



Town of Paradise Valley Action Report

Agenda Item: 10a
Date: October 25, 2012
Public Hearing

AGENDA TITLE

Consideration of Ordinance Number 653; Mountain Shadows Special Use Permit

TO: Mayor LeMarr and Town Council Members	Agenda Item Relates to Mission/Vision	<ul style="list-style-type: none"> Enhances the community's unique character
FROM: Jim Bacon, Town Manager Eva Cutro, Community Development Director <i>(613 for Ed)</i>	Strategic Initiative	<ul style="list-style-type: none"> Enforcement of land use policies identified in General Plan, Town Code, and/or SUPs
DEPARTMENT: Community Development	Other Policies or Statutory Requirements	
CONTACT: Eva Cutro, Community Development Director		

RECOMMENDATION

It is recommended the Town Council review and take public comment on Ordinance #653, a Special Use Permit request for the re-development of the Mountain Shadows Resort.

SUMMARY STATEMENT

On September 24, 2012, the Planning Commission voted 6 to 0 to forward to the Town Council Ordinance Number 653, the proposed Mountain Shadows Special Use Permit with a recommendation for approval subject to stipulations. The request includes, but is not limited to: 1) demolition of the existing resort facilities; 2) construction of resort hotel, resort residential, resort retail, golf facilities, open space and circulation, and golf course area improvements; 3) development standards, 4) landscaping, signage, and ingress/egress improvements; and 5) street and infrastructure improvements.

This meeting is posted as a public hearing. It is appropriate for the Town Council review and take public comment on the Planning Commission's recommendation. Following the public's opportunity to comment on the SUP and stipulations, it is anticipated that the Council will vote to continue the public hearing to November 1, 2012 to receive additional public comment and further evaluate the ordinance.

BUDGETARY IMPACT

ATTACHMENT(S)

Ordinance #653

ORDINANCE NUMBER 653

AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA, AMENDING THE ZONING ORDINANCE AND AMENDING THE ZONING MAP TO PROVIDE FOR THE ISSUANCE OF A SPECIAL USE PERMIT FOR PROPERTY ZONED SUP DISTRICT (RESORT) AND THE REZONING FROM R43 TO SUP DISTRICT (RESORT) TO ALLOW FOR A RESORT HOTEL WITH INTEGRATED DWELLING UNITS (MOUNTAIN SHADOWS RESORT, PARADISE VALLEY) FOR THE PROPERTY LOCATED AT 5525 EAST LINCOLN DRIVE AND 5641 EAST LINCOLN DRIVE, GENERALLY BORDERED BY LINCOLN DRIVE TO THE NORTH, 56TH STREET TO THE EAST AND WEST, AND MC DONALD DRIVE TO THE SOUTH, WITH THE PROPOSED SUP DISTRICT (RESORT) TO INCLUDE A RESORT COMMUNITY, INCLUDING: A RESORT HOTEL WITH 100 MINIMUM KEYS, SPA, RESTAURANTS, AND MEETING SPACE; RESORT RESIDENTIAL; 46 DETACHED RESIDENTIAL ESTATE HOMES ON LOTS AVERAGING 7,500 SQUARE FEET; AND SITE IMPROVEMENTS INCLUDING PARKING, LANDSCAPING, AND LIGHTING AND, IMPROVEMENTS TO SITE INFRASTRUCTURE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Paradise Valley Planning Commission held public hearings on MONTH DAY, 2012, in the manner prescribed by law, for the purpose of considering a rezoning of the property described in Exhibit A attached hereto ("Property") for the purpose of making a recommendation on a proposed SUP District (Resort) to be known as the Special Use Permit for the Mountain Shadows Resort, Paradise Valley, and recommended approval of the new SUP District (Resort) to the Town Council; and

WHEREAS, the Town Council at its meeting of MONTH DAY, 20____, held a public hearing as prescribed by law to hear the conditional rezoning of the Property to a new SUP District (Resort) based upon the recommendation made by the Planning Commission as noted above, and to amend the Town Official Zoning Map to reflect the issuance of a new SUP District (Resort) for the entire Property and to take action on this rezoning request.

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

SECTION 1. Rezoning. A parcel of land, as described in Exhibit A attached hereto, is hereby conditionally rezoned from R-43 to a new SUP District (Resort) designation, with such changes to be made on the Town's Official Zoning Map, such new SUP District (Resort) to allow for use of the Property as a resort and all related uses subject to the stipulations set forth in Exhibit B, attached hereto, the Special Use Permit for MTS Land, LLC, and MTS Golf, LLC, SUP 12-5, such uses including:

- a. A resort hotel with 100 minimum keys/rooms, spa, restaurants, and meeting space.
- b. Resort residential
- c. Detached residential estate homes
- d. Site improvements including parking, landscaping, and lighting
- e. Infrastructure and right-of-way improvements including, but not limited to, utilities, hardscape, landscaping, medians, round-a-bouts and re-surfacing of streets.

SECTION 2. The proposed SUP District (Resort) rezoning is in accordance with Article 11 of the Town Zoning Ordinance, specifically:

- a. It is authorized in the town's adopted general plan, as amended;
- b. It will not be detrimental to, interfere with or adversely affect existing uses or character of adjacent properties, persons residing or working in the vicinity, the neighborhood, the public health, safety, peace, comfort and general welfare, or the purpose of the zone in which it is proposed; and
- c. It will be in full conformity to any conditions, requirements or standards prescribed in the permit, in the zoning ordinance and the ordinances of the Town.

SECTION 3. 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 4. 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 MONTH, 20___.

