

October 14, 2015

Ms. Eva-Marie Cutro
Mr. Paul Michaud
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

Re: Response to Town Staff's Revised Stipulations for the Five Star
Development/Ritz-Carlton Paradise Valley Special Use Permit (SUP 15-01)

Dear Ms. Cutro and Mr. Michaud:

This letter is in response to your October 12, 2015 email in which you provided a request for SUP Booklet revisions and additional and revised stipulations for the above referenced SUP. This letter provides responses to the SUP Booklet Revision requests and a list of comments/responses to Town Staff's revised and newly proposes stipulations. Each of the numbers listed below corresponds with the stipulation number in the document emailed to our team by Town Staff on October 12, 2015:

Response to Requests for SUP Booklet Revisions

- **COMMENT:** Project Narrative, Sheet C-2, concern that the description of Area A1 reads like a condominium project and not resort-related product. Staff has added language in Stipulation 38 on Area A-1 to ensure these units are integrated into the resort of Area A
 - **RESPONSE:** Discussion point for next Planning Commission meeting
- **COMMENT:** Project Narrative, Sheet C-2, delete the reference to square footage related to Area E. Update the uses for Area E to match the last paragraph of the project description in the Stipulation document (resort-related retail, that may include a grocery-store type use up to 36,400 square feet, and resort-related residential, or all detached residential use) The uses listed here seems to include Area E in Scottsdale.
 - **RESPONSE:** SUP Amendment has been edited

- **COMMENT:** Master Plan, Sheet D-3, explain how Area A-1 has a lot coverage of 30.8% when it appears that the building footprints on the site plan have not changed.
 - **RESPONSE:** Discussion point for next Planning Commission meeting
- **COMMENT:** Project Heights, Sheet D-5, the 4-story element may be removed in Area A-1, but four other 2-story elements were increased in height to 3-story. Staff wants to see these 2-story elements remain 2-story
 - **RESPONSE:** Discussion point for next Planning Commission meeting
- **COMMENT:** Area B, Sheet F-2, staff has concerns related to shifting the street access closer to Indian Bend as it may not align with the streets in Area E. Also, there are some general concerns related to integration of this Area with the resort.
 - **RESPONSE:** Discussion point for next Planning Commission meeting
- **COMMENT:** The staff action report will point out that the Lot Coverage for the combined Area A and Area A-1 exceeds the SOD (721,000 sf total instead of the 700,000 sf total in the SOD and 30.1% Lot Coverage instead of 30% Lot Coverage of the SOD)
 - **RESPONSE:** Discussion point for next Planning Commission meeting
- **COMMENT:** The staff action report will point out that the Lot Coverage for Area B and Area C exceeds the average two du/ac guideline of the SOD (they are 2.45 du/ac combined, with Area B at 2.56 du/ac and Area C at 2.0 du/ac)
 - **RESPONSE:** Discussion point for next Planning Commission meeting
- **COMMENT:** Mockingbird Road Section, Sheet D-1, the existing 4' wide bicycle lane should say "proposed", it exists at 2'
 - **RESPONSE:** SUP Amendment has been edited
- **COMMENT:** Mockingbird Road Section, Sheet D-1, add a note that the sidewalk will meander with a setback of 2' to 8' measured from the back of curb.
 - **RESPONSE:** SUP Amendment has been edited
- **COMMENT:** Resort Wall Master Plan, Sheet G-3, the guard gates must meet Town vehicle stacking and turning radius standards (as noted in prior meetings or otherwise stipulated). As drawn, these may not comply.
 - **RESPONSE:** Existing note within the SUP Amendment has been highlighted
- **COMMENT:** Pedestrian Pathway System, Sheet G-6, the public trail in the wash area must comply with all ADA requirements and an alternative to the surface of stabilized, compacted DG may be required
 - **RESPONSE:** SUP Amendment has been edited

- **COMMENT:** Sound Study Letter, Sheet J-4, one aspect of the noise study requested by the Planning Commission was to evaluate the impact sound echoing may have on nearby hillside homes. This was not included in the submitted document. Also, this study seems to lack detailed data and a professional seal. The study references a PA system, however, it should be clearly noted that any reference in such a study is to establish worst case scenario and not what is allowable by the SUP.
 - **RESPONSE:** Updated and expanded Sound Study included within the SUP Amendment

Responses to SUP Stipulation Revisions Corresponding to the Attached Redlines Received from Town Staff on October 12, 2015

Project Description (Lines 1 – 39)

- Line 4: Applicant agrees with revision.
- Line 20: Applicant is not in agreement with the use of “Ritz-Carlton” or “equivalent five-star resort” as these terms are not legally enforceable. The Applicant prefers the use of the term “Resort Hotel.”
- Line 25: Applicant agrees with revision.
- Line 31: Applicant agrees with revision.
- Line 33: Applicant is confused by this change. The term “Attached Village Townhomes (Area D)” has been used consistently throughout the Special Use Permit Application.
- Lines 34-39: Applicant does not agree with proposed revisions and requests the original text proposed by the Applicant. The list of Area E uses must include: hotel, residential, resort-related retail, and resort-related health services. Given recent discussions with the Town, the Applicant was surprised to see Town Staff remove the “hotel” use.

