

Date: 01/11/2019

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**JBW, ~~and~~ CHA, SJR, STR, WP REDLINE 2/8/2019**

**ORDINANCE NUMBER 2019-02**

**AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA, APPROVING A MAJOR AMENDMENT TO THE SPECIAL USE PERMIT FOR PROPERTY ZONED SUP DISTRICT (RESORT) KNOWN AS SMOKE TREE RESORT LOCATED AT 7101 EAST LINCOLN DRIVE, PROVIDING FOR REDEVELOPMENT WITH DEMOLITION OF ALL EXISTING STRUCTURES AND CONSTRUCTION OF A NEW RESORT HOTEL WITH insert-number-here120 HOTEL KEYS WITH RESORT RELATED RESTAURANT, RETAIL, MEETING SPACE, AND SPA, insert-number-here30 RESORT-RELATED RESIDENCES, TOGETHER WITH 15 ALLOWED “LOCK-OFF” UNITS, AND SITE IMPROVEMENTS INCLUDING SURFACE PARKING AND UNDERGROUND PARKING, LANDSCAPING, LIGHTING, AND IMPROVEMENTS TO SITE INFRASTRUCTURE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the Town of Paradise Valley (the “Town”) Planning Commission held a public hearing on insert date here, in the manner prescribed by law, for the purpose of considering an amendment to the Special Use Permit for The Smoke Tree Resort, and recommended insert Planning Commission’s Recommendation here to the Town Council; and

WHEREAS, the Town of Paradise Valley Council (“Town Council”) held a public hearing on insert date here, in the manner prescribed by law, to hear and to take action on the amendment to the Special Use Permit for The Smoke Tree Resort, as recommended by the Planning Commission; and

WHEREAS, the Town Council finds that the requirements of Section 2-5-2.F, Citizen Review Process, including holding a Citizen Review Session on insert date here, to provide a reasonable opportunity for the applicant, adjacent landowners, and other potentially affected citizens to discuss issues or concerns they may have with the application has been met; and

WHEREAS, this amendment to the Special Use Permit for The Smoke Tree Resort is consistent with the property’s designation as “Resort” in the Town’s General Plan Land Use Map; and

WHEREAS, upon the effective date of this Ordinance, the zoning district of “Special Use Permit – Resort” shall now be shown on the Town’s Zoning Map along with a reference to the new major amendment special use permit reference number on the Town’s official Zoning Map of “SUP 18-05”; and

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1 WHEREAS, in accordance with Article II, Section 1 and 2, Constitution of Arizona, the Town  
2 Council has considered the individual property rights and personal liabilities of the residents of  
3 the Town before adopting Ordinance #2019-02 (the "Ordinance").

4  
5 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF**  
6 **THE TOWN OF PARADISE VALLEY, ARIZONA THAT:**

7  
8 SECTION I. In General

- 9  
10 1. The Special Use Permit ("~~SUP~~") zoning for Smoke Tree Resort allows for resort uses  
11 on the approximate 5.3 gross acres of land located at 7101 East Lincoln Drive in the  
12 Town of Paradise Valley, Arizona, more particularly described on Exhibit "A,"  
13 attached hereto (the "Property").
- 14  
15 2. This Major Amendment to the Special Use Permit (SUP 18-05) for Smoke Tree Resort  
16 hereby rescinds all prior Special Use Permits for the Property and creates a new Special  
17 Use permit to allow for redevelopment with demolition of all existing structures and  
18 construction of a new resort hotel with [~~120insert number here~~] hotel keys with resort  
19 related restaurant, retail, meeting space, and spa, [~~30insert number here~~] resort related  
20 residences, together with 15 "lock-off" units, and site improvements including surface  
21 parking and underground parking, landscaping, lighting, and improvements to site  
22 infrastructure, subject to the Conditions set forth in Section II of this Ordinance.
- 23  
24 3. To provide historical reference of what is being rescinded a description of prior  
25 amendments to the Special Use Permit for the Property is summarized in Exhibit "B,"  
26 attached hereto.
- 27  
28 4. All prior Special Use Permit approvals on this Property are rescinded and no longer in  
29 full force and effect upon the Effective Date of this Ordinance.
- 30  
31 5. This Major Amendment to the Special Use Permit for this Property is in accordance  
32 with Section 1102.7 of the Zoning Ordinance.

33  
34 SECTION II. Conditions. Pursuant to Article XI of the Zoning Ordinance of the Town of Paradise  
35 Valley, Arizona (the "Town"), the Town hereby grants to Gentree L.L.C., an Arizona Limited  
36 Liability Company, its successors and assigns, Special Use Permit 18-05 by its approval of this  
37 Ordinance (the "SUP 18-05") governing the use of the Property. All capitalized terms contained  
38 herein shall have the meanings ascribed to them parenthetically or otherwise in this Ordinance.

39  
40 This amendment is one of many amendments to the first Special Use Permit on the Property  
41 approved by the Town in 1969. This Special Use Permit is intended to supersede and replace  
42 all prior Special Use Permits for this Property and rescinds all prior Special Use Permits for the  
43 Property. This Special Use Permit is being granted by the Town to permit the continued use  
44 and operation of the Property for resort use subject to and in accordance with the stipulations  
45 and other provisions set forth herein as shown in Exhibit "C," attached hereto.

46  
47 SECTION III. Severability. If any section, subsection, sentence, clause, phrase or portion of  
48 this Ordinance is for any reason held invalid or unconstitutional by a court of competent

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1 jurisdiction, such portion shall be deemed a separate, distinct and independent provision and  
2 such holding shall not affect the validity of the remaining portions thereof.

3  
4 SECTION IV. Effective Date. This Ordinance shall become effective at the time and in the  
5 manner prescribed by law.

6  
7 PASSED AND ADOPTED by the Mayor and Town Council of the Town of Paradise Valley,  
8 Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

9  
10  
11 \_\_\_\_\_  
12 Jerry Bien-Willner, Mayor

13  
14 SIGNED AND ATTESTED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2019.

15  
16  
17 ATTEST:

APPROVED AS TO FORM:

18  
19  
20 \_\_\_\_\_  
21 Duncan Miller, Town Clerk

\_\_\_\_\_  
Andrew Miller, Town Attorney

Date: 01/11/2019

**EXHIBIT "A"**  
**TO**  
**ORDINANCE NUMBER 2019-02**

**Legal Description**

**TOWN OF PARADISE VALLEY**  
**SPECIAL USE PERMIT FOR THE SMOKE TREE RESORT**

PARCEL NO. 1

The North half of the Northwest quarter of the Northeast quarter of the Southeast quarter of Section 10, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXCEPT the East 200 feet, thereof.

PARCEL NO. 2

The North half of the South Half of the Northwest quarter of the Northeast quarter of the Southeast quarter of Section 10, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXCEPT the East 200 feet, thereof.

