

ORDINANCE NUMBER 2020-09

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 122 HOTEL KEYS WITH RESORT RELATED RESTAURANT, RETAIL, MEETING SPACE, AND SITE IMPROVEMENTS INCLUDING SURFACE 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 March 5, 2019, in the manner prescribed by law, for the purpose of considering an application for an amendment to the Special Use Permit for The Smoke Tree Resort (the Application"), and recommended denial of the Application to the Town of Paradise Valley Council ("Town Council") ; and

WHEREAS, the Town Council held several study sessions which discussed the possibility of having a reduced overall density and removing for-sale units from the Application; and

WHEREAS, the owner of the Smoke Tree property subsequently submitted a significantly revised submittal (the "Amended Application") of the initial Application; and

WHEREAS, the Town Council reviewed the Amended Application and determined that a more thorough review of the Amended Application was necessary; and thereafter approved (on June 25, 2020) a revised statement of direction for Smoke Tree Resort and remanded the Amended Application to the Planning Commission for further study and for a recommendation on the Amended Application; and

WHEREAS, the Planning Commission held a public hearing on _____, in the manner prescribed by law, for the purpose of considering the Amended Application for an amendment to the Special Use Permit for The Smoke Tree Resort property and recommended _____ of the Amended Application to the Town Council; and

WHEREAS, the Town Council held a public hearing on _____, 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; and

Date: 08/13/2020

WHEREAS, the Town Council finds that the requirements of Section 2-5-2.F, Citizen Review Process, including holding Citizen Review Sessions on February 18, 2019, and August 20, 2020, 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, in accordance with Article II, Section 1 and 2, Constitution of Arizona, the Town Council has considered the individual property rights and personal liabilities of the residents of the Town before adopting Ordinance #2020-__ (the "Ordinance").

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

SECTION I. In General

1. The Special Use Permit ("SUP") zoning for Smoke Tree Resort allows for resort uses on approximately ____net acres of land (the "net acres" being calculated by subtracting the public road dedications provided for in this SUP from the approximately 5.0 gross acres contained in the Amended Application) located at 7101 East Lincoln Drive in the Town of Paradise Valley, Arizona, more particularly described on Exhibit "A," attached hereto (the "Property").
2. This Major Amendment to the Special Use Permit (SUP 18-05) for Smoke Tree Resort hereby amends all prior Special Use Permits for the Property and creates a new Special Use Permit to allow for redevelopment with demolition of all existing structures and construction of a new resort hotel with 122 hotel keys with resort related restaurant, retail, meeting space, and onsite and offsite improvements including surface parking, landscaping, lighting, and improvements to onsite and off-site infrastructure, including within N. Quail Run Road and E. Lincoln Drive, subject to the Conditions set forth in Section II of this Ordinance. **[Note: Additional edits may be necessary]**
3. To provide historical reference of what is being superseded, a description of prior amendments to the Special Use Permit for the Property is summarized in Exhibit "B," attached hereto.
4. Upon the Effective Date of this Ordinance the zoning district of "Special Use Permit – Resort" shall now be shown on the Town's official Zoning Map for the Property 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";
5. This Major Amendment to the Special Use Permit for this Property is in accordance with Section 1102.7 of the Zoning Ordinance.

SECTION II. Conditions. Pursuant to Article XI of the Zoning Ordinance of the Town of Paradise Valley, Arizona (the "Town"), the Town hereby grants to Gentree LLC, an Arizona Limited Liability Company, its successors and assigns, Special Use Permit 18-05 by its approval of this

Date: 08/13/2020

Ordinance governing the use of the Property. All capitalized terms contained herein shall have the meanings ascribed to them parenthetically or otherwise in this Ordinance.

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

[Note: Additional edits may be necessary]

SECTION III. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Paradise Valley, Arizona, this _____ day of _____, 2020.

Jerry Bien-Willner, Mayor

SIGNED AND ATTESTED THIS ____ DAY OF _____ 2020.

ATTEST:

APPROVED AS TO FORM:

Duncan Miller, Town Clerk

Andrew Miller, Town Attorney

Date: 08/13/2020

**EXHIBIT “A”
TO
ORDINANCE NUMBER 2020-09**

Legal Description of Net Acres

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

[Note: Insert legal description of the “Net Acres” by taking the submitted legal description and subtracting the dedicated areas for both Lincoln Drive and Quail Run Road. The zoning for the Property should not apply to the areas that will be in the Town right-of-way (ROW)]

**EXHIBIT “B”
TO
ORDINANCE NUMBER 2020-09**

Description of Prior SUP Amendments that are amended 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 amended upon the Effective Date of this Ordinance.

[Note: Additional edits may be necessary]

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: 1) the dedication of 7 feet of additional right-of-way so that the Town would own 40 feet of right-of-way and payment by Maricopa County should it decide to condemn an additional 15 feet of right-of-way on Lincoln Drive (for a total of 55 feet of right-of-way as measured from the centerline of Lincoln Drive) in the event that Maricopa County used federal funds for such condemnation; and 2) that new leases of commercial space be approved by Town Council.

