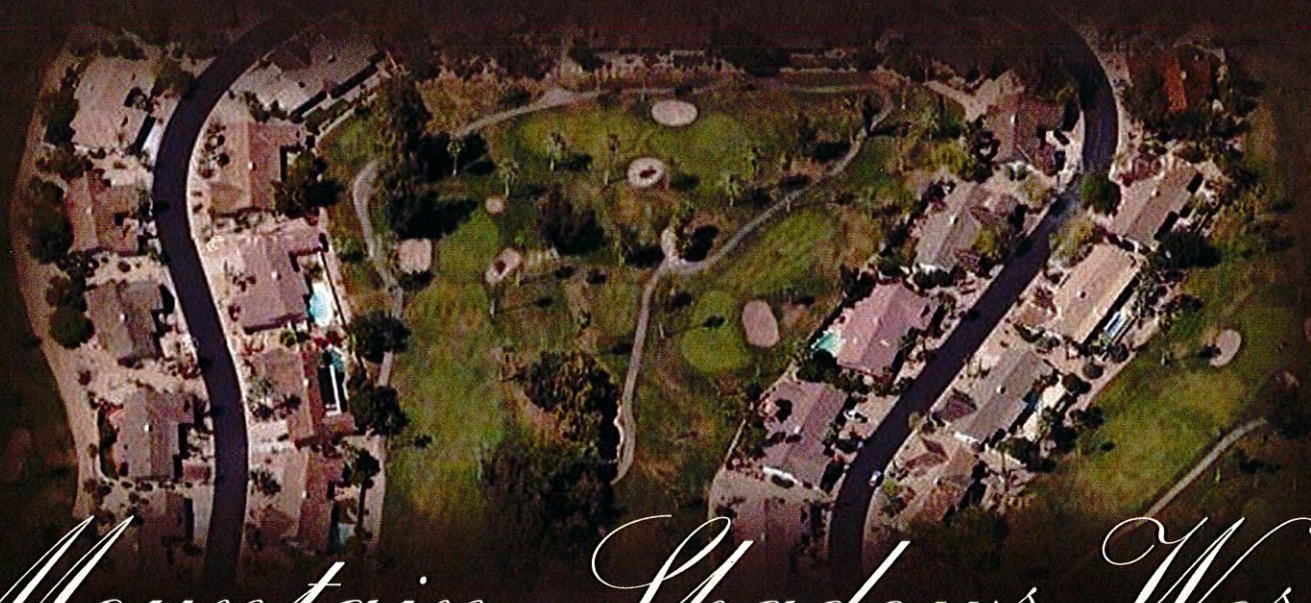


Mountain Shadows West

Town of Paradise Valley Council Hearing

February 14, 2013

Case No. SUP12-5

Vested Rights of Mountain Shadows West

- As successive owners to Paul Construction Company, the 59 lot owners in Mountain Shadows West inherited the developer's vested rights in the resort development.
- Our homes were built at the time the Resort was built.
- Our homes were an integral part of the resort hotel and amenities until 2004.
- The fact that the resort closed in 2004 did not extinguish our rights to enjoy a resort hotel and amenities.
- We, as lot owners, are just as much a part of Mountain Shadows as MTS and have a much larger investment in Mountain Shadows and the integrated resort development.
- This is NOT a setting involving a new development and a nearby neighborhood. We have vested rights in the resort hotel, amenities and golf course.

Vested Rights of Mountain Shadows West

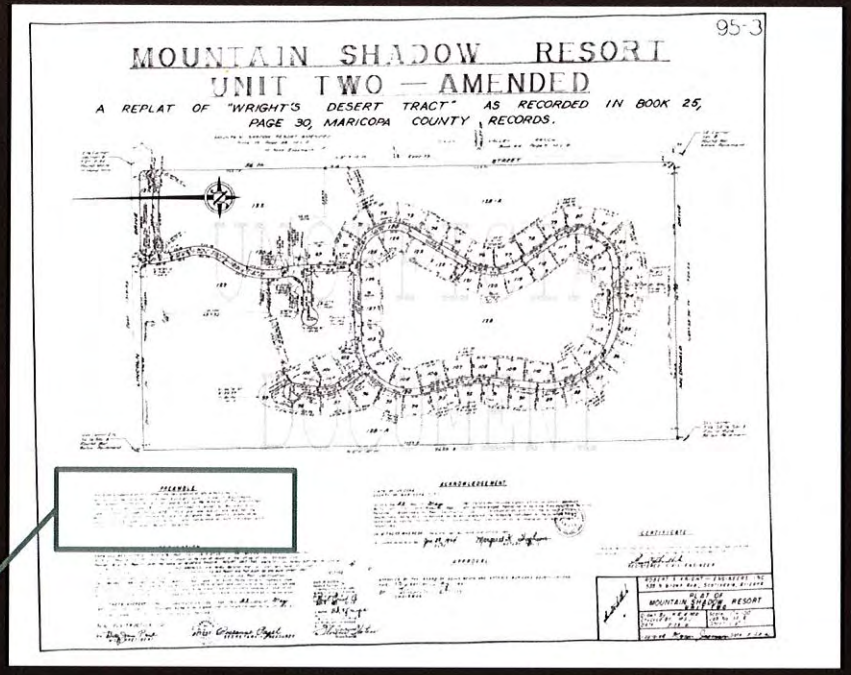
- **Mountain Shadows West lot owners became part owners of the overall resort development, as demonstrated in the following records:**
  - Minutes of the Maricopa County Board of Adjustment and Appeals hearings,
  - Maricopa County Superior Court proceedings,
  - Deed restrictions,
  - Recorded plats,
  - Lot purchase contracts and
  - Sales brochures.

Vested Rights of Mountain Shadows West

"PREAMBLE:

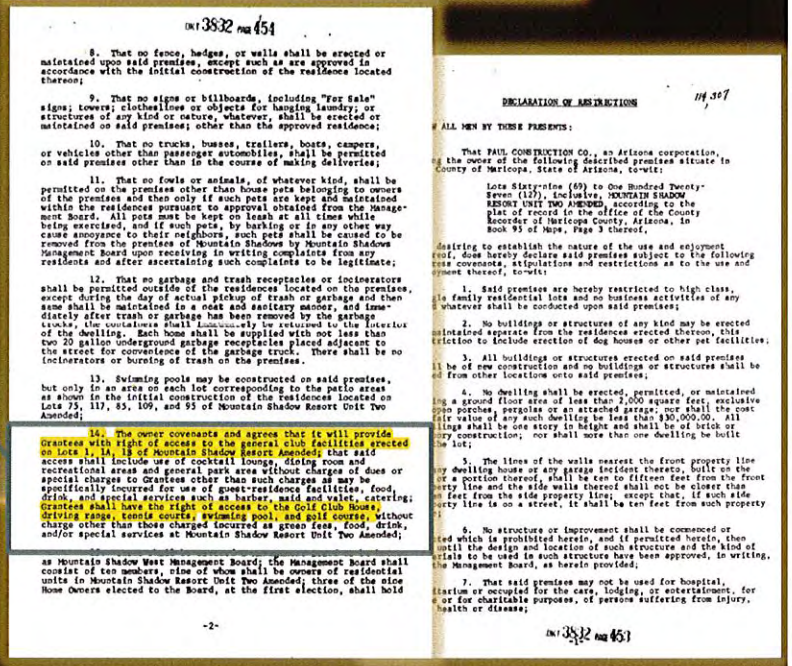
This is not a subdivision, but rather the designation of lots within a Resort, **pursuant to the stipulations of the Maricopa County Board of Adjustments – and Arizona District No. 2, as contained in the minutes of the proceedings of said board on October 13, 1960, and affirmed on appeal by Maricopa County Superior Court in Case No. 120420.** ***This plat and dedications are for the purpose of compliance therewith and to designate the specific areas to be occupied by individual units and to facilitate conveyance of such individual units as a part of the overall Resort operation."***

(Emphasis added).



Vested Rights of Mountain Shadows West

14. The owner covenants and agrees that it will provide Grantees with right of access to the general club facilities erected on Lots 1, 1A, 1B of Mountain Shadow Resort Amended; that said access shall include use of cocktail lounge, dining room and recreational areas and general park area without charges of dues or special charges to Grantees other than such charges as may be specifically incurred for use of guest-residence facilities, food, drink, and special services such as barber, maid and valet, catering; Grantees shall have the right of access to the Golf Club House, driving range, tennis courts, swimming pool, and golf course, without charge other than those charged incurred as green fees, food, drink, and/or special services at Mountain Shadow Resort Unit Two Amended;



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8. That no fence, hedges, or walls shall be erected or maintained upon said premises, except such as are approved in accordance with the initial construction of the residence located thereon;

9. That no signs or billboards, including "For Sale" signs; towers; clotheslines or objects for hanging laundry; or structures of any kind or nature, whatever, shall be erected or maintained on said premises; other than the approved residence;

10. That no trucks, busses, trailers, boats, campers, or vehicles other than passenger automobiles, shall be permitted on said premises other than in the course of making deliveries;

11. That no fowls or animals, of whatever kind, shall be permitted on the premises other than house pets belonging to owners of the premises and then only if such pets are kept and maintained within the residences pursuant to approval obtained from the Management Board. All pets must be kept on leash at all times while being exercised, and if such pets, by barking or in any other way cause annoyance to their neighbors, such pets shall be caused to be removed from the premises of Mountain Shadows by Mountain Shadows Management Board upon receiving in writing complaints from any residents and after ascertaining such complaints to be legitimate;

12. That no garbage and trash receptacles or incinerators shall be permitted outside of the residences located on the premises, except during the day of actual pickup of trash or garbage and then same shall be maintained in a neat and sanitary manner, and immediately after trash or garbage has been removed by the garbage trucks, the containers shall immediately be returned to the interior of the dwelling. Each home shall be supplied with not less than two 20 gallon underground garbage receptacles placed adjacent to the street for convenience of the garbage truck. There shall be no incinerators or burning of trash on the premises.