*[NOTE- Legal description to be updated with correct right-of-way dedication prior to recordation of this Ordinance]*

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**EXHIBIT "B"**  
**TO**  
**ORDINANCE NUMBER 2019-02**

**Description of Prior SUP Amendments that are rescinded upon the Effective Date**

**TOWN OF PARADISE VALLEY**  
**SPECIAL USE PERMIT FOR THE SMOKE TREE RESORT**

The Town annexed the property in 1961. The Town approved the original Special Use Permit on March 13, 1969. The list below summarizes the known amendments to the original Special Use Permit, all of which are rescinded upon the Effective Date of this Ordinance.

June 2008	Amendment to the Special Use Permit to renovate the restaurant for a new tenant. Various improvements to the restaurant building along Lincoln Drive were made including the screening of roof mounted mechanical equipment.
May 1971	Amendment to the Special Use Permit to add more kitchen space. The Town approved modification of Cottage 1 to a non-public use for more kitchen space.
March 1969	Establishment of the property for resort use by Special Use Permit, subject to 2 conditions including payment for condemnation of right-of-way on Lincoln Drive and that new leases of commercial space be approved by Town Council.

14  
15

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**EXHIBIT “C”  
TO  
ORDINANCE NUMBER 2019-02  
  
SUP CONDITIONS  
  
TOWN OF PARADISE VALLEY  
SPECIAL USE PERMIT FOR THE SMOKE TREE RESORT**

**I. PROJECT DESCRIPTION**

Redevelopment of the Property, that includes a complete demolition of all existing structures and construction of a new resort hotel with 120~~insert number here~~ hotel keys with resort related restaurant, retail, meeting space, and spa, ~~insert number here~~30 resort related residences, together with 15 “lock-off” units, and site improvements including surface parking and underground parking, landscaping, lighting, and improvements to site infrastructure

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**II. DEFINITIONS**

“**2019 Development Agreement**” means a development agreement between the Town and the Owner, as it may be amended from time to time, entered into pursuant to the terms of A.R.S. § 9-500.05, which is to be executed contemporaneously with adoption of this SUP.

“**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.

“**Approval Date**” means the date on which both of the following have occurred (i) Ordinance No. 2019-02 is approved (i.e., voted on) by the Town Council of the Town of Paradise Valley, Arizona and (ii) signed by the Mayor.

“**Approved Plans**” means those certain plans and other documents certified by the Town Clerk that are listed in Schedule “IV,” attached hereto and incorporated herein by this reference.

“**Branded Residence**” means a Resort Residential unit which has been designed and finished with standards adopted by an organization which provides services for the

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1 branding of residences. ~~Such Branded Residences are limited to [need to identify~~  
2 ~~acceptable brands or brand standards – this may also be tied into or described in the~~  
3 ~~development agreement], or such other brands as the Town Manager approves, but~~  
4 ~~provided that the Town Manager has first distributed to the Town Council and staff the~~  
5 ~~proposed new brand at least two weeks prior to the Town Manager’s decision. In the~~  
6 ~~event both the Residences and Principal Resort Hotel are Branded, then they must be so~~  
7 ~~under the same brand or within the same related and complimentary brand family. The~~  
8 ~~brand of the Branded Residences shall be the same as the brand of the Principal Resort~~  
9 ~~Hotel.~~ While the specifications for Branded Residences may be different from Hotel  
10 Keys which comprise the Minimum Hotel Keys, they should be compatible in design  
11 with the Hotel Keys. Branded Residences may be sold and resold and or rented and re-  
12 rented through the Resort Rental Management Program or through a program adopted for  
13 their management. In order to participate in the Resort Rental Program, A-a Branded  
14 Residence shall initially have substantially similar furnishings, fixtures, and equipment as  
15 other similar sized Hotel Keys, but a Branded Residence may not be uniquely customized  
16 and furnished by its owner, but and such customizations shall be consistent with the  
17 development standards as set forth in the 2019 Development Agreement. instead shall  
18 have furnishing, fixtures, and equipment the same as other similar sized Hotel Keys, or  
19 as befitting a luxury or upscale Hotel Key.

20  
21 “**CC&Rs**” means one or more sets of conditions, covenants, and restrictions applicable to  
22 discrete portions of the Property that, among other things, implement provisions of these  
23 Stipulations.

24  
25 “**Effective Date**” means the date on which all of the following have occurred: this SUP  
26 and the 2019 Development Agreement have been adopted and approved by the Town  
27 Council, executed by duly authorized representatives of the Town and Owner, and recorded  
28 (if applicable) in the office of the Recorder of Maricopa County, Arizona, and any  
29 applicable referendum period has expired without referral, or any proposed referendum has  
30 been declared invalid in a final non-appealable judgment by a court of competent  
31 jurisdiction, or this SUP (or the 2019 Development Agreement, as applicable) has been  
32 approved by the voters at a referendum election conducted in accordance with Applicable  
33 Laws

34 “**Floor Area**” means the area under roof added to the floor area of any second and third  
35 story; provided, however that “Floor Area” also includes the horizontal solid portion(s) of  
36 trellises and/or open weave roofs, and all the horizontal solid portion of area under roof in  
37 accessory buildings such as gazebos, ramadas and other accessory buildings. Floor Area  
38 excludes the floor area of any mechanical access areas, any fully subterranean portions of  
39 a building, any utility and/or storage facilities that are located  
40 subterraneanly subterraneously in order to avoid unsightly view from ground level,  
41 courtyard areas, and the portion of any roof overhangs with at least 95% coverage,- which  
42 are not over useable exterior spaces. In the case of the Principal Resort Hotel, and  
43 notwithstanding the preceding sentence, Floor Area includes subterranean portions of  
44 buildings that are part of the Principal Resort Hotel and contain areas that are not  
45 generally intended to be accessed by the general public and hotel guests, such as, but not  
46 limited to kitchens, employee locker rooms, cafeterias and/or break rooms, staff offices,  
47 security offices, administrative offices, laundry facilities, storage, maintenance facilities,

**Commented [TR1]:** Defining brand standards in the development agreement is acceptable, recognizing that the branding of resort properties has fundamentally changed over the last few years. The trend is to have a collection of individually branded elements under one global management.

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1 utility rooms, and other facilities that are typically described as “back of house” facilities.  
2 ~~Excluding mechanical access areas and any utility and/or storage facilities relocated~~  
3 ~~subterranean so to avoid unsightly views on surface (example: dumpsters)~~

4  
5 “Hotel Key” means a Resort Unit, served by a single key, which is part of a Resort Hotel,  
6 designed and constructed with all furnishings, fixtures and equipment necessary to  
7 operate as a single unit for transient occupancy use as a part of such Resort Hotel. Each  
8 Hotel Key shall have at least one ~~domestic water and sewer connection~~~~full bath~~ and a  
9 direct lockable connection from the exterior or a corridor. A Hotel Key may be located  
10 in a primary Resort Hotel structure (in a building that includes guest registration,  
11 reception and other allowed uses) or in any number of other buildings integrated or  
12 associated with such Resort Hotel through landscaping or otherwise, including in a  
13 building or buildings with Resort Residential. A Hotel Key may be interconnected with  
14 another Hotel Key unit through a lockable connection, so that more than one Hotel Key  
15 may be rented as a single unit.