**EXHIBIT “C”
TO
ORDINANCE NUMBER 2020-09**

SUP STIPULATIONS

**TOWN OF PARADISE VALLEY
SPECIAL USE PERMIT FOR THE SMOKE TREE RESORT
SUP-18-05**

I. PROJECT DESCRIPTION

Redevelopment of the Property, that includes a complete demolition of all existing structures and construction of a new resort hotel with 122 hotel keys with resort related restaurant, retail, meeting space, and site improvements including surface parking, landscaping, lighting, and improvements to onsite and offsite infrastructure.

II. DEFINITIONS

“Affiliate” as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or spouse or children of such person, if such person is a natural person. For the purposes of this definition, (i) “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the beneficial ownership of voting securities, by contract or otherwise, and (ii) “person” means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, limited liability limited partnerships, trusts, land trusts, business trusts or other organizations, whether or not legal entities.

“Approval Date” means the date on which both of the following have occurred (i) Ordinance No. 2020-09 is approved (i.e., voted on) by the Town Council of the Town of Paradise Valley, Arizona and (ii) signed by the Mayor.

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

“Applicable Laws” means all federal, state, county, and local laws (statutory and common law), and ordinances, rules, regulations, permit requirements, and other requirements and official policies of the Town that apply to the development of the Property.

“Development Agreement” means that certain Development Agreement by, between, and among, the Town of Paradise Valley, Arizona, an Arizona municipal corporation, and Gentree, LLC, an Arizona limited liability company, adopted and entered into by the Town on _____, 2020, by Ordinance #2020-09.

1 **“Effective Date”** means the date on which all of the following have occurred: (i) this SUP
2 has been adopted and approved by the Town Council, executed by duly authorized
3 representatives of the Town and Owner, and recorded (if applicable) in the office of the
4 Recorder of Maricopa County, Arizona;(ii) the Development Agreement (as defined
5 herein) has been adopted and approved by the Town Council, executed by duly authorized
6 representatives of the Town and Owner, and recorded (if applicable) in the office of the
7 Recorder of Maricopa County, Arizona; and (iii) any applicable referendum period has
8 expired without referral, or any proposed referendum has been declared invalid in a final
9 non-appealable judgment by a court of competent jurisdiction, or this SUP has been
10 approved by the voters at a referendum election conducted in accordance with Applicable
11 Laws

12
13 **“Event Lawn”** means program letter E as shown on Sheet A8 of the Approved Plans.
14

15 **“Floor Area”** means the area under roof added to the floor area of any second and third
16 story; provided, however that “Floor Area” also includes the horizontal solid portion(s) of
17 trellises and/or open weave roofs, and all the horizontal solid portion of area under roof in
18 accessory buildings such as gazebos, ramadas and other accessory buildings. Floor Area
19 excludes the floor area of any fully subterranean portions of a building, any utility and/or
20 storage facilities that are located subterraneously in order to avoid unsightly view from
21 ground level, courtyard areas, and the portion of any roof overhangs which are not over
22 useable exterior spaces. *[Note: Square footage maximums for particular uses and the
23 overall set of resort structures may need to be discussed, perhaps by adding a table for
24 such. See Sheets A30 and A31 of the Approved Plans for a start.]*
25

26 **“Gentree”** means Gentree, LLC, an Arizona limited liability company, its successors and
27 assigns. An Owner may be an individual, corporation, partnership, limited liability
28 company, trust, land trust, business trust or other organization, or similar entity, which in
29 turn may be owned by individuals, shareholders, partners, members or benefitted parties
30 under trust agreements, all of which may take any legal form, and may allocate interests in
31 profits, loss, control or use.
32

33 **“Hotel Key”** means a Resort Hotel Unit, served by a single key, which is part of a Resort
34 Hotel (as defined herein), designed and constructed with all furnishings, fixtures and
35 equipment necessary to operate as a single unit for transient occupancy use as a part of
36 such Resort Hotel. Each Hotel Key shall have at least one bathroom and a direct lockable
37 connection from the exterior or a corridor. A Hotel Key may be located in a primary Resort
38 Hotel structure (in a building that includes guest registration, reception and other allowed
39 uses) or in any number of other buildings integrated or associated with such Resort Hotel
40 through landscaping or otherwise. A Hotel Key may be interconnected with another Hotel
41 Key unit through a lockable connection, so that more than one Hotel Key may be rented as
42 a single unit.
43

44 **“Minimum Hotel Keys”** means the 122 Hotel Keys included as part of the Resort Hotel
45 and owned by a single legal owner which also owns the Minimum Resort Hotel
46 Improvements (as defined herein).
47

1 **“Minimum Resort Hotel Improvements”** means the minimum improvements included
2 in the initial design and construction of the Resort Hotel and including not less than all of
3 the following elements:

4
5 (a) The Minimum Hotel Keys.

6 (b) One (1) restaurant that provides full-service dinner, which together
7 with food service areas, are collectively capable of serving three (3) daily meals, and as
8 demand warrants, providing room service to the Minimum Hotel Keys.

9 (c) At least one (1) swimming pool.

10 (d) A designated reception area to accommodate guest check-in.,
11 concierge and cashier.

