

Date: ~~08/13/2020~~ ~~10/14/2020~~ 10/27/2020

**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**

**Commented [PM1]:** NOTE: Track changes relate back to the draft ordinance discussed and revised at the Planning Commission work session of 10/20/2020.

The applicant stated at the 10/20/2020 work session agreement to the stipulations as in the draft ordinance dated 10/14/2020 with the exception of Stipulations 33, 54, and 55 in the 10/14/2020 draft Ordinance which were discussed during the work session.

The track changes made in this draft ordinance dated 10/27/2020 only reflect known outstanding items and proposed edits after the Planning Commission work session of 10/20/2020. There may be other edits, including edits to already discussed items, as the draft ordinance moves forward.

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 after ten (10) study sessions, recommended denial of the Application by a split vote of 3 to 4 to the Town of Paradise Valley Council ("Town Council"); and

WHEREAS, thereafter, 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 and extended the Planning Commission review period from September 30, 2020 to November 17, 2020 at a public meeting on September 10, 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~~ following nine (9) work sessions, the Planning Commission held a public hearing on November 17, 2020, 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

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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

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 #2020-09 (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 4.6 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. The gross acres are more particularly described on Exhibit "A," attached hereto. The net acres are more particularly described on Exhibit "B," 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.
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 "C," 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";

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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 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 "D," attached hereto.

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

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**EXHIBIT "A"**  
**TO**  
**ORDINANCE NUMBER 2020-09**

**Legal Description of Gross Acres**

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

*[Note: Insert legal description of the "Gross Acres"]*

**Commented [PM2]:** NOTE: Sheet A69 appears to be the gross legal description. The applicant will need to provide the legal descriptions prior to Council.

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**EXHIBIT "B"**  
**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)]*

**Commented [PM3]:** NOTE: Sheet A69 appears to be the gross legal description. The applicant will need to provide the legal descriptions prior to Council.

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**EXHIBIT "C"**  
**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.

**Commented [PM4]:** The applicant's position is that similar to other resort ordinances, no discussion of the history is necessary other than what is in paragraph 2 of Section I. As an alternative, Smoke Tree suggests attaching the documents from Attachment F in the agenda. Town staff does not support this position.

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**EXHIBIT “D”  
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.

**Commented [PM5]:** NOTE: There may be additional edits to definitions as the ordinance moves to Council and the Development Agreement is reviewed.

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1 **“Development Agreement”** Development Agreement means the development agreement  
2 between the Town and the Owner entered into pursuant to A.R.S. § 9-500.05, which is to  
3 be executed concurrently with the approval of this SUP, as amended and restated or  
4 supplemented in writing from time to time, and all exhibits and schedules thereto.  
5

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

17 **“Event Lawn”** means program letter E as shown on Sheet A8 of the Approved Plans.  
18

19 **“Floor Area”** means the area under roof added to the floor area of any second and third  
20 story; provided, however that “Floor Area” also includes the horizontal solid portion(s) of  
21 trellises and/or open weave roofs, and all the horizontal solid portion of area under roof in  
22 accessory buildings such as gazebos, ramadas and other accessory buildings. Floor Area  
23 excludes the floor area of any fully subterranean portions of a building, any utility and/or  
24 storage facilities that are located subterraneously in order to avoid unsightly view from  
25 ground level, courtyard areas, and the portion of any roof overhangs which are not over  
26 useable exterior spaces.  
27

28 **“Gentree”** 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 **“Gross Acres”** means the legal description of the existing parcel.  
36

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



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1  
2 **“Maximum Hotel Keys”** means the 122 Hotel Keys included as part of the Resort Hotel  
3 and owned by a single legal owner which also owns the Minimum Resort Hotel  
4 Improvements (as defined herein).

5  
6 **“Minimum Resort Hotel Improvements”** means the minimum improvements included  
7 in the initial design and construction of the Resort Hotel and including not less than all of  
8 the following elements:

9  
10 (a) The Maximum Hotel Keys.

