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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 here] HOTEL KEYS WITH RESORT RELATED RESTAURANT, RETAIL, MEETING SPACE, AND SPA, [insert number here] RESORT RELATED RESIDENCES, 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

Date: 01/11/2019

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 zoning for Smoke Tree Resort allows for resort uses on the
11 approximate 5.3 gross acres of land located at 7101 East Lincoln Drive in the Town of
12 Paradise Valley, Arizona, more particularly described on Exhibit “A,” attached hereto
13 (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 [insert number here] hotel keys with resort
19 related restaurant, retail, meeting space, and spa, [insert number here] resort related
20 residences, and site improvements including surface parking and underground parking,
21 landscaping, lighting, and improvements to site infrastructure, subject to the Conditions
22 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

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.

1 **development agreement**], or such other brands as the Town Manager approves, but
2 provided that the Town Manager has first distributed to the Town Council and staff the
3 proposed new brand at least two weeks prior to the Town Manager’s decision. The brand
4 of the Branded Residences shall be the same as the brand of the Principal Resort Hotel.
5 While the specifications for Branded Residences may be different from Hotel Keys which
6 comprise the Minimum Hotel Keys, they should be compatible in design with the Hotel
7 Keys. Branded Residences may be sold and resold and or rented and re-rented through
8 the Resort Rental Management Program or through a program adopted for their
9 management. A Branded Residence may not be uniquely customized and furnished by its
10 owner but instead shall have furnishing, fixtures, and equipment the same as other similar
11 sized Hotel Keys, or as befitting a luxury or upscaled Hotel Key.

12
13 “**CC&Rs**” means one or more sets of conditions, covenants and restrictions applicable to
14 discrete portions of the Property that, among other things, implement provisions of these
15 Stipulations.

16
17 “**Effective Date**” means the date on which all of the following have occurred: this SUP
18 and the 2019 Development Agreement have been adopted and approved by the Town
19 Council, executed by duly authorized representatives of the Town and Owner, and recorded
20 (if applicable) in the office of the Recorder of Maricopa County, Arizona, and any
21 applicable referendum period has expired without referral, or any proposed referendum has
22 been declared invalid in a final non-appealable judgment by a court of competent
23 jurisdiction, or this SUP (or the 2019 Development Agreement, as applicable) has been
24 approved by the voters at a referendum election conducted in accordance with Applicable
25 Laws

26 “**Floor Area**” means the area under roof added to the floor area of any second and third
27 story; provided, however that “Floor Area” also includes the horizontal solid portion(s) of
28 trellises and/or open weave roofs, and all the horizontal solid portion of area under roof in
29 accessory buildings such as gazebos, ramadas and other accessory buildings. Floor Area
30 excludes the floor area of any fully subterranean portions of a building, courtyard areas,
31 and the portion of any roof overhangs which are not over useable exterior spaces. In the
32 case of the Principal Resort Hotel, and notwithstanding the preceding sentence, Floor
33 Area includes subterranean portions of buildings that are part of the Principal Resort
34 Hotel and contain areas that are not generally intended to be accessed by the general
35 public and hotel guests, such as, but not limited to kitchens, employee locker rooms,
36 cafeterias and/or break rooms, staff offices, security offices, administrative offices,
37 laundry facilities, storage, maintenance facilities, utility rooms, and other facilities that
38 are typically described as “back of house” facilities.

39
40 “**Hotel Key**” means a Resort Unit, served by a single key, which is part of a Resort Hotel,
41 designed and constructed with all furnishings, fixtures and equipment necessary to
42 operate as a single unit for transient occupancy use as a part of such Resort Hotel. Each
43 Hotel Key shall have at least one full bath and a direct lockable connection from the
44 exterior or a corridor. A Hotel Key may be located in a primary Resort Hotel structure
45 (in a building that includes guest registration, reception and other allowed uses) or in any
46 number of other buildings integrated or associated with such Resort Hotel through
47 landscaping or otherwise, including in a building or buildings with Resort Residential. A

1 Hotel Key may be interconnected with another Hotel Key unit through a lockable
2 connection, so that more than one Hotel Key may be rented as a single unit.

3
4 “**Minimum Hotel Keys**” means the [insert number here] Hotel Keys included as part of
5 the Principal Resort Hotel and owned by a single legal Owner which also owns the
6 Minimum Resort Hotel Improvements.

7
8 “**Minimum Resort Hotel Improvements**” means the minimum improvements included
9 in the initial design and construction of the Principal Resort Hotel and including not less
10 than, all of the following elements:

11
12 (a) The Minimum Hotel Keys.