12 (e) A designated area to accommodate vehicle or passenger drop off
13 (such as valet parking services) for Resort Hotel guests

14 **“Open Space Criteria”** means the following criteria related to the height and setback of
15 buildings: No building shall penetrate an imaginary plane beginning at sixteen (16) feet
16 above Original Natural Grade and twenty (20) feet from the exterior property lines of the
17 Property, which plane slopes upward at a ratio of one (1) foot vertically for each five (5)
18 feet horizontally measured perpendicular to the nearest exterior property line of the
19 Property. This limitation shall apply until the maximum allowable height is reached, with
20 the exception of portions of the third floor resort suites and pedestrian courtyard access as
21 illustrated on Sheet A18 and Sheet A19 of Approved Plans. In event of conflict between
22 the Open Space Criteria and the Approved Plans, the Approved Plans shall control.

23
24 **“Original Natural Grade”** is 1,310.5 feet above Mean Sea Level and is set forth on Sheet
25 [XXXX] of the Approved Plans. [*Note: discussion of natural grade may still be needed.*
26 **Sheet A69 and Sheet A87 provide some of this information.**]

27
28 **“Owner”** means Gentree, LLC, an Arizona Limited Liability Company, its successors and
29 assigns. An Owner may be an individual, corporation, partnership, limited liability
30 company, trust, land trust, business trust or other organization, or similar entity, which in
31 turn may be owned by individuals, shareholders, partners, members or benefitted parties
32 under trust agreements, all of which may take any legal form, and may allocate interests in
33 profits, loss, control or use.

34
35 **“Party”** or **“Parties”** means the Town and Owner, or their successors or assigns.

36 **“Pavilion”** means program element D on Sheet A8 of the Approved Plans.

37
38 **“Property”** means the real property described in Exhibit “A” to Ordinance #2020-__.

39
40 **“Resort”** means the entire Property and all facilities and other improvements existing,
41 developed or redeveloped and used or useful on the Property in general conformance with
42 the Approved Plans and/or these Stipulations.

1
2 **“Resort Hotel”** means the Resort Hotel designated as such and which includes the
3 Minimum Resort Hotel Improvements and not less than **[Insert square footage]** square
4 feet of Floor Area. The Resort Hotel shall be owned by a single legal Owner. **[Note:**
5 *Square footage minimums for the “Hotel” will need to be discussed. See Sheets A30 and*
6 *A31 of the Approved Plans.]*

7
8 **“Resort Ancillary Facilities and Uses”** means all facilities and uses related or incidental
9 to the operation of a resort or resort hotel and not as an independent business or operational
10 unit, including specifically: restaurants, ground floor bars and lounges; fitness facilities;
11 indoor and outdoor meeting, convention, display, exhibit, wedding and social function
12 facilities; sale of food and alcohol (for on or off site consumption); catering facilities;
13 outdoor cooking facilities; outdoor dining facilities; gourmet food shops (offering any
14 combination of cooked, frozen, fresh, prepared or pre-packaged foods, beer, wines, liquors,
15 gifts, fresh fruits and vegetables, groceries, sundries, cosmetics, over the counter
16 pharmaceuticals, house wares, and related kitchen, indoor and/or outdoor dining items);
17 deli, coffee, tea, ice cream, yogurt and similar shops or sales; snack bars; central plant,
18 maintenance shop, engineering facilities, housekeeping facilities, laundry, storage and
19 support facilities; valet and other parking facilities; gift and sundries shops; flower sales;
20 art and art galleries; jewelry and jewelry shops; fashion eyewear, footwear and apparel
21 sales; sale of hotel items such as furniture, bedding, art, toiletries; other resort retail; tour
22 and other off-site activity offices; administrative, support and other resort offices including
23 temporary offices and facilities for construction, sales, marketing, and design; indoor and
24 outdoor entertainment facilities; ramadas; pools; cabanas; tents; amenities, recreational
25 facilities and fitness facilities. Any such use or facility may be within any Resort Hotel or
26 separate building(s) including individually or grouped in one or more buildings or facilities.
27 **[Note: Commission discussion needed on each of the uses starting with flower sales;**
28 **more details may be needed on the plans for some of the uses and some of the uses may**
29 **need to be restricted to certain locations or buildings shown on the Approved Plans.]**

30
31 **“Resort Guest Amenity”** means that third-story portion of the Resort Hotel on Sheet A21
32 of the Approved Plans.

33
34 **“Resort Hotel Manager”** means the Owner of the Resort Hotel, including any Affiliate
35 thereof or an experienced professional third-party hotel management company. If any
36 Resort Hotel Manager is not the Owner of the Resort Hotel (or an affiliate of such Owner),
37 it shall initially be a hotel management company which has not less than five (5) years’
38 experience managing full service hotels or resorts or which currently manages not fewer
39 than five (5) full service hotels or resorts.

40
41 **“Resort Hotel Owner”** means the single legal owner of the Resort Hotel.

42
43 **“ROW”** means Right-of-Way

44
45 **“Special Use Permit”** or “SUP-18-05” or “SUP” shall mean this special use permit as
46 approved by Town Ordinance #2020-__.

