

**ORDINANCE NUMBER 653**

**AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA, AMENDING THE ZONING ORDINANCE AND AMENDING THE ZONING MAP FROM R-43 TO SUP DISTRICT (RESORT), TO PROVIDE FOR THE ISSUANCE OF A SPECIAL USE PERMIT FOR PROPERTY, TO NOW BE ZONED SUP DISTRICT (RESORT), LOCATED AT 5525 EAST LINCOLN DRIVE AND 5641 EAST LINCOLN DRIVE, GENERALLY BORDERED BY LINCOLN DRIVE TO THE NORTH, 56<sup>TH</sup> STREET TO THE EAST AND WEST, AND MCDONALD DRIVE TO THE SOUTH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Paradise Valley Planning Commission held public hearings on August 14, September 18, and September 24, 2012, in the manner prescribed by law, for the purpose of considering a rezoning of the property described in Exhibit A attached hereto (“Property,” now known as the Mountain Shadows Resort, Paradise Valley) from R-43 to SUP District (Resort) and for the purpose of making a recommendation on a proposed Special Use Permit for the Property to the Town Council; and

WHEREAS, the Town Council held a public hearing at its meetings on October 25, November 1, and November 15, 2012, and on February 14, 2013, as prescribed by law, to hear the request for the rezoning of the Property to 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 Special Use Permit for the entire Property; and

WHEREAS, pursuant to Article III of the Town Zoning Ordinance, the Town Council finds that the proposed rezoning is consistent with and conforms to the Land Use Map of the Town’s adopted General Plan; and

WHEREAS, the Town Council now desires to approve a rezoning of the Property from R-43 to SUP District (Resort), subject to the terms and conditions of the Special Use Permit and Related Stipulations for Mountain Shadows Resort (Exhibit “B” hereto, incorporated herein by this reference, and hereinafter referred to as the “SUP” and the “Stipulations,” respectively; provided, however, that the term “SUP” shall include the Stipulations and all other documents or instruments referred to in this Ordinance, and in the Stipulations), and to amend the Zoning Map to reflect such rezoning.

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

SECTION 1. Findings. Based on all matters considered by the Town Council including written materials, oral comments, and deliberations, the Town Council finds that the proposed SUP District (Resort) rezoning is in accordance with Articles III and XI of the Town Zoning Ordinance. Specifically, the rezoning:

- a. Is authorized by, and is in conformity with, the Town's adopted General Plan, as amended;
- b. Furthers the goals and policies of the General Plan by (i) ensuring that the primary resort use and structures, and any accessory uses and structures, do not adversely affect the integrity and enjoyment of adjacent residential neighborhoods, (ii) addressing the effects of the proposed revitalization and improvement of the Property on traffic, natural features, light, noise, dust, and odor pollution, and (iii) setting specific limits on site development parameters to promote the security and aesthetic benefits of visual openness throughout the Town;
- c. Will not be detrimental to, interfere with, or adversely affect existing land uses or the 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;
- d. Will be in full conformity with the Zoning Ordinance and other ordinances of the Town and any conditions, requirements, or standards prescribed in the Stipulations;
- e. Meets the intent of the Zoning Ordinance provisions relating to Special Use Permits by incorporating (i) the implementation of the goals and policies of the General Plan, (ii) the development of substantial open space and/or recreational facilities held in common ownership, control or management, (iii) the development of adequate public and/or private streets, storm drainage, and sewer and water utilities to minimize impacts on adjacent properties, (iv) the preservation of significant natural land characteristics, open space, and view corridors, (v) the use of building design, site design, and construction of amenities to create a unique development, (vi) assurances of proper property maintenance through use of common control or management of the property, stringent development standards, and one or more property owners' associations and recorded covenants, conditions, and restrictions, (vii) the preservation and enhancement of the neighborhood's appearance, (viii) the construction and development of improvements that create substantial public benefits, and (ix) the incorporation of standards that ensure the development will have minimal impact on adjacent properties;
- f. Modifies, where appropriate, development standards or permits additional related uses in exchange for site enhancements that improve overall site design or to promote the best interests of the Town or its residents;

- g. Complies with and satisfies the requirements of Section 1102.2A of the Zoning Ordinance in regards to the definition of resort and allowed uses.
- h. Provides for phasing of development and ensuring that the primary use of the property will be a resort operated under a single unified management structure, containing adequate guest units for temporary residency in a physical setting that provides a high level of guest amenities, recreational opportunities, and a quality of design that includes architectural features, extensive open space, and landscaping, along with resort dwelling units and other resort-related uses as accessory uses;
- i. Incorporates the Town's Special Use Permit Guidelines or replaces or adds guidelines to continue the generally-accepted vision for various standards contained in the Guidelines, while recognizing the unique characteristics of the site and other factors of development that merit more or less restrictive standards, where appropriate;
- j. Provides for revitalization of resort uses on the Property, some of which were discontinued on certain portions of the Property in 2004, but others of which have been continuously operating since that time;
- k. Has been approved by the Town Council after considering the recommendation of the Planning Commission, which has held numerous hearings, has considered issues beyond those listed in the Statement of Direction, and has addressed all issues within its purview in making its recommendation to the Town Council; and
- l. Has been requested by the Owner, as defined in the Stipulations, as holder of fee title to the Property and the "owner" for purposes of Section 307 of the Zoning Ordinance and the Private Property Rights Protection Act; adjacent homeowners in Mountain Shadows West and Mountain Shadows East do not have legal or equitable interests in the Property that would also make them "owners."

SECTION 2. Rezoning. A parcel of land, as described in Exhibit "A" attached hereto, is hereby 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 for those other uses permitted by the SUP, and as limited in the SUP.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional, or unenforceable by a court of competent jurisdiction in a final non-appealable judgment, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity or enforceability 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 \_\_\_\_\_, 2013.