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

17 (c) At least one (1) swimming pool along with facilities (which may be
18 remote from the pool) intended to provide food and beverage service to Resort Hotel guests
19 at the pool.

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

21 (e) At least one (1) fitness area to accommodate professional-grade
22 exercise machines and related equipment.

23 (f) An area or areas for providing spa services such as massage
24 services.

25 (g) A dedicated reception area to accommodate guest check-in,
26 concierge and cashier.

27 (h) A dedicated area to accommodate vehicle or passenger drop off
28 (such as valet parking services) for Resort Hotel guests.

29 “**Open Space Criteria**” means the following criteria related to the height and setback of
30 buildings: No building shall penetrate an imaginary plane beginning at sixteen (16) feet
31 above Original Natural Grade and twenty (20) feet from the exterior property lines of the
32 Property, which plane slopes upward at a ratio of one (1) foot vertically for each five (5)
33 feet horizontally measured perpendicular to the nearest exterior property line of the
34 Property. This limitation shall apply until the maximum allowable height is reached. See
35 illustration Sheet [insert sheet number here] of Approved Plans.

36
37 “**Original Natural Grade**” is defined and set forth on Sheet [insert sheet number here]
38 of the Approved Plans.

39
40 “**Owner**” means Gentree L.L.C., an Arizona Limited Liability Company, its successors
41 and assigns. An Owner may be an individual, corporation, partnership, limited liability

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1 company, trust, land trust, business trust or other organization, or similar entity, which in
2 turn may be owned by individuals, shareholders, partners, members or benefitted parties
3 under trust agreements, all of which may take any legal form, and may allocate interests
4 in profits, loss, control or use.

5
6 **“Party”** or **“Parties”** means the Town and Owner, or their successors or assigns.

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

13
14 **“Property”** means the real property described in Exhibit “A” to Ordinance #2019-02.

15
16 **“Resort”** means the entire Property and all facilities and other improvements existing,
17 developed or redeveloped and used or useful on the Property in general conformance
18 with the Approved Plans and/or these Stipulations.

19
20 **“Resort Ancillary Facilities and Uses”** means all facilities and uses related or incidental
21 to the operation of a resort or resort hotel, including specifically, but without limitation:
22 restaurants, bars and lounges; spas and salons; fitness facilities; barbershops; indoor and
23 outdoor meeting, convention, display, exhibit, wedding and social function facilities; sale
24 of food and alcohol (for on or off site consumption); catering facilities; outdoor cooking
25 facilities; outdoor dining facilities; gourmet food shops (offering any combination of
26 cooked, frozen, fresh, prepared or pre-packaged foods, beer, wines, liquors, gifts, fresh
27 fruits and vegetables, groceries, sundries, cosmetics, over the counter pharmaceuticals,
28 house wares, and related kitchen, indoor and/or outdoor dining items); deli, coffee, tea,
29 ice cream, yogurt and similar shops or sales; snack bars; central plant, maintenance shop,
30 engineering facilities, housekeeping facilities, laundry, storage and support facilities;
31 valet and other parking facilities, parking decks, garages and areas; gift and sundries
32 shops; flower sales; art and art galleries; jewelry and jewelry shops; fashion eyewear,
33 footwear and apparel sales; sale of hotel items such as furniture, bedding, art, toiletries;
34 other resort retail; marketing, sale and resale of Resort Residential (including through a
35 real estate sales office) and other resort sales and marketing; tour and other off-site
36 activity offices; administrative, support and other resort offices including temporary
37 offices and facilities for construction, sales, marketing, and design; indoor and outdoor
38 entertainment facilities; ramadas; pools; cabanas; tents; amenities, recreational facilities
39 and fitness facilities. Any such use or facility may be within any Resort Hotel or separate
40 building(s) including individually or grouped in one or more buildings or facilities.

41
42 **“Resort Hotel Manager”** means the Owner of any Resort Hotel, including any Affiliate
43 thereof or a third party hotel management company which manages any Resort Hotel. A
44 Resort Hotel Manager may also manage any other portions of the Resort, including but
45 not limited to the Resort Residential and Hotel Keys. If any Resort Hotel Manager is not
46 the Owner of the Resort Hotel (or an affiliate of such Owner), it shall initially be a hotel
47 management company which has not less than five (5) years’ experience managing full

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1 service hotels or resorts or which currently manages not fewer than five (5) full service
2 hotels or resorts.

3
4 **“Resort Hotel Owner”** means the single legal owner of the Resort Hotel.

