

WHEN RECORDED, RETURN TO:

City Clerk, City of Maricopa  
39700 W. Civic Center Plaza  
Maricopa, AZ 85138

## DEVELOPMENT AND SETTLEMENT AGREEMENT

This DEVELOPMENT AND SETTLEMENT AGREEMENT (this "**Agreement**") is made and entered into this 19<sup>th</sup> day of September, 2017 (the "**Effective Date**"), by and between the City of Maricopa, Arizona, an Arizona municipal corporation (the "**City**") and SLV Homestead, L.L.C., a Delaware limited liability company ("**Starwood**"). The aforementioned entities are collectively referred to herein as the "**Parties**".

### RECITALS

A. Starwood owns and has been developing a portion of that certain property commonly known as Homestead North consisting of approximately 320 acres and legally described on Exhibit A attached hereto (the "**Property**"). Starwood has developed and sold most of the Property and is in the process of entitling and developing its remaining holdings in that portion of the Property known as Parcels 15, 16, 18 and 19.

B. In the spring of 2016, Starwood applied to amend the Planned Area Development (PAD) for Homestead North in order to, among other things, increase the number of lots on Parcels 15, 16, 18 and 19 by a total of 113 lots, enhance certain street sections, and add certain residential design standards.

C. On August 8, 2016, the Maricopa City Council approved Starwood's PAD amendment application.

D. Subsequently, Starwood submitted, and the City reviewed, certain traffic Impact analysis reports ("TIA") for the Homestead North project which projected that two new traffic signals would eventually be required for the intersections located at Smith-Enke Road and Homestead Drive (the "**Smith-Enke Signal**") and Porter Road and Homestead Drive (the "**Porter Signal**", which together with the Smith Enke Signal, are referred to herein as the "**Signals**").

E. The purpose of this Agreement is to document the agreement reached between the Parties regarding the allocation of the responsibilities for the purchase, design, engineering, and installation of, and the payment for, the Signals. Pursuant to this Agreement, the Parties desire to contractually confirm their respective obligations recognizing that the obligations are the result of negotiation and compromise. Accordingly, the Parties desire to confirm their respective responsibilities as described in this Agreement and release each other from liability associated with same upon the terms and conditions contained in this Agreement.

F. The City and Starwood understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, Arizona Revised Statutes §9-500.05 and that the terms of this Agreement are binding upon the

City and Starwood and their successors and assigns and that such terms run with the Property. The City and Starwood agree that entering into this Agreement results in significant direct benefits to the City and Starwood by allocating the responsibilities for the Smith-Enke and Porter Signals between the Parties and the rights, duties obligations and liability's under this Agreement are specifically and expressly "bargained for" as part of the Party's' promised performance to each other, and constitute "consideration as required by Turken v. Gordon, 207 P.3d 709 (Ariz. 2010).

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained and herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, covenant and agree for themselves and their successors and assigns as follows:

1. Recitals. The Recitals set forth above are true, correct and complete and are incorporated in this Agreement.

2. Traffic Signals.

a. Signal Payment. Starwood shall pay the City One Hundred Sixty Thousand Dollars (\$160,000.00) (the "**Signal Payment**") simultaneously with the execution of this Agreement. Payment of the Signal Payment shall fully satisfy, and fully release Starwood, its successors and assigns, and the Property from any obligations to purchase, design, engineer, install, or pay for the Smith-Enke Signal and the Porter Signal and any related improvements required to install the Signals. By execution of this Agreement, the City acknowledges receipt of the Signal Payment.

b. Payment, Purchase, Design, Engineer, and Install. In consideration for payment of the Signal Payment by Starwood, the City hereby agrees to pay for, purchase, design, engineer, and install the Smith-Enke Signal and the Porter Signal and any related improvements when and if the City determines they are necessary.