Stipulations

1. No Revisions (“NR”)
2. NR
3. NR
4. Applicant agrees with the revision.
5. NR

6. NR
7. NR
8. Applicant agrees with the removal of "if included within," however, the references to Stipulation No. 3 should be removed as they are an inapplicable carry-over from the 2008 stipulations. The parenthetical, "(if previously combined)," is incorrectly located and should be placed in Line 86 as proposed by the Applicant. Area A units cannot be combined.
9. Applicant agrees with the revision.
10. Applicant agrees with the new stipulation.
11. Applicant agrees with the new stipulation.
12. Applicant agrees with the new stipulation.
13. Applicant agrees with the revision.
14. Applicant agrees with the revision.
15. Applicant agrees with the revision.
16. NR
17. Applicant agrees with the revision.
18. NR
19. Applicant agrees with the clarification for Town Manager approval. Unless the term "Marketing Center" is defined, it should not be capitalized. Regarding Lines 140-142, Applicant will agree to the revisions if Area A1 is added to the list.
20. The Applicant is not clear on the purpose of the proposed changes. The Applicant is in agreement with this stipulation if the sentence ends after "Town Manager or designee." Temporary construction access will be necessary from Mockingbird for utilities and construction of the wash.
21. Applicant agrees with the revision.
22. Applicant will agree to changes to Line 161 if it is revised as follows: "All construction related parking and storage must be contained **WITHIN THE BOUNDARIES OF THE SUP AND ON THE ADJACENT PROPERTY WITHIN THE CITY OF SCOTTSDALE OWNED BY THE APPLICANT.**" The Applicant wants to ensure

construction related parking and storage can be placed in Area E and on the Scottsdale portion of the Applicant's property at the southwest corner of Indian Bend and Scottsdale Roads.

23. Applicant proposes the following change to Line 171: "commence vertical building improvements **FOR AREA A** and perimeter walls and perimeter . . ." The Applicant sees no reason the Town would want to delay the vertical construction of the Resort Hotel (Area A). The Applicant is willing to consider the changes to Lines 174-177 with the understanding the Phasing Plan will need additional review and revisions.
24. Applicant agrees with the revision. **Please Note:** it was the Applicant's understanding Staff wanted Lines 184-186 included as a Stipulation. The Applicant needs to preserve the right to post temporary sales and marketing signs on the property.
25. Applicant agrees with the revision.
26. Applicant agrees with the revisions in lines 191-194. The Applicant does not agree with the proposed revisions in Lines 195-200. As Town Staff is aware, the exhibits provided within the SUP booklet are conceptual only and are not appropriate for a stipulation requiring "substantial compliance." The Applicant requests the stipulation be changed to reflect the original language.
27. Applicant agrees with the revisions in lines 201-206. The applicant requests all references to setbacks be revised to 40 (forty) feet for accessory structures as is appropriate for the size of the SUP property and the distance of Areas A and A1 from the SUP boundary lines. Additionally, the setback requirements should not be applicable to internal residential areas – only areas outside of the SUP boundaries. For example, as Town Staff proposed language reads, a gazebo on the functioning lawn of Area A would need to be setback 40 feet from Area B – an unintended and unreasonable impact of the Town Staff's proposed language. The Applicant requests this stipulation be changed to reflect the Applicant's originally proposed language.
28. Regarding Town Staff Revisions to line 211, the correct terminology is "finished grade" for this application. The Applicant requests clarification on how Town Staff will define the term, "Grade." For clarification purposes, the terms "Areas A and A1" should remain within Lines 213-214. Line 215 should be changed to read, "Town Manager or designee."
29. The term "Resort Related Luxury Homes (Area B)" has been used consistently throughout the SUP application – please clarify the reasoning for the removal of the term "Luxury." Please replace "Ritz-Carlton" with "Resort Hotel" in line 216 and throughout all stipulations. The Applicant is not in agreement with Line 226. Multiple home styles will include flat roofs with the ability to place screed air conditioners on the roof. Please revise to read: **"AIR CONDITIONS MAY BE INSTALLED ON**

ROOFTOPS ONLY IF COMPLETELY SCREENED BY ARCHITECTURAL PARAPETS OR OTHER SCREENING MEASURES.” Regarding Lines 230-231, the Applicant is not in agreement with this newly proposed language which has not previously been discussed with the Applicant or the Planning Commission. Please delete or provide additional information/rationale. Regarding Lines 236-242, the Applicant is not in agreement with Town Staff’s proposed revisions. Some amenities will need to be placed within the front yard, such as water features, fire pits/places, etc. The Applicant needs to include the list of accessory structures over six feet in lines 239-240, which is consistent with the alternative language provided by Town Staff in Lines 247-276. Additionally, the Applicant anticipates many of the larger lots will include freestanding guest homes/casitas and therefore Town Staff’s proposed prohibition against this use is inappropriate. The Applicant requests the language in Lines 236-242 to be revised back to the Applicant’s originally proposed language. In the Applicant’s prior draft to the Town, the Applicant already selected the first option and rejected the language in Lines 247-276.

30. While Area D has consistently been labeled as “Attached Village Townhomes (Area D)” throughout the application, the Applicant would be willing to consider the change to “Residences” with further input from Town Staff. It was the Applicant’s understanding the Town would want the term “Townhomes” to remain to ensure the final product was not a condominium. Regarding Line 283, the Applicant has not been able to find any definition of the term “Minor Site Improvements” and prefers the use of “Accessory Structures” as previously defined in the stipulations.
31. Applicant agrees with the revision.
32. Applicant agrees with the revision.
33. Applicant agrees with the new stipulation.
34. NR
35. Applicant agrees with the revision.
36. In general, the Applicant is concerned with this newly proposed stipulation as it appears to run counter to the approved temporary tent location plan which provides pre-approval of tent locations and sizes without further review by the Town. The Applicant would be agreeable to the new stipulation with the following revisions: (1) Line 341 is amended as follows: “permit inspections **ARE DETERMINED AS FOLLOWS:**”; and (2) Lines 343-347 are deleted and replaced with the following language: “**ANY SIZE OR LOCATION OF TENT OR CANOPY PREVIOUSLY IDENTIFIED IN THE SUP TEMPORARY TENT PLAN MAY BE PLACED WITHIN THE SUP BOUNDARIES WITHOUT FURTHER REVIEW, INSPECTIONS, OR APPROVALS BY THE TOWN. ANY TENT NOT PREVIOUSLY APPROVED AND IDENTIFIED WITHIN THE TEMPORARY TENT PLAN WHICH EXCEEDS 1000**

SQUARE FEET SHALL BE SUBJECT TO AN INSPECTION AND PERMIT FROM THE TOWN FIRE MARSHAL, OR DESIGNEE.”