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

14 (c) One (1) swimming pool.

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

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

19 **“Net Acres”** means the Gross Acres less the dedicated areas for both Lincoln Drive and  
20 Quail Run Road.

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

31  
32 **“Original Natural Grade”** is 1,310.5 feet above Mean Sea Level and is set forth on Sheet  
33 A31 of the Approved Plans.

34  
35 **“Owner”** means Gentree, LLC, an Arizona Limited Liability Company, its successors and  
36 assigns. An Owner may be an individual, corporation, partnership, limited liability  
37 company, trust, land trust, business trust or other organization, or similar entity, which in  
38 turn may be owned by individuals, shareholders, partners, members or benefitted parties  
39 under trust agreements, all of which may take any legal form, and may allocate interests in  
40 profits, loss, control or use.

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1 **“Parking Management Plan”** means the Parking Management Plan in the Approved  
2 Plans that provides guidance on the number of parking spaces required for the Resort  
3 during its peak operations during the peak season given fluctuations in resort occupancy  
4 and the event non-captive ratio.

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

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

7  
8 **“Property”** means the real property described in Exhibit “B” to Ordinance #2020-\_\_.

9  
10 **“Resort”** means the entire Property and all facilities and other improvements existing,  
11 developed or redeveloped and used or useful on the Property in general conformance with  
12 the Approved Plans and/or these Stipulations.

13  
14 **“Resort Hotel”** means the Resort Hotel designated on the Approved Plans and identified  
15 under Program on Sheets A8, A9, and A10 of the Approved Plans as “C – Resort Reception  
16 and Lobby”, “J – Outdoor Patio” adjoining “C”, “L – Pool Lounge”, “M – Entry Lounge”,  
17 “N – Resort Suites”, “O – Resort Guest Flex Space”, “P – Luxury Suites”, “X – Resort  
18 Guest Amenity”, and “AA – Balconies”.

19  
20 **“Resort Ancillary Facilities and Uses”** means all outdoor open space and resort  
21 recreational facilities and indoor facilities and uses intended for the primary use of its  
22 guests, but not including bars and lounge uses which cater primarily to other than guests  
23 of the resort hotel. Typical uses include, but are not limited to, banquet facilities,  
24 administrative facilities, maintenance and storage facilities, fitness and health spa  
25 facilities, dine-in restaurant, and Resort Retail ~~Uses~~ which are customarily appurtenant to  
26 resort hotels and that accommodate the needs and desires of its visitors, tourists, and  
27 transient guests.

28  
29 **“Resort Hotel Manager”** means the Owner of the Resort Hotel, including any Affiliate  
30 thereof or an experienced professional third-party hotel management company. If any  
31 Resort Hotel Manager is not the Owner of the Resort Hotel (or an affiliate of such Owner),  
32 it shall initially be a hotel management company which has not less than five (5) years’  
33 experience managing full service hotels or resorts or which currently manages not fewer  
34 than five (5) full service hotels or resorts.

35  
36 **“Resort Hotel Owner”** means the single legal owner of the Resort Hotel.  
37  
38

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1 **“Resort Retail ~~Uses~~”** means retail space(s) intended for the primary use of its guests that  
2 provide for personal services (i.e. beauty and barber shop, florist, launderette, catering  
3 services), specialty retail (i.e. art gallery, bookstore, card and gift, and resort wear clothing)  
4 and specialty food sales (i.e. bakery, delicatessen, candy shop, coffee shop, ice cream shop,  
5 and café dining). Resort Retail ~~Uses~~ shall only be located within the buildings shown on  
6 Sheet A8 of the Approved Plans and identified under Program as “C - Resort Reception  
7 and Lobby”, “H – Market”, and “I – Coffee Shop.” Specific tenants for Resort Retail ~~Uses~~  
8 may change over time, with the maximum square footage for Resort Retail ~~Uses~~ not to  
9 exceed 250 square feet in building “C” and not to exceed a total of 2,500 square feet in  
10 buildings “H” and “I.” An updated parking study and/or traffic analysis may be required  
11 for Town Engineer review and approval with changes in use  
12