13. Swimming pools may be constructed on said premises, but only in an area on each lot corresponding to the patio areas as shown in the initial construction of the residences located on Lots 73, 117, 85, 109, and 95 of Mountain Shadow Resort Unit Two Amended;

14. The owner covenants and agrees that it will provide Grantees with right of access to the general club facilities erected on Lots 1, 1A, 1B of Mountain Shadow Resort Amended; that said access shall include use of cocktail lounge, dining room and recreational areas and general park area without charges of dues or special charges to Grantees other than such charges as may be specifically incurred for use of guest-residence facilities, food, drink, and special services such as barber, maid and valet, catering; Grantees shall have the right of access to the Golf Club House, driving range, tennis courts, swimming pool, and golf course, without charge other than those charged incurred as green fees, food, drink, and/or special services at Mountain Shadow Resort Unit Two Amended;

as Mountain Shadow West Management Board; the Management Board shall consist of ten members, nine of whom shall be owners of residential units in Mountain Shadow Resort Unit Two Amended; three of the nine Home Owners elected to the Board, at the first election, shall hold

-2-

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That PAUL CONSTRUCTION CO., an Arizona corporation, is the owner of the following described premises situate in County of Maricopa, State of Arizona, to-wit:

Lots Sixty-nine (69) to One Hundred Twenty-Seven (127), inclusive, MOUNTAIN SHADOW RESORT UNIT TWO AMENDED, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 93 of Maps, Page 3 thereof,

desiring to establish the nature of the use and enjoyment thereof, does hereby declare said premises subject to the following restrictions, covenants, stipulations and restrictions as to the use and enjoyment thereof, to-wit:

1. Said premises are hereby restricted to high class, single family residential lots and no business activities of any kind whatever shall be conducted upon said premises;

2. No buildings or structures of any kind may be erected or maintained seperate from the residences erected thereon, this restriction to include erection of dog houses or other pet facilities;

3. All buildings or structures erected on said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises;

4. No dwelling shall be erected, permitted, or maintained having a ground floor area of less than 2,000 square feet, exclusive of open porches, pergolas or an attached garage, nor shall the cost or fair value of any such dwelling be less than $30,000.00. All buildings shall be one story in height and shall be of brick or masonry construction; nor shall more than one dwelling be built on the lot;

5. The lines of the walls nearest the front property line of any dwelling house or any garage incident thereto, built on the lot or a portion thereof, shall be ten to fifteen feet from the front property line and the side walls thereof shall not be closer than 5 feet from the side property line; except that, if such side property line is on a street, it shall be ten feet from such property line;

6. No structure or improvement shall be commenced or erected which is prohibited herein, and if permitted herein, then until the design and location of such structure and the kind of materials to be used in such structure have been approved, in writing, by the Management Board, as herein provided;

7. That said premises may not be used for hospital, sanitarium or occupied for the care, lodging, or entertainment, for hire or for charitable purposes, of persons suffering from injury, ill health or disease;

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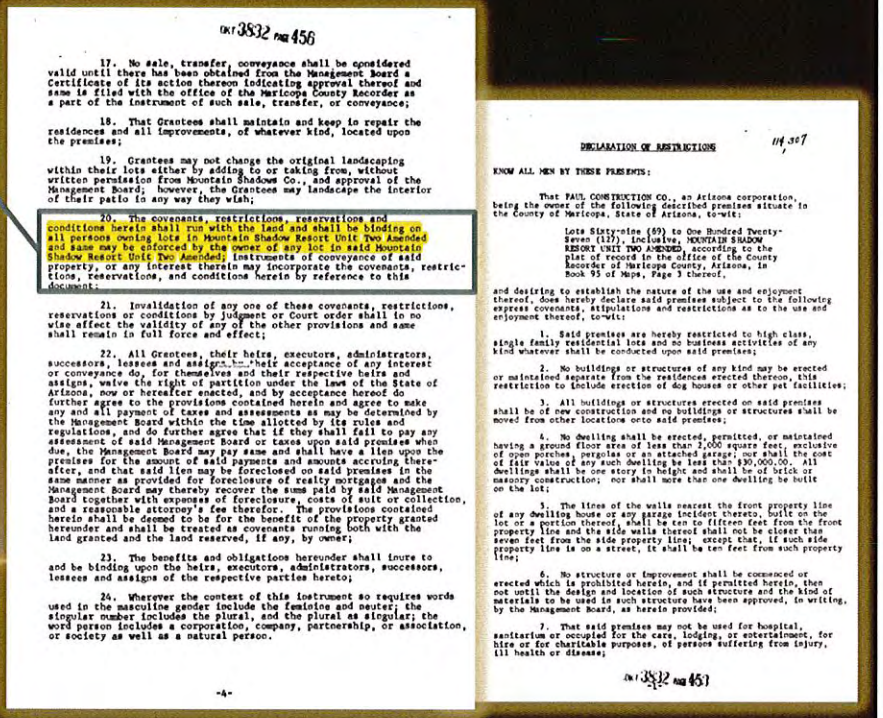
Vested Rights of Mountain Shadows West

20. The covenants, restrictions, reservations and conditions herein shall run with the land and shall be binding on all persons owning lots in Mountain Shadow Resort Unit Two Amended and same may be enforced by the owner of any lot in said Mountain Shadow Resort Unit Two Amended; instruments of conveyance of said property, or any interest therein may incorporate the covenants, restrictions, reservations, and conditions herein by reference to this document;



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17. No sale, transfer, conveyance shall be considered valid until there has been obtained from the Management Board a Certificate of its action thereon indicating approval thereof and same is filed with the office of the Maricopa County Recorder as a part of the instrument of such sale, transfer, or conveyance;

18. That Grantees shall maintain and keep in repair the residences and all improvements, of whatever kind, located upon the premises;

19. Grantees may not change the original landscaping within their lots either by adding to or taking from, without written permission from Mountain Shadows Co., and approval of the Management Board; however, the Grantees may landscape the interior of their patio in any way they wish;

20. The covenants, restrictions, reservations and conditions herein shall run with the land and shall be binding on all persons owning lots in Mountain Shadow Resort Unit Two Amended and same may be enforced by the owner of any lot in said Mountain Shadow Resort Unit Two Amended; instruments of conveyance of said property, or any interest therein may incorporate the covenants, restrictions, reservations, and conditions herein by reference to this document;

21. Invalidation of any one of these covenants, restrictions, reservations or conditions by judgment or Court order shall in no wise affect the validity of any of the other provisions and same shall remain in full force and effect;

22. All Grantees, their heirs, executors, administrators, successors, lessees and assigns, by their acceptance of any interest or conveyance do, for themselves and their respective heirs and assigns, waive the right of partition under the laws of the State of Arizona, now or hereafter enacted, and by acceptance hereof do further agree to the provisions contained herein and agree to make any and all payment of taxes and assessments as may be determined by the Management Board within the time allotted by its rules and regulations, and do further agree that if they shall fail to pay any assessment of said Management Board or taxes upon said premises when due, the Management Board may pay same and shall have a lien upon the premises for the amount of said payments and amounts accruing thereafter, and that said lien may be foreclosed on said premises in the same manner as provided for foreclosure of realty mortgages and the Management Board may thereby recover the sums paid by said Management Board together with expenses of foreclosure, costs of suit or collection, and a reasonable attorney's fee therefor. The provisions contained herein shall be deemed to be for the benefit of the property granted hereunder and shall be treated as covenants running both with the land granted and the land reserved, if any, by owner;

23. The benefits and obligations hereunder shall inure to and be binding upon the heirs, executors, administrators, successors, lessees and assigns of the respective parties hereto;

24. Wherever the context of this instrument so requires words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural as singular; the word person includes a corporation, company, partnership, or association, or society as well as a natural person.

-4-

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That PAUL CONSTRUCTION CO., an Arizona corporation, being the owner of the following described premises situate in the County of Maricopa, State of Arizona, to-wit:

Lots Sixty-nine (69) to One Hundred Twenty-Seven (127), inclusive, MOUNTAIN SHADOW RESORT UNIT TWO AMENDED, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 95 of Maps, Page 3 thereof,

and desiring to establish the nature of the use and enjoyment thereof, does hereby declare said premises subject to the following express covenants, stipulations and restrictions as to the use and enjoyment thereof, to-wit:

1. Said premises are hereby restricted to high class, single family residential lots and no business activities of any kind whatever shall be conducted upon said premises;

2. No buildings or structures of any kind may be erected or maintained separate from the residences erected thereon, this restriction to include erection of dog houses or other pet facilities;

3. All buildings or structures erected on said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises;

4. No dwelling shall be erected, permitted, or maintained having a ground floor area of less than 2,000 square feet, exclusive of open porches, pergolas or an attached garage; nor shall the cost of fair value of any such dwelling be less than $30,000.00. All dwellings shall be one story in height and shall be of brick or masonry construction; nor shall more than one dwelling be built on the lot;

5. The lines of the walls nearest the front property line of any dwelling house or any garage incident thereto, built on the lot or a portion thereof, shall be ten to fifteen feet from the front property line and the side walls thereof shall not be closer than seven feet from the side property line; except that, if such side property line is on a street, it shall be ten feet from such property line;

6. No structure or improvement shall be commenced or erected which is prohibited herein, and if permitted herein, then not until the design and location of such structure and the kind of materials to be used in such structure have been approved, in writing, by the Management Board, as herein provided;

7. That said premises may not be used for hospital, sanitarium or occupied for the care, lodging, or entertainment, for hire or for charitable purposes, of persons suffering from injury, ill health or disease;

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Vested Rights of Mountain Shadows West

- Mountain Shadows is not a subdivision.

- Residential lot owners within Mountain Shadows bought not only the land, but also a common interest of access to and the right to use and enjoy the golf course, park areas and roadways.

- This common interest in the golf course gives the residential lot owners within Mountain Shadows West a right to enforce the vested County zoning and use permit restrictions on the golf course and any proposed development thereon.

Vested Rights of Mountain Shadows West

- *Town of Paradise Valley v. Gulf Leisure Corporation*, 27 Ariz. App. 600, 557 P.2d 532 (1976) (review denied).
- Based upon the analysis in *Gulf Leisure*, the residential lot owners of Mountain Shadows West possess vested rights warranting the enforcement of the original County zoning and use permit requirements.
- Once the Mountain Shadows West use permit was approved by the County, building permits were issued and duly authorized by the law, and the Mountain Shadows West property owners materially acted in reliance thereon, the right to continue under the County zoning and use permit requirements was vested.
  - In this case, the Mountain Shadows West property owners have relied upon the development rights created within the County.
  - The Mountain Shadows resort, golf course, and integrated residences have been constructed at a substantial monetary expense to both the original developer and the residential lot owners.
  - Through considerable contractual commitments and extensive preparation embodied by the minutes of the County Board of Adjustment and Appeals, recorded plats, CC&Rs and purchase and sale agreements, the Mountain Shadows development has complied with and relied upon the original County approvals for close to 50 years.