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

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

8 **“Town”** means the Town of Paradise Valley and its processes as regulated by its codes and
9 ordinances.

10
11 **“Town Manager”** means the Town Manager or their designee.

12
13 **“Visually Significant Corridors Master Plan”** means the Master Plan approved by the
14 Town Council dated October 2018.

15
16 **“Zoning Ordinance”** means the Town’s zoning ordinance in effect as of the Approval
17 Date.

18
19 **III. STIPULATIONS**

20 **A. GENERAL**

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

23 2. This Special Use Permit, as it may be amended or superseded from time
24 to time, shall run with the land (i.e., the Property and each part thereof)
25 and any person having or subsequently acquiring title to the Property
26 shall be subject to this Special Use Permit. Once an Owner no longer
27 owns a portion of the Property, such prior Owner shall no longer be
28 subject to this Special Use Permit with respect to such portion of the
29 Property no longer owned, but the then-current Owner shall be subject
30 to this Special Use Permit.

31 3. If any portion of the Resort is used in violation of the terms of this
32 Special Use Permit, the Town may, after fair notice, a hearing and a
33 reasonable opportunity to correct, impose a monetary sanction on the
34 then Owner of such portion, in an amount not to exceed the maximum
35 amount allowed for violations of the Town Zoning Ordinance for each
36 day such violation exists, in addition to all other orders or sanctions
37 permitted by applicable laws. No such remedy shall be applied to any
38 other Owner or portion of the Resort that is not in violation of this
39 Special Use Permit.
40

4. The use of the Property shall at all times conform to all applicable State laws and Town ordinances, except that if there is a conflict between this Special Use Permit and any Town ordinance or other Town requirement, the terms of Stipulations 9 and 10 shall be applied to resolve any such conflict.
5. The redevelopment of, and construction on, the Property shall, subject to these Stipulations, substantially conform to the intent of the Approved Plans. Each of the Approved Plans is hereby incorporated into this Special Use Permit and made an integral part hereof.
6. A mylar and electronic version of the Approved Plans shall be submitted to the Town within sixty (60) days after the Approval Date.
7. Nothing in this Special Use Permit or otherwise shall require the operation of the Resort under the name "Smoke Tree," "Smoke Tree Resort" or any similar or other name. No further consent shall be required to enable the Owner to transfer all or any portion of the Resort, name or rename the Resort, or select or reselect brands or management companies of the Resort; and further provided that the Property shall be subject to this SUP notwithstanding any such transfer.
8. If any section, subsection, sentence, clause or phrase of this Special Use Permit is for any reason held invalid or unenforceable in a final, non-appealable judgment of any court of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining portions of this Special Use Permit.
9. The Town Manager's approval or determination is provided for in several instances in these Stipulations. The Town Manager shall base his or her approval on standards and criteria set forth in this Special Use Permit, the Town Code, and the Zoning Ordinance, as reasonably applicable, with the intent to implement the viable development of the Resort as provided in this Special Use Permit. Recognizing that the final design and building permit process for which any particular approval of the Town Manager is sought involves multiple stages, including conceptual, schematic, design development and construction documents, an Owner may seek the approval of the Town Manager in writing at one or more stages of such design. Notwithstanding the foregoing, no construction may occur with respect to any particular element or structure until necessary permits for that element or structure are issued.

10. Although the Parties intend that this Special Use Permit, the Development Agreement, Zoning Ordinance, and the Town Code state a consistent relationship between them, the Parties agree that in the event of a conflict between these documents that the order of priority shall be the (1) the Special Use Permit, (2) the Development Agreement, (3) Zoning Ordinance, and (4) Town Code and agree that the higher priority document shall control. Unless otherwise stipulated in this Special Use Permit, amendments to this Special Use Permit shall follow the appropriate process outlined in Article XI, Special Uses and Additional Use Regulations, of the Town Zoning Ordinance, as amended.

B. CONSTRUCTION AND DEVELOPMENT STANDARDS

11. A schedule for demolition of the vertical portions of certain existing improvements shall be provided by the Owner.
12. All permanent public utilities within the Resort shall be underground (excluding certain equipment that is typically installed above ground which shall be appropriately screened, such as transformers, meters, and other equipment) and located within appropriate easements. Screening shall meet utility company requirements and Visually Significant Corridor Master Plan requirements. The Town Manager may, from time to time, require the granting of such easements to utility companies as deemed reasonably appropriate by entities providing utilities benefitting the Resort that are not covered by easements identified in the Approved Plans or in the ROW dedications. Sewage shall be disposed of by connection with an upsized sewer connection to the Town of Paradise Valley's sewage facilities. All new water and sewage facilities shall be constructed in accordance with plans approved by the Town Manager or designee.
13. It is anticipated that construction on, and redevelopment of, the Property will be conducted in phases. No construction permit shall be issued for any phase of construction on the Property until appropriate engineering or architectural plans are submitted to the Town and the issuance of such construction permit for that particular activity is approved by the Town. Submitted plans shall be required to meet the building code most recently adopted by the Town.
14. During any period of demolition and initial new construction of one or more phases within the Resort, temporary curb cuts (driveways) may be allowed on Lincoln Drive and Quail Run Road to allow construction access to the Property; provided that such temporary curb cuts and their location shall first be approved by the Town Manager and coordinated with the Town's Capital Improvement Project known as the Lincoln Drive Roadway Improvements. Temporary construction driveway locations are subject to compliance with Storm Water Pollution