13 **“ROW”** means Right-of-Way  
14

15 **“Special Use Permit”** or “SUP-18-05” or “SUP” shall mean this special use permit as  
16 approved by Town Ordinance #2020-20.  
17

18 **“Special Use Permit Guidelines”** means special use permit guidelines adopted by the  
19 Town and in effect as of the Approval Date.  
20

21 **“Third Floor Communal Area”** means that third-story portion of the Resort Hotel on  
22 Sheets A10 and A21 of the Approved Plans.  
23

24 **“Third Party”** means, with respect to a good faith transaction, any individual or entity  
25 other than a Party, an Affiliate of any Party, a principal of a Party or an Affiliate of a  
26 principal of any Party, and a spouse, parent, child of a principal of a Party or of an Affiliate  
27 of any Party.

28 **“Town”** means the Town of Paradise Valley and its processes as regulated by its codes and  
29 ordinances.  
30

31 **“Town Manager”** means the Town Manager or their designee.  
32

33 **“Visually Significant Corridors Master Plan”** means the Master Plan approved by the  
34 Town Council dated October 2018.  
35

36 **“Zoning Ordinance”** means the Town’s zoning ordinance in effect as of the Approval  
37 Date.  
38  
39

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### III. STIPULATIONS

#### A. GENERAL

1. In the event of a conflict between these Stipulations and the Approved Plans, these Stipulations shall govern.
2. This Special Use Permit, as it may be amended or superseded from time to time, shall run with the land (i.e., the Property and each part thereof) and any person having or subsequently acquiring title to the Property shall be subject to this Special Use Permit. Once an Owner no longer owns a portion of the Property, such prior Owner shall no longer be subject to this Special Use Permit with respect to such portion of the Property no longer owned, but the then-current Owner shall be subject to this Special Use Permit.
3. If any portion of the Resort is used in violation of the terms of this Special Use Permit, the Town may, after fair notice, a hearing and a reasonable opportunity to correct, impose a monetary sanction on the then Owner of such portion, in an amount not to exceed the maximum amount allowed for violations of the Town Zoning Ordinance for each day such violation exists, in addition to all other orders or sanctions permitted by applicable laws. No such remedy shall be applied to any other Owner or portion of the Resort that is not in violation of this Special Use Permit.
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.

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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. An Owner may rely upon an approval in proceeding from one stage of design to the next.
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.

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**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.

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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 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. 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. No pavement cuts shall be permitted on Lincoln Drive with the exception of those needed to close of the western driveway and for the construction of the right turn deceleration lane and shared access driveway modifications.
15. The looped water line shall be in place prior to any vertical construction.
16. Prior to the issuance of a certificate of occupancy for any individual structure, adequate and appropriate fire service, including but not limited to, a fire sprinkler system, building risers, fire alarms, exit signage, room and building identification signage have been installed and inspected by the Town and the necessary fire, emergency, and other vehicle access for each such structure and the particular phase of development in which such structure is located, has been constructed and approved by the Town.

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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, including a copy of the dust permit form the Maricopa County Air Quality Department.
  - 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.
  - f. Offsite improvements related to Lincoln Drive, Quail Run Road sidewalk improvements, utility relocations, etc. shall be completed concurrently with the first phase of development.
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.



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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 required by the Town and generally indicated on the Approved Plans, Sheet A8.
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.

**Commented [PM6]:** NOTE: Edited to reflect that the curb cut on the Approved Plan set is general in nature. The Town through its separate CIP project has construction plans.

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- 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.
- 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. Minor modifications to the architectural style shall be approved administratively by the Town Community Development Director or designee. Major changes to the architectural style shall be made by an approved Special Use Permit (SUP) amendment.