16  
17 “Minimum Hotel Keys” means the ~~[insert number here]~~ Hotel Keys included as part of  
18 the Principal Resort Hotel and owned by a single legal Owner which also owns the  
19 Minimum Resort Hotel Improvements.

20  
21 “Minimum Resort Hotel Improvements” means the minimum improvements included  
22 in the initial design and construction of the Principal Resort Hotel and including not less  
23 than, all of the following elements:

24  
25 (a) The Minimum Hotel Keys.

26 (b) One (1) ~~full service~~ restaurant with seating capacity for not fewer  
27 than ~~[insert number here]~~ (XXX) persons which, together with other restaurants and food  
28 service areas, are collectively capable of serving three (3) daily meals ~~and providing room~~  
29 ~~service~~ to the Minimum Hotel Keys.

30 (c) At least one (1) swimming pool, ~~along with facilities (which may be~~  
31 ~~remote from the pool) intended to provide food and beverage service to Resort Hotel guests~~  
32 ~~at the pool.~~

33 (d) ~~At least one (1) heated whirlpool (such as a “Jacuzzi”).~~

34 (e) ~~At least one (1) fitness area to accommodate professional grade~~  
35 ~~exercise machines and related equipment.~~

36 (f) ~~An area or areas for providing spa services such as massage~~  
37 ~~services.~~

38 (g)(d) A ~~designated dedicated~~ reception area to accommodate guest  
39 check-in, ~~concierge and cashier. (Note: not sole use)~~

40 (h)(e) A ~~designated dedicated~~ area to accommodate vehicle or passenger  
41 drop off (such as valet parking services) for Resort Hotel guests. ~~(note: not sole use)~~

Commented [TR2]: Important to Jason’s suggested edits is that these are “minimum improvements”. These elements may be included, but the preference would be to not have them be required as a minimum improvement.



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1 **“Open Space Criteria”** ~~in accordance with the Approved Plans~~ means the following  
2 criteria related to the height and setback of buildings: No building shall penetrate an  
3 imaginary plane beginning at sixteen (16) feet above Original Natural Grade and twenty  
4 (20) feet from the exterior property lines of the Property, which plane slopes upward at a  
5 ratio of one (1) foot vertically for each five (5) feet horizontally measured perpendicular  
6 to the nearest exterior property line of the Property. This limitation shall apply until the  
7 maximum allowable height is reached. See illustration Sheet [*insert sheet number here*]  
8 of Approved Plans. In event of conflict between the Open Space Criteria and the  
9 Approved Plans, the Approved Plans shall control.

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10  
11 **“Original Natural Grade”** is defined and set forth on Sheet [*insert sheet number here*]  
12 of the Approved Plans.

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13  
14 **“Owner”** means Gentree L.L.C., an Arizona Limited Liability Company, its successors  
15 and assigns. An Owner may be an individual, corporation, partnership, limited liability  
16 company, trust, land trust, business trust or other organization, or similar entity, which in  
17 turn may be owned by individuals, shareholders, partners, members or benefitted parties  
18 under trust agreements, all of which may take any legal form, and may allocate interests  
19 in profits, loss, control or use.

20  
21 **“Party”** or **“Parties”** means the Town and Owner, or their successors or assigns.

22 **“Principal Resort Hotel”** means the Resort Hotel designated as such and which includes  
23 the Minimum Resort Hotel Improvements and not less than **XXXX (XXXX)** square feet  
24 of Floor Area, provided, however, in the event the Principal Resort Hotel contains not  
25 less than **XX (XX)** Hotel Keys which are owned by the Principal Resort Hotel Owner the  
26 minimum Floor Area shall be **XXX (XXX)**. The Principal Resort Hotel shall be owned  
27 by a single legal Owner.

28  
29 **“Property”** means the real property described in Exhibit “A” to Ordinance #2019-02.

30  
31 **“Resort”** means the entire Property and all facilities and other improvements existing,  
32 developed or redeveloped and used or useful on the Property in general conformance  
33 with the Approved Plans and/or these Stipulations.

34  
35 **“Resort Ancillary Facilities and Uses”** means all facilities and uses related or incidental  
36 to the operation of a resort or resort hotel, including specifically, but without limitation:  
37 restaurants, bars and lounges; spas and salons; fitness facilities; barbershops; indoor and  
38 outdoor meeting, convention, display, exhibit, wedding and social function facilities; sale  
39 of food and alcohol (for on or off site consumption); catering facilities; outdoor cooking  
40 facilities; outdoor dining facilities; gourmet food shops (offering any combination of  
41 cooked, frozen, fresh, prepared or pre-packaged foods, beer, wines, liquors, gifts, fresh  
42 fruits and vegetables, groceries, sundries, cosmetics, over the counter pharmaceuticals,  
43 house wares, and related kitchen, indoor and/or outdoor dining items); deli, coffee, tea,  
44 ice cream, yogurt and similar shops or sales; snack bars; central plant, maintenance shop,  
45 engineering facilities, housekeeping facilities, laundry, storage and support facilities;  
46 valet and other parking facilities, parking decks, garages and areas; gift and sundries  
47 shops; flower sales; art and art galleries; jewelry and jewelry shops; fashion eyewear,

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1 footwear and apparel sales; sale of hotel items such as furniture, bedding, art, toiletries;  
2 other resort retail; marketing, sale and resale of Resort Residential (including through a  
3 real estate sales office) and other resort sales and marketing; tour and other off-site  
4 activity offices; administrative, support and other resort offices including temporary  
5 offices and facilities for construction, sales, marketing, and design; indoor and outdoor  
6 entertainment facilities; ramadas; pools; cabanas; tents; amenities, recreational facilities  
7 and fitness facilities. Any such use or facility may be within any Resort Hotel or separate  
8 building(s) including individually or grouped in one or more buildings or facilities.

9  
10 **“Resort Hotel Manager”** means the Owner of any Resort Hotel, including any Affiliate  
11 thereof or an experienced professional third party hotel management company, ~~which~~  
12 ~~manages any Resort Hotel~~. A Resort Hotel Manager may also manage any other portions  
13 of the Resort, including but not limited to the Resort Residential and Hotel Keys. ~~If any~~  
14 ~~Resort Hotel Manager is not the Owner of the Resort Hotel (or an affiliate of such~~  
15 ~~Owner), it shall initially be a hotel management company which has not less than five (5)~~  
16 ~~years’ experience managing full service hotels or resorts or which currently manages not~~  
17 ~~fewer than five (5) full service hotels or resorts.~~

18  
19 **“Resort Hotel Owner”** means the single legal owner of the Resort Hotel.

20  
21 **“Resort Rental Management Program”** means a rental management program offered  
22 and managed by the Owner of any Resort Hotel (or Affiliate thereof) or a Resort Hotel  
23 Manager (or Affiliate thereof) which provides rental management service for all Hotel  
24 Keys for such Resort Hotel and other Resort Units where an Owner elects to include such  
25 residences in such Resort Rental Management Program.