Scott P. LeMarr, Mayor

SIGNED AND ATTESTED TO THIS _____ DAY OF _____ 2012

APPROVED AS TO FORM:

ATTEST:

Andrew M. Miller, Town Attorney

Duncan Miller, Town Clerk

**EXHIBIT B
TO
ORDINANCE NUMBER 653**

**TOWN OF PARADISE VALLEY
SPECIAL USE PERMIT FOR MOUNTAIN SHADOWS RESORT
SUP-12-5**

I. PROJECT DESCRIPTION

Pursuant to Article XI of the Zoning Ordinance of the Town of Paradise Valley, Arizona (the "Town"), the Town hereby grants to MTS Land, LLC, a Delaware limited liability company, its affiliates, successors and MTS Golf, LLC, a Delaware limited liability company, its affiliates, successors and assigns (collectively, the "Resort Hotel Owner"), this special use permit (this "Special Use Permit") governing the use of the real property described below (the "Property"). This Special Use Permit shall be effective as of the date of approval by the Town Council (the "Approval Date"). All capitalized terms contained herein are defined pursuant to the definitions stated herein.

The Property is comprised of approximately 68 acres of land bisected by 56th Street between Lincoln Drive and McDonald Drive in the Town of Paradise Valley, Arizona, as more particularly described on Exhibit A. Maricopa County first issued use permits for the Property in the late 1950s/early 1960s. In 1992, the Property was annexed into the Town as an operating resort pursuant to an agreement between the Town and MTS Land LLC and MTS Golf LLC, dated _____. This Special Use Permit is being granted by the Town to permit the continued use and operation of the Property as a resort subject to and in accordance with the stipulations and other provisions set forth herein.

Subject to the stipulations and other provisions set forth herein (the "Stipulations"), the improvements, facilities and uses authorized to be developed, redeveloped, and used on the Property include the following: Hotel, Clubhouse, and Resort Residential, Resort Estates which may be sold (and thereafter resold) to a third party and used as provided herein; Resort Estates (East Side Homes/Residences); Golf Course; the Resort Ancillary Facilities and Uses; and such other facilities and uses.

II. DEFINITIONS

"Approved Plans" means those certain plans and other documents listed in Exhibit B to Mountain Shadows Stipulations below.

"Courtyard Areas" mean any residential courtyard areas as defined in Article XXIV of the Town Zoning Ordinance.

"Developable Area" means the Land Use Areas A, B, C, D, and E,

Development Envelope means the document depicting the setback/height ratio on the west side of 56th Street.

"Existing Entitlements" means whatever rights the Resort Hotel Owner had with respect to the use and development of the Property prior to the Approval Date.

"Floor Area Ratio" means the total floor area divided by the total lot area.

"Golf Course" means the 18-hole golf course and practice facility generally depicted on the Approved Plans (Sheet 10) and known as Area A.

"Lot Area" means the area bounded by the recorded property description of a lot, excluding any dedicated right of way, street or alley, and excluding any private road for which a Special Use Permit has been granted (68.48 acres).

"Maximum floor area" means the floor area ratio shall not be more than 25% and shall be computed using the total lot area of 68.48 acres which includes the golf course. Individual lots within the overall 68.48 acres shall not be limited by the 25% floor area ratio as to that particular lot (i.e. the individual Resort Estate lots are not limited to a maximum floor area ratio of 25%).

"Resort Ancillary Facilities and Uses" means all facilities and uses related or incidental to the operation of a resort, including specifically, but without limitation: restaurants, bars and lounges; spas and salons; indoor and outdoor meeting, convention, display, exhibit, wedding and social function facilities; sale of food and alcohol; catering facilities; outdoor cooking facilities; outdoor dining facilities; gourmet food shop (offering prepared and pre-packaged foods, wines, liquors, gifts, fresh fruits and vegetables, groceries, sundries, cosmetics, over the counter pharmaceuticals, housewares, and related kitchen, indoor and/or outdoor dining items); deli, coffee, tea, ice cream, yogurt and similar shops or sales; snack bars; central plant, maintenance shop, engineering facilities, housekeeping facilities, laundry, storage and support facilities; valet and other parking facilities, parking garages and areas; automobile rentals; gift and sundries shop; flower sales; art gallery; jewelry shop; fashion, eyewear, footwear and apparel sales; sale of hotel items such as furniture, bedding, art, toiletries, etc is permissible but shall not be sold out of the lobby or sold out of a store; other resort retail; marketing, sale and resale of Resort Residential, Resort Estates and other Resort sales and marketing; travel agency offices; tour and other off-site activity offices; administrative, support and other resort offices; indoor and outdoor entertainment; ramadas; pools; golf, tennis, and other recreational or sport uses and services, amenities, recreational facilities and fitness facilities; and uses now or hereafter located.

"Resort Estates" means the lots and residences in areas E (as shown on Sheet 2).

"Resort Unit" means a room or group of rooms which can be locked and served by a single key and which is part of a resort complex, as such is defined by the Town Zoning Ordinance. A Resort Unit may be served by one or more bathrooms, and may be with or without cooking facilities. A Resort Unit may, subject to the stipulations and other provisions set out below, be owned by either the Resort Hotel Owner or a third party.

"Retail Use" means a dedicated facility open to the general public offering for sale goods and merchandise as in accordance with the definition for "Resort Ancillary Facilities and Uses". Restaurants and the incidental sale of products and services incidental to or in conjunction with restaurant or other typical resort uses shall not be considered Retail Use.

"Resort Hotel" means the 100 to 314 Resort Units.

"Resort Residential" means the Resort Units on the west side of 56th Street.

"Tall Structures" mean any third story building or structure in excess of 28 feet in height (Sheet 9.3).

"Total Floor Area" means the area under roof added to the floor area of any second and third story. The total floor area also includes any residential courtyard areas (as defined in Article XXIV of the Town Zoning Ordinance) in Area E (east of 56th street); the solid portion(s) of trellises and/or open weave roofs, and all area under roof in accessory buildings such as gazebos, ramadas and other accessory buildings. The total floor area excludes the floor area of any fully subterranean portions of a building, courtyard areas (for any area west of 56th Street), and overhangs (for any area west of 56th Street) not over useable exterior spaces (as illustrated on Sheet 2.1).

"Total Floor Area for the Resort Estates (Area E)" means area under roof added to the floor area of any second story. The total floor area also includes any courtyard areas (as defined in Article XXIV of the Town Zoning Ordinance); the solid portion(s) of trellises and/or open weave roofs, overhangs, and all area under roof in accessory buildings such as gazebos, ramadas and other accessory buildings. The total floor area excludes the floor area of any fully subterranean portions of a building.