\_\_\_\_\_  
Scott P. LeMarr, Mayor

SIGNED AND ATTESTED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2013

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Andrew M. Miller, Town Attorney

\_\_\_\_\_  
Duncan Miller, Town Clerk

**EXHIBIT “A”  
TO  
ORDINANCE NUMBER 653**

Legal Description

The Special Use Permit for the Mountain Shadows Resort relates to the land legally described as:

EAST OF 56<sup>TH</sup> STREET - LOT I, LOT 1-A AND LOT 1-B OF “MOUNTAIN SHADOW RESORT AMENDED”, BOOK 75 PAGE 34, M.C.R.

WEST OF 56<sup>TH</sup> 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, 169-43-005, 169-43-006)

But excluding Lot 68, Book 75 of Maps, Page 34, M.C.R., if inadvertently included within the foregoing description.

**EXHIBIT “B”  
TO  
ORDINANCE NUMBER 653**

**TOWN OF PARADISE VALLEY  
SPECIAL USE PERMIT AND RELATED STIPULATIONS  
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 successors and assigns, and to MTS Golf, LLC, a Delaware limited liability company, its successors and assigns (collectively, the “Owner”), Special Use Permit No. 12-5 (with these Stipulations, the “SUP”) governing the use of the Property. All capitalized terms contained herein shall have the meanings ascribed to them parenthetically or otherwise in Ordinance No. 653 or otherwise in these Stipulations.

The Property is comprised of approximately 67.00 acres of land bisected by 56<sup>th</sup> Street between Lincoln Drive and McDonald Drive in the Town of Paradise Valley, Arizona, as more particularly described on Exhibit “A” to Ordinance No. 653; said Property to specifically exclude Lot 68, as defined below. The SUP is being granted by the Town to permit the continued use and operation of the Property as a resort and to allow demolition of existing improvements and redevelopment of the Property subject to and in accordance with these Stipulations and the 2013 Development Agreement.

Subject to the Stipulations, the improvements, facilities and uses authorized to be developed, redeveloped, and used on the Property, as described below, include the following: “Resort Hotel;” “Clubhouse;” “Resort Residential” and “Resort Estates;” “Golf Course;” “Resort Ancillary Facilities and Uses;” and such other facilities and uses as are permitted herein. The Property and any part thereof may be sold or conveyed to one or more third parties and thereafter resold or reconveyed to one or more third parties and used as permitted in the SUP.

**II. DEFINITIONS**

“2013 Development Agreement” means a development agreement between the Town and the Owner entered into pursuant to the terms of A.R.S. § 9-500.05, which is to be executed contemporaneously with adoption of the SUP.

“Approval Date” means the date this Special Use Permit is approved by the Town Council of the Town of Paradise Valley, Arizona.

"Approved Plans" means those certain plans and other documents certified by the Town Clerk that are listed in Schedule “2,” attached hereto and incorporated herein by this reference.

“Area A,” “Area B,” “Area C,” “Area D,” and “Area E” means those portions of the Property as shown on Sheet 2 of the Approved Plans. Whenever in these Stipulations a reference is made to an “Area,” such reference is to one or more particular Areas on Sheet 2 of the Approved Plans.

"Area C Retail" means one or more full service, sit down restaurants (not a fast food restaurant) and/or a gourmet food shop (such as are operated by Dean & DeLuca or Le Grande Orange) and retail facilities, to the extent located within the reduced set back area within Area C as allowed by Stipulation 61, and which are open to the general public, offering for sale goods and merchandise or certain services as described herein below. Provided restaurants and/or gourmet food shops described above occupy a minimum combined Floor Area of five thousand (5,000) square feet in one or more buildings, a maximum Floor Area of two thousand five hundred (2,500) square feet of other retail facilities described below may also be located in Area C (provided, however, no other such retail facilities may open for business until at least one restaurant or gourmet food shop has initially opened for business). The following other types of retail business may operate in not more than an aggregate of twenty five hundred (2500) square feet of floor area: a café (such as Starbucks or Coffee Bean); full service salon; jewelry store; art gallery; a resort sales and marketing facility selling resort services, Resort Units or the Resort Rental Management Program (including services and sales related thereto). The restaurants or gourmet food shops (which may be separate facilities or one facility) may include some or all of the following facilities and/or uses: the sale of alcohol including beer, wine or liquors (for on or off site consumption); outdoor cooking facilities; outdoor dining facilities; the sale of any combination of cooked, prepared, frozen, fresh or pre-packaged foods, fresh fruits and vegetables, groceries, gift items, sundries, cosmetics, over the counter pharmaceuticals, housewares and related kitchen, indoor and/or outdoor dining items; deli items, coffee, tea, ice cream, frozen yogurt; snacks; fresh or artificial flower sales; art; jewelry; fashion eyewear, footwear and apparel; tobacco products; newspapers, books and periodicals. Area C Retail specifically excludes the sale of medical marijuana and stores commonly referred to as convenience store, gas station, or minimart (such as brands like Circle K, 7 Eleven, AM PM Minimart, Quick Trip or similar brands of retail establishments that sell as the principal part of their business convenience goods, such as prepackaged food items, tobacco, periodicals and other household goods, collectively “convenience store”); provided that a convenience store does not include a restaurant or gourmet food shop described above selling the foregoing. Except as provided above, Area C Retail does not include establishments that are principally engaged in the provision of services (as opposed to restaurant and retail facilities) that are not subject to the Town’s transaction privilege tax or the gross receipts derived from retail sales activities.

“Bankruptcy Cases” means the following cases being heard by the United States Bankruptcy Court for the District of Arizona: In re: MTS Land, LLC, an Arizona limited liability company, Case No. 2:12-bk-16257-EWH, including any appeal thereof, and In re: MTS Golf, LLC, an Arizona limited liability company, Case No. 2:12-bk-16259-EWH, including any appeal thereof. The “Bankruptcy Court” is the United States Bankruptcy Court for the District of Arizona hearing such cases.