37. The Applicant does not agree with the proposed deletion of language within Lines 363-364. While an event, inclusive of alcohol and food service, shall cease at 10:00 PM and may not commence prior to 7:00 AM, the Resort Hotel will require time to breakdown and set-up events as is standard in the industry. Please replace the Applicant's proposed language in Lines 363-364. The Applicant is not in agreement with the revision to Line 368 as flexibility is needed in order to remove all temporary structures. The requirement to remove temporary structures within 24 hours of the event as Proposed by the Applicant still ensures structures will not remain erected for prolonged periods of time. The Applicant is in agreement with the revisions in Lines 371-375 and Lines 378-379.
38. As previously stated (regarding Lines 383-384), the Applicant is requesting the term “Ritz-Carlton” to be replaced by “Resort Hotel” and the removal of the terms “Luxury” and “Village Townhomes” appears unnecessary. The Applicant does not agree with the reformatting of the Area E uses in line 385 and strongly prefers for Area E uses to have its own stipulation and section as previously proposed in Lines 443-453. **Please Note:** The Applicant was completely surprised by the inclusion of new stipulations which appear to be cut and pasted from the recent Mountain Shadows amended development agreement – requirements which are inapplicable to this SUP. The Planning Commission has not expressed any need or desire for this additional language and its inclusion appears to be driven by Town Staff, contrary to the Planning Commission's direction. The Applicant is opposed to all newly proposed language in Lines 396-397, Line 401, and Lines 409-410. Lines 398-400 are agreeable to the Applicant if removed and replaced with: “RENTAL OF UNITS IN THE HOTEL'S RENTAL PROGRAM WILL BE PROCESSED THROUGH THE PRINCIPAL RESORT HOTEL'S RENTAL MANAGEMENT PROGRAM OR OTHER SIMILAR MECHANISM WHERE THE PRINCIPAL RESORT HOTEL CAN TRACK ALL RENTAL ACTIVITY.” The Applicant will agree to the new language proposed in Lines 403-404. The Applicant is generally agreeable to the new language in Lines 411-414, however, the phrase, “as typically found in a full service upper upscale or better resort hotel” is subjective, oddly worded, and may prove to be impossible to define and implement. Please provide clarification as to the intent of this language.

The Applicant requests to delete the language within Lines 435-438 and reinstate the language provided by the Applicant in Lines 443-453 as a separate stipulation. The Applicant needs written acknowledgment from the Planning Commission of the specific list of uses proposed by the Applicant for Area E: hotel, residences, resort-related-retail, and resort-related health services. It is the Applicant's understanding from recent conversations with the Town that that a hotel use is desirable within the Paradise Valley portion of Area E. Furthermore, it was specifically discussed with the Town Staff and the Planning Commission that the future site plan approval

process for Area E would be an Intermediate Amendment, as guaranteed by stipulations.

The Applicant is in agreement with the deletion of Lines 439-441, with the understanding this topic will be addressed within the development agreement.

39. The Applicant does not agree with the removal of the language in Lines 461-462 which clarified parking amendments would be handled through a Minor SUP Amendment. This language is consistent with prior discussions with Town Staff and the Planning Commission. Please reinstate the Applicant's previously proposed language.
40. NR
41. As previously stated, please correct the language in this stipulation to include the appropriate list of Area E uses as proposed by the Applicant.
42. Applicant agrees with the revision.
43. NR
44. Applicant agrees with the revision.
45. NR
46. Applicant agrees with the revision.
47. Applicant agrees with the revision.
48. Applicant agrees with the revision.

Please Note: It was the Applicant's understanding the deleted language in Lines 516-518 was requested by Town Staff and included in Ms. Cutro's SUP checklist.

49. NR
50. Please provide clarification as to the definition of a "Community Outreach Plan" and what the implementation of the plan will entail.

We look forward to our next opportunity to discuss this SUP application with Town Staff and the Planning Commission.

Sincerely,

WITHEY MORRIS, P.L.C.

By 
Benjamin W. Graff

BWG/jt

cc: Kevin Burke, Town Manager
Dolf Strom, Planning Commission Chair
Paradise Valley Planning Commissioners

1. PROJECT DESCRIPTION

Pursuant to Article XI of the Zoning Ordinance of the Town of Paradise Valley, Arizona, the Town hereby grants to Five Star Development Resort Communities, LLC, an Arizona Limited Liability Company, its successors and assigns, and the underlying Property, this amendment to the Prior Special Use Permit governing the use the Property, which amendment shall be effective the Approval Date. All capitalized terms contained herein are defined pursuant to the definitions set forth in this Special Use Permit.

The Property subject to This Special Use Permit is currently owned by the Resort Hotel Owner and is comprised of approximately one hundred and five (105) acres located at the northeast corner of Mockingbird Lane and Lincoln Drive in the Town of Paradise Valley, Arizona.

This amendment, including Exhibits _____, is referred to throughout as This "Special Use Permit" to distinguish it from the "Prior Special Use Permit" currently governing the use of the Property. The Town issued the Prior Special Use Permit for the Property in 2008. This Special Use Permit is intended to supersede and replace the Prior Special Use Permit. This Special Use Permit is being granted by the Town to permit the development, construction, use and operation of the Property as a resort subject to and in accordance with the stipulations and other provisions set forth herein.