"Town Manager" means the Paradise Valley Town Manager or his designee.

III. STIPULATIONS

A. GENERAL

1. In the event of a conflict between the Mountain Shadows Resort Special Use Permit stipulations and the approved plans, the stipulations shall prevail.
2. As of the Approval Date, this Special Use Permit shall supersede and replace the Existing Entitlements – (Town Attorney to review and redraft if needed)
3. This Special Use Permit shall run with the land and any person having or subsequently acquiring title to any portion of the Property shall be subject to this Special Use Permit, as it applies to the portion of the Property owned thereby and as it may be amended or superseded from time to time. Once an owner (including, without limitation, a third party owner of a

Resort Unit or the Resort Hotel Owner) no longer owns a portion of the Property, such prior owner shall not be subject to this Special Use Permit.

4. If the Resort is used in violation of the terms of this Special Use Permit, the Town Council may, after fair notice, a hearing and a reasonable opportunity to correct, terminate this Special Use Permit or, if the Council so determines, after fair notice, a hearing and a reasonable opportunity to correct, the Council may impose a sanction in an amount not to exceed the maximum amount allowed for violations of the Town Zoning Ordinance for each day such violation exists.
5. 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 requirement, this Special Use Permit shall prevail.
6. The redevelopment and construction of the Property shall, subject to the Stipulations, substantially conform with the intent of those certain plans and other documents (collectively, the "Approved Plans") marked and certified by the Paradise Valley Town Clerk which are listed in Exhibit B (attached). Each of the Approved Plans is hereby incorporated into this Special Use Permit and made an integral part hereof.
7. A mylar and electronic version of the Approved Plans and an electronic version of the other Approved Plans shall be submitted to the Town within 60 days after the Town Council's approval of this Special Use Permit.
8. Nothing in this Special Use Permit or otherwise shall require the operation of the Resort under the name "Mountain Shadows," "Mountain Shadows Resort" or any similar or other name. No further consent shall be required to enable the Resort Hotel 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. None of the Resort Units or any part of the Resort shall be operated as a Time-Share Project; as such term is defined by the Town Zoning Ordinance.
9. If any section, subsection, sentence, clause or phrase of this Special Use Permit is for any reason held illegal, invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Special Use Permit.
10. The Town and the Resort Hotel Owner believe and intend that the provisions of this Special Use Permit are valid and enforceable. In the unlikely event that this Special Use Permit is declared by a court of competent jurisdiction to be invalid or unenforceable, the Resort may be used and operated as a legal non-conforming use in accordance with the Stipulations until such time as a special use permit or other applicable zoning for the Resort is issued or reissued by the Town for the Property, it

being the intent of the Town that in such event the Town will promptly issue a special use permit or other zoning classifications containing stipulations and other provisions which are identical to, or as near to identical as possible, to those contained in this Special Use Permit.

B. DEMOLITION

11. No later than ninety (90) days following the Effective Date of the SUP, the applicant shall apply for all permits (including all required submittals of plans and payment of all applicable fees) for the demolition of the existing improvements (except for any existing golf course and clubhouse improvements); said demolition permit application to also include a dust mitigation plan.

Within thirty (30) days following the issuance of all necessary permits by the Town, applicant shall commence demolition of the existing improvements ("Demolition Start Date").

No later than one hundred eighty (180) days following the Demolition Start Date, the applicant shall complete (or have caused the completion of) all demolition of the existing improvements and clean-up of the site.

If requested by the Town, prior to the Demolition Start Date, applicant shall provide the Town with a completion bond in an amount, and subject only to those conditions, deemed reasonably satisfactory to the Town Attorney, naming the Town as obligee of such bond, to cause the completion of demolition of the existing improvements and subsequent clean-up. The costs of such bond shall be paid by applicant, and the bond shall include such other reasonable and customary terms as the Town may require.

A pre-demolition meeting must be held with the Town **Manager** prior to demolition of any structures.

C. DEVELOPMENT

12. All permanent public utilities within the Resort shall be underground and located within appropriate easements. The Town Manager may, from time to time, require the granting of such easements as deemed reasonably appropriate for utilities benefiting the Resort that are not covered by easements shown on the final plat or set forth in the recorded CC&Rs for the Resort, Resort Hotel, Resort Residential or Resort Estates. Sewage shall be disposed of by connection with the sewer system. All water and sewage facilities shall be constructed in accordance with plans approved by the Town Manager.

13. No construction permit shall be issued for any phase of construction on the Property until appropriate engineering or architectural plans are submitted to the Town and the issuance of such construction permit for that particular activity is approved by the Town Manager. This provision shall not impede continued maintenance, repair or replacements of the Golf Course, including arbor care, irrigation system replacement and other renovation of existing features that are to remain as part of the Golf Course, or are necessary to keep the Golf Course operating prior to initiation of remodeling of the Golf Course as contemplated by the Approved Plans and the Stipulations.
14. Access to the Property during construction shall comply with the following.
 - a. During redevelopment of the Resort, temporary curb cuts may be allowed on 56th Street to allow construction access to the Property both east and west of 56th Street, such temporary curb cuts and their location shall be approved by the Town Engineer. A maximum of two such curb cuts shall be allowed on each side of 56th Street between Lincoln Drive and the southern boundaries of the Property.
 - b. Temporary construction driveway locations are subject to the review and approval by the Town Manager or his designee.
15. The Owner's development plans 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, adequate fire, emergency and other vehicle access and adequate fire service shall be provided in the Resort, Resort Hotel, Resort Residential and Resort Estates as determined by the Town Manager.
17. The Owner shall submit a construction schedule prior to the issuance of any building permit to ensure compliance with all Town ordinances and in order to minimize construction nuisances. This construction schedule shall include the following:
 - Dust and noise control measures
 - Vehicle /equipment storage/parking
 - Construction days/hours
 - Location of staging area for construction supplies/equipment
 - Location of any construction trailer and sanitary facility
 - Location of on-site construction-materials/debris storage
 - Location of fire lanes during the construction period