“CC&Rs” means one or more sets of conditions, covenants and restrictions applicable to discrete portions of the Property that, among other things, implement provisions of the Stipulations.

“Clubhouse” means either the golf clubhouse existing as of the Approval Date (“Existing Clubhouse”), or such golf clubhouse as remodeled, relocated and/or rebuilt, from time to time, which may be in one or more buildings. Any Clubhouse may include all facilities and uses typically found in golf clubhouses, and any use allowed in a Resort Hotel.

“Courtyard Areas” means any residential courtyard areas as defined in Article XXIV of the Town Zoning Ordinance.

“Effective Date” means the date on which all of the following have occurred: (i) the SUP and the 2013 Development Agreement have been adopted and approved by the Town Council, executed by the Mayor of Paradise Valley, Arizona, and any applicable referendum period has expired without referral, or any proposed referendum has been declared invalid in a final non-appealable judgment by a court of competent jurisdiction, or the SUP and the 2013 Development Agreement, as applicable, have been approved by the voters at a referendum election conducted in accordance with Applicable Laws and (ii) the SUP and the 2013 Development Agreement have been approved by the Bankruptcy Court, if such approval is required.

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

“Floor Area” means the area under roof added to the floor area of any second and third story; provided, however that “Floor Area” also includes the Courtyard Areas for any Resort Estates, the horizontal solid portion(s) of trellises and/or open weave roofs, and all the horizontal solid portion of area under roof in accessory buildings such as gazebos, ramadas and other accessory buildings. Floor Area excludes the floor area of any fully subterranean portions of a building, Courtyard Areas for all structures other than Resort Estates, and the portion of any roof overhangs which are not over useable exterior spaces (all as illustrated on Sheet 2.1 of the Approved Plans).

“Golf Course” means the 18-hole golf course and any practice facility (including outdoor putting, pitching, and driving areas), as it exists as of the Approval Date or as it may be redeveloped, generally as depicted on Sheet 6 of the Approved Plans.

“Golf Facilities” means those uses typically found in golf courses in Maricopa County, including but not limited to clubhouses, pro shop, starter facilities, restrooms, locker rooms, pump stations, parking, irrigation systems, indoor video driving ranges, golf cart storage, but excluding the Golf Course maintenance building/maintenance yard which shall be located as depicted on Sheet 5 of the Approved Plans.

“Hotel Key” means a Resort Unit located in Area B, served by a single key, which is part of a “Resort Hotel” designed and constructed with all furnishings, fixtures and equipment necessary to operate as a single unit for transient occupancy use as a part of a Resort Hotel. Each Hotel Key shall have at least one full bath and a direct lockable connection from the exterior or a corridor. A Hotel Key may be located in a primary Resort Hotel structure (which includes guest registration, reception and other allowed uses) or in any number of other buildings (which may

be across private drives from a Resort Hotel structure) integrated or associated with such Resort Hotel through landscaping or otherwise, including in a building or buildings with Resort Residential. A Hotel Key may be interconnected with another Hotel Key unit through a lockable connection, so that more than one Hotel Key may be rented as a single unit.

“Lot 68” means lot 68 (as shown on the plat of Mountain Shadow Resort Amended, recorded in Book 75 of Maps, page 34, official records of Maricopa County Recorder).

“Minimum Hotel Keys” means the one hundred (100) Hotel Keys included as part of the Principal Resort Hotel and owned by a single legal Owner which also owns the Minimum Resort Hotel Improvements.

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

(a) The Minimum Hotel Keys, provided that Hotel Keys in excess of the Minimum Hotel Keys may be owned by an Owner(s) other than the Owner of the Principal Resort Hotel.

(b) At least one (1) full service restaurant with seating capacity for not fewer than one hundred (100) persons, capable of serving three (3) daily meals and providing room service to the Minimum Hotel Keys.

(c) At least one (1) swimming pool along with facilities (which may be remote from the pool) intended to provide food and beverage service to Resort Hotel guests at the pool.

(d) At least one (1) heated whirlpool (such as a “Jacuzzi”).

(e) At least one (1) fitness area to accommodate professional-grade exercise machines and related equipment.

(f) An area or areas for providing spa services such as massage services.

(g) A dedicated reception area to accommodate guest check-in, concierge and cashier.

(h) A dedicated area to accommodate vehicle or passenger drop off (such as valet parking services) for Resort Hotel guests.

“Mountain Shadows East” means the fifty-nine (59) lots as depicted on the plat “Mountain Shadow Resort Amended,” recorded in Book 75, Page 34, official records of Maricopa County Recorder on January 20, 1958.

“Mountain Shadows West” means the fifty-nine (59) lots as depicted on the plat “Mountain Shadow Resort Unit Two – Amended,” recorded in Book 95, Page 3, official records of Maricopa County Recorder on June 6, 1961.

“Open Space Criteria” means the following criteria related to the height and setback of buildings: No building shall penetrate an imaginary plane beginning at sixteen (16) feet above Original Natural Grade and twenty (20) feet from the exterior property lines of the Property, which plane slopes upward at a ratio of one (1) foot vertically for each five (5) feet horizontally measured perpendicular to the nearest exterior property line of the Property. This limitation shall apply until the maximum allowable height is reached. See illustration Sheet 2.1 of Approved Plans.

“Original Natural Grade” is defined and set forth on Sheet 4 of the Approved Plans.

“Owner” means collectively or separately MTS Land, LLC, a Delaware limited liability company, and MTS Golf, LLC, a Delaware limited liability company, and their respective successors and assigns, as well as any subsequent owner of any portion or portions of the Property, including but not limited to, an owner of a Resort Hotel, any Resort Unit, any Resort Estates lot, the Golf Course, any Area C Retail, or one or more combinations thereof. Any Owner may be an individual, corporation, partnership, limited liability company, trusts, land trusts, business trusts or other organizations, or similar entity, which in turn may be owned by individuals, shareholders, partners, members or benefitted parties under trust agreements, all of which may take any legal form, and may allocate interests in profits, loss, control or use.

