 30
August	September 20	November 19	January 31
September	October 20	December 19	January 31
October	November 20	January 19	January 31
November	December 20	February 19	April 30
December	January 20	March 19	April 30