18. During construction, a sign shall be posted on the Property indicating the name and phone number of a person the public may contact with construction-related concerns.
19. During construction, the Owner shall sweep Lincoln Drive, 56th Street and McDonald Drive adjacent to the Property to remove construction-related dirt and debris at least once a day, as reasonably required by the Town Manager.
20. Sidewalks along 56th Street shall be designed and constructed in accordance with the plans prepared by the Town's Consultant. 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 56th Street shall be approved by the Town Manager.
21. The public improvements shall be installed as depicted on the Approved Plans created by Wood/Patel. Bonding of all offsite improvements shall be submitted prior to the issuance of any building permits.
22. The Owner shall arrange for Construction Phasing on the Property in the following sequence:
 - a. Commence native plant salvage, dust and erosion control measures, job-site mobilization and set-up, and the like.
 - b. Upon completion of the salvage, erosion and dust control, job-site mobilization, and set-up, commence horizontal or civil improvements and site work
 - c. Upon substantial completion of the civil improvements and site work, commence perimeter landscaping of the Property, along Lincoln Drive, 56th Street and McDonald Drive and adjoining existing residences. The landscape plan(s) shall be reviewed and approved by the Town Manger or his designee.
 - d. Upon substantial completion of the perimeter landscaping the vertical building improvements may commence.

Off-site and right-of-way improvements may be scheduled independently of the foregoing.

D. HEIGHT AND AREA

23. **Floor Area and Floor Area Ratio:**
 - a. The maximum floor area ratio shall not be more than 25% and shall be computed using the total lot area of 68.48 acres which includes the golf course. Individual lots within the overall 68.48 acres shall not be limited by the 25% floor area ratio as to that particular lot (i.e. the individual Resort Estate lots are not limited to a maximum floor area ratio of 25%).

- b. The total floor area shall be defined as the area under roof added to the floor area of any second and third story. The total floor area also includes any residential courtyard areas (as defined in Article XXIV of the Town Zoning Ordinance) in Area E (east of 56th street); the solid portion(s) of trellises and/or open weave roofs, and all area under roof in accessory buildings such as gazebos, ramadas and other accessory buildings. Any parking structure/parking garage that is more than six feet above ground shall be included in the floor area ratio calculation. The total floor area excludes the floor area of any fully subterranean portions of a building, courtyard areas (for any area west of 56th Street), and overhangs not over useable exterior spaces.
 - c. Any increase in the amount of floor area above 25% shall constitute an amendment to the Mountain Shadows Special Use Permit in accordance with Article XI of the Town Zoning Ordinance.
- 24. The building elevations, architectural elements and features (such as parapets, eaves, hips, gables, etc.), materials, and colors shown on the plans are conceptual in nature. Final building plans may vary from these concepts provided that they are generally consistent with the architectural style reflected in such concepts as determined by the Town Manager.
 - 25. Height measurements shall be taken from the original natural grade as set forth on Sheet 4. Since the original natural grade has been established by the Town Engineer and applicant's engineer, the Town Council finds that the original natural grade as submitted is acceptable. If finished grade is not restored back to original natural grade, the maximum height shall be measured from the mid-point equidistant from the high point and low point of the Original Natural Grade or un-restored grade or existing grade, whichever is lower immediately adjacent to such building;
 - 26. The Monument signs shall comply with the Town of Paradise Valley Special Use Permit Guidelines;
 - 27. No structures shall be placed in a right-of-way easement except approved monument signs and any other approved structures per this Special Use Permit;
 - 28. All mechanical equipment, including pool and fountain equipment, shall be screened so that it is not visible from abutting properties and the right-of-way. All pool heaters are to be low-profile in configuration.

Mechanical equipment and mechanical equipment screens shall be included in the total height of any structure they are attached to. If applicable, mechanical screening shall provide the necessary noise attenuation for any mechanical equipment. All mechanical equipment,

with the use of screens, shall comply with the allowable noise levels as defined in the Town's noise ordinance.

E DEVELOPMENT AREAS

AREA A GOLF COURSE

29. The redevelopment of the Golf Course shall be in accordance with the Approved Plans (Sheet 10). Detailed plans regarding the improvements shall be submitted for Town Manager review and approval.
30. Other than periods of repair, remodel or replacement, if the Golf Course is not utilized as a golf course, it shall be maintained as landscaped open space.
31. Maintenance Facility and Restroom
 - a. These structures are limited to a maximum floor area of 8000 square feet combined.
 - b. These structures shall meet the Open Space Criteria
 - c. Setbacks shall be a minimum of 40' adjacent to residential and 20' adjoining ROW.
 - d. Ingress and egress for the maintenance facility shall face either east or north.
 - e. No more than 4 employee parking spaces shall be at the maintenance facility. All other employees must park in alternate resort parking lots.
 - f. Deliveries, trash pick-ups, or other noise generating outside services (excluding those addressed in Stipulation 37 and Stipulation 38), including large commercial trucks, shall be allowed at the Maintenance Facility only between 9:00 a.m. to 4:00 p.m., Monday through Friday. No such activity shall be allowed on weekends, or legal holidays
 - g. Setback areas directly adjacent to maintenance and restroom buildings shall be landscaped with plant materials sufficient to fully screen buildings when landscaping is mature.
32. Portions of the overall design created by Wood/Patel for the 56th Street corridor shall be extended along McDonald Road. The applicant shall incorporate similar design standards such as landscaping and hardscaping to provide continuity of design along 56th Street and McDonald Drive.
33. Walls and fences along 56th Street bordering the golf course shall be permitted in their existing location; but outside of any Rights of Way. Section 8-1-13 Corner Vision shall be met. Height is limited to 6' and the fence must meet view fence requirements in Article XXIV. If a standard, non-view fence/wall is proposed it must meet height and setback requirements in Article XXIV.
34. The perimeter fence walls along McDonald Drive may have a 0 foot setback with no infringement on the golf course. Fence wall may be

located at the property line (but not in the Town's ROW). The fence wall shall not exceed a height of 6 feet and the fence must meet view fence requirement of 80% openness in Article XXIV. Section 8-1-13 Corner Vision shall be met at 56th St and McDonald Dr.;