Unrestricted R-43 and R1-10 Zoning Classifications Violate Arizona's Statutory Zoning Classification Requirements for Annexed Territories

Arizona Revised Statutes § 9-461.L

"A city or town annexing an area ***shall adopt zoning classifications that permit densities and uses no greater than those permitted by the county immediately before annexation.*** Subsequent changes in zoning of the annexed territory shall be made according to existing procedures established by the city or town for the rezoning of land."

Unrestricted R-43 and R1-10 Zoning Classifications Violate Arizona's Statutory Zoning Classification Requirements for Annexed Territories

MARICOPA COUNTY ZONING HISTORY

- Within the County, the land was zoned R2-DR residential with a maximum density of one dwelling unit per acre.
- The County zoning ordinance allowed the development of a "guest ranch" on one-to-the-acre property through a special use permit approval process. The original developer, James P. Paul, obtained use permits from the County allowing homes to be built on 10,000 to 12,000 s.f. lots within the Mountain Shadows development **so long as the homes were made an integral part of a "guest ranch."**
- A Maricopa County Superior Court judge affirmed the issuance of a use permit to Mr. Paul due to the promise that the Mountain Shadows West development would be maintained as part of the guest ranch, resort, and golf-course.

Unrestricted R-43 and R1-10 Zoning Classifications Violate Arizona's Statutory Zoning Classification Requirements for Annexed Territories

MARICOPA COUNTY ZONING HISTORY (Cont'd)

- Mr. Paul was very careful in his platting documents, CC&R's, sales contracts and marketing brochures to provide assurances that the "guest ranch" consisted of:
  - the resort hotel,
  - Mountain Shadows East and West residences, and
  - 2 golf courses – a 9 hole short course on Mountain Shadows East and an 18-hole short course in Mountain Shadows West.

- In the case of Mountain Shadows West, the addition of the area of the 42-acre golf course to the combined area of the 59 lots yields an average density of one home per acre.

Unrestricted R-43 and R1-10 Zoning Classifications Violate Arizona's Statutory Zoning Classification Requirements for Annexed Territories

ANNEXATION TO TOWN OF PARADISE VALLEY

- Mountain Shadows East, West, the resort and golf course were annexed into the Town in 3 separate annexations that occurred, respectively, in 1984, 1985 and 1992.

- Upon annexation, the Town designated the Mountain Shadows East and West lots with an unrestricted R1-10 zoning classification.

- The resort and golf course sites were designated R-43 zoning district.

- The R1-10 and R-43 zoning was placed on these lots and the golf course without complying with the public hearing process for rezoning required by A.R.S. § 9-462, et seq.

Unrestricted R-43 and R1-10 Zoning Classifications Violate Arizona's Statutory Zoning Classification Requirements for Annexed Territories

CONCLUSION

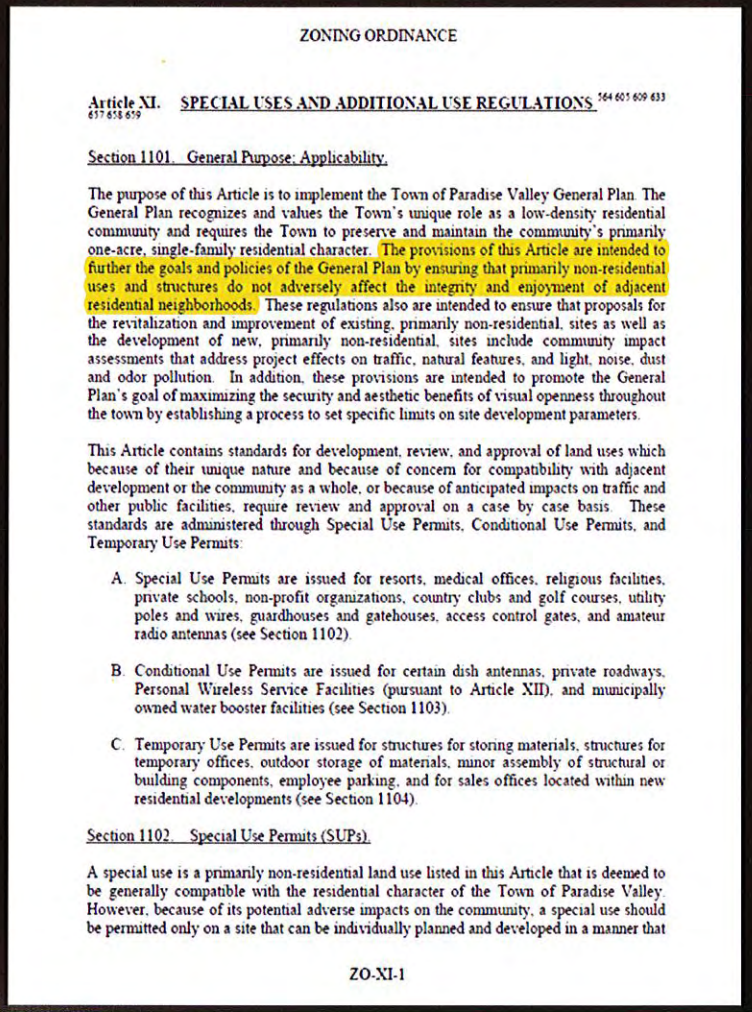
- The entire Mountain Shadows resort development was originally platted, permitted, and constructed pursuant to use permits issued by Maricopa County which allowed use of the land for residences on lots less than one acre together with an adjoining guest ranch hotel limited to the buildings and density originally proposed.

- Upon annexation, the Town, without public notice or hearings, adopted zoning classifications permitting greater density than would have been permitted under the County zoning, thus failing to comply with ARIZ.REV.STAT. Sections 9-462, et. seq. and 9-471(L).

MTS Special Use Permit Adversely Affects the Integrity and Enjoyment of Mountains Shadows West

Zoning Ordinance Section 1101

- "The provisions of this Article are intended to further the goals and policies of the General Plan by ***ensuring that primarily non-residential uses and structures do not adversely affect the integrity and enjoyment of adjacent residential neighborhoods.***" (Emphasis added).



ZONING ORDINANCE

Article XI. SPECIAL USES AND ADDITIONAL USE REGULATIONS [564 601 609 633 637 658 659]

Section 1101. General Purpose; Applicability.

The purpose of this Article is to implement the Town of Paradise Valley General Plan. The General Plan recognizes and values the Town's unique role as a low-density residential community and requires the Town to preserve and maintain the community's primarily one-acre, single-family residential character. The provisions of this Article are intended to further the goals and policies of the General Plan by ensuring that primarily non-residential uses and structures do not adversely affect the integrity and enjoyment of adjacent residential neighborhoods. These regulations also are intended to ensure that proposals for the revitalization and improvement of existing, primarily non-residential, sites as well as the development of new, primarily non-residential, sites include community impact assessments that address project effects on traffic, natural features, and light, noise, dust and odor pollution. In addition, these provisions are intended to promote the General Plan's goal of maximizing the security and aesthetic benefits of visual openness throughout the town by establishing a process to set specific limits on site development parameters.

This Article contains standards for development, review, and approval of land uses which because of their unique nature and because of concern for compatibility with adjacent development or the community as a whole, or because of anticipated impacts on traffic and other public facilities, require review and approval on a case by case basis. These standards are administered through Special Use Permits, Conditional Use Permits, and Temporary Use Permits:

A. Special Use Permits are issued for resorts, medical offices, religious facilities, private schools, non-profit organizations, country clubs and golf courses, utility poles and wires, guardhouses and gatehouses, access control gates, and amateur radio antennas (see Section 1102).

B. Conditional Use Permits are issued for certain dish antennas, private roadways, Personal Wireless Service Facilities (pursuant to Article XII), and municipally owned water booster facilities (see Section 1103).

C. Temporary Use Permits are issued for structures for storing materials, structures for temporary offices, outdoor storage of materials, minor assembly of structural or building components, employee parking, and for sales offices located within new residential developments (see Section 1104).

Section 1102. Special Use Permits (SUPs).

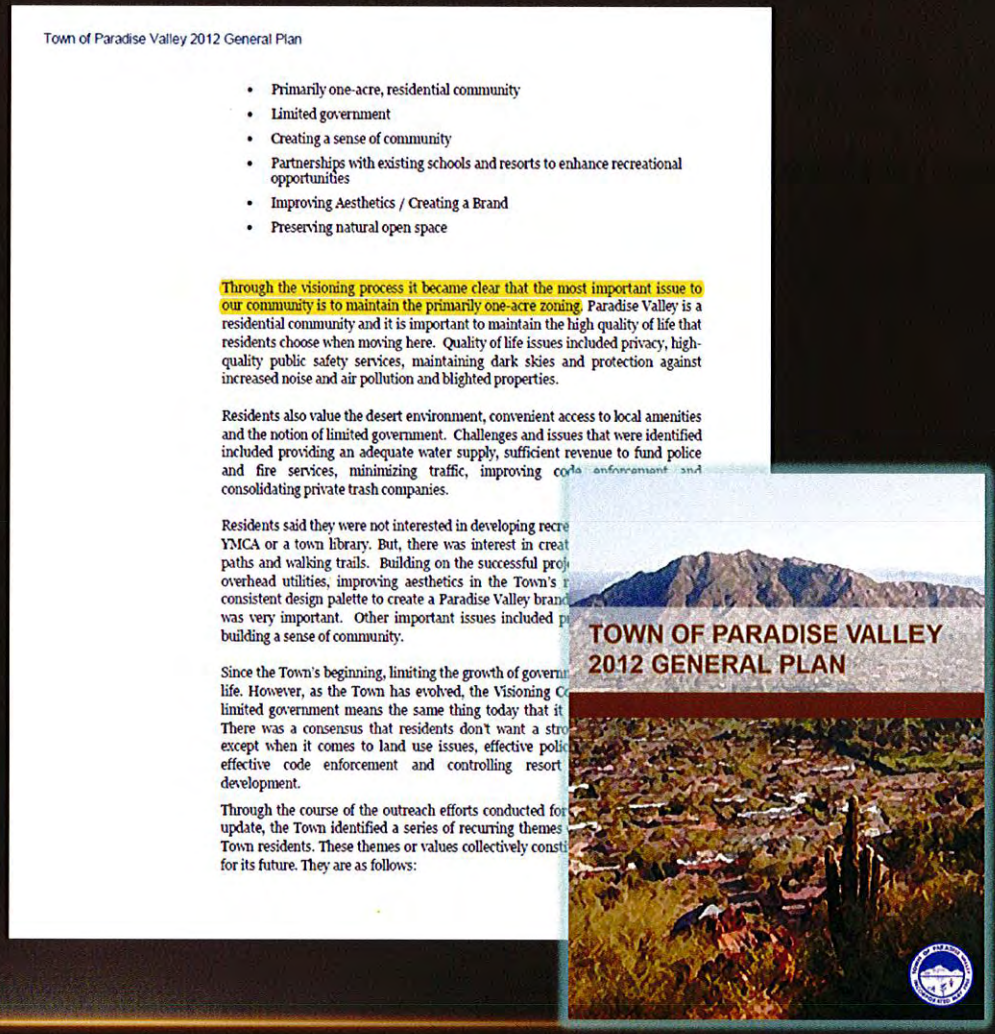
A special use is a primarily non-residential land use listed in this Article that is deemed to be generally compatible with the residential character of the Town of Paradise Valley. However, because of its potential adverse impacts on the community, a special use should be permitted only on a site that can be individually planned and developed in a manner that