- a. Minor architectural modifications are permissible provided these modifications maintain the overall design of the Resort illustrated in the Approved Plans (design style, scale, massing, material, and sense of place). Minor architectural modifications shall include: 1) the alteration and/or relocation of doors, windows, mullions, cornices, etc., 2) alterations in the roof line or addition of decorative elements (which must comply with all applicable setback, height, and area requirements and be appropriate to and maintain the overall style) in order to provide architectural relief or articulation (changes to primary material or style are not minor modifications), 3) exterior color changes, and/or 4) changes to the exterior material provided the primary material remains stucco or a similar material and there are at least three other secondary materials incorporated on building

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facades facing and/or viewed from adjoining streets and perimeter lot lines (e.g. masonry, iron, tile, or wood).

b. All other changes shall be deemed Major Architectural Changes and will require a Special Use Permit Amendment in accordance with Article 11 of the Town Zoning Ordinance.

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. All rooftop screening shall be part of the articulation of a building and not appear as an afterthought; shall be architecturally integrated and compatible with the architectural style. 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.

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28. Except for aesthetics and safety as outlined below, the Development Agreement shall address other aspects of the potential relocation of the existing utility box located along Lincoln Drive at the northwest portion of the Resort identified under Program on Sheet A8 of the Approved Plans as “APS Utility Box” AC.”

a. Aesthetics for screening of the equipment shall comply with the “Best” criteria option of the Resort Living Zone in the Town’s Visually Significant Corridors Plan, as amended. This may include, and is not limited to, use of weathered steel framed panels, painted mountain cutout and matching posts, and ½ inch by ½ inch screen mesh cut in wave patterns set in weathered steel.

b. Safety measures shall address minimum clearances and related measures as required by Arizona Public Service (APS) and the Town Code. This includes clearances the equipment and screening are from the street improvements (e.g., sidewalk, travel lane).

**C. ALLOWED USES**

29. 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.

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30. 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, and not limited to, fitness, restaurant, locker rooms, meeting rooms, offices, and storage shall be included in the Floor Area calculation.
31. 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. Fence wall heights shall be measured from the exterior finished grade. Additional walls not shown on the Approved Plans are permissible provided the Owner obtains a Town building permit, the walls are not taller than 6 feet, and the walls are not visible from off of the Resort property.
32. The maximum hours of public operation of the following specific uses/facilities shall be as set forth below:
- a. Vendor deliveries and trash pick-up (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. Monday through Saturday, with such activities prohibited on Sunday and holidays as defined by the Town Code (except for emergency deliveries). US Mail, private courier services such as UPS or FedEx, and emergency deliveries: at any time.
  - b. Exterior Pools, spas and Jacuzzis may be used 6:00 a.m. to midnight. 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.

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- 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.
- f. Resort ~~R~~etail: 7:00 a.m. to midnight
- g. Room service: 24 hours/day
- h. Guest reception and guest services, including up to 100 square feet of retail for guest purchases: 24 hours/day
- i. Parking facilities: 24 hours/day
- j. Fitness facilities: 24 hours/day and for use only by guests of the Resort. ~~Refer to Stipulation 32 for additional provisions.~~
- k. 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.

33. The Third Floor Communal Area shall be limited to the uses outlined on Sheet A21 of the Approved Plans and herein described:

- a. These uses are:
  - i. Area A – Communal Area
  - ii. Area B – Enclosed Terrace
  - iii. Area C – Exterior Terrace
  - iv. Area D – Restrooms/Storage
  - v. Area E – Third Floor Lobby
  - vi. Area F- Kitchenette
  - vii. Area G – Fitness Corner
  - viii. Area H – Key Card Access Only
- b. There shall be no alcohol served on, nor shall importation of alcohol from off Property be brought on the Third Floor Communal Area.
- c. No meals shall be produced in this area.

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d. Outdoor patio access shall not be permitted to Area C on Sheet A21 of the Approved Plans between 10:00 p.m. and 6:00 a.m.

e. No speakers or amplified music shall be allowed in accordance with Stipulation 37 below.