“Property” means the land described in Exhibit “A” to Ordinance Number 653.

“Principal Resort Hotel” means the Resort Hotel designated as such and which includes the Minimum Resort Hotel Improvements and not less than one hundred twenty thousand (120,000) square feet of Floor Area, provided, however, in the event the Principal Resort Hotel contains not less than 120 Hotel Keys which are owned by the Principal Resort Hotel Owner the minimum Floor Area shall be one hundred eight thousand (108,000). The Principal Resort Hotel shall be owned by a single legal Owner (provided Hotel Keys in excess of the Minimum Hotel Keys may be owned by another Owner(s)).

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

"Resort Ancillary Facilities and Uses" means all facilities and uses related or incidental to the operation of a resort or resort hotel, including specifically, but without limitation: restaurants, bars and lounges; spas and salons; fitness facilities; barbershops; indoor and outdoor meeting, convention, display, exhibit, wedding and social function facilities; sale of food and alcohol (for on or off site consumption); catering facilities; outdoor cooking facilities; outdoor dining facilities; gourmet food shops (offering any combination of cooked, frozen, fresh, prepared or pre-packaged foods, beer, wines, liquors, gifts, fresh fruits and vegetables, groceries, sundries, cosmetics, over the counter pharmaceuticals, house wares, 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 decks, garages and areas; automobile rentals; gift and sundries shops; flower sales; art and art galleries; jewelry and jewelry shops; fashion eyewear, footwear and apparel sales; sale of hotel items such as furniture, bedding, art, toiletries; other resort retail; marketing, sale and resale of Resort Units, Resort Residential or Resort Estates (including through a real estate sales office) and other resort sales and marketing; travel agency offices; tour and other off-site activity offices; administrative, support and other resort offices including temporary offices and facilities for construction, sales, marketing, and design (including the temporary use permit facilities currently located at the southwest corner of 56<sup>th</sup> Street and Lincoln Drive); indoor and outdoor entertainment facilities; ramadas; pools; cabanas; tents; golf, tennis, and other recreational or sport uses and services, amenities, recreational facilities and fitness facilities. Any such use or facility may be within any Resort Hotel, Clubhouse or separate building(s) including individually or grouped in one or more buildings or facilities.

“Resort Estates” means all of the lots to be improved with residences in Area E.

“Resort Hotel” means one or more hotel(s) to be designed and constructed within Area B. At least one Resort Hotel shall be the Principal Resort Hotel that at all times contains the Minimum Resort Hotel Improvements (subject to force majeure, remodeling, alteration, reconstruction, redevelopment, and similar events). Resort Hotels provide accommodations for transient occupants and related facilities and services, and which also may include Resort Residential, the Clubhouse (or portions thereof) and any Resort Ancillary Facilities and Uses.

“Resort Hotel Manager” means the Owner of any Resort Hotel, including any Affiliate thereof or a third party hotel management company which manages any Resort Hotel. A Resort Hotel Manager may also manage any other portions of the Resort, including but not limited to the Golf Course, the Clubhouse, Resort Residential, Resort Estates, and Hotel Keys. If any Resort Hotel Manager is not the Owner of a Resort Hotel (or an affiliate of such Owner), it shall initially be a hotel management company which has not less than five (5) years’ experience managing full service hotels or resorts or which currently manages not fewer than five (5) full service hotels or resorts. If there is more than one (1) Resort Hotel, there may be more than one (1) Resort Hotel Manager. Any Resort Hotel Manager may enter into one or more agreements, and/or designate others to operate, manage, or provide services to or for one or more different parts, uses, or services within any Resort Hotel, including by Affiliates of such Resort Hotel Manager, or Third Party(ies).

“Resort Rental Management Program” means a rental management program offered and managed by the Owner of any Resort Hotel or a Resort Hotel Manager which provides rental management service for all Hotel Keys for such Resort Hotel and other residential properties on the Property where an Owner elects to include such residences in such Resort Rental Management Program.

“Resort Hotel Owner” means the single legal owner of each Resort Hotel.

“Resort Residential” means the Resort Units, exclusive of any Hotel Keys, located on the west side of 56<sup>th</sup> Street in Area B.

“Resort Sign Guideline” and “Resort Sign Program” means plans and/or a narrative describing signage for the Resort as described in Stipulation 29 and 30 of these Stipulations.

"Resort Unit" means all Hotel Keys and all other residential units (including Resort Residential and Resort Estates), which may include a room or group of rooms which can be locked and served by a single key (or multiple keys). A Resort Unit may be served by one or more bathrooms, and may be with or without cooking facilities or kitchens. Except for the requirement that the Minimum Hotel Keys be owned by the Principal Resort Hotel Owner, a Resort Unit may, subject to these Stipulations, be owned by either an Owner or a third party and may be sold, resold, or may be rented and re-rented from time to time, including for transient occupancy; and provided further that, except for the requirement that the Minimum Hotel Keys be owned by the Principal Resort Hotel Owner and managed by the Resort Hotel Manager thereof, a Resort Unit may only, subject to these Stipulations, be used for any type of residential occupancy (including transient occupancy) and created as separate units through one or more plats or horizontal property regimes through one or more maps.

“Special Use Permit” or “SUP” means Special Use Permit No. 12-5, which includes exhibits thereto, these Stipulations, and all Schedules hereto.

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

“Town” means the Town of Paradise Valley, Arizona.

“Town Manager” means the Town Manager or his designee.

“Town’s Landscape Guidelines” means those certain landscape guidelines accepted by the Town Council dated September 26, 1996.

“Vacation Club” means the ownership of a group of Resort Units, with such group of units designed and constructed with all furnishings, fixtures, and equipment necessary to operate as single units for transient occupancy by a recognized operator of vacation clubs or an entity controlled and/or managed thereby. A recognized operator of vacation clubs is limited to Hilton Grand Vacations, Hyatt Vacation Club, Marriott Vacation Club International, or such other operator as the Town Manager approves. The foregoing definition is not intended to affect the right of an Owner(s) of a Resort Unit(s) to place such Resort Unit(s) in a Resort Rental Management Program.