The improvements, facilities and uses authorized to be developed, constructed, used, operated and maintained on the Property include the following: one (1) ~~Luxury-Resort Hotel~~ Ritz-Carlton or equivalent five star resort with Ancillary Facilities and two hundred (200) Hotel Rooms (Area A) which may be owned only by the Resort Hotel Owner and used as provided herein; one-hundred and twenty (120) Resort Villas (Area A1) which may be owned by the Resort Hotel Owner or by a private owner which may be sold (and thereafter resold) and/or voluntarily included by the private owner within the Resort Hotel rental program and made available for transient occupancy uses or hospitality uses, and otherwise used as provided herein; eighty (80) Resort Related Luxury Detached Single Family Homes (Area B) which may be sold (and

thereafter resold) to a third party, or parties, and used as provided herein; ~~45 Resort-Ritz-Carlton~~
Branded Detached Single Family Homes (Area C) which may be owned by the Resort Hotel
Owner or by a private owner which may be sold (and thereafter resold) and/or voluntarily
included ~~by the private owner~~ within the Resort Hotel rental program and made available for
transient occupancy uses or hospitality uses, and otherwise used as provided herein; 74 Resort
Related Attached ~~Village Townhomes~~Residences (Area D) which may be sold (and thereafter
resold) to a third party, or parties, and used as provided herein; and the following uses subject to
future site plan review for Area E located within the Town of hotel, residential, resort-related
retail, that may include a grocery-store type use up to 36,400 square feet, and resort-related
residential, or all detached residential use and resort-related health services (Area E) (Area E
residential units may be sold (and thereafter resold) to a third party, or parties); and other
facilities and site improvements.

2. STIPULATIONS

A. General

1. As of the Approval Date, This Special Use Permit shall supersede and replace any and all
Prior Special Use Permit(s) related to the Property.
2. This Special Use Permit touches and concerns the land and shall run with the land. Any
person having or subsequently acquiring title to any portion of the Property shall be subject
to This Special Use Permit, as it applies to the portion of the Property owned thereby and as
it may be amended or superseded from time to time.
3. Development of the Resort shall be in substantial conformance with the Ritz Carlton Paradise
Valley Special Use Permit Application Book dated _____, an Index of which is
attached hereto as Exhibit _____ (the Index and SUP Application Book are collectively
referred to as the "SUP Book"), the Site Plan, dated _____ attached hereto as Exhibit
_____ (Site Plan), which are made a part hereof by this reference, and these stipulations.
4. Lot coverage for the Property as a whole shall not exceed that noted in the Land Density
Table- in the SUP booklet.

- 55 5. The use of the Property shall at all times conform to This Special Use Permit and all
56 applicable State laws and Town ordinances, except that if there is a conflict between This
57 Special Use Permit and any Town ordinance or other requirement, This Special Use Permit
58 shall prevail.
- 59 6. If any section, subsection, sentence, clause or phrase of This Special Use Permit is for any
60 reason held illegal, invalid or unconstitutional by the final decision of any court of competent
61 jurisdiction, such decision shall not affect the validity of the remaining portions of This
62 Special Use Permit. The Town and the Resort Hotel Owner believe and intend that the
63 provisions of This Special Use Permit are valid and enforceable. In the unlikely event that
64 This Special Use Permit is declared by a court of competent jurisdiction to be invalid or
65 unenforceable, the Resort may be used and operated as a legal non-conforming use in
66 accordance with the stipulations and other provisions set out herein until such time as a
67 special use permit or other applicable zoning for the Resort is issued by the Town for the
68 Property, it being the intent of the Town that in such event the Town will promptly issue a
69 special use permit or other zoning classifications containing stipulations and other provisions
70 which are identical to, or as near to identical as possible, to those contained in This Special
71 Use Permit.
- 72 7. In the case of, inconsistencies or conflicts between or among these stipulations, the SUP
73 Book and/or the Site Plan shall be resolved in the following order of precedence: these
74 stipulations shall have first precedence and control over the text of the SUP Book and the
75 Site Plan, and after that, the text of the SUP Book shall have precedence and control over the
76 Site Plan. In the event of a conflict between the text or narrative and diagrams, drawings or
77 other graphic representations contained in either the SUP Book or the Site Plan, the text or
78 narrative will prevail and control over the graphic representations.
- 79 8. Mylar versions of the Site Plan, lighting plan, perimeter landscaping, wall plan, grading and
80 drainage plan and elevations, if included within from the SUP Application book, (as
81 modified per Stipulation No. 3) and electronic versions of all Special Use Permit Application
82 Book sheets (as modified per Stipulation No. 3), shall be submitted thirty (30) days after final

83 approval. No part of the Resort shall be operated as a Time-Share Project, as such term is
84 defined by the Town Zoning Ordinance. No part of the Resort Hotel Area A may be
85 subdivided (if previously combined) for purposes of sale or resale. Any part or individual
86 unit of the Resort Villas Area A1 may be subdivided (if previously combined) or combined
87 for the purposes of sale or resale provided that the total number of units shall not exceed one
88 hundred twenty (120).

89 9. When applicable, all approvals and determinations by the Town Manager or designee
90 referenced herein shall be ~~administrative and~~ governed by the Code in effect at the date of
91 that determination, codified.

92 10. If any portion of the property is used in violation of the terms of This Special Use Permit, the
93 Town may, after fair notice, a hearing and a reasonable opportunity to correct, impose a
94 monetary sanction on the then Owner of such portion, in an amount not to exceed the
95 maximum amount allowed for violations of the Town Zoning Ordinance for each day such
96 violation exists, in addition to all other orders or sanctions permitted by applicable laws. No
97 such remedy shall be sought from any other Owner or portion of the Property that is not in
98 violation of this Special Use Permit.

99 ~~The Resort Hotel Owner and successor owners of the Property shall have a right to undertake~~
100 ~~and complete the development and use of the Property in accordance with This Special Use~~
101 ~~Permit.~~

102 ~~12.11. This Special Use Permit shall run with the land and any person having or subsequently~~
103 ~~acquiring title to any portion of the property shall be subject to This Special Use Permit, as it~~
104 ~~applies to the portion of the property owned thereby and as it may be amended or superseded~~
105 ~~from time to time. Once an Owner no longer owns the property, such prior owner shall not~~
106 ~~be subject to This Special Use Permit.~~

12. Unless otherwise stipulated in This Special Use Permit, Amendments shall follow the appropriate process outlined in Article XI, Special Uses and Additional Regulations, of the Town Zoning Ordinance, as amended

B. Construction and Development Standards

13. All utilities within the Resort shall be underground and located within appropriate easements. All water and sewage facilities shall be constructed in accordance with plans approved ~~administratively~~ by the Town Manager or designee.