5
6 **“Resort Rental Management Program”** means a rental management program offered
7 and managed by the Owner of any Resort Hotel (or Affiliate thereof) or a Resort Hotel
8 Manager (or Affiliate thereof) which provides rental management service for all Hotel
9 Keys for such Resort Hotel and other Resort Units where an Owner elects to include such
10 residences in such Resort Rental Management Program.

11
12 **“Resort Residential”** means the Resort Units, exclusive of any Hotel Keys.

13
14 **“Resort Unit”** means all Hotel Keys and all other residential units (including Resort
15 Residential), which may include a room or group of rooms which can be locked and
16 served by a single key (or multiple keys). A Resort Unit may be served by one or more
17 bathrooms, and may be with or without cooking facilities or kitchens. Except for the
18 requirement that the Minimum Hotel Keys be owned by the Principal Resort Hotel
19 Owner, a Resort Unit may, subject to these Stipulations, be owned by either an Owner or
20 a Third Party and may be sold, resold, or may be rented and re-rented from time to time,
21 including for transient occupancy; and provided further that, except for the requirement
22 that the Minimum Hotel Keys be owned by the Principal Resort Hotel Owner and
23 managed by the Resort Hotel Manager thereof, a Resort Unit may only, subject to these
24 Stipulations, be used for any type of residential occupancy (including transient
25 occupancy) and may be created as separate legal units through one or more plats or
26 horizontal property regimes through one or more maps.

27
28 **“Special Use Permit”** or “SUP-18-05” or “SUP” shall mean this special use permit as
29 approved by Town Ordinance #2019-02.

30
31 **“Special Use Permit Guidelines”** means special use permit guidelines adopted by the
32 Town and in effect as of the Approval Date.

33
34 **“Third Party”** means, with respect to a good faith transaction, any individual or entity
35 other than a Party, an Affiliate of any Party, a principal of a Party or an Affiliate of a
36 principal of any Party, and a spouse, parent, child of a principal of a Party or of an Affiliate
37 of any Party.

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

39
40 **“Town Manager”** means the Town Manager or his designee.

41
42 **“Visually Significant Corridors Master Plan”** means the Master Plan approved by the
43 Town Council dated October, 2018.

44
45 **“Zoning Ordinance”** means the Town’s zoning ordinance in effect as of the Approval
46 Date, attached hereto as Schedule “2.”

1 **III. STIPULATIONS**

2 **A. GENERAL**

3 1. In the event of a conflict between these Stipulations and the Approved
4 Plans, these Stipulations shall govern.

5 2. This Special Use Permit, as it may be amended or superseded from
6 time to time, shall run with the land (i.e., the Property and each part
7 thereof) and any person having or subsequently acquiring title to the
8 Property shall be subject to this Special Use Permit. Once an Owner
9 (including without limitation any owner of a Resort Unit, including
10 each Resort Residential unit, Resort Hotel, or any other Owner) no
11 longer owns a portion of the Property, such prior Owner shall no
12 longer be subject to this Special Use Permit with respect to such
13 portion of the Property no longer owned, but the then current Owner
14 shall be subject to this Special Use Permit.

15 3. If any portion of the Resort is used in violation of the terms of this
16 Special Use Permit, the Town may, after fair notice, a hearing and a
17 reasonable opportunity to correct, impose a monetary sanction on the
18 then Owner of such portion, in an amount not to exceed the maximum
19 amount allowed for violations of the Town Zoning Ordinance for each
20 day such violation exists, in addition to all other orders or sanctions
21 permitted by applicable laws. No such remedy shall be applied to any
22 other Owner or portion of the Resort that is not in violation of this
23 Special Use Permit.

24 4. The use of the Property shall at all times conform to all applicable
25 State laws and Town ordinances, except that if there is a conflict
26 between this Special Use Permit and any Town ordinance or other
27 Town requirement, the terms of **Stipulation 10** shall be applied to
28 resolve any such conflict.

29 5. The redevelopment of, and construction on, the Property shall, subject
30 to these Stipulations, substantially conform to the intent of the
31 Approved Plans. Each of the Approved Plans is hereby incorporated
32 into this Special Use Permit and made an integral part hereof.

33 6. A mylar and electronic version of the Approved Plans shall be
34 submitted to the Town within sixty (60) days after the Approval Date.