“Zoning Ordinance” means the Town’s zoning ordinance in effect as of the Approval Date, attached hereto as Schedule 2.

### III. STIPULATIONS

#### A. GENERAL

1. In the event of a conflict between the Stipulations and the Approved Plans, the Stipulations shall govern.
2. Unless otherwise determined by a final order in the Bankruptcy Cases or the final order of another court with jurisdiction, as of the Effective Date the Special Use Permit shall supersede and replace the Existing Entitlements.
3. The Special Use Permit, as it may be amended or superseded from time to time, shall run with the land (i.e., the Property and each part thereof) and any person having or subsequently acquiring title to any portion of the Property shall be subject to this Special Use Permit, only as it applies to the portion of the Property owned by such person. Once an Owner (including without limitation any owner of a Resort Unit, including each Resort Residential, Resort Estate, Resort Hotel, Area C Retail or any other Owner) no longer owns a portion of the Property, such prior Owner shall no longer be subject to this Special Use Permit with respect to such portion of the Property no longer owned, but the then current Owner shall be subject to this Special Use Permit.
4. If any portion of the Resort is used in violation of the terms of this Special Use Permit, the Town may, after fair notice, a hearing and a reasonable opportunity to correct, impose a monetary sanction on the then Owner of such portion, in an amount not to exceed the maximum amount allowed for violations of the Town Zoning Ordinance for each day such violation exists, in addition to all other orders or sanctions permitted by applicable laws. No such remedy shall be applied to any other Owner or portion of the Resort that is not in violation of this Special Use Permit.
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 Town requirement, the terms of Stipulation 11 shall be applied to resolve any such conflict.
6. The redevelopment of, and construction on, the Property shall, subject to the Stipulations, substantially conform to the intent of the Approved Plans. Each of the Approved Plans is hereby incorporated into this Special Use Permit and made an integral part hereof.
7. A mylar and electronic version of the Approved Plans shall be submitted to the Town within sixty (60) days after the Approval Date.

8. Nothing in the 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 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, except as may be required by the 2013 Development Agreement; and further provided that the Property shall be subject to the SUP notwithstanding any such transfer. None of the Resort Units or any part of the Property shall, at any time, be operated as a Time-Share Project, as such term is currently defined by the Town Zoning Ordinance. Notwithstanding any prohibition of Time-Share Projects, if a Resort Unit (exclusive of the Minimum Hotel Keys) is owned or operated by a party for residential use where use of the premises is allocated amongst the members of such party, such use is allowed, provided that the members of such party shall not have a right to a specified period of use of a specific Resort Unit on a specific annual or other periodic basis. The foregoing sentence is intended to allow Vacation Clubs to utilize a Resort Unit.
9. If any section, subsection, sentence, clause or phrase of this Special Use Permit is for any reason held invalid or unenforceable in a final, non-appealable judgment of any court of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining portions of this Special Use Permit.
10. The Town and the 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 (as then constructed) may continue to be used and operated as a legal non-conforming use in accordance with these 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.
11. The Town Manager’s approval or determination is provided for in several instances in the Stipulations. The Town Manager shall base his approval on standards and criteria set forth in the SUP, the 2013 Development Agreement, the Town Code, and the Zoning Ordinance, as reasonably applicable, with the intent to implement the viable development of the Resort as provided in this SUP and the 2013 Development Agreement. Recognizing that the final design and building permit process for which any particular approval of the Town Manager is sought involves multiple stages, including conceptual, schematic, design development and construction documents, an Owner may seek the approval of the Town Manager at one or more stages of such design. Notwithstanding the foregoing, no construction may occur with respect to any particular element or structure until necessary permits for that element or structure

are issued. An Owner may rely upon an approval in proceeding from one stage of design to the next. Where proposed construction is not specifically and clearly disallowed by the Special Use Permit and/or the 2013 Development Agreement, the Town Manager is authorized to allow such construction even if it deviates from the Special Use Permit Guidelines. Although the Parties intend that the Special Use Permit, 2013 Development Agreement, Zoning Ordinance, and the Town Code state a consistent relationship between them, the Parties agree that in the event of a conflict between these documents that the order of priority shall be the (1) Special Use Permit, (2) 2013 Development Agreement, (3) Zoning Ordinance and (4) Town Code and agree that the higher priority document shall control.

**B. DEMOLITION**

12. A schedule for demolition by Owner of the vertical portions of certain existing improvements shall be as provided in the 2013 Development Agreement.

**C. DEVELOPMENT**

13. All permanent public utilities within the Resort shall be underground (excluding certain equipment that is typically installed above ground which shall be appropriately screened, such as transformers, meters, and other equipment) and located within appropriate easements. The Town Manager may, from time to time, require the granting of such easements to utility companies as deemed reasonably appropriate by entities providing utilities benefitting the Resort that are not covered by easements 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 existing City of Phoenix sewer system lines in Lincoln Drive and 56<sup>th</sup> Street. All new water and sewage facilities shall be constructed in accordance with plans approved by the Town Manager.
14. It is anticipated that construction on, and redevelopment of, the Property will be conducted in phases. No construction permit shall be issued for any phase of construction on the Property until appropriate engineering or architectural plans are submitted to the Town and the issuance of such construction permit for that particular activity is approved by the Town Manager. Submitted plans shall be required to meet the building code most recently adopted by the Town. This provision shall not restrict or limit the continued maintenance, repair or replacement of the Golf Course, Clubhouse, parking areas, lighting facilities, landscaping, the temporary trailers, tennis courts, tennis club building, or any other facility used or useful, including but not limited to arbor care, irrigation system repair or replacement and other renovation of these existing features.