ZO-XI-1

Mountain Shadows Special Use Permit Does NOT Implement the Town's Visions and Values

General Plan Section 1.4 – Town Visions and Values

- "Through the visioning process it became clear that the ***most important issue to our community is to maintain the primarily one-acre zoning.***" (Emphasis added).



Town of Paradise Valley 2012 General Plan

- Primarily one-acre, residential community
- Limited government
- Creating a sense of community
- Partnerships with existing schools and resorts to enhance recreational opportunities
- Improving Aesthetics / Creating a Brand
- Preserving natural open space

Through the visioning process it became clear that the most important issue to our community is to maintain the primarily one-acre zoning. Paradise Valley is a residential community and it is important to maintain the high quality of life that residents choose when moving here. Quality of life issues included privacy, high-quality public safety services, maintaining dark skies and protection against increased noise and air pollution and blighted properties.

Residents also value the desert environment, convenient access to local amenities and the notion of limited government. Challenges and issues that were identified included providing an adequate water supply, sufficient revenue to fund police and fire services, minimizing traffic, improving code enforcement and consolidating private trash companies.

Residents said they were not interested in developing recre YMCA or a town library. But, there was interest in creat paths and walking trails. Building on the successful proj overhead utilities, improving aesthetics in the Town's r consistent design palette to create a Paradise Valley brand was very important. Other important issues included p building a sense of community.

Since the Town's beginning, limiting the growth of governm life. However, as the Town has evolved, the Visioning C limited government means the same thing today that it There was a consensus that residents don't want a stro except when it comes to land use issues, effective polic effective code enforcement and controlling resort development.

Through the course of the outreach efforts conducted for update, the Town identified a series of recurring themes Town residents. These themes or values collectively consti for its future. They are as follows:

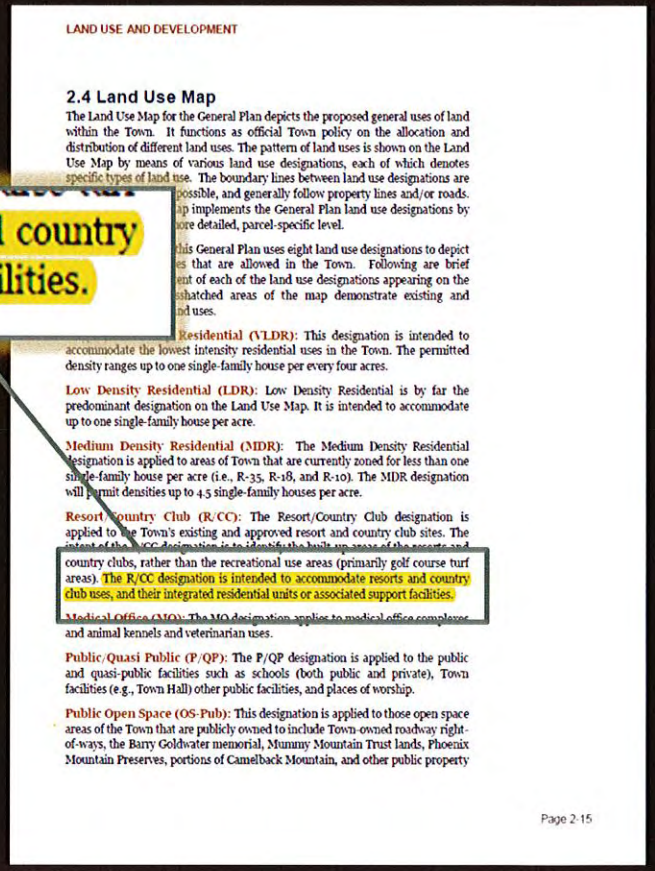
TOWN OF PARADISE VALLEY
2012 GENERAL PLAN

Resort Country Club General Plan Designation Requires Resort Residential Units to be Integrated

General Plan Section 2.4 - Resort/Country Club (R/CC) Designation

areas). The R/CC designation is intended to accommodate resorts and country club uses, and their integrated residential units or associated support facilities.

The proposed residential units ***must be integrated*** with the resort hotel and golf course in order to be a permitted use within the R/CC land use designation.



LAND USE AND DEVELOPMENT

2.4 Land Use Map

The Land Use Map for the General Plan depicts the proposed general uses of land within the Town. It functions as official Town policy on the allocation and distribution of different land uses. The pattern of land uses is shown on the Land Use Map by means of various land use designations, each of which denotes specific types of land use. The boundary lines between land use designations are ossible, and generally follow property lines and/or roads. ap implements the General Plan land use designations by ore detailed, parcel-specific level.

his General Plan uses eight land use designations to depict es that are allowed in the Town. Following are brief ent of each of the land use designations appearing on the shatched areas of the map demonstrate existing and nd uses.

Residential (VLDR): This designation is intended to accommodate the lowest intensity residential uses in the Town. The permitted density ranges up to one single-family house per every four acres.

Low Density Residential (LDR): Low Density Residential is by far the predominant designation on the Land Use Map. It is intended to accommodate up to one single-family house per acre.

Medium Density Residential (MDR): The Medium Density Residential designation is applied to areas of Town that are currently zoned for less than one single-family house per acre (i.e., R-35, R-18, and R-10). The MDR designation will permit densities up to 4.5 single-family houses per acre.

Resort/Country Club (R/CC): The Resort/Country Club designation is applied to the Town's existing and approved resort and country club sites. The

country clubs, rather than the recreational use areas (primarily golf course turf areas). The R/CC designation is intended to accommodate resorts and country club uses, and their integrated residential units or associated support facilities.

and animal kennels and veterinarian uses.

Public/Quasi Public (P/QP): The P/QP designation is applied to the public and quasi-public facilities such as schools (both public and private), Town facilities (e.g., Town Hall) other public facilities, and places of worship.

Public Open Space (OS-Pub): This designation is applied to those open space areas of the Town that are publicly owned to include Town-owned roadway right-of-ways, the Barry Goldwater memorial, Mummy Mountain Trust lands, Phoenix Mountain Preserves, portions of Camelback Mountain, and other public property

Page 2-15

Primary vs. Accessory Uses Permitted by a Special Use Permit

Zoning Ordinance Section 1102.2.A
Primary Use = Resort Under Unified Management

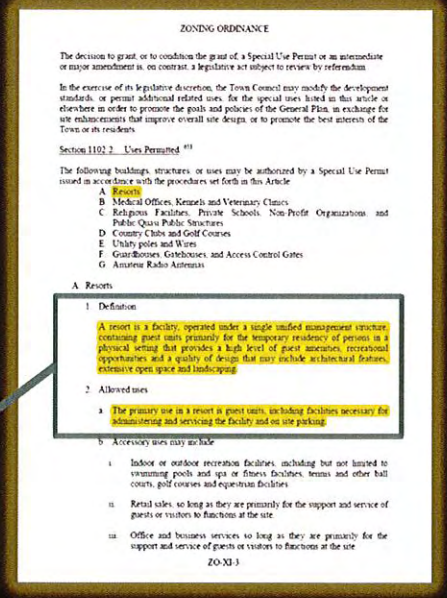
A. Resorts

1. Definition

A resort is a facility, operated under a single unified management structure, containing guest units primarily for the temporary residency of persons in a physical setting that provides a high level of guest amenities, recreational opportunities and a quality of design that may include architectural features, extensive open space and landscaping.

2. Allowed uses

a. The primary use in a resort is guest units, including facilities necessary for administering and servicing the facility and on site parking.



ZONING ORDINANCE

The decision to grant, or to condition the grant of, a Special Use Permit or an intermediate or major amendment is, on contrast, a legislative act subject to review by referendum.

In the exercise of its legislative discretion, the Town Council may modify the development standards, or permit additional related uses, for the special uses listed in this article or elsewhere in order to promote the goals and policies of the General Plan, in exchange for site enhancements that improve overall site design, or to promote the best interests of the Town or its residents.

Section 1102.2 Uses Permitted [03]

The following buildings, structures, or uses may be authorized by a Special Use Permit issued in accordance with the procedures set forth in this Article:

A Resorts
B Medical Offices, Kennels and Veterinary Clinics
C Religious Facilities, Private Schools, Non-Profit Organizations, and Public Quasi-Public Structures
D Country Clubs and Golf Courses
E Utility poles and Wires
F Guardhouses, Gatehouses, and Access Control Gates
G Amateur Radio Antennas

A Resorts

1 Definition

A resort is a facility, operated under a single unified management structure containing guest units primarily for the temporary residency of persons in a physical setting that provides a high level of guest amenities, recreational opportunities and a quality of design that may include architectural features, extensive open space and landscaping.

2 Allowed uses

a The primary use in a resort is guest units, including facilities necessary for administering and servicing the facility and on site parking.

b Accessory uses may include

i Indoor or outdoor recreation facilities, including but not limited to swimming pools and spa or fitness facilities, tennis and other ball courts, golf courses and equestrian facilities.

ii Retail sales, so long as they are primarily for the support and service of guests or visitors to functions at the site.

iii Office and business services so long as they are primarily for the support and service of guests or visitors to functions at the site.