c. City Permits and Approvals. The Parties agree the Signal Payment shall satisfy all City conditions, requirements and exactions related to Starwood's zoning, development, permits and approvals for the Property, including without limitation the conditions, requirements and exactions contained in City Council's August 8, 2016 approval of Starwood's PAD amendment application (City Case No. 15-04) and in the City Council's July 2017 approval of Starwood's Replat request (City Case No. SUB17-01). Accordingly, the City shall approve and issue in the normal course of business, and shall not otherwise unreasonably withhold, condition, or delay any approval or issuance of any applications, permits and approvals associated with the Property.

d. Deposit of Signal Payment. The Parties agree the Signal Payment may be placed in the City's general fund. The Parties further agree that the City's use of the Signal Payment for uses other than the Smith-Enke and Porter Signal improvements shall not give rise to liability of Starwood, its successors or assigns, or the Property to purchase, design, engineer, install, or pay for the Smith-Enke and Porter Signals.

3. Release of City. Starwood hereby fully, finally and forever releases and discharges the City together with its present and former members, officers, directors, elected officials, appointed officials and employees (collectively the "**City Releasees**") for, from and

against any and all claims, demands, actions, causes of action, liabilities, suits, debts, accounts, bonds, covenants, contracts, controversies, torts, agreements, promises and judgments, whatsoever in law or in equity (collectively, "**Claims**"), that Starwood may have had, now has or which it may have for or by reason of any manner, cause or thing whatsoever, relating to the purchase, design, engineering, and installation of, or the payment for, the Smith-Enke Signal and the Porter Signal up and through and including the Effective Date. The release set forth above shall not extend to any Claims arising after the Effective Date to the extent based on acts or omissions of the City Releasees occurring after the Effective Date, except that such release is specifically intended by the Parties to include the transactions leading up to the execution of this Agreement, but not any obligations, duties or agreements under this Agreement or first arising after the Effective Date. This Agreement and covenants contained in this Section 3 are contractual, and not mere recital and the Parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any Party.

4. Release of Starwood and the Property. City hereby fully, finally and forever releases and discharges Starwood, the Property, together with their present and former owners, members, partners, officers, directors and employees, respectively, (collectively the "**Starwood Releasees**") for, from and against any and all Claims, that the City may have had, now has or which it may have for or by reason of any manner, cause or thing whatsoever, relating to the purchase, design, engineering, and installation of, or the payment for, the Smith-Enke Signal and the Porter Signal up and through and including the Effective Date. The release set forth above shall not extend to any Claims arising after the Effective Date to the extent based on acts or omissions of Starwood Releasees occurring after the Effective Date, except that such release is specifically intended by the Parties to include the transactions leading up to the execution of this Agreement, but not any obligations, duties or agreements under this Agreement or first arising after the Effective Date. This Agreement and covenants contained in this Section 4 are contractual, and not mere recital and the Parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any Party.

5. Knowing Waiver; Compromise of Disputed Claims. The Parties acknowledge and agree that each has consulted with and received the advice of counsel, or has had the opportunity to consult with and receive the advice of counsel, and that each Party is executing this Agreement after independent investigation and without fraud, duress or undue influence. The execution of this Agreement is not to be construed as an admission of liability on the part of Starwood or the City. This Agreement represents a compromise of disputed claims. The City and Starwood acknowledge and agree that Starwood, including parties related to Starwood, may own or control other property that is subject to other development agreements, but which is not covered by or considered a part of this Agreement. The consideration, compromises, and waivers in the Agreement reflect the unique facts and circumstances related to this dispute and, as such, pertain only to the Property. By entering into this Agreement, the Parties have no intention or desire to settle, compromise, bind or limit the respective Parties' rights and obligations under any other development agreement or property, beyond that expressly set forth in this Agreement. As such, the terms of this Agreement are evidence of settlement and compromise pertaining to the Property only and cannot be used as precedent or evidence in any subsequent proceedings arising from any dispute concerning the interpretation of another development agreement or issues concerning another property.

6. Time is of the Essence. Time is of the essence of this Agreement in each and every provision hereof.

7. Further Assurances. The Parties agree to enter into and execute such other and further agreements and perform any further or additional acts or give any further or additional

assurances, as may be reasonably necessary to effectuate the terms and intentions of this Agreement.