35. Golf cart storage
 - a. Golf cart storage shall be either underground or in a partially subterranean building that would be completely shielded from view by the wall proposed along Lincoln Drive. Any portion above ground shall have a setback of 100' from non-SUP residential property line and 65' from non-residential and shall meet Open Space Criteria.
 - b. If necessary, temporary at-grade golf cart storage may be used to keep the golf course operational while a permanent golf cart storage structure is being constructed. It shall be permitted with setbacks of 100' from residential property line and 65' from non-residential and shall meet Open Space Criteria.
36. Golf Course, maintenance areas and practice area hours of operation shall be no earlier than 5:30 a.m. and no later than 60 minutes after sunset;
37. Golf Course mowing shall not begin prior to 5:30 am. All golf course maintenance equipment shall be "Noise Friendly", as follows:
 - a. "Noise Friendly" shall be defined as meeting all applicable governmental noise regulations for such equipment at the time of purchase, including provisions of this Special Use Permit.
 - b. All new motorized equipment shall be the most "Noise Friendly" commercial equipment available for its intended function at the time of purchase.

AREA B RESORT/RESIDENTIAL

38. The Resort Hotel, Resort Facilities and/or Resort Units shall be constructed prior to or concurrently with the construction of the Resort Residential and/or Resort Estates; or as determined in the Development Agreement.
39. The maximum square footage of development/floor area shall be 400,000
40. At least 120,000 square feet of the 400,000 total shall be utilized for the resort component (i.e. rooms, lobby, and other support uses)
41. Resort component shall contain a minimum of 100 keys/units.
42. The location (i.e. footprint) of any building or structure, or any portion thereof, shall be in accordance with the Approved Development Envelope Plan. Tall Structures shall be limited to the locations identified on the Tall Structure plan (Sheet 9.3); but must also fit within the Approved

Development Envelope Plan and meet the Open Space Criteria. Any change in the location of the Tall Structure(s) shall be subject to an Amendment to the Special Use Permit.

43. The principal resort structures, such as the lodge building and those containing guest rooms, guest registration areas and facility administrative offices, shall be limited to a maximum height of 36 feet tall. Resort residential structures shall be limited to a maximum height of 28 feet tall.
44. The building elevations, architectural elements and features (such as parapets, eaves, hips, gables, etc.), materials, and colors shown on the plans are conceptual in nature. Final building plans may vary from these concepts.
45. No exposed face in any vertical plane shall exceed a 24' height. The vertical plane must then be broken by a recess or offset at least 5' deep. (With the exception of necessary elevator shafts and stairwells)
46. Massing and articulation of Resort Hotel, Resort Units, Resort Residential and Resort Estate structures shall be designed in a manner that is generally consistent with the architectural style reflected in such concepts as determined by the Town Manager and is considerate of views and view corridors. Architectural massing refers to the concept of arranging the volumes of a structure in relation to other structures and the streetscape. Massing may be adjusted to maintain building proportions and surface areas consistent with the style. A balanced effect and style statement is achieved by variations in simple building form and projections. Facades shall incorporate architectural features such as pilasters, windows, cornices, porches, corners, offsets, or changes in materials and changes in the vertical plane to break up the mass of the building and add visual interest
47. Walls and Fences along Lincoln shall be in accordance with Article XXIV
48. Walls and Fences along 56th St shall not exceed 6' in height with a minimum setback of 15'. They shall be integrated into the overall design created by Wood/Patel for the 56th Street corridor and must incorporate similar design standards as the walls on the west side of 56th Street to provide continuity of design;
49. Common Use Pools shall be in compliance with the resort guidelines of 200' setback from a residential property line and 65' from non-residential.
50. Residents living in Mountain Shadows East and West shall have access to resort amenities.
51. The maximum hours of public operation of the following specific uses/facilities shall be as follows:

- a. Vendor deliveries (other than US Mail, private courier services such as UPS or FedX, or emergencies): 6 am - 7 pm
 - b. Pools, spas and jacuzzis (except pools, spas and jacuzzis located in enclosed private yards including yards such as presidential suites or hotel suites or casitas, which may be used 24 hours/day): 6 am - midnight
 - c. Restaurants and other food service facilities: 6 am - 2 am
 - d. Bars/lounges: 10 am – 3 am
 - e. Banquet facilities, receptions, weddings and socials: 6 am – 2 am
 - f. Resort retail: 7 am – midnight
 - g. Golf facilities and related retail - 5:30 a.m. – until midnight
 - h. Room service: 24 hours/day
 - i. Guest reception and guest services: 24 hours/day
 - j. Parking facilities: 24 hours/day
 - k. Spa & fitness facilities: 24 hours/day (outside members limited to 5 am – midnight).
 - l. Trash pickup: 7 am – 7 pm
 - m. Outdoor venues, events, or functions shall comply with the allowable noise levels as defined by the Town’s noise ordinance.
52. Each owner of a Resort Residential Unit may occupy it, permit its guest(s) to occupy it, or make it available for rental for transient occupancy uses, residential uses or hospitality uses (rental of these units would not be counted towards the 100 minimum units required, but would be in excess of these units). Rental of resort residential units shall be addressed in the Development Agreement;
53. Unlicensed support vehicles (i.e., golf carts, utility vehicles, etc.) may be used to service the Resort, and to transport and provide persons or service to guests of the Resort and owners of the Resort Units and by owners of the Resort Residential and Resort Estates. The support vehicles shall not park on public streets.
54. Parking Structure(s) - Detailed plans regarding any proposed parking structure(s) will be submitted at a later date to be approved by the Town Manager or his designee. If any portion of the proposed parking

structure/parking garage is more than six feet above ground, it shall be included in the total allowable square footage calculation;

55. All contracts between Resort Hotel Owner and any valet company or other parking company shall include an acknowledgment and agreement that such company shall not park any vehicles on public streets in the Town. Buses and other vehicles may be used to shuttle guests or employees to or from parking areas not located on the Resort, and between the Resort and other destinations (e.g., airport, shopping facilities, golf courses, etc.). Any catering agreement between Resort Hotel Owner and any guests booking events at the Resort shall include an acknowledgement and agreement that vehicles may not park on public streets in the Town. There shall be no valet parking on the streets. Any automobile rental facilities shall be limited to five (5) rental cars allowed to be stored on site.
56. At any time the parking demand within the Resort reaches capacity, the Resort Hotel Owner shall submit a valet parking plan for review and approval by the Town Manager or his designee.