ZO-XI-3

Primary vs. Accessory Uses Permitted by a Special Use Permit

Zoning Ordinance Section 1102.2.A
Primary Use = Resort Under Unified Management

A. Resorts

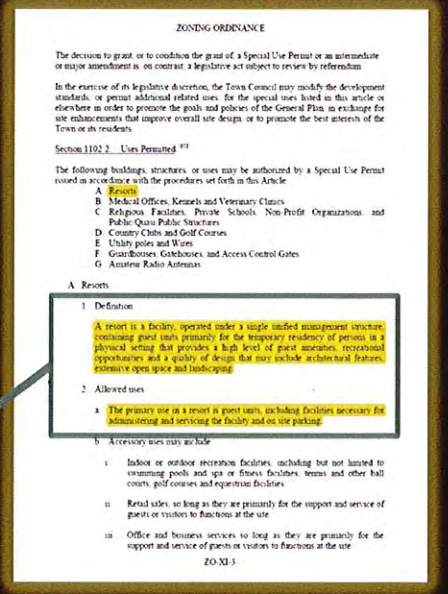
1. Definition

A resort is a facility, operated under a single unified management structure, containing guest units primarily for the temporary residency of persons in a physical setting that provides a high level of guest amenities, recreational opportunities and a quality of design that may include architectural features, extensive open space and landscaping.

2. Allowed uses

a. The primary use in a resort is guest units, including facilities necessary for administering and servicing the facility and on site parking.

(e) "Unified Management" means any management or organizational form or structure under which the facilities comprising the Public Areas on the Property, and the facilities comprising the Resort Units on the Property are cooperatively operated, managed and maintained as an integrated resort or residential complex, or both resort and residential complex, regardless of the identity, legal status or legal relationship of the managing entity or entities, and regardless of the underlying ownership of the Property or any improvements on the Property.


ZONING ORDINANCE

The decision to grant, or to condition the grant of, a Special Use Permit or an intermediate or major amendment is, on contrast, a legislative act subject to review by referendum.

In the exercise of its legislative discretion, the Town Council may modify the development standards, or permit additional related uses, for the special uses listed in this article or elsewhere in order to promote the goals and policies of the General Plan, in exchange for site enhancements that improve overall site design, or to promote the best interests of the Town or its residents.

Section 1102.2 Uses Permitted

The following buildings, structures, or uses may be authorized by a Special Use Permit issued in accordance with the procedures set forth in this Article:

A. Resorts
B. Medical Offices, Kennels and Veterinary Clinics
C. Religious Facilities, Private Schools, Non-Profit Organizations, and Public Quasi Public Structures
D. Country Clubs and Golf Courses
E. Utility poles and Wires
F. Guardhouses, Gatehouses, and Access Control Gates
G. Amateur Radio Antennas

A. Resorts

1. Definition

A resort is a facility, operated under a single unified management structure, containing guest units primarily for the temporary residency of persons in a physical setting that provides a high level of guest amenities, recreational opportunities and a quality of design that may include architectural features, extensive open space and landscaping.

2. Allowed uses

a. The primary use in a resort is guest units, including facilities necessary for administering and servicing the facility and on site parking.

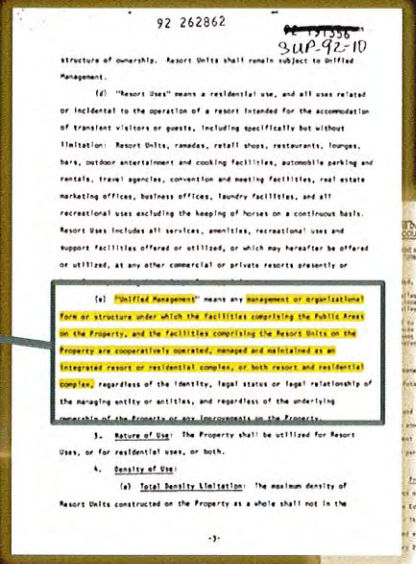
b. Accessory uses may include

i. Indoor or outdoor recreation facilities, including but not limited to swimming pools and spa or fitness facilities, tennis and other ball courts, golf courses and equestrian facilities

ii. Retail sales, so long as they are primarily for the support and service of guests or visitors to functions at the site

iii. Office and business services so long as they are primarily for the support and service of guests or visitors to functions at the site

ZO-XI-3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SUP-92-10

structure of ownership. Resort Units shall remain subject to Unified Management.

(d) "Resort Uses" means a residential use, and all uses related or incidental to the operation of a resort intended for the accommodation of transient visitors or guests, including specifically but without limitation: Resort Units, ramadas, retail shops, restaurants, lounges, bars, outdoor entertainment and cooking facilities, automobile parking and rentals, travel agencies, convention and meeting facilities, real estate marketing offices, business offices, laundry facilities, and all recreational uses excluding the keeping of horses on a continuous basis. Resort Uses includes all services, amenities, recreational uses and support facilities offered or utilized, or which may hereafter be offered or utilized, at any other commercial or private resorts presently or

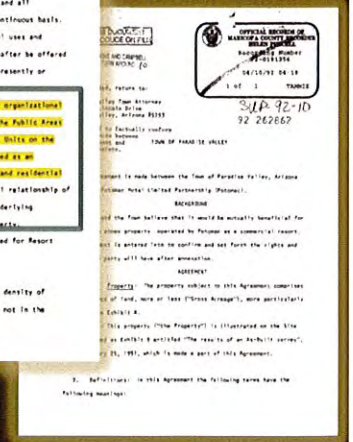
(e) "Unified Management" means any management or organizational form or structure under which the facilities comprising the Public Areas on the Property, and the facilities comprising the Resort Units on the Property are cooperatively operated, managed and maintained as an integrated resort or residential complex, or both resort and residential complex, regardless of the identity, legal status or legal relationship of the managing entity or entities, and regardless of the underlying ownership of the Property or any improvements on the Property.

3. Nature of Use: The Property shall be utilized for Resort Uses, or for residential uses, or both.

4. Density of Use:

(a) Total Density Limitation: The maximum density of Resort Units constructed on the Property as a whole shall not in the

-3-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1 of 1 TAMMIE

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TOWN OF PARADISE VALLEY

BACKGROUND

AGREEMENT

9. Definitions: In this Agreement the following terms have the following meanings:

Primary vs. Accessory Uses Permitted by a Special Use Permit

Zoning Ordinance Section 1102.2.A.2.b
Resort Accessory Use= Dwelling Units

b. Accessory uses may include:

i. Indoor or outdoor recreation facilities, including but not limited to swimming pools and spa or fitness facilities, tennis and other ball courts, golf courses and equestrian facilities.

ii. Retail sales, so long as they are primarily for the support and service of guests or visitors to functions at the site.

iii. Office and business services so long as they are primarily for the support and service of guests or visitors to functions at the site.

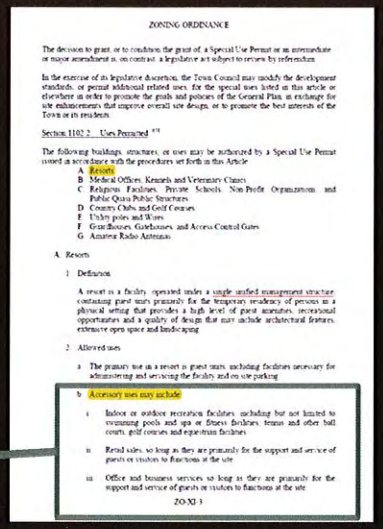
ZO-XI-3

iv. Restaurants, banquet rooms and food service facilities which may include live music, entertainment and dancing.

v. Meeting and public assembly facilities.

vi. Dwelling units.

vii. Any other resort-related use specifically approved in a Special Use Permit



ZONING ORDINANCE

The decision to grant or to condition the grant of a Special Use Permit or an intermediate or major amendment is, on contrast, a legislative act subject to review by referendum.

In the exercise of its legislative discretion, the Town Council may modify the development standards, or permit additional related uses for the special uses listed in this article or elsewhere in order to promote the goals and policies of the General Plan, in exchange for site enhancements that improve overall site design, or to promote the best interests of the Town or its residents.

Section 1102.2 Uses Permitted [43]

The following buildings, structures, or uses may be authorized by a Special Use Permit issued in accordance with the procedures set forth in this Article:

A Resorts
B Medical Offices, Kennels and Veterinary Clinics
C Religious Facilities, Private Schools, Non-Profit Organizations and Public Quasi-Public Structures
D Country Clubs and Golf Courses
E Utility poles and Wires
F Guard houses, Gatehouses, and Access Control Gates
G Amateur Radio Antennas

A. Resorts

1. Definition

A resort is a facility, operated under a single unified management structure, containing guest units primarily for the temporary residency of persons in a physical setting that provides a high level of guest amenities, recreational opportunities and a quality of design that may include architectural features, extensive open space and landscaping.

2. Allowed uses

a. The primary use in a resort is guest units, including facilities necessary for administering and servicing the facility and on-site parking.

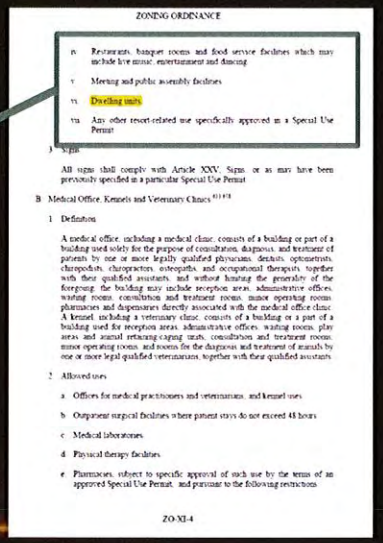
b. Accessory uses may include:

i. Indoor or outdoor recreation facilities, including but not limited to swimming pools and spa or fitness facilities, tennis and other ball courts, golf courses and equestrian facilities.

ii. Retail sales, so long as they are primarily for the support and service of guests or visitors to functions at the site.

iii. Office and business services so long as they are primarily for the support and service of guests or visitors to functions at the site.

ZO-XI-3



ZONING ORDINANCE

iv. Restaurants, banquet rooms and food service facilities which may include live music, entertainment and dancing.

v. Meeting and public assembly facilities.

vi. Dwelling units.

vii. Any other resort-related use specifically approved in a Special Use Permit

3. Signs

All signs shall comply with Article XXV, Signs, or as may have been previously specified in a particular Special Use Permit.