26  
27 **“Resort Residential”** means the Resort Units, exclusive of any Hotel Keys.

28  
29 **“Resort Unit”** means all Hotel Keys and all other residential units (including Resort  
30 Residential), which may include a room or group of rooms which can be locked and  
31 served by a single key (or multiple keys). A Resort Unit may be served by one or more  
32 bathrooms, and may be with or without cooking facilities or kitchens. Except for the  
33 requirement that the Minimum Hotel Keys be owned by the Principal Resort Hotel  
34 Owner, a Resort Unit may, subject to these Stipulations, be owned by either an Owner or  
35 a Third Party and may be sold, resold, or may be rented and re-rented from time to time,  
36 including for transient occupancy; and provided further that, except for the requirement  
37 that the Minimum Hotel Keys be owned by the Principal Resort Hotel Owner and  
38 managed by the Resort Hotel Manager thereof, a Resort Unit may only, subject to these  
39 Stipulations, be used for any type of residential occupancy (including transient  
40 occupancy) and may be created as separate legal units through one or more plats or  
41 horizontal property regimes through one or more maps.

42  
43 **“Special Use Permit”** or “SUP-18-05” or “SUP” shall mean this special use permit as  
44 approved by Town Ordinance #2019-02.

45  
46 **“Special Use Permit Guidelines”** means special use permit guidelines adopted by the  
47 Town and in effect as of the Approval Date.

48

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

5 **“Town”** means the Town of Paradise Valley.

6  
7 **“Town Manager”** means the Town Manager or his designee.

8  
9 **“Visually Significant Corridors Master Plan”** means the Master Plan approved by the  
10 Town Council dated October, 2018.

11  
12 **“Zoning Ordinance”** means the Town’s zoning ordinance in effect as of the Approval  
13 Date, attached hereto as Schedule “2.”

14  
15 **III. STIPULATIONS**

16 **A. GENERAL**

- 17 1. In the event of a conflict between these Stipulations and the Approved  
18 Plans, these Stipulations shall govern.
- 19 2. This Special Use Permit, as it may be amended or superseded from  
20 time to time, shall run with the land (i.e., the Property and each part  
21 thereof) and any person having or subsequently acquiring title to the  
22 Property shall be subject to this Special Use Permit. Once an Owner  
23 (including without limitation any owner of a Resort Unit, including  
24 each Resort Residential unit, Resort Hotel, or any other Owner) no  
25 longer owns a portion of the Property, such prior Owner shall no  
26 longer be subject to this Special Use Permit with respect to such  
27 portion of the Property no longer owned, but the then current Owner  
28 shall be subject to this Special Use Permit.
- 29 3. If any portion of the Resort is used in violation of the terms of this  
30 Special Use Permit, the Town may, after fair notice, a hearing and a  
31 reasonable opportunity to correct, impose a monetary sanction on the  
32 then Owner of such portion, in an amount not to exceed the maximum  
33 amount allowed for violations of the Town Zoning Ordinance for each  
34 day such violation exists, in addition to all other orders or sanctions  
35 permitted by applicable laws. No such remedy shall be applied to any  
36 other Owner or portion of the Resort that is not in violation of this  
37 Special Use Permit.
- 38 4. The use of the Property shall at all times conform to all applicable  
39 State laws and Town ordinances, except that if there is a conflict  
40 between this Special Use Permit and any Town ordinance or other  
41 Town requirement, the terms of Stipulation 10 shall be applied to  
42 resolve any such conflict.

Commented [CA3]: There is no stipulation 10

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- 1           5.       The redevelopment of, and construction on, the Property shall, subject  
2                   to these Stipulations, substantially conform to the intent of the  
3                   Approved Plans. Each of the Approved Plans is hereby incorporated  
4                   into this Special Use Permit and made an integral part hereof.
- 5           6.       A mylar and electronic version of the Approved Plans shall be  
6                   submitted to the Town within sixty (60) days after the Approval Date.
- 7           7.       Nothing in this Special Use Permit or otherwise shall require the  
8                   operation of the Resort under the name "Smoke Tree," "Smoke Tree  
9                   Resort" or any similar or other name. No further consent shall be  
10                  required to enable the Owner to transfer all or any portion of the  
11                  Resort, name or rename the Resort, or select or reselect brands or  
12                  management companies of the Resort, ~~except as may be required by~~  
13                  ~~the 2019 Development Agreement;~~ and further provided that the  
14                  Property shall be subject to this SUP notwithstanding any such  
15                  transfer. None of the Resort Units or any part of the Property shall, at  
16                  any time, be operated as a Time-Share Project, as such term is  
17                  currently defined by the Town Zoning Ordinance or state law.
- 18          8.       If any section, subsection, sentence, clause or phrase of this Special  
19                  Use Permit is for any reason held invalid or unenforceable in a final,  
20                  non-appealable judgment of any court of competent jurisdiction, such  
21                  decision shall not affect the validity or enforceability of the remaining  
22                  portions of this Special Use Permit.
- 23          9.       The Town Manager's approval or determination is provided for in  
24                  several instances in these Stipulations. The Town Manager shall base  
25                  his approval on standards and criteria set forth in this SUP, the 2019  
26                  Development Agreement, the Town Code, and the Zoning Ordinance,  
27                  as reasonably applicable, with the intent to implement the viable  
28                  development of the Resort as provided in this SUP and the 2019  
29                  Development Agreement. Recognizing that the final design and  
30                  building permit process for which any particular approval of the Town  
31                  Manager is sought involves multiple stages, including conceptual,  
32                  schematic, design development and construction documents, an Owner  
33                  may seek the approval of the Town Manager in writing at one or more  
34                  stages of such design. Notwithstanding the foregoing, no construction  
35                  may occur with respect to any particular element or structure until  
36                  necessary permits for that element or structure are issued. An Owner  
37                  may rely upon an approval in proceeding from one stage of design to  
38                  the next. Although the Parties intend that this Special Use Permit,  
39                  2019 Development Agreement, Zoning Ordinance, and the Town Code  
40                  state a consistent relationship between them, the Parties agree that in  
41                  the event of a conflict between these documents that the order of  
42                  priority shall be the (1) Special Use Permit, (2) 2019 Development  
43                  Agreement, (3) Zoning Ordinance and (4) Town Code and agree that  
44                  the higher priority document shall control.