14. No construction permit shall be issued for any 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 ~~administratively~~ by the Town Manager or designee. However, the Town may issue approvals and/or permits to salvage native plants and stage or prepare the job-site for work, with fences, trailers, dumpsters, sanitation, water tanks, material storage, erosion control and dust control measures, and the like, without engineering or architectural plans.

15. During the period of demolition or construction of new improvements, signs shall be posted on the Property (or at the entrance to a particular phase) indicating the name and phone number of a person the public may contact with construction-related concerns. Sign details such as the sign size, height and location shall be reviewed and ~~administratively~~ approved by the Town Manager or designee.

16. 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.

17. 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 particular phase of development in which such structure is located, as

determined ~~administratively~~ by the Town Manager or designee.

18. Interiors of any Resort Hotel structure may be remodeled at any time without an amendment to This Special Use Permit so long as such remodeling does not increase the number of keys specified within This Special Use Permit.

19. One or more locations within the Resort as ~~administratively~~ approved by the Town Manager or designee may be improved and used as a ~~marketing-center~~Marketing Center for the sales and marketing of the project until such time as all project construction has been substantially completed and all ~~privately-owned residential products have been sold~~Resort Related Homes (Area B), Ritz-Carlton Branded Homes (Area C), and Resort Related Attached Residences (Area D) have been sold.

20. Temporary construction driveway locations are subject to ~~administrative~~the approval by the Town Manager or designee and are limited to locations on major arterial roadways and/or Indian Bend Road east of the existing traffic circle.

21. If construction has not commenced on ~~any~~a portion of the site by a date that is five (5) years after the Approval Date, any such unimproved, disturbed portion shall be stabilized and/or landscaped to minimize dust.

22. The Resort Hotel Owner shall submit a construction schedule prior to the issuance of any building permit to ensure compliance with all Town ordinances and in order to minimize construction nuisances. This construction schedule shall include the following:

- Dust and noise control measures
- Vehicle/equipment storage/parking
- Construction days/hours
- Location of staging area for construction supplies/equipment
- Location of any construction trailer and sanitary facility

- Location of on-site construction-materials/debris storage
- Location of fire lanes during the construction period
- The approximate beginning and ending for construction of structures within a phase
- All construction related parking and storage must be contained on-site

23. The Resort Hotel Owner shall arrange for Construction Phasing per Area on the Property in the following sequence:

- Commence native plant salvage, dust and erosion control measures, job-site mobilization and set-up, and the like
- Begin Storm Water Pollution Prevention Plan and Measures
- Upon completion of the salvage, erosion and dust control, job-site mobilization, and set-up, commence horizontal or civil improvements and site work.
- Upon substantial completion of the civil improvements and site work, commence ~~vertical building improvements and~~ perimeter walls and perimeter landscaping (outside the perimeter walls) of the Property, along Lincoln Drive, Mockingbird Lane and Indian Bend Road
- Upon substantial completion of above, vertical building improvements for Areas A, A1, B, C, and D, may commence ~~concurrently or independently from each other in~~ accordance with the phasing plan. Off-site and right-of-way improvements may be scheduled independently of the foregoing

24. Subject to requirements for construction of the horizontal or vertical improvements, construction access, emergency vehicle access, erosion control, storm water pollution prevention control, dust control and other measures, portions of the perimeter wall and landscaping may be postponed, or re-opened for construction or access subject to ~~administrative~~ approval by the Town Manager or designee.

~~During construction and development of the Resort Property, temporary sales and marketing signs may be posted on the Property consistent with the future Temporary Sign Plan to be submitted by the owner/developer and administratively approved by the Town.~~

25. During construction, the Resort Hotel Owner shall sweep the streets adjacent to the Property or any other public streets in the Town directly affected by development on the Property using a PM-10 or equivalent capable street sweeper at least three times a week or more as required by the Town Manager or designee.

26. Screening of any backflow preventer, transformer, or other similar equipment visible from Lincoln Drive, Mockingbird Lane or Indian Bend Road shall be required and the precise location thereof shall first be approved ~~administratively~~ by the Town Manager or designee and the utility provider.

[Place in the development agreement] The building floor plans, elevations (exclusive of heights and setbacks), materials and colors ~~may generally comply~~shall be in substantial compliance with those shown on This Special Use Permit, ~~however, all elevations, architectural examples, imagery, photographic representations, and renderings provided in~~. Minor variations may be approved by the SUP booklet are conceptual in nature and do not necessarily represent the final design and construction Town Manager or designee.

27. Additional accessory and service structures in Areas A and A1, as defined in the Town's Resort SUP Guidelines, each limited to eight-hundred (800) square feet, may be added to the Approved Plans ~~administratively~~, provided that the total square footage of all the accessory and service structures added together does not exceed fifteen thousand (15,000) square feet, such additions to be provided to the Town ~~for administrative approval~~Manager or designee as a revised conceptual site plan. The additional accessory and service structures cannot exceed sixteen (16) feet in height and must be set back a minimum of ~~sixty (60)~~ forty (40) feet for any accessory structure and sixty (60) feet for any service structure from any rights-of-way or residential property lines ~~(outside of the SUP boundaries)~~ and 10 feet from any non-residentially zoned property ~~(outside of the SUP boundaries)~~.

28. Accessory structures that do not exceed six (6) feet in height above ~~finished grade~~Grade in Areas A & A1, including, but not limited to, pools, barbeques, fire pits, fireplaces, water features and other accessory structures, shall be allowed within the boundaries of ~~Areas A and A1~~the Resort, such additions shall be properly permitted ~~and administratively approved~~ by the Town.