B. Medical Office, Kennels and Veterinary Clinics [43][45]

1. Definition

A medical office, including a medical clinic, consists of a building or part of a building used solely for the purpose of consultation, diagnosis, and treatment of patients by one or more legally qualified physicians, dentists, optometrists, chiropodists, chiropractors, osteopaths, and occupational therapists, together with their qualified assistants, and without limiting the generality of the foregoing, the building may include reception areas, administrative offices, waiting rooms, consultation and treatment rooms, minor operating rooms, pharmacies and dispensaries directly associated with the medical office clinic. A kennel, including a veterinary clinic, consists of a building or a part of a building used for reception areas, administrative offices, waiting rooms, play areas, and animal relieving cages, pens, consultation and treatment rooms, minor operating rooms, and rooms for the diagnosis and treatment of animals by one or more legal qualified veterinarians, together with their qualified assistants.

2. Allowed uses

a. Offices for medical practitioners and veterinarians, and kennel uses.

b. Outpatient surgical facilities where patient stays do not exceed 48 hours.

c. Medical laboratories.

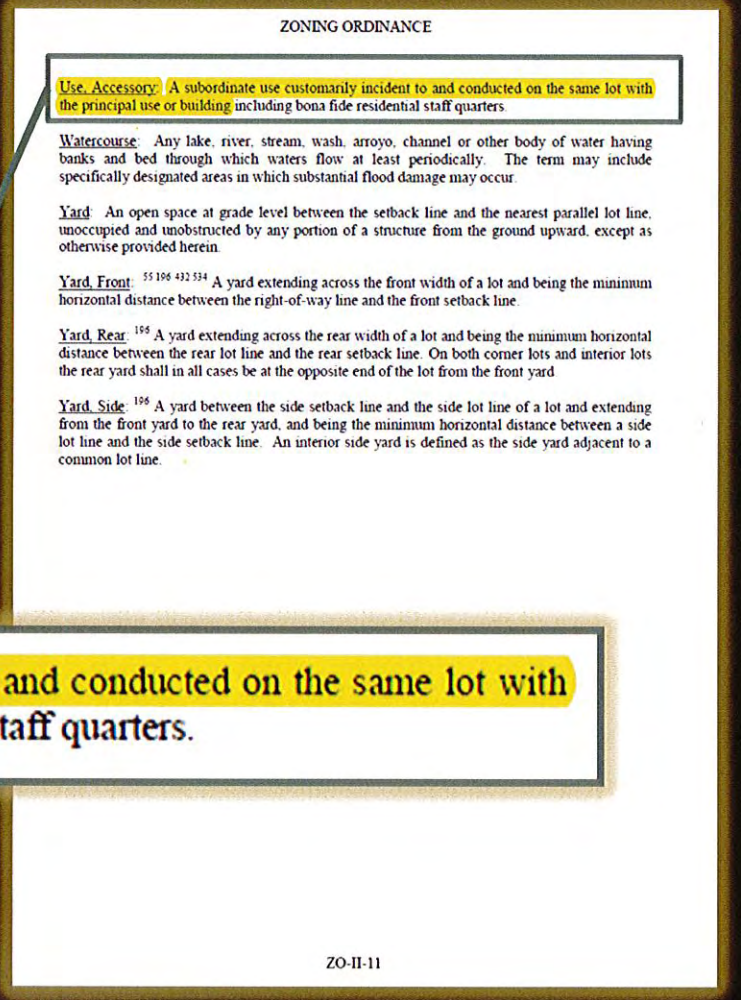
d. Physical therapy facilities.

e. Pharmacies, subject to specific approval of such use by the terms of an approved Special Use Permit, and pursuant to the following restrictions:

ZO-XI-4

Primary vs. Accessory Uses Permitted by a Special Use Permit

Zoning Ordinance § 201 Definition of Accessory Use



ZONING ORDINANCE

Use, Accessory: A subordinate use customarily incident to and conducted on the same lot with the principal use or building including bona fide residential staff quarters.

Watercourse: Any lake, river, stream, wash, arroyo, channel or other body of water having banks and bed through which waters flow at least periodically. The term may include specifically designated areas in which substantial flood damage may occur.

Yard: An open space at grade level between the setback line and the nearest parallel lot line, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.

Yard, Front: [55 106 432 534] A yard extending across the front width of a lot and being the minimum horizontal distance between the right-of-way line and the front setback line.

Yard, Rear: [195] A yard extending across the rear width of a lot and being the minimum horizontal distance between the rear lot line and the rear setback line. On both corner lots and interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.

Yard, Side: [195] A yard between the side setback line and the side lot line of a lot and extending from the front yard to the rear yard, and being the minimum horizontal distance between a side lot line and the side setback line. An interior side yard is defined as the side yard adjacent to a common lot line.

ZO-II-11

Use, Accessory: A subordinate use customarily incident to and conducted on the same lot with the principal use or building including bona fide residential staff quarters.

Allowing an Accessory Use to be Built First Violates the Town's Zoning Ordinance

- The proposed Special Use Permit would allow single family residences to be constructed first without MTS posting any financial assurance that the resort hotel units will ever be built.

- This would create illegal substandard-size lots as an accessory use to a non-existent principal use, *i.e.*, the resort hotel.

- Allowing the accessory single family residences to be built prior to the principal use would violate Sections 201 and 1102.2(A)(2) of the Zoning Ordinance, which provide that dwelling units are an accessory use to a resort under a special use permit approval.

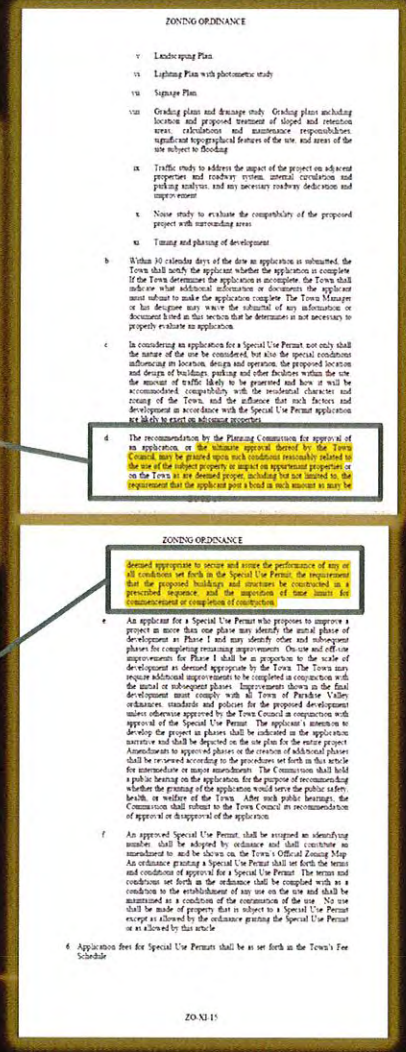
Authority of Town Council to Require Assurance of Hotel Development

Zoning Ordinance Section 1102.3.C.5.d

d. The recommendation by the Planning Commission for approval of an application, or the ultimate approval thereof by the Town Council, may be granted upon such conditions reasonably related to the use of the subject property or impact on appurtenant properties or on the Town as are deemed proper, including but not limited to; the requirement that the applicant post a bond in such amount as may be

ZO-XI-14

deemed appropriate to secure and assure the performance of any or all conditions set forth in the Special Use Permit; the requirement that the proposed buildings and structures be constructed in a prescribed sequence; and the imposition of time limits for commencement or completion of construction.



ZONING ORDINANCE

v Landscaping Plan

vi Lighting Plan with photometric study

vii Signage Plan

viii Grading plans and drainage study. Grading plans including location and proposed treatment of sloped and retention areas; calculations and maintenance responsibilities; significant topographical features of the site and areas of the site subject to flooding

ix Traffic study to address the impact of the project on adjacent properties and roadway system, internal circulation and parking analysis, and any necessary roadway dedications and improvement

x Noise study to evaluate the compatibility of the proposed project with surrounding areas

xi Timing and phasing of development

b Within 30 calendar days of the date an application is submitted, the Town shall notify the applicant whether the application is complete. If the Town determines the application is incomplete the Town shall indicate what additional information or documents the applicant must submit to make the application complete. The Town Manager or his designee may waive the submittal of any information or document listed in this section that he determines is not necessary to properly evaluate an application.

c In considering an application for a Special Use Permit, not only shall the nature of the use be considered, but also the special conditions influencing its location, design and operation, the proposed location and design of buildings, parking and other facilities within the site, the amount of traffic likely to be generated and how it will be accommodated, compatibility with the residential character and zoning of the Town, and the influence that such factors and development in accordance with the Special Use Permit application are likely to exert on adjacent properties.

d The recommendation by the Planning Commission for approval of an application, or the ultimate approval thereof by the Town Council, may be granted upon such conditions reasonably related to the use of the subject property or impact on appurtenant properties or on the Town as are deemed proper, including but not limited to, the requirement that the applicant post a bond in such amount as may be

ZONING ORDINANCE

deemed appropriate to secure and assure the performance of any or all conditions set forth in the Special Use Permit; the requirement that the proposed buildings and structures be constructed in a prescribed sequence; and the imposition of time limits for commencement or completion of construction.

e An applicant for a Special Use Permit who proposes to improve a project in more than one phase may identify the initial phase of development as Phase I and may identify other and subsequent phases for completing remaining improvements. On-site and off-site improvements for Phase I shall be in proportion to the scale of development as deemed appropriate by the Town. The Town may require additional improvements to be completed in conjunction with the initial or subsequent phases. Improvements shown in the final development must comply with all Town of Paradise Valley ordinances, standards and policies for the proposed development unless otherwise approved by the Town Council in conjunction with approval of the Special Use Permit. The applicant's intention to develop the project in phases shall be indicated in the application narrative and shall be depicted on the site plan for the entire project. Amendments to approved phases or the creation of additional phases shall be reviewed according to the procedures set forth in this article for intermediate or major amendments. The Commission shall hold a public hearing on the application, for the purpose of recommending whether the granting of the application would serve the public safety, health, or welfare of the Town. After such public hearings, the Commission shall submit to the Town Council its recommendation of approval or disapproval of the application.

f An approved Special Use Permit, shall be assigned an identifying number, shall be adopted by ordinance and shall constitute an amendment to and be shown on the Town's Official Zoning Map. An ordinance granting a Special Use Permit shall set forth the terms and conditions of approval for a Special Use Permit. The terms and conditions set forth in the ordinance shall be complied with as a condition to the establishment of any use on the site and shall be maintained as a condition of the continuation of the use. No use shall be made of property that is subject to a Special Use Permit except as allowed by the ordinance granting the Special Use Permit or as allowed by this article.