**B. CONSTRUCTION AND DEVELOPMENT STANDARDS**

11. A schedule for demolition by Owner of the vertical portions of certain existing improvements shall be as provided in the 2019 Development Agreement.
12. All permanent public utilities within the Resort shall be underground (excluding certain equipment that is typically installed above ground which shall be appropriately screened, such as transformers, meters, and other equipment) and located within appropriate easements. The Town Manager may, from time to time, require the granting of such easements to utility companies as deemed reasonably appropriate by entities providing utilities benefitting the Resort that are not covered by easements shown on the final plat or set forth in the recorded CC&Rs for the Resort, Resort Hotel, Resort Residential. Sewage shall be disposed of by connection with an upsized sewer connection to the ~~existing~~ Town of Paradise Valley's sewage facilities. All new water and sewage facilities shall be constructed in accordance with plans approved by the Town Manager.
13. It is anticipated that construction on, and redevelopment of, the Property will be conducted in phases. No construction permit shall be issued for any phase of construction on the Property until appropriate engineering or architectural plans are submitted to the Town and the issuance of such construction permit for that particular activity is approved by the Town Manager. Submitted plans shall be required to meet the building code most recently adopted by the Town.
14. During any period of demolition and initial new construction of one or more phases within the Resort, temporary curb cuts (driveways) shall be allowed on Lincoln Drive and Quail Run Road to allow construction access to the Property; such temporary curb cuts and their location shall be approved by the Town Manager and be coordinated with the Town's Capital Improvement Project known as the Lincoln Drive Roadway Improvements. Temporary construction driveway locations are subject to compliance with Storm Water Pollution Prevention Plan Best Management Practices and the review and approval by the Town Manager.
15. All new construction shall satisfy all fire department requirements for each component of work (which may include temporary fire protection facilities) prior to the issuance of any building permit for such work.
16. Prior to the issuance of a certificate of occupancy for any individual structure, adequate fire, emergency and other vehicle access and adequate fire service shall be provided for such structure and the

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- 1 particular phase of development in which such structure is located, as  
2 determined by the Town Manager.
- 3 17. Owner(s) shall submit a construction phasing schedule prior to the  
4 issuance of any building permit for a particular new structure to ensure  
5 compliance with all Town ordinances and in order to minimize  
6 construction nuisances. This schedule may encompass the building of  
7 multiple new structures within a particular phase, and may be modified  
8 or amended from time to time. This construction/phasing schedule shall  
9 provide information on the following:  
10 • Dust and noise control measures  
11 • Vehicle /equipment storage/parking  
12 • Construction days/hours  
13 • The general location of the following elements, which may be  
14 relocated from time to time:  
15 - Location(s) of a staging area(s) for construction  
16 supplies/equipment  
17 - Location of any construction trailer(s) and/or sanitary facility(s)  
18 - Location of on-site construction materials/debris storage  
19 - Location of fire lanes during the construction period  
20 • The approximate beginning and ending for construction of  
21 structures within a phase
- 22 18. During the period of demolition or construction of new improvements,  
23 signs shall be posted on the Property (or at the entrance to a particular  
24 phase) indicating the name and phone number of a person the public  
25 may contact with construction-related concerns. Sign details such as the  
26 sign size, height and location shall be reviewed and approved by the  
27 Town Manager.
- 28 19. As a pre-requisite to obtaining a building permit for a particular phase  
29 of development, the Owner must demonstrate the existence of adequate  
30 perimeter screening for such phase prior to construction. For purposes  
31 of this requirement, adequate screening shall consist of an existing  
32 oleander hedge or a six (6) foot chain link fence with green screening.
- 33 20. During demolition, site grading, and the initial construction of other on  
34 or offsite improvements, Owner(s) shall coordinate the sweeping of  
35 Lincoln Drive and Quail Run Road adjacent to the Property to remove  
36 construction-related dirt and debris, as reasonably required by the Town  
37 Manager.
- 38 21. The precise location and/or required screening of any backflow  
39 preventer or other similar equipment to the extent same would be visible

**Commented [TR4]:** In QRR's current state, sweeping wouldn't do anything...might need a different definition of how to keep it clean.

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1 from Lincoln Drive or Quail Run Road shall be approved by the Town  
2 Manager.

- 3 22. One permanent curb cut on Lincoln Drive east of Quail Run Road is  
4 permitted at a location as determined by the Town Manager, and  
5 requires a deceleration lane, which shall be installed by Owner, ~~in~~  
6 ~~conjunction with construction on the adjacent property.~~ The  
7 approximate locations of permanent curb cuts are shown on Sheet 13 of  
8 the Approved Plans. The final locations of the permanent curb cut(s)  
9 shall be based upon the Town Engineer's review and approval of the  
10 Final Traffic Impact Analysis.

- 11 23. The Owner shall arrange for construction phasing within any particular  
12 phase in the following sequence:

- 13 a. Commence native plant salvage, (for those plant materials  
14 required to be salvaged pursuant to Town Code §5-8-4 and  
15 deemed by a Native Plant Preservation Plan to be certain to  
16 survive and worthy of salvage), dust and erosion control  
17 measures, job-site mobilization and set-up, and the like.
- 18 b. Upon completion of the salvage, commence horizontal or civil  
19 improvements and site work within such phase, including  
20 appropriate erosion and dust control.
- 21 c. Upon or prior to substantial completion of the civil  
22 improvements and site work as reasonably necessary to  
23 commence perimeter walls and landscaping for such phase,  
24 including areas immediately adjoining such phase, the  
25 perimeter landscape plan(s) shall be submitted, reviewed and  
26 approved by the Town Manager. Installation of perimeter  
27 landscaping shall not be required to commence until adjacent  
28 site or structure improvements are sufficiently complete such  
29 that additional work will not harm the proposed landscape  
30 elements. Perimeter landscaping is landscaping between  
31 adjacent edge of roadway and any proposed perimeter structure  
32 or parking area on the Property.
- 33 d. Any required deceleration lanes on Lincoln Drive or curb cuts  
34 on Lincoln Drive, may be scheduled independently of the  
35 foregoing, in a manner consistent with the anticipated  
36 completion of the Town's roadway improvements to Lincoln  
37 Drive approved by the Town Manager.
- 38 e. The Owner shall, at all times during construction, provide  
39 Quail Run access of at least fourteen (14) feet in width from  
40 Lincoln Drive to the southern Property line.

**Commented [TR5]:** This section should cover any potential impacts to the conceptual access plan that may result from future revisions to the TIA.

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- 1           24.       Building architecture, materials, and colors shall be as shown on the  
2                    Approved Plans. Any future modifications to exterior materials and  
3                    colors shall be approved by the Town Manager, or designee. Changes  
4                    to the architectural style shall only be made by an approved SUP  
5                    amendment.
- 6           25.       The color of any visible ~~thesloped~~ roofs of the buildings shall have a  
7                    Light Reflective Value at or less than fifty percent (50%).
- 8           26.       All mechanical equipment shall be screened so that it is not visible from  
9                    adjoining properties not a part of this Special Use Permit and from  
10                   adjoining public rights-of-way. Mechanical equipment and mechanical  
11                   equipment screens shall be included in the total height of any structure  
12                   to which they are attached. If applicable, mechanical screening may  
13                   provide the necessary noise attenuation for any mechanical equipment.  
14                   All mechanical equipment, along with any screens used for attenuation  
15                   of noise, shall comply with the allowable noise levels defined in the  
16                   Town's noise ordinance. Noise measurement shall include any installed  
17                   screening or other attenuation devices.
- 18          27.       Screening of backflow preventers, electric transformers, generators, or  
19                   other similar equipment (all herein further referred to as "Visually  
20                   Unappealing Improvements") visible from off the Property shall be  
21                   located so as to minimize its visual impact and screened from public  
22                   view, all of which must first be approved by the Town Manager prior to  
23                   approval of construction of any such Visually Unappealing  
24                   Improvements.