8. Attorneys' Fees. Each Party shall bear its own respective legal fees and costs arising out of this Agreement. If any legal action or proceeding is brought for the enforcement of or for a declaration of rights and duties under this Agreement because of an alleged dispute, breach, or default arising out of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, litigation related costs, court costs and other costs or expense incurred in that action or proceeding, in addition to any other relief to which such Party may be entitled.

9. Notices. Any notice, demand or communication under or in connection with this Agreement shall be in writing and shall be given at the address specified below or at such other address any such Party specifies in writing in accordance with the provisions of this section. Such notice shall be deemed given upon personal delivery.

If to Starwood: SLV Homestead, L.L.C.,  
6720 N. Scottsdale Rd, Ste. 195  
Scottsdale, AZ 85253  
Attention: Mr. Tyler Champlin

With a copy to: Lewis Roca Rothgerber Christie LLP  
201 East Washington Street, Suite 1200  
Phoenix, Arizona 85004-2595  
Attention: Mr. Michael J. Phalen

If to City: City Manager, City of Maricopa  
39700 W. Civic Center Plaza  
Maricopa, AZ 85138

With a Copy to: City Attorney, City of Maricopa  
39700 W. Civic Center Plaza  
Maricopa, AZ 85138

10. Entire Agreement. This Agreement, including Exhibit A constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written, between them concerning the subject matter of this Agreement. No subsequent agreement between the Parties shall be binding upon the Parties unless in writing and signed by all of the Parties or the Party to be bound. Any amendment to this Agreement shall be recorded in the official records of the Pinal County Recorder, Pinal County, Arizona within ten (10) days after the execution of such amendment.

11. Severability. If any clause or provision of this Agreement is determined to be unconstitutional, illegal, invalid, or unenforceable under any present or future law, such clause or provision shall be ineffective, but the remainder of this Agreement will not be affected thereby. If any provision of this Agreement is challenged by a person or entity not a party to this Agreement, the parties will cooperate to assist in the decision to such challenge in order to reduce costs and efficiently defend the enforceability of this Agreement.

12. Construction. The Parties acknowledge that each Party and its counsel have reviewed and approved this Agreement and that the normal rule of construction to the effect that

any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

13. Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which combined shall constitute one and the same instrument.

14. Public Lot Provisions. The provisions of this Agreement shall be for the benefit of, and shall be a burden upon, the Property and they shall be covenants running with the Property, without the necessity of any assignment of this Agreement with the conveyance of any part of the Property. However, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot with a residential dwelling unit constructed thereon, which has been finally subdivided and individually (and not in "bulk") sold to the end purchaser or user thereof or as to any tract or parcel of land that is dedicated or conveyed to any governmental authority, utility provider, irrigation district or property owners association (collectively "**Public Lot**") and thereupon such Public Lot shall be released from and no longer be subject to or burdened by the provision of this Agreement.

15. Waivers. No waiver of any of the provisions in this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding upon any Party unless executed in writing by the party to be bound. Any Party may waive any provisions of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other Party(ies) from the performance of any of its other obligations under this Agreement.

16. Headings. Section or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

17. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona. The venue for any dispute shall be in Pinal County. This Agreement is subject to the provisions of A.R.S. §38-511.

18. Recordation. This Agreement shall be recorded by the City in the official records of the Pinal County Recorder, Pinal County, Arizona, not later than ten (10) days after the execution date of this Agreement by all Parties hereto.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties hereof have entered into this Agreement as of the day and year first above written.

CITY OF MARICOPA, ARIZONA,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Name: Christian Price  
Its: Mayor

Attest:

\_\_\_\_\_  
Vanessa Bueras, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Denis Fitzgibbons, City Attorney

STATE OF ARIZONA            )  
  ) §§  
County of Pinal                )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2017 by Christian Price, the Mayor of the City of Maricopa, Arizona, an Arizona municipal corporation, on behalf of the corporation.