35 7. Nothing in this Special Use Permit or otherwise shall require the
36 operation of the Resort under the name "Smoke Tree," "Smoke Tree
37 Resort" or any similar or other name. No further consent shall be
38 required to enable the Owner to transfer all or any portion of the
39 Resort, name or rename the Resort, or select or reselect brands or
40 management companies of the Resort, except as may be required by
41 the **2019 Development Agreement**; and further provided that the

1 Property shall be subject to this SUP notwithstanding any such
2 transfer. None of the Resort Units or any part of the Property shall, at
3 any time, be operated as a Time-Share Project, as such term is
4 currently defined by the Town Zoning Ordinance or state law.

5 8. If any section, subsection, sentence, clause or phrase of this Special
6 Use Permit is for any reason held invalid or unenforceable in a final,
7 non-appealable judgment of any court of competent jurisdiction, such
8 decision shall not affect the validity or enforceability of the remaining
9 portions of this Special Use Permit.

10 9. The Town Manager's approval or determination is provided for in
11 several instances in these Stipulations. The Town Manager shall base
12 his approval on standards and criteria set forth in this SUP, the 2019
13 Development Agreement, the Town Code, and the Zoning Ordinance,
14 as reasonably applicable, with the intent to implement the viable
15 development of the Resort as provided in this SUP and the 2019
16 Development Agreement. Recognizing that the final design and
17 building permit process for which any particular approval of the Town
18 Manager is sought involves multiple stages, including conceptual,
19 schematic, design development and construction documents, an Owner
20 may seek the approval of the Town Manager in writing at one or more
21 stages of such design. Notwithstanding the foregoing, no construction
22 may occur with respect to any particular element or structure until
23 necessary permits for that element or structure are issued. An Owner
24 may rely upon an approval in proceeding from one stage of design to
25 the next. Although the Parties intend that this Special Use Permit,
26 2019 Development Agreement, Zoning Ordinance, and the Town Code
27 state a consistent relationship between them, the Parties agree that in
28 the event of a conflict between these documents that the order of
29 priority shall be the (1) Special Use Permit, (2) 2019 Development
30 Agreement, (3) Zoning Ordinance and (4) Town Code and agree that
31 the higher priority document shall control.

32 **B. CONSTURCTION AND DEVELOPMENT STANDARDS**

33 11. A schedule for demolition by Owner of the vertical portions of certain
34 existing improvements shall be as provided in the 2019 Development
35 Agreement.

36 12. All permanent public utilities within the Resort shall be underground
37 (excluding certain equipment that is typically installed above ground
38 which shall be appropriately screened, such as transformers, meters, and
39 other equipment) and located within appropriate easements. The Town
40 Manager may, from time to time, require the granting of such easements
41 to utility companies as deemed reasonably appropriate by entities
42 providing utilities benefitting the Resort that are not covered by
43 easements shown on the final plat or set forth in the recorded CC&Rs

1 for the Resort, Resort Hotel, Resort Residential. Sewage shall be
2 disposed of by connection with an upsized sewer connection to the
3 existing Town of Paradise Valley. All new water and sewage facilities
4 shall be constructed in accordance with plans approved by the Town
5 Manager.

6 13. It is anticipated that construction on, and redevelopment of, the Property
7 will be conducted in phases. No construction permit shall be issued for
8 any phase of construction on the Property until appropriate engineering
9 or architectural plans are submitted to the Town and the issuance of such
10 construction permit for that particular activity is approved by the Town
11 Manager. Submitted plans shall be required to meet the building code
12 most recently adopted by the Town.

13 14. During any period of demolition and initial new construction of one or
14 more phases within the Resort, temporary curb cuts (driveways) shall
15 be allowed on Lincoln Drive and Quail Run Road to allow construction
16 access to the Property; such temporary curb cuts and their location shall
17 be approved by the Town Manager and be coordinated with the Town's
18 Capital Improvement Project known as the Lincoln Drive Roadway
19 Improvements. Temporary construction driveway locations are subject
20 to compliance with Storm Water Pollution Prevention Plan Best
21 Management Practices and the review and approval by the Town
22 Manager.

23 15. All new construction shall satisfy all fire department requirements for
24 each component of work (which may include temporary fire protection
25 facilities) prior to the issuance of any building permit for such work.

26 16. Prior to the issuance of a certificate of occupancy for any individual
27 structure, adequate fire, emergency and other vehicle access and
28 adequate fire service shall be provided for such structure and the
29 particular phase of development in which such structure is located, as
30 determined by the Town Manager.