Prevention Plan Best Management Practices and the review and approval by the Town. **[Note: Revise to address curb cut onto Lincoln Drive and timing of first lift of asphalt]**

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

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

17. Owner(s) shall submit a construction phasing schedule prior to the issuance of any building permit for a particular new structure to ensure compliance with all Town ordinances and in order to minimize construction nuisances. This schedule may encompass the building of multiple new structures within a particular phase and may be modified or amended from time to time. This construction/phasing schedule shall provide information on the following:

- a. Dust and noise control measures
- b. Vehicle/equipment storage/parking
- c. Construction days/hours
- d. The general location of the following elements, which may be relocated from time to time:
 - i. Location(s) of a staging area(s) for construction supplies/equipment
 - ii. Location of any construction trailer(s) and/or sanitary facility(ies)
 - iii. Location of onsite construction materials/debris storage
 - iv. Location of fire lanes during the construction period
- e. The approximate beginning and ending for construction of structures within a phase

18. 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) in conformance with the Town construction sign regulations.

19. As a pre-requisite to obtaining a building permit for a particular phase of development, the Owner must demonstrate the existence of adequate perimeter screening for such phase prior to construction. For purposes of this requirement, adequate screening shall consist of an existing oleander hedge or a six (6) foot chain link fence with an approved screen material. No project or contractor signage shall be displayed on such fencing.
20. During demolition, site grading, and the initial construction of other onsite or offsite improvements, Owner(s) shall coordinate the sweeping of Lincoln Drive and the paved portion of Quail Run Road adjacent to the Property to remove construction-related dirt and debris, as reasonably required by the Town.
21. The precise location and/or required screening of any backflow preventer or other similar equipment to the extent same would be visible from Lincoln Drive or Quail Run Road shall be approved by the Town.
22. One permanent curb cut on Lincoln Drive east of Quail Run Road is permitted, and requires a deceleration lane, which shall be installed by Owner. The final location of the permanent curb cut shall be as indicated on the Approved Plans, Sheet **[Note: To be provided by the applicant]**.
23. The Owner shall arrange for construction phasing within any particular phase in the following sequence:
 - a. Commence native plant salvage, (for those plant materials required to be salvaged pursuant to Town Code §5-8-4 and deemed by a Native Plant Preservation Plan to be certain to survive and worthy of salvage), dust and erosion control measures, job-site mobilization and set-up, and the like.
 - b. Upon completion of the salvage, commence horizontal or civil improvements and site work within such phase, including appropriate erosion and dust control.
 - c. Upon or prior to substantial completion of the civil improvements and site work as reasonably necessary to commence perimeter walls and landscaping for such phase, including areas immediately adjoining such phase, the perimeter landscape plan(s) shall be submitted, reviewed and approved by the Town Manager. Installation of perimeter landscaping shall not be required to commence until adjacent site or structure improvements are sufficiently complete such that additional work will not harm the proposed landscape elements. Perimeter landscaping is landscaping between adjacent edge of roadway

and any proposed perimeter structure or parking area on the Property.

d. Any required deceleration lanes on Lincoln Drive or curb cuts on Lincoln Drive, may be scheduled independently of the foregoing. **[Note: may need to be done first]**

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

24. Building architecture shall be as shown on the Approved Plans. Changes to the architectural style shall only be made by an approved Special Use Permit (SUP) amendment.

25. The surfaces and colors of all roofs shall have a Light Reflective Value at or less than fifty percent (50%).

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

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

C. ALLOWED USES

28. The Property may be developed to include the Resort Hotel, and the Resort Ancillary Facilities and Uses. The Property may be developed and redeveloped in one or more phases from time to time in multiple buildings or structures of various height and character, subject to these stipulations. Facilities or structures initially developed for a particular use may be converted or reused from time to time for other allowed uses provided that all other requirements of these stipulations are still met. Not later than one (1) year after the Effective Date, Owner shall submit to the Town a schedule of development stating when vertical construction of the Resort Hotel will commence. The schedule of development in the preceding sentence may be extended if Owner, in its

sole discretion, gives written notice to the Town stating the length of the extension. Any single extension shall not exceed three (3) months. Owner may give multiple notices of extension. ***[Note: a more specific construction schedule should be supplied, if possible. This may be an issue to be specified in the DA, particularly for the deceleration lane and sidewalk on Lincoln Drive construction timing.]***

29. The Resort Hotel may be constructed in one (1) or more buildings on the Property provided all such buildings must have an integrated theme and share design cohesiveness, including architecture, signage, pedestrian and service vehicle connections to the primary Resort Hotel structure (the structure which includes guest reception and registration). Facilities located on the Property which also provide function or service for the Resort Hotel such as fitness, restaurant, locker rooms, meeting rooms, offices, and storage shall be included in the Floor Area calculation.