29. Construction for the Resort Related ~~Luxury~~ Homes (Area B) and ~~Resort-Ritz-Carlton~~ Branded Homes (Area C).

a. The Resort Related ~~Luxury~~ Homes (Area B) and ~~Resort-Ritz-Carlton~~ Branded Homes (Area C) shall be constructed in conformance with the development standards set forth in This Special Use Permit;

b. Additional walls not shown on This Special Use Permit may be constructed on a Resort Related ~~Luxury~~ Lot or ~~Resort-Ritz-Carlton~~ Branded Lot within enclosed private yards, provided they do not exceed six feet in height;

c. Air conditioners shall not be installed on roofs;

d. All exterior lighting shall comply with Town ordinances;

e. A minimum of 33% of the aggregate of all enclosed yard areas within a Resort Related Luxury or Ritz-Carlton Branded lot shall be open, planted, or pervious;

f. Accessory structures that do not exceed six (6) feet in height above ~~finished grade~~Grade, including, but not limited to, pools, barbeques, fire pits, fireplaces, water features and other accessory structures, shall be allowed within the boundaries of each ~~Area B and Area C~~ lot, provided they are located behind and screened from public right-of-way streets. A freestanding guesthouse is not an allowed accessory structure. Accessory structures over six (6) feet above ~~finished grade, inclusive of casitas, freestanding guest~~

~~homes, gazebos, trellises, and patio covers~~Grade shall be allowed on each
~~Area B and Area C~~lot, provided they are limited to sixteen (16) feet above
~~finished grade~~Grade and comply with the following setbacks:

- Front yard – ten (10) feet
- Side yard – five (5) feet
- Side yard that abuts a street – ten (10) feet
- Rear yard – ten (10) feet

OR, an alternative to Stipulation 29.f above:

Detached Accessory Buildings and Minor Site Improvements such as pools, spas, trellis, patio covers, gazebos, fireplaces and fire pits may be installed in an enclosed Resort Related yard or Ritz-Carlton Branded yard provided they each have a setback of five (5) feet from the enclosed yard wall and a height below sixteen (16) feet. No setback is required for water features less than eighteen (18) inches deep as long as no portion of such water feature shall exceed the height of the closest property wall. The total area of all such open beamed and roofed accessory structures shall be limited to a maximum of 25% of the total enclosed yard area within a lot.

OTHER stipulations for consideration to add to Stipulation 29 above:

Pools, spas, hot tubs, ponds and fountains are allowed, provided that the aggregate area of such features which are in excess of 18” deep shall not exceed 1,000 square feet.

Pool and fountain equipment are allowed, provided that all such equipment must be screened in such a manner so as not to be visible from any lot or common area or adjoining property. All heaters are to be stackless or low-profile in configuration.

Freestanding fireplaces or fire pits are allowed, subject to the following:

- Wood burning freestanding exterior fireplaces or fire pits are allowed but are limited to one per Resort Villa lot. Additional freestanding fireplaces are allowed but are restricted to gas burning only.
- Freestanding outdoor fireplace chimneys shall not exceed ten feet in height. Attached fireplace chimneys may be two feet above the top of accessory structure or 14 feet in height total, whichever is less.
- Freestanding fireplaces and fire pits must be set back a minimum of five feet from all Resort perimeter Property lines.

Playground equipment, basketball backboards, storage sheds and free-standing flagpoles shall not be permitted.

30. Construction for the Resort Related Attached ~~Village Townhomes~~Residences (Area D)

- a. The Resort Related Attached ~~Village Townhomes~~residences shall be constructed in conformance with the development standards set forth in This Special Use Permit; and-
- b. ~~Aecessory structures~~Minor Site Improvements not shown on This Special Use Permit may be constructed on a Resort Related Attached ~~Village Townhome~~ ~~lot~~residences when otherwise in compliance with This Special Use Permit.

31. All lighting not visible off site shall meet Resort SUP Guidelines. All lighting (including fixtures, light source, etc..) visible off site shall be approved through a minor SUP amendment.

291 32. Except as otherwise allowed by Federal or State requirements, antenna and satellite dishes
292 are permitted, as follows:

293
294 a. Satellite dishes must not be located above the roof line. Satellite dishes and antennas
295 greater than twenty-four (24) inches in diameter are permitted, provided that they are
296 not mounted on the roof and meet all Town Code requirements, including full
297 screening of equipment from view to the public right-of-way or properties not part of
298 This Special Use Permit; and

299
300 b. All wiring shall be contained within a structure, conduit or underground.

301
302 33. Cellular and other wireless transmission antennas are permitted, provided that they comply
303 with this Special Use Permit, all applicable Town ordinances and obtain a Conditional Use
304 Permit pursuant to Article XI, Special Uses and Additional Regulations, of the Town Zoning
305 Ordinance, as amended. Any cellular antennas shall be designed as integrated architectural
306 features within the structures on the Property and any screening shall be in the same finish
307 and color as the structure on which it is located. There shall be no unscreened projections of
308 cellular antennas on any building above the roofline. Any lease agreement with a wireless
309 operator will specifically allow entry by the Town and its agent for the purpose of inspection
310 and compliance with Town ordinances and will require compliance with Article XII,
311 Personal Wireless Service Facilities, of the Town Zoning Ordinance or any successor
312 ordinance regarding the conditions and limitations of special use permits.

313
314 34. The final design for the Visually Significant Corridor of Lincoln Drive shall be submitted
315 and approved by the Town Manager or designee.

C. Uses

35. Temporary tents or pavilions may be erected at the Resort Hotel, Resort Villas, Resort Ancillary Facilities and related site improvements, in the locations shown on the Approved Plans, provided that such temporary tents or pavilions shall not remain erected for more than sixteen (16) consecutive days per event. No tent shall be higher than twenty-four feet (24') above finished grade. Any other temporary tent or pavilion shall have adequate parking and be approved ~~administratively~~ by the Town Manager or designee.