31 17. Owner(s) shall submit a construction phasing schedule prior to the
32 issuance of any building permit for a particular new structure to ensure
33 compliance with all Town ordinances and in order to minimize
34 construction nuisances. This schedule may encompass the building of
35 multiple new structures within a particular phase, and may be modified

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

1 **the Approved Plans**. The final locations shall be based upon the Town
2 Engineer's review and approval of the Final Traffic Impact Analysis.

3 23. The Owner shall arrange for construction phasing within any particular
4 phase in the following sequence:

5 a. Commence native plant salvage (for those plant materials
6 required to be salvaged pursuant to Town Code §5-8-4 and
7 deemed by a Native Plant Preservation Plan to be certain to
8 survive and worthy of salvage), dust and erosion control
9 measures, job-site mobilization and set-up, and the like.

10 b. Upon completion of the salvage, commence horizontal or civil
11 improvements and site work within such phase, including
12 appropriate erosion and dust control.

13 c. Upon or prior to substantial completion of the civil
14 improvements and site work as reasonably necessary to
15 commence perimeter walls and landscaping for such phase,
16 including areas immediately adjoining such phase, the
17 perimeter landscape plan(s) shall be submitted, reviewed and
18 approved by the Town Manager. Installation of perimeter
19 landscaping shall not be required to commence until adjacent
20 site or structure improvements are sufficiently complete such
21 that additional work will not harm the proposed landscape
22 elements. Perimeter landscaping is landscaping between
23 adjacent edge of roadway and any proposed perimeter structure
24 or parking area on the Property.

25 d. Any required deceleration lanes on Lincoln Drive or curb cuts
26 on Lincoln Drive, may be scheduled independently of the
27 foregoing, in a manner consistent with the anticipated
28 completion of the Town's roadway improvements to Lincoln
29 Drive approved by the Town Manager.

30 e. The Owner shall, at all times during construction, provide
31 Quail Run access of at least fourteen (14) feet in width from
32 Lincoln Drive to the southern Property line.

33 24. Building architecture, materials, and colors shall be as shown on the
34 Approved Plans. Any future modifications to exterior materials and
35 colors shall be approved by the Town Manager, or designee. Changes

1 to the architectural style shall only be made by an approved SUP
2 amendment.

3 25. The color of the roofs of the buildings shall have a Light Reflective
4 Value at or less than fifty percent (50%).

5 26. All mechanical equipment shall be screened so that it is not visible from
6 adjoining properties not a part of this Special Use Permit and from
7 adjoining public rights-of-way. Mechanical equipment and mechanical
8 equipment screens shall be included in the total height of any structure
9 to which they are attached. If applicable, mechanical screening may
10 provide the necessary noise attenuation for any mechanical equipment.
11 All mechanical equipment, along with any screens used for attenuation
12 of noise, shall comply with the allowable noise levels defined in the
13 Town's noise ordinance. Noise measurement shall include any installed
14 screening or other attenuation devices.

15 27. Screening of backflow preventers, electric transformers, generators, or
16 other similar equipment (all herein further referred to as “Visually
17 Unappealing Improvements”) visible from off the Property shall be
18 located so as to minimize its visual impact and screened from public
19 view, all of which must first be approved by the Town Manager prior to
20 approval of construction of any such Visually Unappealing
21 Improvements.

22 **C. RESORT HOTEL, RESORT RESIDENTIAL, AND ASSOCIATED**
23 **USES**

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

1 gives written notice to the Town stating the length of the extension. Any
2 single extension shall not exceed three (3) months. Owner may give
3 multiple notices of extension.
4

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

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

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

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

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

- 1 j. Parking facilities: 24 hours/day
- 2 k. Spa & fitness facilities: 24 hours/day (use of such facilities by
- 3 those who are not guests of the Resort, or owners or renters
- 4 within the Resort and their guests shall be limited to 5 am –
- 5 midnight).
- 6 l. Trash pickup: 7 am – 7 pm
- 7 m. Outdoor venues, events, or functions with music and/or
- 8 amplified sound shall comply with the allowable noise levels
- 9 as defined by the Town’s current noise ordinance.
- 10 33. Each owner of any Resort Residential unit may occupy it, permit its
- 11 guest(s) to occupy it, or make it available for rental for transient
- 12 occupancy uses, residential uses or hospitality uses (rental of these units
- 13 are not counted towards the Minimum Hotel Keys requirement, but
- 14 would be considered a rental of a Resort Unit in excess of the Minimum
- 15 Hotel Keys requirement).
- 16
- 17 34. Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.)
- 18 may be used to service the Resort but such support vehicles shall not
- 19 park on public streets.
- 20
- 21 35. Parking Structure(s) – Any parking provided or required under this
- 22 Special Use Permit may, at the Owner’s choice, be located at-grade,
- 23 below grade or a combination thereof in one or more parking structures
- 24 or in one or more surface parking areas. The Owner shall submit plans
- 25 (which initially may be conceptual or schematic drawing(s)) of any
- 26 proposed parking structures to the Town Manager for determination
- 27 whether they comply with this Stipulation. The following provisions
- 28 shall apply to any above or below grade parking structures and surface
- 29 parking areas:
- 30
- 31 a. Parking structures fully (other than ramps leading to or from) below
- 32 grade (under a building or otherwise) are allowed.
- 33
- 34 b. Surface parking lots are allowed, subject to the following setback
- 35 requirements:
- 36
- 37 i. Lincoln Drive: _____ (__) feet
- 38
- 39 ii. Quail Run Road: _____ (__) feet
- 40
- 41 iii. Any other exterior property boundary: twenty (20) feet;
- 42