15. During any period of demolition and initial new construction of one or more phases within the Resort, temporary curb cuts (driveways) shall be allowed on Lincoln Drive and 56<sup>th</sup> Street to allow construction access to the Property both east and west of 56<sup>th</sup> Street; such temporary curb cuts and their location shall be approved by the Town Manager. A maximum of three (3) such temporary curb cuts (in addition to any permanent curb cuts shown on Sheet 3 of the Approved Plans) shall be allowed on each side of 56<sup>th</sup> Street between Lincoln Drive and the southern boundaries of the Property. A maximum of two (2) such temporary curb cuts shall be allowed along Lincoln Drive west of 56<sup>th</sup> Street and one (1) temporary curb cut shall be allowed along Lincoln Drive east of 56<sup>th</sup> Street. The existing curb cut along McDonald may continue to be used and may be relocated subject to the approval of the Town Manager. Temporary construction driveway locations are subject to the review and approval by the Town Manager.
16. All new construction shall satisfy all fire department requirements for each component of work (which may include temporary fire protection facilities) prior to the issuance of any building permit for such work.
17. Prior to the issuance of a certificate of occupancy for any individual structure, adequate fire, emergency and other vehicle access and adequate fire service shall be provided for such structure and the particular phase of development in which such structure is located, as determined by the Town Manager.
18. Owner(s) shall submit a construction phasing schedule prior to the issuance of any building permit for a particular new structure within a phase to ensure compliance with all Town ordinances and in order to minimize construction nuisances. This schedule may encompass the building of multiple new structures within a particular phase, and may be modified or amended from time to time. This construction/phasing schedule shall provide information on the following:
  - Dust and noise control measures
  - Vehicle /equipment storage/parking
  - Construction days/hours
  - The general location of the following elements, which may be relocated from time to time:
    - Location(s) of a staging area(s) for construction supplies/equipment
    - Location of any construction trailer(s) and/or sanitary facility(s)
    - Location of on-site construction materials/debris storage
    - Location of fire lanes during the construction period

- The approximate beginning and ending for construction of structures within a phase
19. During the period of demolition or construction of new improvements, signs shall be posted on the Property (or at the entrance to a particular phase) indicating the name and phone number of a person the public may contact with construction-related concerns. Sign details such as the sign size, height and location shall be reviewed and approved by the Town Manager.
  20. During demolition, site grading, and the initial construction of other on or offsite improvements, Owner(s) shall coordinate the sweeping of Lincoln Drive, 56<sup>th</sup> Street and McDonald Drive adjacent to the Property to remove construction-related dirt and debris, as reasonably required by the Town Manager.
  21. The precise location and/or required screening of any backflow preventer or other similar equipment to the extent same would be visible from Lincoln Drive or 56<sup>th</sup> Street shall be approved by the Town Manager.
  22. Any permanent curb cuts on Lincoln Drive west of 56<sup>th</sup> Street may, as determined by the Town Manager, require a deceleration lane, which shall be installed by Owner in conjunction with construction on the adjacent property. Since Owner will pay a sum certain to the Town as provided for in the 2013 Development Agreement for improvements to the 56<sup>th</sup> Street and McDonald Drive rights-of-way, the Town shall be solely responsible for constructing those improvements within the 56<sup>th</sup> Street and McDonald Drive rights-of-way (including initial installation of landscaping), other than curb cuts into the Property which shall be installed by the Owner. The approximate locations of permanent curb cuts are shown on Sheet 3 of the Approved Plans. The final locations shall be based upon final site plans for various phases of the Resort.
  23. The Property can be developed in one or more phases, by one or more Owners, including portions east or west of 56<sup>th</sup> Street and separate phases within each development Area, as determined by the Owner(s) and subject to such other restrictions and limitations contained in those Stipulations which specifically apply to each such phase. Prior to issuance of building permits for any new structure within a particular phase, the Owner thereof shall submit a site plan showing the particular area of the Property on which such proposed building is located and setting forth the area of the phase which includes such structure. A phase shall include the necessary points of ingress and egress from public streets (which may occur through other phases or parts of the Property), associated parking areas, connections to internal private streets and features such as common use facilities to be constructed within such phase. The failure of an Owner of

any part of the property or Area to comply with any provision of these Stipulations shall not impact property in any other part of the property or Area, as long as such other parts of the property or Areas are not owned by the same Owner(s).

24. The Owner shall arrange for construction phasing within any particular phase in the following sequence:
  - a. Commence native plant salvage (for those plant materials required to be salvaged pursuant to Town Code §5-8-4 and deemed by a Native Plant Preservation Plan (prepared by each particular Owner for each particular phase) to be certain to survive and worthy of salvage), dust and erosion control measures, job-site mobilization and set-up, and the like.
  - b. Upon completion of the salvage, commence horizontal or civil improvements and site work within such phase, including appropriate erosion and dust control.
  - c. Upon or prior to substantial completion of the civil improvements and site work as reasonably necessary to commence perimeter walls and landscaping for such phase, including areas immediately adjoining such phase, the perimeter landscape plan(s) shall be submitted, reviewed and approved by the Town Manager. Installation of perimeter landscaping shall not be required to commence until adjacent site or structure improvements are sufficiently complete such that additional work will not harm the proposed landscape elements. Perimeter landscaping is landscaping between a public right-of-way and any proposed perimeter wall on the Property, or twenty (20) feet back of such right-of-way, whichever is less.
  - d. Any required deceleration lanes on Lincoln Drive or curb cuts on Lincoln Drive, 56<sup>th</sup> Street, or McDonald Drive may be scheduled independently of the foregoing, in a manner consistent with the anticipated completion of structures within a phase as approved by the Town Manager.
  - e. The Owner shall, at all times, provide a paved access drive at least twenty-two (22) feet in width from Lincoln Drive or 56<sup>th</sup> Street to the Mountain Shadows West guardhouse. The Owner may also sell, lease or grant an easement for the maintenance and or reconstruction of the Mountain Shadows West guardhouse at its current location or another location serviced by the foregoing access drive.
  - f. A twenty (20) foot wide area from 56<sup>th</sup> Street to Lot 68, as shown on Sheet 5.1 of the Approved Plans, shall be reserved for such use as is provided in a separate special use permit relating to such property.