36. Special events shall be permissible, with or without temporary tents or pavilions, provided these events are in accordance with the Article 8-8, Special Events on Private Property and Public Rights-of-Way, of the Town Code, as may be amended, with the following conditions:

- a. As allowable in said Article 8-8, Special Use Permit properties are exempt from the Special Event permit review process provided that such exempted events are limited to the type of activities that are customary and incidental to the primary uses of This Special Use Permit and any temporary tents or pavilions used are as approved at the locations and tent sizes shown with This Special Use Permit;
- b. Exemption from the Special Event permit review process does not exempt the Resort Owner from any applicable required permit inspections related to public health, safety and welfare by the Town, State of Arizona, or other such jurisdiction. Such permit inspections may include, but are not limited to the following:
 - i. A permit from the Town Fire Marshal, or designee, for any structure or tent having an area in excess of 200 square feet, or a canopy in excess of 400 square feet, and
 - ii. Review by the Town Community Development Department the provision for and location of any portable restroom facilities;

c. Any temporary tents or pavilions not shown on said plans may be approved in accordance to Article 8-8-10, Procedure for Review of Application and Appeal of Decision, of the Town Code;

d. Temporary tents or pavilions must meet a minimum setback of 40 feet to the exterior property line of This Special Use Permit; and

e. Placement of any temporary tent or pavilion shall have no adverse impact on parking or circulation

37. The hours of public operation for the Resort Hotel shall be twenty-four (24) hours per day, seven (7) days a week, except for the hours and operational standards set forth below:

a. Indoor Bars/lounges: 6:00 a.m. to close per state statute;

b. Outdoor banquets, receptions, weddings and socials: 6:00 a.m. to 2:00 a.m.;

c. Rooftop Resort Hotel Amenity

i. No activities or events shall occur between 10:00 p.m. and 7:00 a.m.; ~~with the exception of event setup and breakdown procedures conducted by resort staff.~~

ii. No amplified music shall be permitted at any time;

iii. No permanent shade structures may be constructed. Temporary shade structures are permitted as needed for specific events. Temporary structures shall be ~~constructed~~erected and removed ~~within 24 hours of the same day as~~ the event;

iv. No outward projected lighting shall be permitted from the Rooftop Resort Hotel Amenity;

v. At no time may the noise level exceed ~~56 decibels~~current Town Code standards at or beyond the SUP boundary line. The Town reserves the right to require additional noise mitigation measures such as sound deadening materials or other techniques to remedy any violation of the Town's noise or nuisance regulations

375 and This Special Use Permit;

376 vi. The maximum occupancy shall be limited to the applicable building and fire
377 codes;

378 vii. Food and alcohol service may be provided at any time ~~prior to~~between 7:00
379 a.m. and 10:00 p.m.

380 viii. The Spa & Fitness facilities: Outside members limited to 5:00 a.m. to midnight;
381 and

382 ix. Trash pickup: 7:00 a.m. to 7:00 p.m.

383 38. Use of Resort Villas (Area A1), Resort Related ~~Luxury~~ Homes (Area B), ~~Resort Ritz-Carlton~~
384 Branded Homes (Area C), ~~and~~ Resort Related Attached ~~Village Townhomes~~residences (Area
385 D), and Resort-Related Mixed Use (Area E).

386 a. Resort Villas (Area A1)

387 i. Each owner of a Resort Villa may occupy it, or permit its family and guest(s)
388 to occupy it, or make it available for residential uses. In addition, each owner
389 of a Resort Villa may voluntarily participate in the Resort Hotel rental
390 program and make the Resort Villa available for transient occupancy uses, or
391 hospitality uses, at their sole option, under the terms and conditions of the
392 Resort Hotel rental program. The principal guest of a Resort Villa in the
393 Resort Hotel rental program shall register with the Resort Hotel. Nothing shall
394 prohibit a Resort Villa from being sold (and thereafter resold) to a third party,
395 or parties, and used as provided herein.

396 ii. Units must always meet the FF&E standards established under the Principal
397 Resort Hotel's Comprehensive Design Manual for Hotel Keys.

398 iii. Rental of units will be processed through the Principal Resort Hotel's Rental
399 Management Program or other similar mechanism where the Principal Resort
400 Hotel can track all rental activity.

401 iv. The term "residences" will not be used in any branding or marketing materials
402 for the sale of units.

403 v. Each floor of the building containing units must contain a maid/housekeeping

404 closet and an ice-making machine

405 vi. Each unit must have locking entrance doors tied to a remote master key
406 system located at the guest reception area of the Principal Resort Hotel, which
407 system is capable of issuing new key cards for each unit as it is rented and
408 cancelling key cards upon expiration of the rental term

409 vii. Each unit must be connected to a master television system as would typically
410 be found in a full service upper upscale or better resort hotel

411 viii. Each unit must be connected to a master telephone or VOIP system that
412 allows intra-system calls to the front desk, concierge, housekeeping, room
413 service, and other hotel services, as typically found in a full service upper
414 upscale or better resort hotel.

415 b. Resort Related ~~Luxury~~ Homes (Area B). Each owner of a Resort Related
416 ~~Luxury~~ Home may occupy it or permit its family and guest(s) to occupy it, or
417 make it available for residential uses. Nothing shall prohibit a Resort Related
418 ~~Luxury~~ Home from being sold (and thereafter resold) to a third party, or
419 parties, and used as provided herein.

420 c. ~~Resort-Ritz-Carlton~~ Branded Homes (Area C). Each owner of a ~~Resort-Ritz-~~
421 ~~Carlton~~ Branded Home may occupy it, or permit its family and guest(s) to
422 occupy it, or make it available for residential uses. In addition, each owner of
423 a ~~Resort-Ritz-Carlton~~ Branded Home may voluntarily participate in the Resort
424 Hotel rental program and make the home available for transient occupancy
425 uses, or hospitality uses, at their sole option, under the terms and conditions of
426 the Resort Hotel rental program. Nothing shall prohibit a ~~Resort-Ritz-Carlton~~
427 Branded Home from being sold (and thereafter resold) to a third party, or
428 parties, and used as provided herein.

429 d. Resort Related Attached ~~Village Townhomes~~ Residences (Area D). Each owner
430 of a Resort Related Attached ~~Village Townhome~~ Residence may occupy it or
431 permit its family and guest(s) to occupy it, or make it available for residential

432 uses. Nothing shall prohibit a Resort Related Attached ~~Village~~
433 ~~Townhome~~Residence from being sold (and thereafter resold) to a third party,
434 or parties, and used as provided herein.