30. Walls and fences shall be constructed in accordance with the Approved Plans. In the event of a conflict between the Approved Plans and Article XXIV of the Town Zoning Ordinance, the Approved Plans shall control. If a modification to a wall or fence shown on the Approved Plans is needed, the Town Manager may approve such modification administratively. Said wall shall also meet the thirty-three (33) foot corner vision criteria as approved by the Town Engineer. ***[Note: process to modify walls may need more discussion.]***

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

- a. Vendor deliveries (generally): Vendor deliveries (generally), trash pickups, or other noise generating outside services involving mechanical equipment, including large commercial trucks, shall be allowed to operate between 7:00 a.m. to 7:00 p.m. US Mail, private courier services such as UPS or FedEx, and emergency deliveries: at any time.
- b. Pools, spas and jacuzzis (except pools, spas and jacuzzis located indoors or in enclosed private yards including yards for the luxury suites, if any, which may be used 24 hours/day): 6:00 a.m. to midnight.
- c. Restaurants and other food service facilities: 6:00 a.m. to 2:00 a.m.
- d. Bars/lounges: 10:00 a.m. to 2:30 a.m.
- e. Banquet facilities, receptions, weddings and socials: 6:00 a.m. to 2:00 a.m.

- 1 f. Resort retail: 7:00 a.m. to midnight
 - 2 g. Room service: 24 hours/day
 - 3 h. Guest reception and guest services, including up to 100 square
 - 4 feet of retail for guest purchases: 24 hours/day
 - 5 j. Parking facilities: 24 hours/day
 - 6 k. Fitness facilities: 24 hours/day and for use only by guests of
 - 7 the Resort. Refer to Stipulation 32 for additional provisions.
 - 8 l. Trash pickup: 7:00 a.m. to 7:00 p.m.
 - 9 m. Outdoor venues, events, or functions with music and/or
 - 10 amplified sound shall comply with the allowable noise levels
 - 11 as defined by the Town's noise ordinance, as may be amended.
- 12 32. The third floor Resort Guest Amenity shall be limited to the uses
- 13 outlined on Sheet A21 of the Approved Plans:
- 14 a. These uses are:
 - 15 i. Area A – Communal Amenity
 - 16 ii. Area B – Enclosed Terrace
 - 17 iii. Area C – Exterior Terrace
 - 18 iv. Area D – Restrooms/Storage
 - 19 v. Area E – Third Floor Lobby
 - 20 vi. Area F- Kitchenette and Wet Bar [**Note: Further discussion**
 - 21 **needed on this use since it was understood at the July**
 - 22 **meeting that no alcohol would be served or consumed on**
 - 23 **the Third Floor Amenity]**
 - 24 vii. Area G – Fitness Corner
 - 25 viii. Area H – Key Card Access Only
 - 26 b. There shall be no alcohol served or consumed on the Third Floor
 - 27 Amenity. [*Note: update here or on Sheet A21 with the specific*
 - 28 *uses and square footage for each use in the Resort Guest*
 - 29 *Amenity area.*]
 - 30 c. No meals shall be produced in this area.
 - 31 d. Afterhours access shall not be permitted.
 - 32 e. No speakers or amplified music shall be allowed in accordance
 - 33 with Stipulation 35 below.

34 [**Note: Additional stipulations may be warranted or discussed]**

- 35 33. Only storage is allowable in the areas identified as “Back of House for
- 36 the Resort” in buildings shown as “H” and “T” on Sheet A8, being the
- 37 market and coffee shop.

D. CONTROL OF EXCESSIVE NOISE

34. Outdoor venues, events, or functions with music and/or amplified sound shall comply with the allowable noise levels as defined by the Town's noise ordinance, as may be amended.

35. *[Note: Stipulation related to acoustical study to follow.]*

36. No outdoor speakers or amplified music will be permitted on the third floor Resort Guest Amenity. The third floor Resort Guest Amenity shall comply with the allowable noise levels as defined by the Town's noise ordinance, as may be amended. All exterior doors on the third floor Resort Guest Amenity shall be closed not later than 10:00 p.m.

E. HEIGHT AND HEIGHT MEASUREMENT

37. The maximum height of the structures shall not exceed thirty-six (36) feet above Original Natural Grade which is 1,310.5 feet above Mean Sea Level. The maximum height of the structures will conform to the Approved Plans. *[Note: See prior note on ONG in the definition section.]*

F. RIGHT-OF-WAY, PARKING & CIRCULATION

[Note: The approval will also include a development agreement for review and approval by the Town Council. This development agreement will address financial assurance/bond for the improvements in the right-of-way, other matters pertaining to the right-of-way, among other items].

38. The Owner shall execute one or more fee simple dedication(s) in favor of the Town, which shall serve to provide a total right-of-way width of forty-five and one-half feet (45.5') to the Town, as measured from the centerline of Lincoln Drive ROW adjoining the Property (the "Lincoln Drive Dedication"), for public purposes including, but not limited to: landscaping, travel lanes, sidewalk, utilities, and associated public roadway improvements (the "Public Improvements") on Lincoln Drive. The terms and timing of the fee simple dedications shall be as more fully provided in the Development Agreement.