AREA C RESTAURANT/RETAIL

57. A maximum floor area of 10,000 square feet of restaurant/retail may be developed.
58. Maximum restaurant(s) and/or retail hours of public operation are limited to 6 am – 10 pm.
59. A total of 150 lineal feet of building frontage for retail/restaurant uses located on the west side of 56th Street adjoining Lincoln Drive, may be allowed at a minimum setback of 40 feet from the property line and must meet the Open Space Criteria. The maximum height shall be 20’;
60. The entrance to the retail structure shall be off of 56th Street or through the existing Mountain Shadows West Drive. No new entrance off of Lincoln Drive shall be permitted.
61. Massing and articulation shall be designed in a manner that is generally consistent with the architectural style reflected in such concepts as determined by the Town Manager and is considerate of views and view corridors. Architectural massing refers to the concept of arranging the volumes of a structure in relation to other structures and the streetscape. Massing may be adjusted to maintain building proportions and surface areas consistent with the style. A balanced effect and style statement is achieved by variations in simple building form and projections. Facades shall incorporate architectural features such as pilasters, windows,

cornices, porches, corners, offsets, or changes in materials and changes in the vertical plane to break up the mass of the building and add visual interest.

62. Walls and Fences along Lincoln Drive shall be in accordance with Article XXIV.
63. Walls and fences along 56th Street shall have a maximum 6' height with a minimum setback of 15'. They shall be integrated into the overall design created by Wood/Patel for the 56th Street corridor and must incorporate similar design standards as the walls on the west side of 56th Street to provide continuity of design;
64. Section 8-1-13 Corner Vision shall be met.

AREA D OPEN SPACE

65. This land shall remain in open space and shall not be developed; except for landscaping and hardscaping including, but not limited to: pathways, seat walls, benches, and water features.
66. Public access to Area D shall not be restricted in any manner. Walls along Lincoln Drive or 56th Street shall be prohibited. Any landscaping or hardscaping along 56th Street shall be consistent with the plan prepared by Wood/Patel and shall not obstruct corner vision.

AREA E RESIDENTIAL

67. Allowed uses – single family residential (resort estates) and uses incidental or accessory thereto (such as barbecues, fences, fireplaces, pools, spas, etc.);
68. All platted Rights of Way must meet Town standard of 50' width. Pavement must be approximately 30' wide and centered in Right of Way.
69. The minimum lot size shall be 10,000 square feet, with a minimum width of 100 feet. On lots that are not rectangular, width shall be measured at the center point of the lot
70. Each owner of a Resort Estate may occupy it, permit its guest(s) to occupy it, or make it available for rental for transient occupancy uses, or residential uses.
71. Primary Residence Area requirements shall be as follows:
 - a. Primary Residence/Structure:
 1. Minimum Setbacks
 - Front yard – 10 feet

- Side yard – 7 feet (zero lot lines allowed, but side yards must total at least 14')
- Side yard with frontage – 10 feet
- Rear yard – 25 feet

2. Heights

- 20 feet maximum on perimeter lots; 24 feet maximum height on interior lots
- Maximum number of stories – mix of one and two stories.

3. Minimum floor area of 2,000 square feet;

72. Accessory structures including, but not limited to, pools, barbeques, fire pits, fireplaces, water features and other accessory structures shall not exceed 6 feet in height and shall be allowed in the setbacks provided they are located behind and completely screened by the allowed walls;
73. Accessory structures over 6 feet but no taller than 15 feet shall comply with the following setbacks – 10 foot front yard, 5 foot side yard (10 foot side yard with frontage), 7 foot rear yard (10 foot rear yard with frontage);
74. Interior fence
- a. Interior fence walls shall not exceed a height of 6 feet shall maintain a setback of:
 - Front yard – 10 feet,
 - Side/Rear yards – 0 feet,
 - Side/rear yards adjoining a public right-of-way – 15 feet
 - Side/rear yards adjoining Lot 68 – 5 feet
 - Side/rear yards adjoining all other rights of way – 0 feet
 - b. Three (3') tall Interior Fence Walls:
 - Front yard – 10 feet,
 - Side/rear yards – 0 feet,
 - Side/rear yards adjoining a public right-of-way – 15 feet
 - Side/rear yards adjoining Lot 68 – 5 feet
 - Side/rear yards adjoining all other rights of way – 0 feet
 - c. Fences adjoining Lot 68 shall not exceed a height of 6' and shall maintain a setback of:
 - Front yard – 10 feet,
 - Side yard – 5 feet,
 - Rear yard – 5 feet;
75. If construction has not commenced on any Resort Estate building by a date that is one (1) year after issuance of the initial building permit for the first element of work (excluding the grading and demolition permits), any such Resort Estate building pad shall be landscaped as reasonably required by the Town Manager.

76. Preliminary Plat and Final Plat shall meet all on site retention requirements for Area E in total.
77. A guard house east of 56th Street adjoining Lincoln Drive may be allowed at a minimum setback of 25 feet from the property line. The maximum size of the floor area shall not exceed 500 square feet to allow for the guard house functions and mail drop. Maximum height shall not exceed 16' and maximum control gate height shall not exceed 6'. All signage shall comply with the SUP guidelines.
78. Walls and fences along Lincoln drive shall meet Article XXIV
79. Perimeter fence walls along 56th Street shall have a minimum 15' setback. They shall be integrated into the overall design created by Wood/Patel for the 56th Street corridor and must incorporate similar design standards as the walls on the west side of 56th Street to provide continuity of design;
80. Restrictions Related to Issuance of Resort Estates/East Side Resort Homes (Area E) Certificates of Occupancy

Prior to issuance of a certificate of occupancy for the first East Side homes, all of the following shall occur:

- a. All demolition on the east and west side of 56th Street has been completed, grading permits have been issued, and grading has been completed.
 - b. All offsite improvements to Lincoln Drive and 56th Street to be done by the Resort Hotel Owner are substantially complete.
 - c. All necessary infrastructure such as storm drains, sewer, fire service, water, and electrical serving such Resort Estate is complete, including such items as access roads.
 - d. Further phasing of construction shall be as per the development agreement.
81. All exterior lighting shall comply with the Town zoning ordinances and the Special Use Permit Guidelines;
 82. Except as otherwise allowed by Federal or State requirements, antenna and satellite dishes are permitted, as follows:
 - a. Satellite dishes must not be located above the roof line. Satellite dishes and antennas greater than 24" x 36" in diameter are permitted, provided that they are not mounted on the roof and meet all Town Code requirements including full screening of equipment from view.