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

My commission expires:  
\_\_\_\_\_

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

SLV Homestead, L.L.C.,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Tyler Champlin  
Its: Vice President of Operations

STATE OF ARIZONA            )  
  ) §§  
County of Maricopa         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by Tyler Champlin, the Vice President of Operations of SLV Homestead, L.L.C., a Delaware limited liability company, on behalf of the company.

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

My commission expires:  
\_\_\_\_\_

## Exhibit A

### (Legal Description of the Property)

#### PARCEL NO. 7:

LOTS 7 THROUGH 10, INCLUSIVE, 12, 13, 41 THROUGH 45, INCLUSIVE, 53, 55, 56, 63 THROUGH 67, INCLUSIVE, FINAL PLAT FOR PARCEL 7 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET F, SLIDE 140.

#### PARCEL NO. 8:

LOTS 1 THROUGH 6, INCLUSIVE, 14 THROUGH 21, INCLUSIVE, 29 THROUGH 37, INCLUSIVE, 41 THROUGH 48, INCLUSIVE, 55 THROUGH 70, INCLUSIVE, 82 AND 83, FINAL PLAT FOR PARCEL 9 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET F, SLIDE 141.

#### PARCEL NO. 9:

LOTS 1 THROUGH 73, INCLUSIVE, FINAL PLAT FOR PARCEL 10 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET F, SLIDE 142 AND AFFIDAVIT AND CERTIFICATE OF CORRECTIONS RECORDED AS 2005-169429 AND AS 2008-053860.

#### PARCEL NO. 10:

LOTS 1 THROUGH 77, INCLUSIVE, FINAL PLAT FOR PARCEL 11 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET F, SLIDE 143 AND AFFIDAVIT AND CERTIFICATE OF CORRECTIONS RECORDED AS 2005-169430 AND AS 2008-053861.

#### PARCEL NO. 11:

LOTS 1 THROUGH 137, INCLUSIVE, AND TRACTS A12, B12, C12, D12, E12, F12, G12, H12, I12, J12, K12, L12, M12 AND N12, FINAL PLAT FOR PARCEL 12 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 122 AND AFFIDAVIT AND CERTIFICATE OF CORRECTION RECORDED AS 2008-051289 AND AS 2008-053862.



PARCEL NO. 12:

LOTS 1 THROUGH 117, INCLUSIVE AND TRACTS A13 THROUGH D13, INCLUSIVE AND F13 THROUGH N13, INCLUSIVE, FINAL PLAT FOR PARCEL 13 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 123 AND AFFIDAVITS OF CORRECTION RECORDED AS 2008-051290 AND 2008-053863.

PARCEL NO. 13:

LOTS 1 THROUGH 84, INCLUSIVE, FINAL PLAT FOR PARCEL 14 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 124.

PARCEL NO. 14:

LOTS 1 THROUGH 68, INCLUSIVE, FINAL PLAT FOR PARCEL 15 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 125.

PARCEL NO. 15:

LOTS 1 THROUGH 64, FINAL PLAT FOR PARCEL 16 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 126 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-029432.

PARCEL NO. 16:

LOTS 1 THROUGH 90 INCLUSIVE, FINAL PLAT FOR PARCEL 18 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA. RECORDED IN CABINET G, SLIDE 127.

PARCEL NO. 17:

LOTS 1 THROUGH 69 INCLUSIVE, FINAL PLAT FOR PARCEL 19 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 128.

PARCEL NO. 18:

LOTS 1 THROUGH 101 INCLUSIVE, FINAL PLAT FOR PARCEL 20 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 129.

PARCEL NO. 19:

LOTS 1 THROUGH 94 INCLUSIVE, FINAL PLAT FOR PARCEL 23 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 130.

PARCEL NO. 20:

LOTS 1 THROUGH 134 INCLUSIVE, FINAL PLAT FOR PARCEL 24 AT HOMESTEAD NORTH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN CABINET G, SLIDE 131 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-029433.