6 Application fees for Special Use Permits shall be as set forth in the Town's Fee Schedule

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So Far, the Town Council Has Not Exercised its Authority to Require Assurance of Hotel Development

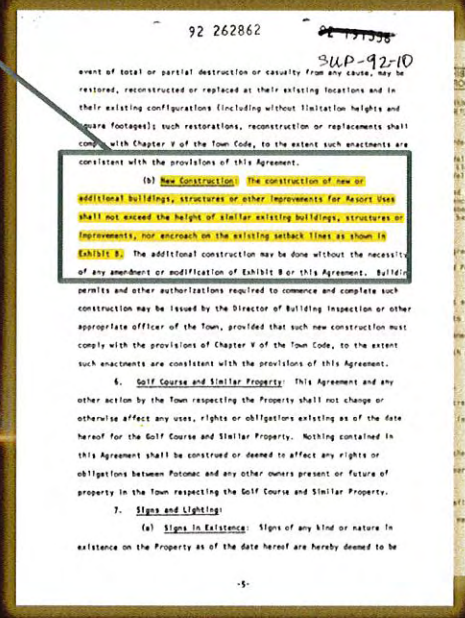
1. There are no conditions requiring the applicant to post a bond to assure performance.

2. There are no conditions requiring the resort hotel and resort amenities to be constructed prior to the single-family residential.

3. There are no conditions imposing time limits for commencement or completion of construction of the resort hotel and resort amenities.

1992 Development Agreement
Paragraph 5(b) – Height and Setbacks

(b) **New Construction:** The construction of new or additional buildings, structures or other improvements for Resort Uses shall not exceed the height of similar existing buildings, structures or improvements, nor encroach on the existing setback lines as shown in Exhibit B. The additional construction may be done without the necessity



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event of total or partial destruction or casualty from any cause, may be restored, reconstructed or replaced at their existing locations and in their existing configurations (including without limitation heights and square footages); such restorations, reconstruction or replacements shall comply with Chapter V of the Town Code, to the extent such enactments are consistent with the provisions of this Agreement.

(b) New Construction: The construction of new or additional buildings, structures or other improvements for Resort Uses shall not exceed the height of similar existing buildings, structures or improvements, nor encroach on the existing setback lines as shown in Exhibit B. The additional construction may be done without the necessity of any amendment or modification of Exhibit B or this Agreement. Buildi permits and other authorizations required to commence and complete such construction may be issued by the Director of Building Inspection or other appropriate officer of the Town, provided that such new construction must comply with the provisions of Chapter V of the Town Code, to the extent such enactments are consistent with the provisions of this Agreement.

6. Golf Course and Similar Property: This Agreement and any other action by the Town respecting the Property shall not change or otherwise affect any uses, rights or obligations existing as of the date hereof for the Golf Course and Similar Property. Nothing contained in this Agreement shall be construed or deemed to affect any rights or obligations between Potomac and any other owners present or future of property in the Town respecting the Golf Course and Similar Property.

7. Signs and Lighting:

(a) Signs in Existence: Signs of any kind or nature in existence on the Property as of the date hereof are hereby deemed to be

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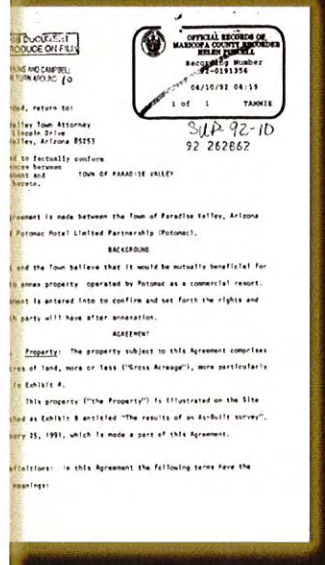

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TOWN OF PARADISE VALLEY

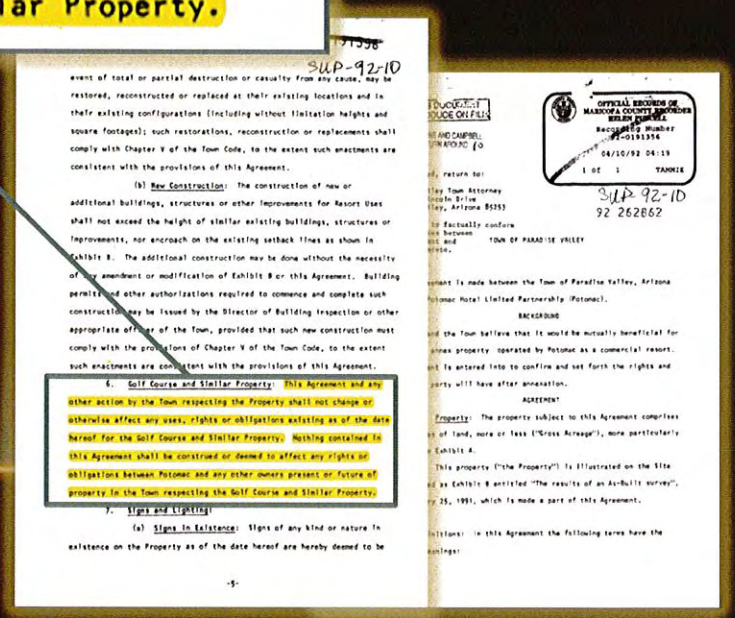
Potomac Hotel Limited Partnership (Potomac).

BACKGROUND

AGREEMENT

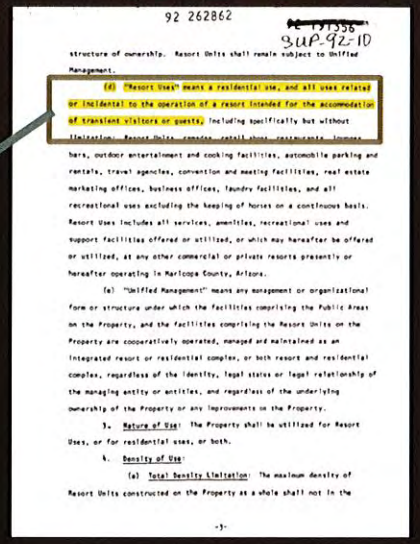
1992 Development Agreement Paragraph 6

6. Golf Course and Similar Property: This Agreement and any other action by the Town respecting the Property shall not change or otherwise affect any uses, rights or obligations existing as of the date hereof for the Golf Course and Similar Property. Nothing contained in this Agreement shall be construed or deemed to affect any rights or obligations between Potomac and any other owners present or future of property in the Town respecting the Golf Course and Similar Property.



1992 Development Agreement Expired in 2004 Paragraph 11

(d) "Resort Uses" means a residential use, and all uses related or incidental to the operation of a resort intended for the accommodation of transient visitors or guests, including specifically but without limitation: Resort Units, ramadas, retail shops, restaurants, lounges, bars, outdoor entertainment and cooking facilities, automobile parking and rentals, travel agencies, convention and meeting facilities, real estate marketing offices, business offices, laundry facilities, and all recreational uses excluding the keeping of horses on a continuous basis. Resort Uses includes all services, amenities, recreational uses and support facilities offered or utilized, or which may hereafter be offered or utilized, at any other commercial or private resorts presently or hereafter operating in Maricopa County, Arizona.



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SUP-92-10

structure of ownership. Resort Units shall remain subject to Unified Management.

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(e) "Unified Management" means any management or organizational form or structure under which the facilities comprising the Public Areas on the Property, and the facilities comprising the Resort Units on the Property are cooperatively operated, managed and maintained as an integrated resort or residential complex, or both resort and residential complex, regardless of the identity, legal status or legal relationship of the managing entity or entities, and regardless of the underlying ownership of the Property or any improvements on the Property.

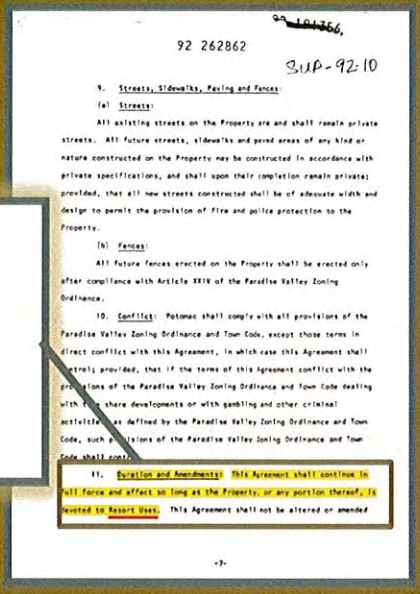
3. Nature of Use: The Property shall be utilized for Resort Uses, or for residential uses, or both.

4. Density of Use:

(a) Total Density Limitation: The maximum density of Resort Units constructed on the Property as a whole shall not in the

-3-

11. Duration and Amendments: This Agreement shall continue in full force and effect so long as the Property, or any portion thereof, is devoted to Resort Uses. This Agreement shall not be altered or amended



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9. Streets, Sidewalks, Paving and Fences:

(a) Streets:

All existing streets on the Property are and shall remain private streets. All future streets, sidewalks and paved areas of any kind or nature constructed on the Property may be constructed in accordance with private specifications, and shall upon their completion 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.

(b) Fences:

All future fences erected on the Property shall be erected only after compliance with Article XXIII of the Paradise Valley Zoning Ordinance.

10. Conflict: Potomac shall comply with all provisions of the Paradise Valley Zoning Ordinance and Town Code, except those terms in direct conflict with this Agreement, in which case this Agreement shall control; provided, that if the terms of this Agreement conflict with the provisions of the Paradise Valley Zoning Ordinance and Town Code dealing with time share developments or with gambling and other criminal activities as defined by the Paradise Valley Zoning Ordinance and Town Code, such provisions of the Paradise Valley Zoning Ordinance and Town Code shall control.

11. Duration and Amendments: This Agreement shall continue in full force and effect so long as the Property, or any portion thereof, is devoted to Resort Uses. This Agreement shall not be altered or amended

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Mountain Shadows West Sales Brochure

Mountain Shadows West

Mountain Shadows is
Pleased to Announce the
Expansion of its Luxurious Resort
and Residential Facilities to Include
Fifty-nine Custom Designed and Constructed
Homes on the Beautiful Grounds Surrounded by the
Fairways of the new Mountain Shadows Golf Course.