- 1 iv. Any surface parking area shall be appropriately screened by
- 2 a wall or landscaping to minimize the amount of vehicle
- 3 headlight trespass off the property.
- 4
- 5 v. All surface parking lots may include appropriate signs,
- 6 lighting (provided any lighting shall comply with this SUP)
- 7 and landscape as provided in this SUP or the Town's
- 8 Special Use Permit Guidelines as applicable or otherwise
- 9 approved by the Town Manager.
- 10

11 36. Buses and other vehicles may be used to shuttle guests or employees to
12 or from areas not located on the Resort, and between the Resort and
13 other destinations (e.g., airport, shopping facilities, golf courses, etc.).
14 All parking on any public street by any Resort guest, any Owner or their
15 guests, employees of the Resort, any invitee of any Owner, any occupant
16 of any portion of the Resort or any parking service provider is
17 prohibited. Any agreement which allows any person to use the Resort
18 for any purpose shall contain an acknowledgment that parking on any
19 public street is prohibited.

20

21 37. At any time when the parking demand within the Resort is expected to
22 exceed onsite capacity, the Owners of the affected areas shall initiate a
23 parking management plan which may include valet parking or offsite
24 parking arrangements (but not the use of parking on any public street
25 within the Town).

26

27 **D. HEIGHT AND HEIGHT MESUREMENT**

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

- 38 a. Chimney – three (3) feet
- 39 b. Elevator enclosure – three (3) feet
- 40 c. Towers or other architectural features, excluding mechanical
- 41 equipment or mechanical equipment screens – three (3) feet

42 39. Mechanical equipment and mechanical equipment screens shall be
43 included in the total height of any structure they are attached to.

E. LANDSCAPING

- 1
2
3 40. Landscaping on the Property shall be in substantial compliance with the
4 Approved Plans.
5
6 41. All landscaping that dies shall be replaced in a reasonable amount of
7 time, be in general compliance with the approved landscape plan of the
8 Approved Plans, and shall use material that is on the Approved Plans,
9 Town's Landscape Guidelines, and/or the Visually Significant
10 Corridors Plan for the Property's character zone.
11
12 42. The Approved Plans show parking spaces along Lincoln Drive that
13 could be converted to landscaped area. The width of the landscape
14 buffer along Lincoln Drive may be increased to make this landscaped
15 area more in compliance to the Special Use Permit guideline of fifty feet
16 (50') without an amendment to the Special Use Permit. An updated
17 landscape plan of this area shall be provided to the Town Manager, or
18 designee, for review and approval. A parking study/statement, prepared
19 by a licensed engineer and approved by the Town Engineer, may be
20 required to demonstrate the Property has adequate parking. This
21 provision may also apply should there be a request to convert other
22 parking spaces on the Property to landscaped areas.
23

24 **F. RIGHT-OF-WAY, PARKING & CIRCULATION**

- 25
26 43. [STAFF RECOMMENDATION] To Be Determined
27
28 1. [PLANNING COMMISISON LANGUAGE FOR ADJACNET
29 PROPERTY] The Owner shall deed, by dedication and easement, a
30 total right-of-way width of sixty-five feet (65') to the Town; as
31 measured from the centerline of Lincoln Drive adjoining the Property
32 (the "Right-of-Way").
33
34 a. The north portion of this Right-of-Way shall be forty-nine feet
35 (49') in width and deeded as a dedication to the Town for
36 public purposes such as, and not limited to, landscaping, travel
37 lanes, sidewalk, utilities, and associated public roadway
38 improvements (the "Public Improvements").
39
40 b. The south portion of this Right-of-Way shall be sixteen feet
41 (16') in width and deeded as a roadway easement to the Town
42 for future Public Improvements. [It is expected that the
43 Owner's reservation of uses in the roadway easement area will
44 be determined by the Town Council in a development
45 agreement, or otherwise. The Planning Commission would
46 recommend shared left turn ingress and egress with adjoining

property owners be explained, but also expects that this issue will be determined by the Town Council as well.]