- g. The Owner shall at all times provide continuous paved access at least twenty-two (22) feet in width from Lincoln Drive to the location of the existing Mountain Shadows East guard house, either using the eastern most existing access drive off of Lincoln (shown on Sheet 5.1), or through a newly relocated access drive off of Lincoln Drive west of such drive.

**D. HEIGHT AND HEIGHT MEASUREMENT AND RELATED ISSUES**

- 25. An Original Natural Grade Plan (Sheet 4 of the Approved Plans) has been established by the Town Engineer and Owner's engineer, and the Town Council finds the grades established by the Original Natural Grade Plan acceptable, and shall be used to establish maximum height of any new structure built on the Property. Since the Property has a sloping topography it is accepted that finish grades for new structures may require cut and/or fill and/or retaining walls or structures to support finished grades which transverse a slope.
- 26. Sheets 5 and 5.1 of the Approved Plans set forth the maximum height of any new structure within particular areas of the Property measured in the manner set forth herein below. Larger individual structures which traverse grades may have more than one (1) elevation at finished grade, and such structures may thus have more than one maximum height, which will be measured with respect to that portion of such structure that has the same elevation at finished grade.
- 27. The maximum height of a structure (or portion thereof where larger structures have more than one height as described above) shall be the maximum height above Original Natural Grade (or if the finished grade at a structure is lower than Original Natural Grade, the maximum height shall be measured from the finished grade, except as noted on Sheet 5) within each particular area set forth on Sheet 5 or 5.1 of the Approved Plans. Measurement is determined by determining a mid-point of finished grade equal distance from the high point and low point adjacent to such structure (or portion thereof) as illustrated on Sheet 4 of the Approved Plans.
- 28. Maximum height shall be measured at such midpoint, as illustrated on Sheet 4 of the Approved Plans. If finished grade at a structure is lower than Original Natural Grade, the maximum height shall be measured from the finished grade at each midpoint used for measuring the height of a structure or portion thereof, except as noted on Sheet 5. Notwithstanding the foregoing, in no event shall the vertical extent of a structure (or portion thereof) measured from finished grade at such midpoint, exceed the number of feet listed in each area of Sheets 5 and 5.1 of the Approved Plans, provided however a structure which traverses from one height area

to another shall only be limited by the height in each particular area. The following building components are allowed to exceed the maximum height of each structure (or portion thereof) as follows:

- Chimney – three (3) feet
- Elevator Enclosure – three (3) feet
- Towers or other architectural features, excluding mechanical equipment or mechanical equipment screens) – three (3) feet

29. Subsequent to the Approval Date, Owner shall submit comprehensive Resort Sign Guidelines for the overall Resort for review and approval by the Town Manager, such guidelines to be consistent with the Special Use Permit Guidelines as modified in Stipulation 30 or otherwise approved by the Town Manager. After approval of the Resort Sign Guidelines, the Owner may submit a Resort Sign Program specific to a certain phase of construction for review and approval by the Town Manager, such Resort Sign Program(s) to be consistent with the Resort Sign Guidelines. Any sign installed in compliance with the Special Use Permit Guidelines or any approved Resort Sign Program shall not require further review by the Town, except for the issuance of any required building permit.

30. It shall be the objective of the Resort Sign Guidelines that the Resort, each Resort Hotel and components thereof, each Area C Retail or service establishment, the Golf Course and Clubhouse, the Resort Estates and Resort Residential units have appropriate identifying signage including both monument signage visible from Lincoln Drive, McDonald Drive, and 56<sup>th</sup> Street as well as interior monument, building and directional signage. Each of the foregoing components may have building-mounted signs that identify the activities and name of each business within, such as restaurants, spa, bar or lounge, reception, retail shops and pro shop. Monument signs shall be allowed at the locations shown on Sheet 3 and identified as Type 1, 2, or 3 monument signs which shall be limited to the following sizes (each side) and quantities:

<b>TYPE</b>	<b>MAX. HEIGHT AND LENGTH OF TOTAL STRUCTURE</b>	<b>AGGREGATE* SQ. FT. OF SIGN COPY PER SIGN</b>	<b>QUANTITY</b>
1	6' high x 20' long	50 square feet	1
2	5' high x 15' long	35 square feet	3
3	3'6" high x 8' long	30 square feet	5

\*Aggregate means that both sides of a double faced sign count towards the total square feet. Area of sign copy shall be calculated based on the definition of Free-standing Letter Sign in Article II of the Zoning Ordinance.

The foregoing heights are measured from finished grade adjacent to the sign. The Resort Sign Guidelines, once approved by the Town Manager, shall govern the overall signage for the Resort and shall set forth sizes for various types of signs, locations, design, type of illumination, and mounting. Such signs shall also meet the fifty (50) foot corner vision criteria in Town Code Section 8-1-13.

Within the Resort, directional signage may be appropriately placed to direct Resort guests, employees, vendors, and others and may include private street signs, building signs, and other such features, all with appropriate illumination. Maximum height of interior directional signs shall be seven (7) feet, shall not exceed an area of twenty (20) square feet per side, and shall not be located closer than fifty (50) feet from public rights-of-way, except as may be approved by the Town Manager.

31. No above ground structures shall be placed in a right-of-way easement except approved monument signs and any other approved structures allowed by this Special Use Permit.
32. All mechanical equipment, including pool and fountain equipment, shall be screened so that it is not visible from properties not a part of this Special Use Permit and from public rights-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 may provide the necessary noise attenuation for any mechanical equipment. All mechanical equipment, along with any screens used for attenuation of noise, shall comply with the allowable noise levels as defined in the Town's noise ordinance as it exists as of the Approval Date. Noise measurement shall include any installed screening or other attenuation devices.