Mountain Shadows West

Mountain Shadows is
Pleased to Announce the
Expansion of its Luxurious Resort
and Residential Facilities to Include
Fifty-nine Custom Designed and Constructed
Homes on the Beautiful Grounds Surrounded by the
Fairways of the new Mountain Shadows Golf Course.

HO 00330

Mountain Shadows West Sales Brochure

Mountain Shadows, which already has enjoyed phenomenal success, both as a resort and residential area, has now expanded its facilities to include a new desert oasis, with golf course and country club, surrounding 59 beautiful new custom homes.

A success in any venture is always a pleasurable experience, even more so when one successful accomplishment follows another. This has happened at Mountain Shadows.

The desires of all who seek a way of carefree, true resort living were reflected in the visions of Jim Paul, president of Mountain Shadows Resort. A contractor and developer for twenty years, Mr. Paul foresaw the development of a residential way of life that represented the ultimate in life's comforts. Mountain Shadows was the result.

Now Mr. Paul has joined hands with master builder and developer Del E. Webb, whose ideas and construction methods have revolutionized the American building industry, to elevate this luxury living idea to new heights.

Mountain Shadows, which already has enjoyed phenomenal success, both as a resort and residential area, has now expanded its facilities to include a new desert oasis, with golf course and country club, surrounding 59 beautiful new custom homes.

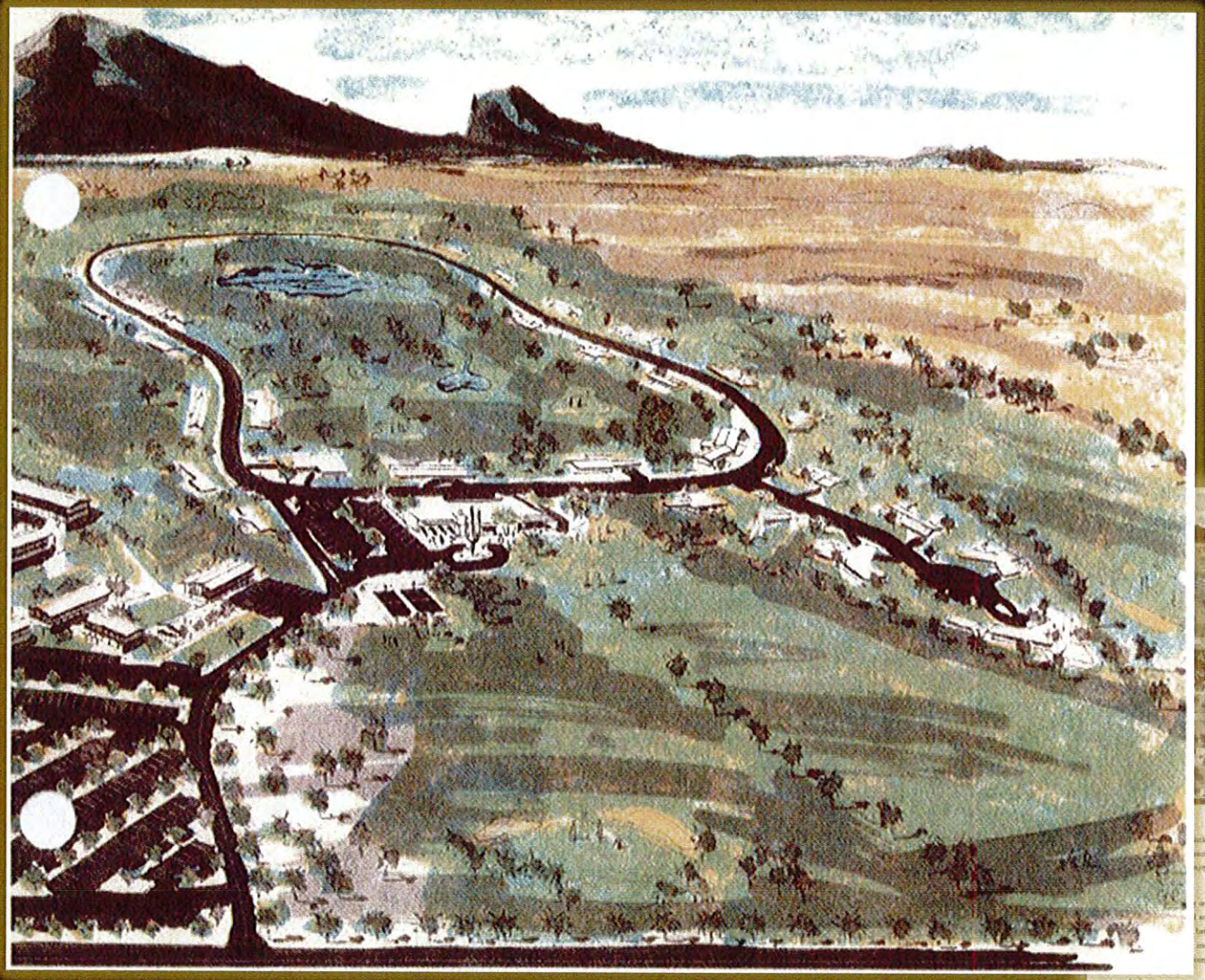
HO 00331

Mountain Shadows West

Mountain Shadows is Pleased to Announce the Expansion of its Luxurious Resort and Residential Facilities to Include Fifty-nine Custom Designed and Constructed Homes on the Beautiful Grounds Surrounded by the Fairways of the new Mountain Shadows Golf Course.

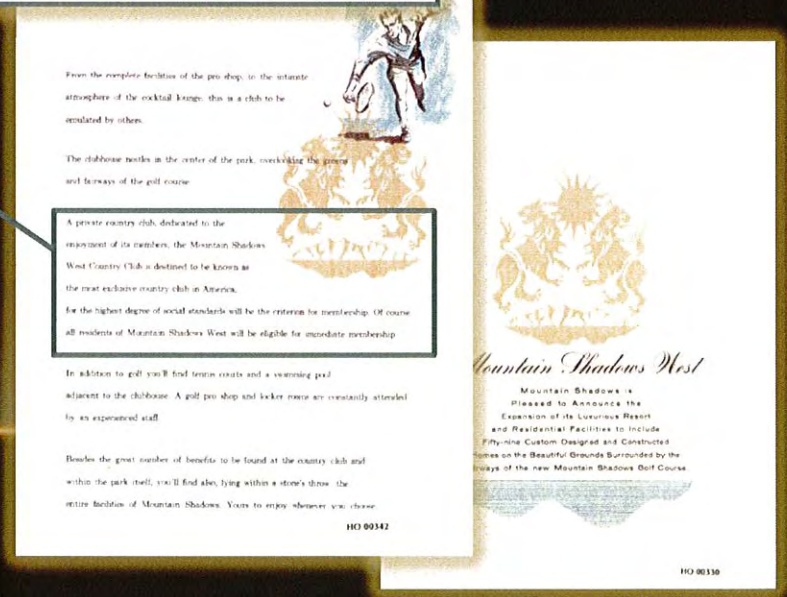
HO 00330

Mountain Shadows West Sales Brochure



Mountain Shadows West Sales Brochure

A private country club, dedicated to the enjoyment of its members, the Mountain Shadows West Country Club is destined to be known as the most exclusive country club in America, for the highest degree of social standards will be the criterion for membership. Of course, all residents of Mountain Shadows West will be eligible for immediate membership.



From the complete facilities of the pro shop, to the intimate atmosphere of the cocktail lounge, this is a club to be emulated by others.

The clubhouse nestles in the center of the park, overlooking the greens and fairways of the golf course.

A private country club, dedicated to the enjoyment of its members, the Mountain Shadows West Country Club is destined to be known as the most exclusive country club in America, for the highest degree of social standards will be the criterion for membership. Of course, all residents of Mountain Shadows West will be eligible for immediate membership.

In addition to golf you'll find tennis courts and a swimming pool adjacent to the clubhouse. A golf pro shop and locker room are constantly attended by an experienced staff.

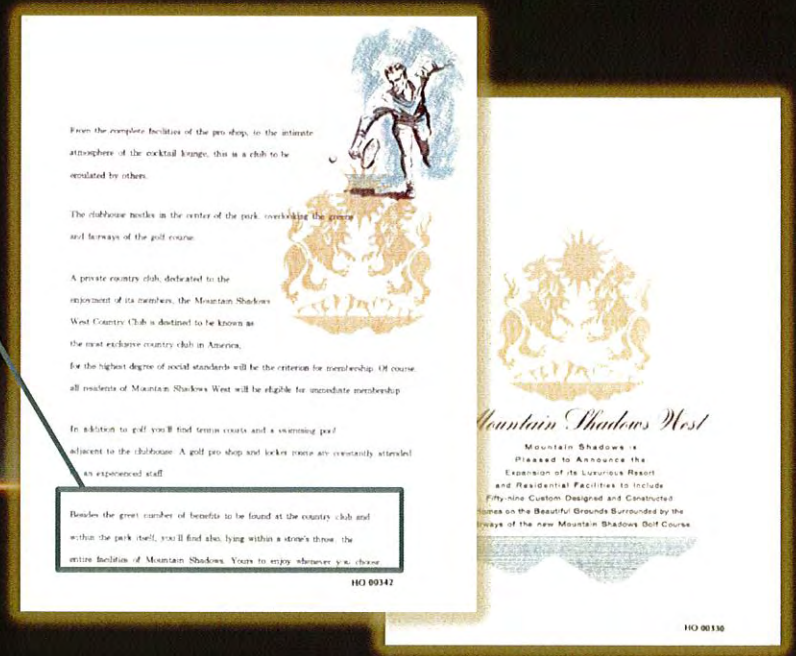
Besides the great number of benefits to be found at the country club and within the park itself, you'll find also, lying within a stone's throw, the entire facilities of Mountain Shadows. Yours to enjoy, whenever you choose.

HO 00342

Mountain Shadows West

Mountain Shadows is Pleased to Announce the Expansion of its Luxurious Resort and Residential Facilities to Include Fifty-nine Custom Designed and Constructed Homes on the Beautiful Grounds Surrounded by the Fairways of the new Mountain Shadows Golf Course.

HO 00330

Mountain Shadows West Sales Brochure

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