435 ~~d.e.~~Resort-Related Mixed Use (Area E). The following uses are subject to future
436 site plan review for Area E located within the Town of resort-related retail,
437 that may include a grocery-store type use up to 36,400 square feet, and resort-
438 related residential, or all detached residential use

439 [Place in the development agreement] Rentals other than by Resort Hotel Owner.
440 Annual or longer rentals of Resort Villas and Resort-Branded Homes are permitted,
441 subject to the Covenants, Conditions and Restrictions of the Resort.

442
443 ~~35. — Anticipated Uses and Future Approval Process for Area E.~~

444
445 ~~A. The Town and owner/developer anticipate Area E to include, but not be limited to,~~
446 ~~the following uses: hotel, residential, resort-related retail, and resort-related health~~
447 ~~services.~~

448
449 ~~B. Prior to obtaining plat approval and building permits for Area E, owner/developer~~
450 ~~shall submit a site plan for Area E to the Town to be approved as an Intermediate~~
451 ~~SUP Amendment. The amendment may be approved by a joint meeting of the Town's~~
452 ~~Planning Commission and Town Council. The amendment shall be limited to Area~~
453 ~~E.~~

D. Parking and Circulation

39. Parking shall meet or exceed the parking requirements set forth in this Special Use Permit.

Any change in use to the Resort Hotel that increases the parking demand over what is provided in This Special Use Permit must be approved ~~as a minor amendment by the Planning Commission~~ through the SUP process.

40. All contracts between the Resort Hotel Owner and any valet company or other parking company shall include an acknowledgment and agreement that such company shall not park any vehicles on public streets in the Town. Buses and other vehicles may be used to shuttle guests or employees to or from parking areas not located on the Resort, and between the Resort and other destinations (e.g., airport, shopping facilities, golf courses, attractions, etc.). Any catering agreement between Resort Hotel Owner and any owner or guest booking events at the Resort shall include an acknowledgement and agreement that catering vehicles may not park on public streets in the Town.

41. Unlicensed support vehicles (i.e., golf carts, utility vehicles, etc.) may be used to transport guests and residents and provide services to the Resort, Resort Villas, Resort Ancillary Facilities, Resort Related Luxury Homes (Area B), ~~Resort-Ritz-Carlton~~ Branded Homes (Area C), Resort Related Attached ~~Village Townhomes~~ residences (Area D), and ~~hotel, residential, resort-related retail, restaurant~~ Resort Related Retail, Restaurant, and ~~resort-related health services in Residential Uses~~ (Area E ~~and the 17 acres of land within the City of Scottsdale located at the southwest corner of Indian Bend and Scottsdale Roads,~~), but shall not be used or parked on any public street.

42. All designated fire lanes shall maintain a vertical clearance of fourteen feet (14') above finished grade and a horizontal clearance of twenty feet (20') to allow passage of emergency vehicles and must meet all current Arizona Department of Transportation standards. Emergency access points are only to be utilized for emergency vehicles. No deliveries or other use is allowed.

43. 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).

44. All streets and drives in the Resort are and shall remain private streets. All streets, sidewalks and paved areas constructed shall remain private; provided, that all new streets constructed shall be ~~of adequate width and design to permit the provision of fire and police protection to the Property per the SUP booklet cross sections.~~ That part of This Special Use Permit granted for private streets and drives herein shall be binding on the Applicant.

45. The streets and drives on the Property shall be constructed and maintained by the Applicant. The rights and obligations, including but not limited to the right and obligation to maintain the streets and drives on the Property, shall run with the land and shall be binding thereon. In the event a condition that threatens the health or safety of the residents of the Town is created or results from the Applicant's failure to maintain the streets or drives within the Property, the Town may give the Applicant a written notice to undertake appropriate maintenance to cure such condition. If the condition remains uncured for thirty (30) days after notice thereof in writing to the Applicant by the Town, or if the condition is such that it cannot be reasonably corrected within thirty (30) days, the correction thereof not having been commenced and thereafter diligently prosecuted within thirty (30) days from receipt of such written notice, the Town may enter the Property and perform such work necessary to cure the condition. The Town may assess the actual costs and expenses related to such work against the Applicant as owner of the private streets and drives, and the Applicant shall remit payment to the Town within thirty (30) days of receipt of an invoice together with the usual and customary supporting documents and materials from such work. If the Applicant fails to remit such payment within the 30-day period, the Town may file a lien against the Property for any such unpaid amount due to the Town.

46. The 8' wide public trail shall remain ungated and unobstructed at all times. The trail must meet ADA requirements and must have full clearance for a bicycle at bridge crossing.

47. Proposed guardgates and guardhouses shall be in the general locations shown on the Resort Wall Master Plan and must meet the ~~Resort~~^{SUP} Guideline standards.

48. All proposed cul-de-sacs in Areas B & C shall meet a right-of-way radius of not less than forty-five feet (45') with an improved traffic circle having a radius of forty feet (40').)

~~No loading, truck parking, trash containers or outdoor storage area shall be located within 100 feet of residentially zoned property outside of the SUP boundaries. All such areas shall provide visual and noise screening to minimize impacts on adjacent residential property.~~

E. Management

49. There shall be at least one person at the Resort at all times who has been thoroughly briefed on the provisions of This Special Use Permit and who has the authority to resolve all problems related to compliance with This Special Use Permit. All calls from Town residents to the Town or Resort, regarding noise or disturbances shall be referred to and addressed by such person(s). Maintenance of the Resort in general, and all common areas specifically, shall be coordinated through a single unified management entity, which may be the Resort Hotel Owner or its designee.

50. COMMUNITY OUTREACH Subsequent to the approval of this Ordinance, the Owner shall implement the Community Outreach Plan.

Note: Prior to Town Council action these stipulations will be put into a Town ordinance format, including the inclusion of definitions