39. The Owner shall execute one or more dedication(s) in favor of the Town, which shall serve to provide a total right-of-way of twenty-five (25) feet to the Town; as measured from the centerline of Quail Run Road adjoining the Property (the "Quail Run Road Dedication"), for public purposes including, but not limited to, landscaping, travel lanes, sidewalk, utilities, and associated public roadway improvements (the "Public Improvements") on Quail Run Road. The terms and timing of the fee simple dedications shall be as more fully provided in the Development Agreement.

- 1
2 40. The Owner shall grant one or more easements to the Town for the
3 purpose of establishing the Town's ability to construct the traffic signal
4 at the intersection of Quail Run Road and Lincoln Drive (the "Roadway
5 Easement Dedication") and the sidewalk improvements shown on the
6 Approved Plans, Sheet **[Note: Sheet to be provided by the applicant]**.
7 The terms and timing of the easement dedications shall be as more fully
8 provided in the Development Agreement.
9
- 10 41. The dedication(s) and easement(s) shall be recorded with the Maricopa
11 County Recorder, Maricopa County, Arizona, pursuant to the terms
12 specified in the Development Agreement.
13
- 14 42. No above ground structures shall be placed in any Right-of-Way, except
15 for any approved Town monument and/or Town directional sign(s),
16 utilities, and any other approved structures or uses allowed by this
17 Special Use Permit. Structures placed in the ROW may be subject to an
18 encroachment permit or otherwise be maintained and insured by the
19 Owner of the Resort.
20
- 21 43. The minimum parking space size shall be 180 square feet as defined in
22 Article II, Definitions, of the Town Zoning Ordinance. However, the
23 Approved Plans identify 9-foot by 18-foot parking spaces with a two-
24 foot overhang in the adjoining landscape area (which meets the 180
25 square-foot requirement). Accordingly, this two-foot landscape or
26 walkway area shall, in perpetuity, be kept and maintained clear of
27 structures or plant material that may restrict the parking of a vehicle
28 within this two-foot landscape area or walkway area.
- 29 44. Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.)
30 may be used to service the Resort but such support vehicles shall not
31 park on public streets.
32
- 33 45. Any parking provided or required under this Special Use Permit shall
34 comply with the parking studies that have been reviewed and approved
35 by the Town Engineer, as identified on the Approved Plans. This
36 includes the permanent retention of the minimum parking spaces
37 required by such parking studies. Parking spaces allowed as specified
38 on the Approved Plans, Sheet A8, shall be appropriately screened by a
39 wall or landscaping to minimize the amount of vehicle headlight
40 trespass off the property.
41 **[Note: Additional modification is necessary, identify minimum**
42 **parking count and Add language for parking management plan to**
43 **address valet operations and large events that exceed valet plan**
44 **parking]**
45

1
2
3 46. Buses and other vehicles may be used to shuttle guests or employees to
4 or from areas not located on the Resort, and between the Resort and
5 other destinations (e.g., airport, shopping facilities, golf courses, etc.).
6 All parking on any public street by any Resort guest, any Owner or their
7 guests, employees of the Resort, any invitee of any Owner, any occupant
8 of any portion of the Resort or any parking service provider is
9 prohibited. Any agreement which allows any person to use the Resort
10 for any purpose shall contain an acknowledgment that parking on any
11 public street is prohibited.

12
13 47. At any time when the parking demand within the Resort is expected to
14 exceed onsite capacity, the Owners of the affected areas shall initiate a
15 parking management plan which may include valet parking or offsite
16 parking arrangements (but not the use of parking on any public street
17 within the Town). The Pavilion and Event Lawn may not be booked for
18 separate events and no events shall be booked that exceed the capacity
19 of each individual venue. ***[Note: need to confirm in this stipulation or***
20 ***in the Approved Plans that Smoke Tree provided the capacity of the***
21 ***Pavilion and Event Lawn and discuss any time periods the Resort***
22 ***must use the valet plan.]***

23
24 48. All designated fire lanes shall maintain a vertical clearance of fourteen
25 (14) feet above actual finished grade and a horizontal clearance of
26 twenty (20) feet to allow passage of emergency vehicles and must meet
27 all Arizona Department of Transportation standards.

28 **G. SIGNAGE**

29
30 49. All signs shall be in accordance with the Approved Plans, with
31 illumination compliant with Article XXV, Signs, of the Town Zoning
32 Ordinance and the Special Use Permit Guidelines. ***[Note: Need to***
33 ***confirm that coffee shop and market building signage is only internal***
34 ***as discussed at prior Commission Meeting. Sign plan Sheet 62 and***
35 ***Sheet 63 may need to be updated.]***

36
37 50. With the exception of the monument signs on Sheet A25 and Sheet A26,
38 there shall be no outward facing signage which is visible from the street
39 or adjoining properties.

40
41 51. New internal directional or wayfinding signs shall comply with the
42 Special Use Permit (SUP) Guidelines and are subject to Town Manager
43 review and approval.
44

52. Other than as specified in the terms of the roadway easement documents, no above ground structures shall be placed in the roadway easement except approved monument signs and any other approved structures allowed by this Special Use Permit.