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

83. Unlicensed support vehicles (i.e., golf carts, utility vehicles, etc.) may be used to service the Resort, and to transport and provide persons or service to guests of the Resort and owners of the Resort Units and by owners of the Resort Residential and Resort Estates. The support vehicles shall not park on public streets.

F. USES

84. Temporary tents or pavilions may be erected on the Property in accordance with the Town Code Special Event Permit requirements (Chapter 8). No tent shall be higher than 24 feet above finished grade or closer to any exterior property line than the minimum setbacks shown for a 24 foot height building. Placement of tents shall have no material adverse impact on parking or circulation on site. Temporary tents or structures shall not be allowed for more than thirteen (13) consecutive days.

85. Recorded Documents

The following stipulations shall be set forth in certain easements and/or covenants, conditions and restrictions ("CC&Rs") or other recorded instruments, to be recorded on the Resort or such part thereof for which such stipulation is germane. Such recordation shall occur at or prior to recordation of the final plat or final map as the case may be. As a condition to approval of the final plat or final map, such recorded instruments shall be approved by the Town Manager.

a. Easements

a. Vehicular and pedestrian access easements shall be dedicated and maintained as needed and determined by the Town of Paradise Valley.

b. Utility easements shall be dedicated and maintained as needed and determined by the Town of Paradise Valley.

c. Drainage easements shall be dedicated and maintained as needed and determined by the Town of Paradise Valley.

d. West Side (Land Use Areas A, B, and C). Easement for the Resort Hotel Owner to Maintain and Repair the Resort, Resort Hotel and Resort Residential. An easement to enable the Resort Hotel Owner to fully control the maintenance and repair of the

Resort as a whole by giving it a property right to exercise its rights and responsibilities under Section b below.

- b. Resort Hotel Owner Maintenance Rights and Responsibilities
 1. West Side (Land Use Area B) - Exterior Yards of the Resort Residential. The Resort Hotel Owner will initially improve and thereafter shall be entitled and responsible to maintain or shall cause the maintenance of the portions of the front, side and rear yards of each Resort Residential yard located outside of privacy walls, to ensure consistency of landscaping and maintenance throughout the Resort.
 2. West Side (Land Use Areas A, B and C) - Maintenance and Repair of Exteriors of the Resort, Resort Hotel, Resort Residential and Related Improvements. The Resort Hotel Owner shall be entitled and responsible to maintain or shall cause to be maintained the exteriors of the Resort, Resort Hotel, Resort Residential and related improvements, such as the exterior features of garages, fences, walls and the like, to ensure consistency throughout the Resort.
 3. Town Self-Help Remedy. A covenant will be recorded on the Resort, Resort Hotel, Resort Residential (which may be set forth in the CC&R's) providing the Town a right to perform exterior maintenance and repair of those properties and related facilities (i.e., access roads and parking lots) to the extent maintenance and repair of each the Resort Hotel and Resort Residential unit if such unit is not reasonably maintained and such deficiency is not cured within a reasonable period of time, following notice and hearing, in addition to any other remedies available at law to the Town. In the event the Town utilizes such remedy, the owners of the affected property will be responsible to repay the Town for its reasonable costs and expenses incurred in performing such work within 30 days after receipt of an invoice and reasonable supporting materials from the Town. If the owner does not pay such amount to the Town within such 30-day period, the Town shall be entitled to file a lien on the owner's Resort Hotel and Resort Residential unit, and enforce such lien as provided by Arizona law.
 4. Rental. Resort Residential (Area B) and Resort Estates (Area E) owners may participate in the Resort Hotel Owner's rental program at their option.
 5. Registration at Front Desk. Each principal occupant (other than the owner) of a Resort Residential (Area B) and Resort Estates (Area E) shall register with the onsite registration to be maintained

by the Resort Hotel Owner, and shall be required to update that registration upon the occurrence of any material change in occupancy or status.

6. Rental by Rental Agents Other than Resort Hotel Owner. Rentals of Resort Residential and Resort Estates by a rental agent other than the Resort Hotel Owner or its affiliates or agents, are permitted provided, each such agent must be locally based, licensed as required under applicable law, insured, and provide continuous service availability to each owner and/or renter (i.e., available at all times), as confirmed by documents provided to the Resort Hotel Owner.
86. All the improvements, except for the pavement, of Lincoln Drive, 56th Street and McDonald Drive shall be maintained by Resort Hotel Owner and/or the individual property owner.
87. Prior to the issuance of building permits for a particular phase of development (this does not prevent the acquisition of demolition permits), the applicant shall provide to the Town for each phase of development proposed:
 - a. The lighting, interior landscaping, circulation, parking, and interior signage plans for Town Manager review and approval in accordance with Article XI of the Town zoning ordinance the SUP resort guidelines.