2. The Owner Shall deed twenty-five feet (25') of right-of-way to the Town; as measured from the centerline of Quail Run Road adjoining the Property (the "Quail Run Road Right-of-Way"). All travel lanes, public sidewalk (if any), and associated public roadway improvements shall be located within this Quail Run Road Right-of-Way.
3. The Right-of-Way and Roadway Easement deed instrument(s) shall be recorded with the Maricopa County Recorder, Maricopa County, Arizona, concurrent or prior to the Effective Date of this Ordinance.
4. No above ground structures shall be placed in the Right-of-Way, except for any approved Town monument and/or Town directional sign(s), utilities, and any other approved structures or uses allowed by this Special Use Permit.
5. The Owner shall construct (or provide payment to the Town in lieu of actual construction) roadway improvements to Quail Run Road as outlined in the **2019 Development Agreement**.
6. Shared access to the adjoining properties of Lincoln Medical Plaza or Andaz Resort may be allowable. The Owner shall demonstrate through a traffic/circulation/parking study, prepared by a licensed engineer and approved by the Town Engineer, that such shared access is safe and does not create negative or adverse traffic impacts.
7. The minimum parking space size shall be 180 square feet as defined in Article II, Definitions, of the Town Zoning Ordinance. However, the Approved Plans identify 9-foot by 18-foot parking spaces with a two-foot overhang in the adjoining landscape area (which meets the 180 square-foot requirement). Accordingly, this two-foot landscape area shall, in perpetuity, be kept and maintained clear of structures or plant material that may restrict the parking of a vehicle within this two-foot landscape area. Parking spaces within the underground parking garage shall meet the minimum size of 180 square feet.
8. All designated fire lanes shall maintain a vertical clearance of fourteen (14) feet above actual finished grade and a horizontal clearance of twenty (20) feet to allow passage of emergency vehicles and must meet all Department of Transportation standards.

G. SIGNAGE

52. All signs shall be installed in accordance with the SUP Guidelines.

1 53. No above ground structures shall be placed in the roadway easement
2 except approved monument signs and any other approved structures
3 allowed by this Special Use Permit.
4

5 **H. LIGHTING**

6
7 54. All outdoor lighting shall be in compliance the Approved Plans,
8 including the wattage and color of each lighting fixture. In the event
9 the Approved Plans are not clear, such lighting shall meet the Special
10 Use Permit Guidelines, as such may be amended from time to time.
11

12 55. Lamps, lighting, or illumination devices within an outdoor light fixture
13 shall not be visible from outside the Property. If the Town receives a
14 complaint from an offsite owner that a lamp or lighting or illumination
15 device within an outdoor light fixture is visible from outside the
16 Property, the Town Manager or designee may inspect the Property and
17 require the Owner to shield such lighting fixture if the Town Manager
18 determines that the light emitting element is visible from outside the
19 Property.
20

21 **I. LANDSCAPING**

22
23 56. Perimeter landscaping plans (i.e., for those areas between the back of
24 curb and adjacent structures of parking areas) shall be submitted to the
25 Town Manager for review and approval. Perimeter landscaping along
26 Lincoln Drive shall be compliant with the Town’s Visually Significant
27 Corridors Master Plan. If new construction allowed under this Special
28 Use Permit does not start within three hundred sixty-five (365) days
29 from issuance of a demolition permit, Owner must either, at Owner’s
30 option, replace landscaping or provide other screening where removal
31 of existing landscaping/screening was necessary for demolition.
32 Perimeter landscaping will be maintained by the owner in
33 conformance with the approved plan.
34

35 **J. TEMPORARY USES**

36 57. Temporary event tents or pavilions may be erected on the Event Lawn
37 Area of the Property in accordance with the Town Code Special Event
38 Permit requirements (Chapter 8). No event tent shall be higher than
39 twenty-four (24) feet above Original Natural Grade or closer to any
40 exterior property line than the minimum setbacks shown for a twenty-
41 four (24) foot height building. Placement of event tents shall have no
42 material adverse impact on parking or circulation on site. Temporary
43 event tents or structures shall not be allowed for more than fourteen
44 (14) consecutive days. Temporary event tents are required to receive a
45 Tent Permit from the Town.
46