53. Market, coffee shop, and other ancillary signage intended for resort guests in order to minimize and manage parking is permissible, provided it is not visible from off the property and is subject to Town Manager review and approval. **[Note: May require revisions]**

54. All other signage which is not shown on the Approved Plan and noted in Section G of the Special Use Permit, shall be governed by the applicable Town Ordinances and is subject to the Special Use Amendment process outlined in Article XI of the Town Zoning Ordinance.

H. LIGHTING

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

56. Unless otherwise included in the Approved Plans, lamps, lighting, or illumination devices within an outdoor light fixture shall be screened so as to not be directly visible from outside the Property. If the Town receives a complaint from an offsite owner that a lamp or lighting or illumination device within an outdoor light fixture is visible from outside the Property, the Town Manager or designee may inspect the Property and require the Owner to shield such lighting fixture if the Town Manager or designee determines that the light emitting element is visible from outside the Property.

57. Palm tree ring lighting (fixture type TR) shall be limited to a maximum height of 16 feet tall. The lights shall be directed downward (with no up lighting of the trees).

58. Landscape lighting (fixture type GU) and bollard lighting (fixture type BL) which are located in the right-of-way are the responsibility of the Owner. The Owner assumes all liability associated with the light fixtures located in the right-of-way and must receive an encroachment permit from the Town in a form acceptable to the Town Engineer and Town Attorney.

I. LANDSCAPING

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

60. All landscaping that dies shall be replaced in a reasonable amount of time, be in general compliance with the approved landscape plan of the Approved Plans, and use material that are on the Approved Plans.

61. Perimeter landscaping plans (i.e., for those areas between the back of curb and adjacent structures of parking areas) shall be as shown on the Approved Plans, Sheet [Note: Applicant needs to add sheet number to the landscape plans].

J. TEMPORARY USES

62. Temporary event tents may be erected on the Event Lawn Area of the Property in accordance with the Town Code Special Event Permit requirements (Chapter 8). No event tent shall be higher than twenty-four (24) feet above the finished grade of the Event Lawn or closer to any exterior property line than the minimum setbacks shown for a twenty-four (24) foot height building. Placement of event tents shall have no material adverse impact on parking or circulation on site. Temporary event tents or structures shall not be allowed for more than fourteen (14) consecutive days unless located interior to the site, in which case if the Town issues a Tent Permit that runs consecutive to an existing Tent Permit, the event tent or structure will be allowed to remain in place for longer than fourteen (14) consecutive days. Notwithstanding the foregoing, no temporary event tent or structure shall remain in place for more than thirty (30) consecutive days. Temporary event tents are required to receive a Tent Permit from the Town.

K. CELLULAR ANTENNAS

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

L. MANAGEMENT - MAINTENANCE

64. There shall be at least one (1) person designated by 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, or to refer to others for resolution, 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). The name and contact information for the property manager to be provided to the Town's Community Development Department Director, or designee prior to the issuance of a certificate of completion, and to then be updated within ten (10) days after any property manager change is made. 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.
65. All exterior portions of all structures and all driveways, parking areas, landscaping, walls, and lighting shall be kept and maintained in good condition and repair.
66. Interiors of the building on the Property may be remodeled at any time without an amendment to the Special Use Permit so long as the other aspects of the Property remain in substantial compliance with the Ordinance and the Approved Plans, and all applicable building permits are obtained.
67. Use of outdoor space by employees for activities such as smoking may create unintended nuisances for persons on adjoining properties. This type of activity shall be permitted at the location proposed on the Approved Plans. **[Note: Areas to be defined or clarified]**
68. Except as approved as part of a building permit application and during construction periods, no storage of outdoor materials is permitted on the Property that can be seen off site.

M. CONDITIONAL APPROVAL

69. This SUP shall be effective as of the Effective Date if, but only if, approved by the Town Council. After this SUP is recorded, if this SUP does not become effective within 365 days or if it is no longer effective, then the Town shall promptly record a notice that this SUP did not become or is no longer effective.

IV. APPROVED PLANS

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

[Note: Need to update plans before public hearing meeting]

(SUP 18-05)	<ol style="list-style-type: none">1. Smoke Tree Resort Major Amendment Application Booklet dated [XXXX].2. Existing Topographic Survey and Original Natural Grade Exhibit dated February 22, 2019.3. Smoke Tree Resort Traffic Impact Analysis, prepared by CivTech, sealed by Dawn Cartier on [XXXX].4. Parking Study for Smoke Tree Resort, prepared by CivTech, sealed by Dawn Cartier on [XXXX]. <i>[Note: this may need to change to the Walker Consultants shared parking memo which utilizes the ULI parking model.]</i>5. Water Service Impact Study for Smoke Tree Resort by CVL Sealed by Cassandra Alejandro on [XXXX].6. Wastewater Capacity Study for Smoke Tree Resort by CVL Sealed by Cassandra Alejandro [XXXX].7. Preliminary Drainage Report for Smoke Tree Resort by CVL Sealed by Oscar Garcia on [XXXX].
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