25       **C.       RESORT HOTEL, RESORT RESIDENTIAL, AND ASSOCIATED**  
26       **USES**

- 27          28.       The Property may be developed to include any Resort Hotel, Resort  
28                   Residential, and any Resort Ancillary Facilities and Uses. The Property  
29                   may be developed and redeveloped in one or more phases from time to  
30                   time in multiple buildings or structures of various height and character,  
31                   subject to these stipulations. Facilities or structures initially developed  
32                   for a particular use may be converted or reused from time to time for  
33                   other allowed uses provided that all other requirements of these  
34                   stipulations are still met. The Property may be subdivided with one or  
35                   more maps from time to time. Dwelling units are allowed on the  
36                   Property as horizontal property regimes as reflected in one or more  
37                   maps. The maximum Floor Area of Resort Residential development  
38                   shall be \_\_\_\_\_ thousand (\_\_\_\_) square feet (the foregoing \_\_\_\_\_ (\_\_\_\_)  
39                   square feet is tabulated based on the actual Floor Area of the Resort  
40                   Residential units and not the Floor Area of any other allowed elements  
41                   of the Resort, including, but not limited to, any Resort Hotel, Hotel  
42                   Keys, or Resort Ancillary Facilities and Uses. Not later than one (1)  
43                   year after the Effective Date, Owner shall submit to the Town a schedule



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1 of development stating when vertical construction of the Principal  
2 Resort Hotel will commence. The schedule of development in the  
3 preceding sentence may be extended if Owner, in its sole discretion,  
4 gives written notice to the Town stating the length of the extension. Any  
5 single extension shall not exceed three (3) months. Owner may give  
6 multiple notices of extension.  
7

8 29. The Principal Resort Hotel may be constructed in one (1) or more  
9 buildings on the Property provided all such buildings must have an  
10 integrated theme and share design cohesiveness, including architecture,  
11 signage, pedestrian and service vehicle connections to the primary  
12 Resort Hotel structure (the structure which includes guest reception and  
13 registration). Facilities located on the Property which also provide  
14 function or service for the Principal Resort Hotel such as fitness, spa,  
15 restaurants, locker rooms, meeting rooms, offices, and storage shall be  
16 included in the minimum Floor Area requirement.  
17

18 30. The Resort Hotel Owner shall establish a single, unified rental  
19 management program and process for all Hotel Keys which are a part of  
20 such Resort Hotel.  
21

22 31. If walls and fences are constructed along Lincoln Drive and Quail Run  
23 Road, such walls and fences shall be in accordance with Article XXIV  
24 of the Town Zoning Ordinance and shall be measured from property  
25 lines; provided that a wall or fence that does not comply with Article  
26 XXIV may be approved by the Town Manager. Said wall shall also meet  
27 the fifty (50) foot corner vision criteria in Town Code Section 8-1-13.  
28

29 32. The maximum hours of public operation of the following specific  
30 uses/facilities shall be as set forth below:

- 31 a. Vendor deliveries (generally): 7 am - 7 pm. US Mail, private  
32 courier services such as UPS or FedEx, and emergency  
33 deliveries: at any time.
- 34 b. Pools, spas and jacuzzis (except pools, spas and jacuzzis  
35 located indoors or in enclosed private yards including yards  
36 such as presidential suites or Resort Hotel suites, which may be  
37 used 24 hours/day): 6 am ~~–~~ midnight.
- 38 c. Restaurants and other food service facilities: 6 am – 2 am
- 39 d. Bars/lounges: 10 am – 3 am
- 40 e. Banquet facilities, receptions, weddings and socials: 6 am – 2  
41 am
- 42 f. Resort retail: 24 hours/day~~27/7-7 am – midnight~~

**Commented [TR6]:** We had discussed a 33-foot corner vision with staff and received preliminary feedback that that may be acceptable

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- 1 g. Room service: 24 hours/day
- 2 h. Guest reception and guest services: 24 hours/day
- 3 j. Parking facilities: 24 hours/day
- 4 k. Spa & fitness facilities: 24 hours/day (use of such facilities by
- 5 those who are not guests of the Resort, or owners or renters
- 6 within the Resort and their guests shall be limited to 5 am –
- 7 midnight).
- 8 l. Trash pickup: 7 am – 7 pm
- 9 m. Outdoor venues, events, or functions with music and/or
- 10 amplified sound shall comply with the allowable noise levels
- 11 as defined by the Town’s current noise ordinance.
- 12 33. Each owner of any Resort Residential unit may occupy it, permit its
- 13 guest(s) to occupy it, or make it available for rental for transient
- 14 occupancy uses, residential uses or hospitality uses (rental of these units
- 15 are not counted towards the Minimum Hotel Keys requirement, but
- 16 would be considered a rental of a Resort Unit in excess of the Minimum
- 17 Hotel Keys requirement).
- 18
- 19 34. Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.)
- 20 may be used to service the Resort but such support vehicles shall not
- 21 park on public streets.
- 22
- 23 35. Parking Structure(s) – Any parking provided or required under this
- 24 Special Use Permit may, at the Owner’s choice, be located at-grade,
- 25 below grade or a combination thereof in one or more parking structures
- 26 or in one or more surface parking areas. The Owner shall submit plans
- 27 (which initially may be conceptual or schematic drawing(s)) of any
- 28 proposed parking structures to the Town Manager for determination
- 29 whether they comply with this Stipulation. The following provisions
- 30 shall apply to any above or below grade parking structures and surface
- 31 parking areas:
- 32
- 33 a. Parking structures fully (other than ramps leading to or from) below
- 34 grade (under a building or otherwise) are allowed.
- 35
- 36 b. Surface parking lots are allowed, subject to the following setback
- 37 requirements:
- 38
- 39 i. Lincoln Drive:       ( ) feet as shown on the attached
- 40 plans.
- 41

**Commented [TR7]:** This section should cover any potential impacts to the conceptual parking plan that may result from future revisions to the Parking Study.

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- plans.
- ii. Quail Run Road: ~~\_\_\_\_\_~~ (—) feetas shown on the attached
  - iii. Any other exterior property boundary: twenty (20) feet;
  - iv. Any surface parking area shall be appropriately screened by a wall or landscaping to minimize the amount of vehicle headlight trespass off the property.
  - v. All surface parking lots may include appropriate signs, lighting (provided any lighting shall comply with this SUP) and landscape as provided in this SUP or the Town’s Special Use Permit Guidelines as applicable or otherwise approved by the Town Manager.