34. The Back of House identified under Program on Sheet A8 of the Approved Plans as “W” adjoining the buildings “H” and “I” shall only be used for storage and related purposes (not kitchen or seating).

35. The area of the Resort Hotel and Resort Ancillary Facilities and Uses shall not exceed a total Floor Area of 128,500 square feet and not exceed a total lot coverage of 58,832 square feet as set forth on Sheet ~~A41~~ ~~A34~~ of the Approved Plans summarized below:

a. Resort Hotel as defined in Section II, Definitions, of this Ordinance shall have a maximum total Floor Area of 80,000 square feet.

b. Restaurant (places open to the public that include, and are not limited to, areas inside and outside for food/beverage service) identified under Program on Sheet A8 of the Approved Plans as “G” and “J – Outdoor Patio” adjoining “G” and on Sheet A26, Enlarged Floor Plan, shall have a maximum total Floor Area of 3,200 square feet.

**Commented [PM7]: ADDED:** The 3,200 sf is the square footage used in the parking study. The clarification here is to address trellis area, J’ that may not be used for dining/seating (e.g. the front north entry trellis area)

c. Market and Coffee Shop identified under Program on Sheet A8 of the Approved Plans as “H”, “I”, and “J – Outdoor Patio” adjoining “I” (if used for food/beverage service) and on Sheet A25, Enlarged Floor Plan, shall have a maximum total Floor Area of ~~4,000~~ 2,500 square feet, with “H” not more than 2,000 square feet and “I” not more than 500 square feet programmed for public use for resort guests and patrons.

~~d. Coffee Shop identified under Program on Sheet A8 of the Approved Plans as “I” and “J – Outdoor Patio” adjoining “I”, shall have a maximum total Floor Area of 1,800 square feet, with not more than 500 square feet programmed for public use for resort guests and patrons.~~

**Commented [PM8]: NOTE:** Combined in 35.c above

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~~e.d.~~ Pavilion identified under Program on Sheet A8 of the Approved Plans as “D” shall have a maximum total Floor Area of 4,000 square feet.

~~f.e.~~ Third Floor Communal Area under Program on Sheet A10 of the Approved Plans as “X” and on Sheet A27, Enlarged Floor Plan, shall have a maximum Floor Area of 2,000 square feet.

#### **D. CONTROL OF EXCESSIVE NOISE**

36. 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.
37. No outdoor speakers or amplified music will be permitted on the Third Floor Communal Area. The Third Floor Communal Area shall comply with the allowable noise levels as defined by the Town’s noise ordinance, as may be amended. All exterior doors and windows on the Third Floor Communal Area shall be closed not later than 10:00 p.m.
38. Loudspeaker/Public Address (PA) systems shall not exceed 91 dBA at five (5) feet from the speakers. These limits shall be built into the Resort contract for persons holding an event, with such levels set by computer to reduce user error. Loudspeaker/Public Address (PA) systems are prohibited on the Event Lawn on Sundays and holidays as defined by the Town Code, but may be used inside the Pavilion in accordance with the noise levels as defined by the Town’s noise ordinance, as may be amended.
39. All live music or events (e.g. DJ, live band) must be concluded and be moved indoors at or before 10:00 p.m. per the Town’s noise ordinance.
40. The walls bordering the Event Lawn as shown on Sheet A11 of the Approved Plans contribute to the acoustical barrier for adjacent property and shall remain.
41. The following restrictions shall apply on the Event Lawn:
  - a. Only events with non-amplified devices and a maximum of 50 people shall be allowed on the Event Lawn on Sundays and holidays as defined by the Town Code. Said event noise level shall not exceed the Town’s 45 dBA limit at the property line on Sundays and holidays.



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- b. Amplified devices on the Event Lawn are allowable Monday through Saturday from 7:00 a.m. to 10:00 p.m., are limited to a maximum of 200 people, and the event noise level shall not exceed the Town's 56 dBA limit at the property line.

42. The Resort Hotel Manager or designee shall be responsible to measure the noise levels using an on-site sound level meter as a means to monitor compliance.