1 **K. CELLULAR ANTENNAS**

2 58. Cellular and other wireless transmission antennas are permitted,
3 provided that they comply with this Special Use Permit and all
4 applicable Town ordinances, specifically including the current
5 requirement to obtain a conditional use permit. Any cellular antennas
6 shall be designed as integrated architectural features within the
7 structures on the Property and any screening shall be in the same finish
8 and color as the structure on which it is located. There shall be no
9 unscreened projections of cellular antennas on any building above the
10 roofline. Any lease agreement with a wireless operator will
11 specifically allow entry by the Town and its agent for the purpose of
12 inspection and compliance with Town ordinances and will require
13 compliance with Article XII of the Town Zoning Ordinance.
14

15 **L. MANAGEMENT - MAINTENANCE**

16 59. There shall be at least one (1) person designated by the Resort at all
17 times who has been thoroughly briefed on the provisions of this
18 Special Use Permit and who has the authority to resolve, or to refer to
19 others for resolution, all problems related to compliance with this
20 Special Use Permit. All calls from Town residents to the Town or
21 Resort regarding noise or disturbances shall be referred to and
22 addressed by such person(s). The name and contact information for
23 the property manager to be provided to the Town’s Community
24 Development Department Director, or designee prior to the issuance of
25 a certificate of completion, and to then be updated within two (2) days
26 after any property manager change is made. Maintenance of the
27 Resort in general and all common areas specifically, shall be
28 coordinated through a single unified management entity, which may be
29 the Principal Resort Hotel Owner or a master association of Owners.
30

31 60. All exterior portions of all structures and all driveways, parking areas,
32 landscaping, walls, and lighting shall be kept and maintained in good
33 condition and repair.
34

35 61. Interiors of the building on the Property may be remodeled at any time
36 without an amendment to the Special Use Permit so long as the other
37 aspects of the Property remain in substantial compliance with the 2019
38 Development Agreement and the Approved Plans and all applicable
39 building permits are obtained.
40

41 62. Use of outdoor space by employees for activities such as smoking may
42 create unintended nuisances for persons on adjoining properties. This
43 type of activity shall be located near the rear and sides of the building,
44 away from the perimeter of the Property.
45

1 63. No storage of outdoor materials is permitted on the Property that can be
2 seen off site.
3

4 64. A maintenance, repair and replacement regime shall be formulated by
5 Owner(s) and incorporated into one or more CC&Rs which shall be a
6 first priority lien (junior only to existing matters of record other than
7 monetary liens and the 2019 Development Agreement) on the Resort or
8 each particular phase, as the case may be. Said regime shall provide for
9 governance through a master developer of the Resort or of a phase, or
10 through an authorized or duly formulated association of certain, some,
11 or all Owners of the Resort or phased parts thereof. Said regime shall
12 set forth and contain the minimum following elements:
13

14 a. All exterior portions of all structures and all roadways, parking
15 areas, landscaping, walls, pools and lighting shall be kept and
16 maintained in a first-class condition, commensurate with a mixed
17 use resort project serving multiple uses and Owners so that each part
18 is benefited by the first class condition of each other part.
19

20 b. Adequate and reasonable assessments shall be made of each Owner
21 to reasonably fund estimated budgets for the maintenance, repair,
22 replacement, and care of the completed Resort and/or each phase
23 thereof.
24

25 c. A governance mechanism to protect all Owners and insure the
26 reasonable and adequate maintenance of all components of all
27 phases of the Resort, including the power to access and enter upon
28 the property of another for the purpose of enforcing the regime.

29 **M. CONDITIONAL APPROVAL**

30 65. This SUP shall be effective as of the Effective Date if, but only if, the
31 2019 Development Agreement is approved by the Town Council and
32 signed by Owner. After this SUP is recorded, if this SUP does not
33 become effective or if it is no longer effective, then the Town shall
34 promptly record a notice that this SUP did not become or is no longer
35 effective.

36 **IV. APPROVED PLANS [Will need to update with the final plans/documents]**
37

38 The following plans and documents apply to the Property. In the case of discrepancies
39 between Approved Plans, those with a later date shall take precedence. In the case of
40 discrepancies between Approved Plans and Stipulations, the Stipulations shall take
41 precedence as specified in Section III.A.1.
42

(SUP 18-05)	1. Smoke Tree Resort Major Amendment Application Booklet, dated January 9, 2019.
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Date: 01/11/2019

	<ol style="list-style-type: none">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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