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- 36. Buses and other vehicles may be used to shuttle guests or employees to or from areas not located on the Resort, and between the Resort and other destinations (e.g., airport, shopping facilities, golf courses, etc.). All parking on any public street by any Resort guest, any Owner or their guests, employees of the Resort, any invitee of any Owner, any occupant of any portion of the Resort or any parking service provider is prohibited. Any agreement which allows any person to use the Resort for any purpose shall contain an acknowledgment that parking on any public street is prohibited.
- 37. At any time when the parking demand within the Resort is expected to exceed onsite capacity, the Owners of the affected areas shall initiate a parking management plan which may include valet parking or offsite parking arrangements (but not the use of parking on any public street within the Town).

32

**D. HEIGHT AND HEIGHT MESUREMENT**

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- 38. An Original Natural Grade Plan shall be submitted by the Owner’s Engineer and reviewed by the Town Engineer. Once the Town Engineer finds the grades established by the Original Natural Grade Plan acceptable, it shall be used to establish maximum height of any new structure built on the Property. The maximum height of the structures will conform to [redacted] of the Approved Plans. A height envelope will be established following the contours from the Original Natural Grade to an elevation certain above Mean Sea Level. The following building components are allowed to exceed the maximum height of each structure (or portion thereof) as follows:

43  
44

- a. Chimney – three (3) feet
- b. Elevator enclosure – three (3) feet

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c. Towers or other architectural features, excluding mechanical equipment or mechanical equipment screens – three (3) feet

Commented [TR8]: This conflicts with B-26, 38-c

39. ~~Unless contained within the Approved Plans, all mechanical equipment and mechanical equipment screens shall be included in the total height of any structure they are attached to.~~

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E. LANDSCAPING

40. Landscaping on the Property shall be in substantial compliance with the Approved Plans.

41. All landscaping that dies shall be replaced in a reasonable amount of time, be in general compliance with the approved landscape plan of the Approved Plans, and shall use material that is on the Approved Plans, Town’s Landscape Guidelines, and/or the Visually Significant Corridors Plan for the Property’s character zone.

42. The Approved Plans show parking spaces along Lincoln Drive that could be converted to landscaped area. ~~The width of the landscape buffer along Lincoln Drive may be increased to make this landscaped area more in compliance to the Special Use Permit guideline of fifty feet (50’) without an amendment to the Special Use Permit. In which the event, of the foregoing, an~~ updated landscape plan of this area shall be provided to the Town Manager, or designee, for review and approval. A parking study/statement, prepared by a licensed engineer and approved by the Town Engineer, may be required to demonstrate the Property has adequate parking. This provision may also apply should there be a request to convert other parking spaces on the Property to landscaped areas.

Commented [TR9]: This section should cover any potential impacts to the conceptual parking plan that may result from future revisions to the Parking Study.

F. RIGHT-OF-WAY, PARKING & CIRCULATION

43. [STAFF RECOMMENDATION] To Be Determined

1. [PLANNING COMMISISON LANGUAGE FOR ADJACNET PROPERTY] The Owner shall deed, by dedication and/or easement, a total right-of-way width of sixty-five feet (65’) to the Town; as measured from the centerline of Lincoln Drive adjoining the Property (the “Right-of-Way”), ~~provided however that such dedication and/or easement shall not affect calculations for density now and in the future. This shall not reduce Property size for density calculations now and in perpetuity.~~

a. The north portion of this Right-of-Way shall be forty-nine feet (49’) in width and dedeed as a dedication to the Town for public purposes such as, and not limited to, landscaping, travel

- 1 lanes, sidewalk, utilities, and associated public roadway  
2 improvements (the “Public Improvements”).  
3  
4 b. The south portion of this Right-of-Way shall be sixteen feet  
5 (16’) in width and deeded as a roadway easement to the Town  
6 for future Public Improvements. [It is expected that the  
7 Owner’s reservation of uses in the roadway easement area will  
8 be determined by the Town Council in a development  
9 agreement, or otherwise. The Planning Commission would  
10 recommend shared left turn ingress and egress with adjoining  
11 property owners be explained, but also expects that this issue  
12 will be determined by the Town Council as well.]  
13  
14 2. The Owner Shall deed twenty-five feet (25’) of right-of-way to the  
15 Town; as measured from the centerline of Quail Run Road adjoining  
16 the Property (the “Quail Run Road Right-of-Way”). All travel lanes,  
17 public sidewalk (if any), and associated public roadway improvements  
18 shall be located within this Quail Run Road Right-of-Way. Such  
19 dedication shall not affect calculations for density now and in the  
20 future. This shall not reduce Property size for density calculations  
21 now and in perpetuity.  
22  
23 3. The Right-of-Way and Roadway Easement deed instrument(s) shall be  
24 recorded with the Maricopa County Recorder, Maricopa County,  
25 Arizona, concurrent or prior to the Effective Date of this Ordinance.  
26  
27 4. No above ground structures shall be placed in the Right-of-Way, except  
28 for any approved Town monument and/or Town directional sign(s),  
29 utilities, and any other approved structures or uses allowed by this  
30 Special Use Permit.  
31  
32 5. The Owner shall construct (or provide payment to the Town in lieu of  
33 actual construction) roadway improvements to Quail Run Road as  
34 outlined in the **2019 Development Agreement**.  
35  
36 6. Shared access to the adjoining properties of Lincoln Medical Plaza  
37 and/or Andaz Resort may be allowable if desired by Owner, and  
38 provided that Owner has ~~The Owner shall demonstrate~~ through a  
39 traffic/circulation/parking study, prepared by a licensed engineer and  
40 approved by the Town Engineer, that such shared access is safe and  
41 does not create negative or adverse traffic impacts.  
42  
43 7. The minimum parking space size shall be 180 square feet as defined in  
44 Article II, Definitions, of the Town Zoning Ordinance. However, the  
45 Approved Plans identify 9-foot by 18-foot parking spaces with a two-  
46 foot overhang in the adjoining landscape area (which meets the 180  
47 square-foot requirement). Accordingly, this two-foot landscape area  
48 shall, in perpetuity, be kept and maintained clear of structures or plant

1 material that may restrict the parking of a vehicle within this two-foot  
2 landscape area. Parking spaces within the underground parking garage  
3 shall meet the minimum size of 180 square feet.

4  
5 8. All designated fire lanes shall maintain a vertical clearance of fourteen  
6 (14) feet above actual finished grade and a horizontal clearance of  
7 twenty (20) feet to allow passage of emergency vehicles and must  
8 meet all Department of Transportation standards.

9 **G. SIGNAGE**

10  
11 52. All signs shall be installed in accordance with the Approved Plans, or  
12 the 2019 Development Agreement. In the event of a conflict between  
13 the 2019 Development Agreement and the Approved Plans, the 2019  
14 Development Agreement shall control. ~~the SUP Guidelines.~~

15  
16 53. No above ground structures shall be placed in the roadway easement  
17 except approved monument signs and any other approved structures  
18 allowed by this Special Use Permit.

19  
20 **H. LIGHTING**

21  
22 54. All outdoor lighting shall be in compliance the Approved Plans,  
23 including the wattage and color of each lighting fixture. In the event  
24 the Approved Plans are not clear, such lighting shall meet the Special  
25 Use Permit Guidelines, as such may be amended from time to time.