Commented [PL9]: NOTE: Responding to a Commission inquiry, the Andaz resort has a similar stipulation.

**E. HEIGHT AND HEIGHT MEASUREMENT**

43. 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.

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

44. 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 and the Public Improvements shall be as more fully provided in the Development Agreement.
45. 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 and the Public Improvements shall be as more fully provided in the Development Agreement.

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- 1           46.       The Owner shall grant one or more easements to the Town for the  
2                   purpose of establishing the Town's ability to construct the traffic signal  
3                   at the intersection of Quail Run Road and Lincoln Drive (the "Roadway  
4                   Easement Dedication") and the sidewalk improvements be ~~as generally~~  
5                   indicated on the Approved Plans, Sheets A7 and A8, ~~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          47.       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          48.       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          49.       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. Some form of  
29                   wheel stops shall be provided for each parking space to prevent further  
30                   intrusion into this landscape area by the vehicles while still maintaining  
31                   the ability for stormwater runoff to enter into the adjacent landscape  
32                   area.
- 33
- 34          50.       Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.)  
35                   may be used to service the Resort but such support vehicles shall not  
36                   park on public streets.
- 37

**Commented [PM10]:** NOTE: Edited to reflect that the easements for the traffic signal and sidewalk on the Approved Plan set is general in nature. The Owner will need to dedicate these via a separate recorded instrument.

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1           51.       There shall be a minimum of 170 parking spaces at the Resort and a  
2                   minimum of 199 parking spaces at the Resort in valet mode. Any  
3                   parking provided or required under this Special Use Permit shall  
4                   comply with the parking studies that have been reviewed and approved  
5                   by the Town Engineer, as identified on the Approved Plans. This  
6                   includes the permanent retention of the minimum parking spaces  
7                   required by such parking studies. Parking spaces allowed as specified  
8                   on the Approved Plans, Sheet A8, shall be appropriately screened by a  
9                   3' high screen wall and/or landscaped berm or combination thereof to  
10                  minimize the amount of vehicle headlight trespass off the property. As  
11                  approved by the Town Engineer and Town Fire Marshal, the parking lot  
12                  may use paving methods in lieu of asphalt (e.g. stabilized decomposed  
13                  granite, permeable pavers, stone pavers, brick).

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

25          53.       ~~At any time when the combination of hotel occupancy and event internal~~  
26                   ~~capture exceeds 153 parking spaces the parking demand within the~~  
27                   ~~Resort is expected to reach 90% capacity or greater,~~ the Owner shall  
28                   initiate the valet parking described in the Parking Management Plan  
29                   which may include offsite parking arrangements (but not the use of  
30                   parking on any public street within the Town) and hiring of an off-duty  
31                   police officer to from the Town of Paradise Valley Police Department  
32                   to manually control the traffic signal at the Lincoln Drive and Quail Run  
33                   Road intersection. The Parking Management Plan is included in the  
34                   Approved Plans listed in Section IV herein.

Commented [PM11]: REVISED: as discussed by the Planning  
Commission on 10/20/2020

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54. The Pavilion and Event Lawn may not be booked for separate events at the same time when such simultaneous events will exceed the total parking capacity of the Resort per the Parking Management Plan and Parking Study in the Approved Plans.

**Commented [PM12]: REVISED:** as discussed by the Planning Commission on 10/20/2020, combining deleted Stipulation 55 below

~~55. 55. No events shall be booked that exceed the capacity of each individual venue~~

~~56-55.~~ All designated fire lanes shall maintain a vertical clearance of fourteen (14) feet above actual finished grade and a horizontal clearance of twenty (20) feet to allow passage of emergency vehicles and must meet all Arizona Department of Transportation standards.