G. PARKING & CIRCULATION

88. Parking and circulation shall be reviewed and approved by the Town Manager. The minimum parking counts shall be based upon the Special Use Permit Guidelines, the Institute of Transportation Engineers (ITE) or the American Association of State Highway and Transportation Officials (AASHTO) standards. The standard that generates the largest required parking count shall prevail. Shared parking provisions shall be considered.
89. All designated fire lanes shall maintain a vertical clearance of 14 feet above finished grade and a horizontal clearance of 20 feet to allow passage of emergency vehicles and must meet all Department of Transportation standards.
90. Trash service for the Resort, Resort Hotel and Resort Residential shall be provided either directly by Resort Hotel Owner or through a single third party vendor. Incidental removal of trash, debris and landscape material may be handled by alternative vendors.
91. All streets and drives within the Property are and shall remain private streets. All streets, sidewalks, and paved areas constructed shall remain

private; provided, that all new streets constructed shall be of adequate width and design to permit the provision of fire and police protection to the Property.

H. MANAGEMENT

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

I. CELLULAR ANTENNAS

94. Cellular and other wireless transmission antennas are permitted, provided that they comply with this Special Use Permit, all applicable Town ordinances and 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 or any successor ordinance regarding the conditions and limitations of special use permits.

J. LIGHTING

95. The exterior lighting shall comply with the Special Use Permit Guidelines and shall be submitted for Town Manager review and approval in accordance with Article XI of the Town zoning ordinance.
96. If the Town receives a complaint from an off site owner that the light emitting element (i.e., the bulb) within an exterior light fixture is visible from off the Property, Town Manager may inspect the Property and require the Resort Hotel Owner to redirect such light source if the light emitting element is visible from outside the Property.

K. LANDSCAPE STANDARDS

97. Landscaping plans shall be submitted for Town Manager or his designee for review and approval in accordance with Article XI of the Town zoning ordinance. Perimeter landscaping adjoining Lincoln Drive, 56th Street and McDonald Drive shall be substantially compliant with the Town's Landscape Guidelines.
98. If construction does not start within 365 days from issuance of the demolition permit, the applicant must landscape the perimeter of the property and all portion(s) of the property adjoining existing residences. The landscape plan(s), which may include the use of existing vegetation and landscaping, shall be reviewed and approved by the Town Manger or his designee.
99. Where all or part of oleander hedge is removed an alternate screening shall be proposed. It may be a combination of landscaping, berming, and hardscaping that shall respect privacy concerns, as well as safety and aesthetic concern.
100. As a pre-requisite to obtaining a building permit the applicant must demonstrate the existence of adequate perimeter screening either existing or to be planted prior to construction.

L. ADVISORY BOARD

101. In the interest of assisting the Town Manager and Staff, and to protect and preserve the vision of the Town as prescribed by the General Plan and SUP Guidelines, an Advisory Board consisting of 3 members of the Planning Commission, as chosen by the Planning Commission, shall be assigned to work with the Town Manager to review and recommend to the Town Council proposals from the applicant relative to:
 - a. Parking for all components of the development,
 - b. Vehicular circulation including ingress and egress,
 - c. Noise generation and abatement across the property with a focus on mechanical equipment and special event staging,
 - d. Perimeter landscaping, walls and fences,
 - e. Lighting,
 - f. Pool locations,
 - g. Back of-house activities including delivery access and any exterior storage,
 - h. Perimeter signage
 - i. Architectural character.

The reviews shall occur as necessary between SUP approval and Certificate of Occupancy.

M. ENTITLEMENTS

102. This SUP anticipates that the entire area subject to this SUP (the Entire SUP Area) shall be developed by one master developer, who may be the applicant or any subsequent applicant who purchases or otherwise acquires the Entire SUP Area, and that said applicant may develop the Entire SUP Area in phases such that individual lot or unit sales may be made by purchasers who acquire title directly from the one master developer, however, sales of a bulk parcel, such as entire Developable Area shall be prohibited. Should the applicant (or any subsequent owner of the Entire SUP Area) sell any bulk parcel, such as entire Developable Area, to a third party who is not the then current owner of the Entire SUP Area, within 15 years after the approval of this SUP, this SUP may be revoked and the Entire SUP Area shall revert to its former zoning classification, pursuant to the provisions contained in ARS §9-462.01(E) (or any similar statute that may replace ARS §9-462.01(E) in the future).

**EXHIBIT A
TO
MOUNTAIN SHADOWS STIPULATIONS**

Legal Description of Property

The Special Use Permit for the Mountain Shadows Resort is on the land legally described as:

EAST OF 56TH STREET - LOT I, LOT 1-A AND LOT 1-B OF "MOUNTAIN SHADOW RESORT AMENDED", BOOK 75 PAGE 34, M.C.R.

WEST OF 56TH STREET - LOT 128, LOT 130-A AND LOT 131 OF "MOUNTAIN SHADOW RESORT UNIT TWO-AMENDED", BOOK 95 PAGE 3, M.C.R. AND LOT 132 OF MOUNTAIN SHADOW RESORT UNIT TWO-AMENDED II" BOOK 940 PAGE 7, M.C.R. AND LOT 128-A AND LOT 129 OF "MOUNTAIN SHADOW RESORT UNIT TWO-AMENDED III", BOOK 1110 PAGE 37, M.C.R.

(Assessors Parcel Numbers 169-30-063, 169-30-070, 169-30-071, 169-30-074, 169-30-073, 169-30-067A, 169-30-068A, 169-30-068B, 169-30-067B, 169-30-072, 169-43-004C, 169-43-006, 169-43-067)

EXHIBIT B
TO
MOUNTAIN SHADOWS STIPULATIONS
Approved Plans

Sheet Number	Title	Date
	Cover Sheet	July 25, 2012
2	Land Use Plan	August 23, 2012
2.1	Mountain Shadows Resort Program, Land Use Plan Notes & Diagrams	June 26, 2012
3	Ingress/Egress Diagram	June 26, 2012
4	Original Natural Grade (O.N.G.) Plan	June 26, 2012
9.3	Buildings in Excess of 28 FT. in Height	July 25, 2012
10	Conceptual golf Course Improvement Plan	June 26, 2012

EXHIBIT C
TO
MOUNTAIN SHADOWS STIPULATIONS

Thematic Character Development for 56th
Wood/Patel 8/14/2012 (three sheets)

EXHIBIT D
TO
MOUNTAIN SHADOWS STIPULATIONS

Development Envelope Plans prepared by Town Staff 10/4/2012