26  
27 55. Unless otherwise included in the Approved Plans, Lamps, lighting, or  
28 illumination devices within an outdoor light fixture shall not be visible  
29 from outside the Property. If the Town receives a complaint from an  
30 offsite owner that a lamp or lighting or illumination device within an  
31 outdoor light fixture is visible from outside the Property, the Town  
32 Manager or designee may inspect the Property and require the Owner to  
33 shield such lighting fixture if the Town Manager determines that the  
34 light emitting element is visible from outside the Property.

35  
36 **I. LANDSCAPING**

37  
38 56. Perimeter landscaping plans (i.e., for those areas between the back of  
39 curb and adjacent structures of parking areas) shall be submitted to the  
40 Town Manager for review and approval. Perimeter landscaping along  
41 Lincoln Drive shall be compliant with the Town’s Visually Significant  
42 Corridors Master Plan. If new construction allowed under this Special  
43 Use Permit does not start within three hundred sixty-five (365) days  
44 from issuance of a demolition permit, Owner must either, at Owner’s  
45 option, replace landscaping or provide other screening where removal  
46 of existing landscaping/screening was necessary for demolition.

1 Perimeter landscaping will be maintained by the owner in  
2 conformance with the approved plan.

3  
4 **J. TEMPORARY USES**

- 5 57. Temporary event tents or pavilions may be erected on the Event Lawn  
6 Area of the Property in accordance with the Town Code Special Event  
7 Permit requirements (Chapter 8). No event tent shall be higher than  
8 twenty-four (24) feet above Original Natural Grade or closer to any  
9 exterior property line than the minimum setbacks shown for a twenty-  
10 four (24) foot height building. Placement of event tents shall have no  
11 material adverse impact on parking or circulation on site. Temporary  
12 event tents or structures shall not be allowed for more than fourteen  
13 (14) consecutive days unless located interior to the site, in which  
14 location temporary tents may be allowed for up to ninety (90)  
15 consecutive days. Temporary event tents are required to receive a  
16 Tent Permit from the Town.  
17

18 **K. CELLULAR ANTENNAS**

- 19 58. Cellular and other wireless transmission antennas are permitted,  
20 provided that they comply with this Special Use Permit and all  
21 applicable Town ordinances, specifically including the current  
22 requirement to obtain a conditional use permit. Any cellular antennas  
23 shall be designed as integrated architectural features within the  
24 structures on the Property and any screening shall be in the same finish  
25 and color as the structure on which it is located. There shall be no  
26 unscreened projections of cellular antennas on any building above the  
27 roofline. Any lease agreement with a wireless operator will  
28 specifically allow entry by the Town and its agent for the purpose of  
29 inspection and compliance with Town ordinances and will require  
30 compliance with Article XII of the Town Zoning Ordinance.  
31

32 **L. MANAGEMENT - MAINTENANCE**

- 33 59. There shall be at least one (1) person designated by the Resort at all  
34 times who has been thoroughly briefed on the provisions of this  
35 Special Use Permit and who has the authority to resolve, or to refer to  
36 others for resolution, all problems related to compliance with this  
37 Special Use Permit. All calls from Town residents to the Town or  
38 Resort regarding noise or disturbances shall be referred to and  
39 addressed by such person(s). The name and contact information for  
40 the property manager to be provided to the Town's Community  
41 Development Department Director, or designee prior to the issuance of  
42 a certificate of completion, and to then be updated within ~~ten~~ **(10)**  
43 days after any property manager change is made. Maintenance of the  
44 Resort in general and all common areas specifically, shall be

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- 1 coordinated through a single unified management entity, which may be  
2 the Principal Resort Hotel Owner or a master association of Owners.  
3
- 4 60. All exterior portions of all structures and all driveways, parking areas,  
5 landscaping, walls, and lighting shall be kept and maintained in good  
6 condition and repair.  
7
- 8 61. Interiors of the building on the Property may be remodeled at any time  
9 without an amendment to the Special Use Permit so long as the other  
10 aspects of the Property remain in substantial compliance with the 2019  
11 Development Agreement and the Approved Plans and all applicable  
12 building permits are obtained.  
13
- 14 62. Use of outdoor space by employees for activities such as smoking may  
15 create unintended nuisances for persons on adjoining properties. This  
16 type of activity shall be located near the rear and sides of the building,  
17 away from the perimeter of the Property.  
18
- 19 63. Except during construction periods, No storage of outdoor materials is  
20 permitted on the Property that can be seen off site.  
21
- 22 64. A maintenance, repair and replacement regime shall be formulated by  
23 Owner(s) and incorporated into one or more CC&Rs which shall be a  
24 first priority lien (junior only to existing matters of record other than  
25 monetary liens and the 2019 Development Agreement) on the Resort or  
26 each particular phase, as the case may be. Said regime shall provide for  
27 governance through a master developer of the Resort or of a phase, or  
28 through an authorized or duly formulated association of certain, some,  
29 or all Owners of the Resort or phased parts thereof. Said regime shall  
30 set forth and contain the minimum following elements:  
31
- 32 a. All exterior portions of all structures and all roadways, parking  
33 areas, landscaping, walls, pools and lighting shall be kept and  
34 maintained in working a first-class condition, commensurate with a  
35 mixed use resort project serving multiple uses and Owners so that  
36 each part is benefited by the first class condition of each other part.  
37
- 38 b. Adequate and reasonable assessments shall be made of each Owner  
39 to reasonably fund estimated budgets for the maintenance, repair,  
40 replacement, and care of the completed Resort and/or each phase  
41 thereof.  
42
- 43 c. A governance mechanism to protect all Owners and insure the  
44 reasonable and adequate maintenance of all components of all  
45 phases of the Resort, including the power to access and enter upon  
46 the property of another for the purpose of enforcing the regime.



Date: 01/11/2019

1       **M.           CONDITIONAL APPROVAL**

2           65.       This SUP shall be effective as of the Effective Date if, but only if, the  
3                   2019 Development Agreement is approved by the Town Council and  
4                   signed by Owner. After this SUP is recorded, if this SUP does not  
5                   become effective within 365 days or if it is no longer effective, then  
6                   the Town shall promptly record a notice that this SUP did not become  
7                   or is no longer effective.

8       **IV.           APPROVED PLANS [Will need to update with the final plans/documents]**

9  
10       The following plans and documents apply to the Property. In the case of discrepancies  
11       between Approved Plans, those with a later date shall take precedence. In the case of  
12       discrepancies between Approved Plans and Stipulations, the Stipulations shall take  
13       precedence as specified in Section III.A.1.  
14

(SUP 18-05)	1. Smoke Tree Resort Major Amendment Application Booklet, dated January 9, 2019. 2. Smoke Tree Resort Traffic Impact Analysis, prepared by CivTech, sealed by Dawn Cartier on November 19, 2018. 3. Parking Study for Smoketree Resort, prepared by CivTech, Sealed by Dawn Cartier on November 20, 2018.
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