~~57-56.~~ The Owner or Resort Hotel Manager shall take all reasonable means to direct commercial vehicles accessing the site to use the shared driveway on Lincoln Drive for entering and exiting the Resort. Also, as a means to avoid commercial vehicles having to circle the Resort parking lot, to direct such vehicle operators to use the parking drive aisle east of the Resort Hotel to access and leave the areas identified under Program as "U – Delivery Location" and "T – Garbage Bins" on Sheet A8 of the Approved Plans. Commercial vehicles are defined as a vehicle requiring a Class A, B, or C driver license pursuant to the Arizona Department of Transportation (ADOT). Allowable exceptions shall be granted for emergencies, with an additional exception for circling the parking lot when the valet plan is active. Some means, include and are not limited to, including such provisions in the resort contract with vendors and coordinating trash services with the adjoining medical center located at 7125 E Lincoln Drive.

**Commented [PM13]: NOTE:** The Development Agreement will address the mitigation measures. Staff discussion that the column markers be included as part of this stipulation.

These mitigation measures include the following concepts:

- The installation of column markers on both sides of Quail Run Road south of the Resort main entry with appropriate signage (e.g. dead end, private road) completed in the first phase of development. Such columns shall be no taller than four feet in height and setback at least four feet from the curb/pavement.

- Installation of a sign(s) on Quail Run Road (e.g. dead end, no outlet) on or near the new traffic control signal at the intersection of Lincoln Drive and Quail Run Road south of Lincoln Drive.

- Include a fund set-aside for an independent study to see if persons are missing the Resort main entry and entering and/or parking onto the private residential parcels and private driveways south of the Resort main entry on Quail Run Road. Such study shall be completed within the second year of Resort operation.

- If the independent study noted above is determined to be an impact to the adjacent residential neighborhood, then the set-aside funds shall be used to install a gate(s) as generally illustrated on Sheet [insert sheet number] of the Approved Plans after the appropriate process pursuant to Article XI, Special Uses and Additional Use Regulations, of the Town's Zoning Ordinance.

~~58-57.~~ The Development Agreement shall address mitigation measures related to persons using vehicle and other modes of travel on Quail Run Road onto the private residential parcels and private driveways south of the Resort main entry on Quail Run Road as generally depicted on Sheet [insert sheet number] of the Approved Plans.

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**G. SIGNAGE**

58. ~~59.~~ All signs shall be in accordance with the Approved Plans, with illumination compliant with Article XXV, Signs, of the Town Zoning Ordinance and the Special Use Permit Guidelines.
59. ~~60.~~ With the exception of the monument signs on Sheet A25 and Sheet A26, there shall be no outward facing signage which is visible from the street or adjoining properties. Monument signs shall be in accordance with Sheet A25 and Sheet A26.
60. ~~61.~~ New internal directional or wayfinding signs shall comply with the Special Use Permit (SUP) Guidelines and are subject to Town Manager review and approval.
61. ~~62.~~ 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.
62. ~~63.~~ 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.
63. ~~64.~~ 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.

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## H. LIGHTING

64. ~~65.~~ 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.
65. ~~66.~~ 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.
66. ~~67.~~ All exterior lighting shall operate in accordance with the Approved Plans. In summary, the following shall also apply to the exterior lighting:
- a. Parking Lot Pole Lights (Type SA):
    - i. The concrete decorative base shall be limited to a maximum height of 28 inches. The fixture shall not exceed a maximum height of 12' tall from the adjoining grade (including the decorative base).
    - ii. All pole lights shall have house side shields.
  - b. All exterior light fixtures shall be limited to a maximum color temperature of 3000 Kelvins.
  - c. All exterior lighting shall operate from dusk to dawn. All landscape, outdoor open space and seating areas, and building lighting level shall be reduced to 50% after 1:00 a.m.
  - d. Palm tree ring lighting (Type TR) shall be limited to a maximum height of 16 feet tall. The lights shall be directed downward (with no uplighting of the trees).

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e. Landscape lighting fixtures shall be selected, located, aimed and fully shielded so that direct illumination is focused exclusively on the plantings or other intended site features and away from adjacent properties and the public street right-of-way.

f. The Type LU fixture is a flush grade fixture to uplight landscape, pots, and key architectural features as shown on the lighting plans on Sheets A14 through A19 of the Approved Plans. Illumination of key architectural features are also illustrated in the renderings "With Uplights" and Without Uplights" prepared by Creative Designs in Lighting ,submitted on October 8, 2020. These uplights allow some illumination of the architectural features while meeting the intent of the Town's Zoning Ordinance and Special Use Permit Guidelines to preserve low light level conditions that minimize light pollution, while maintaining adequate lighting for safety, security, and enjoyment of outdoor living. At any time these uplights are not found to meet the above intent, the Town Manager or designee may inspect the Property and require the Owner to turn off or reduce the light level (which may include, and is not limited to, reducing fixture count, applying a dimmer, or similar measure).

**Commented [PM14]: ADDED.** This is a new stipulation to address the uplight fixture as discussed by the Planning Commission on 10/20/2020

67. ~~68.~~ Light fixtures shall be prohibited within the dedicated public right-of-way areas, except for Town-approved fixtures.

## **I. LANDSCAPING**

68. ~~69.~~ Landscaping on the Property shall be in substantial compliance in quantity, size, and plant palette with the Approved Plans.

69. ~~70.~~ 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 similar material that are on the Approved Plans.

70. ~~71.~~ 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, Sheets A11, A12, and A13. This shall include leaving the existing oleander hedge row along the south property line adjoining the Andaz Resort.

71. ~~72.~~ All landscaped areas shall be supported by an automatic irrigation system.

**Commented [PM15]: ADDED:** The landscape plan Sheets A11-A13 do not clearly show the oleanders along Andaz that was discussed as being on the Andaz property and not Smoke Tree property. It was stated many times during the July-Oct 2020 Planning Commission review that these oleanders will remain.

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72. ~~73.~~ All landscaped areas shall be constructed and maintained in a manner that promotes water conservation and prevents water overflow or seepage into the street, sidewalk or parking areas.

**J. TEMPORARY USES**

73. ~~75.~~ Temporary event tents may be erected on the Event Lawn Area of the Property All other temporary tent locations require a Special Event Permit with Chapter 8 of the Town Code. 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.

**K. CELLULAR ANTENNAS**

74. ~~76.~~ 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.



Date: ~~08/13/2020~~ ~~10/14/2020~~ 10/27/2020

**L. MANAGEMENT - MAINTENANCE**

75. ~~77.~~ 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.
76. ~~78.~~ 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.
77. ~~79.~~ 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.
78. ~~80.~~ 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 in Area V, Employee Break Area, as shown on Sheet A8 and Sheet A11 of the Approved Plans and the area shall include seating, trash receptacles, and/or smoking receptacles.
79. ~~81.~~ 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.

Date: ~~08/13/2020~~ ~~10/14/2020~~ 10/27/2020

**M.           CONDITIONAL APPROVAL**

80.       ~~82-~~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.

Date: ~~08/13/2020~~ ~~10/14/2020~~ 10/27/2020

#### 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]**

**Commented [PM16]:** This section will be updated for the November 17<sup>th</sup> hearing once the applicant resubmits the complete plan set

(SUP 18-05)	<ol style="list-style-type: none"><li>1. Smoke Tree Resort Major Amendment Application Booklet dated [XXXX].</li><li>2. Existing Topographic Survey and Original Natural Grade Exhibit dated February 22, 2019.</li><li>3. Smoke Tree Resort Traffic Impact Analysis, prepared by CivTech, sealed by Dawn Cartier on [XXXX].</li><li>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></li><li>5. Water Service Impact Study for Smoke Tree Resort by CVL Sealed by Cassandra Alejandro on [XXXX].</li><li>6. Wastewater Capacity Study for Smoke Tree Resort by CVL Sealed by Cassandra Alejandro [XXXX].</li><li>7. Preliminary Drainage Report for Smoke Tree Resort by CVL Sealed by Oscar Garcia on [XXXX].</li></ol>
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