## **E. DEVELOPMENT AREAS**

### **AREA A - GOLF COURSE**

33. Area A contains portions of the existing Golf Course; portions of the existing Golf Course are also in Area B. The Golf Course may continue to be used, operated, repaired, maintained, and replaced, as it currently is improved and used, including maintenance and refurbishment of existing tee boxes, greens, sand traps and other hazards, cart paths, walls, water features, landscape elements, restrooms, irrigation systems and maintenance facilities, all as would typically occur in an operating golf course.

34. Within twelve (12) months after the Effective Date, the Owner shall commence alterations of the Golf Course to include the following alterations, the areas of which are depicted on Sheet 6 of the Approved Plans (the “Initial Renovation”).
- a. Install within the area labeled “New Golf Area” new golf improvements to include a tee box, green and fairway. This New Golf Area may also be used and improved as a multipurpose golf area to include practice areas, pitching areas, putting areas, training and teaching areas, and outdoor event space.
  - b. Modify existing golf holes 3, 6, 15, and 18, generally as shown on Sheet 6 of the Approved Plans to create a total of six (6) golf holes (including related tee boxes, hazards, fairways, and greens), so that after the elimination of existing holes 1 and 2, the altered Golf Course shall have eighteen (18) holes plus the New Golf Area.
  - c. Remove existing holes 1 and 2 and those portions of the existing practice area located within Area B so that they will no longer be part of the Golf Course.
  - d. The approximate location of tee boxes and greens are shown on Sheet 6 of the Approved Plans; the exact final locations, size, and shape will be determined by Owner in connection with the implementation of items a and b above and in conformance with good golf course practices. No further building permit or approval shall be required to implement items a – c above, except such permits as may be required for irrigation, electrical, walls or grading. The exact size, shape and location of greens and holes within greens, hazards, water features, and other features may be modified from time to time in connection with managing and operating the Golf Course, in conformance with good golf course practices.
  - e. Once commenced, the alterations set forth in items a-c above, shall be completed, subject to force majeure, within six (6) months.
  - f. Existing landscape elements within the Golf Course, such as trees, shrubs, flowers and other planted areas, may be added to, altered, removed and/or replaced from time to time in conformance with good golf course practices.
  - g. Existing irrigation systems, including pumps, motors, controllers, water lines and other related elements may be maintained, repaired and replaced from time to time in locations and amounts determined by Owner, in conformance with good golf course practices.

- h. Existing lighting within the Golf Course may remain in current locations, or may be replaced with similar new fixtures.

The Initial Renovation, once completed, and subject to the rights to operate, repair, maintain, and renovate the Golf Course in conformance with good golf course practices, may continue for as long as the Owner chooses. The Golf Course may be renovated pursuant to some other plan proposed by Owner, referred to as a “Major Renovation,” or the Golf Course may cease operating as a golf course in conformance with Stipulation 35 below. If the Owner desires to undertake a Major Renovation, it shall submit detailed plans to the Town Manager for review and approval.

- 35. If the Owner desires to cease operating the Golf Course as a golf course (“Golf Cessation”), it shall provide not less than sixty (60) days written notice to the Town of such determination. A cessation of Golf Course operations for periods of repair or renovation or for a period up to one (1) year as determined by Owner, shall not constitute Golf Cessation. In the event Golf Cessation occurs, the Owner shall thereafter maintain Area A as landscaped open space, which may include some or all of the landscape elements which exist at the time of such Golf Cessation. As part of the implementation of conversion to landscaped open space, the Owner may undertake such renovation as it determines to reduce the use of water for irrigation (such as removal of turf and replacement with desert landscape). The exact plans for such conversion shall be subject to the reasonable approval of the Town Manager. A conversion similar to the landscape elements, existing as of the Effective Date, contained in the open space areas of Mountain Shadows East’s former golf course area (located on Lot 67A of the plat of Mountain Shadow Resort Amended, a subdivision recorded in Book 75 of Maps, page 34, records of Maricopa County, Arizona) is deemed acceptable.
- 36. The location of the maintenance yard and the location of maintenance building(s) within such maintenance yard within Area A are shown on Sheet 5 of the Approved Plans. The maintenance building(s) shall not have a Floor Area greater than eight thousand (8,000) square feet, shall not be taller than sixteen (16) feet from finished grade, and shall maintain setbacks as shown on Sheet 5 of the Approved Plans. Areas adjacent to new maintenance buildings (or the yard around such buildings) shall be landscaped with plant materials sufficient to appropriately screen the buildings when said landscaping is mature. Until such time as the new maintenance building is ready for occupancy and intended to replace any existing structure, existing maintenance structures and areas may continue to be utilized. The primary ingress and egress to and/or from the maintenance yard shall be either to the east or south. No more than six (6) employee parking spaces shall be at the maintenance yard. All other

employees must park in other Resort parking areas. Deliveries, trash pickups, or other noise generating outside services involving mechanical equipment (excluding those addressed in Stipulation 41 and Stipulation 42), including large commercial trucks, shall be allowed to operate at the maintenance facility only between 7:00 a.m. to 5:00 p.m., Monday through Friday. No such activity, defined above, shall be allowed on weekends or legal holidays. These limitations above shall not apply for emergency situations or for overseeding and related turf maintenance activity.

37. Other Golf Facilities (but excluding the Clubhouse, above-ground golf cart storage buildings, indoor driving ranges, and locker rooms) may be built in Area A as follows:
  - a. Other Golf Facilities buildings are limited to a maximum Floor Area of two thousand (2,000) square feet combined.
  - b. All structures shall meet the Open Space Criteria.
  - c. Any new restroom buildings, pump stations and other similar above-ground facilities and equipment must be located at least twenty (20) feet from any property line not an internal property line within the Property subject to this Special Use Permit (provided existing facilities may remain in current locations and may be repaired, replaced or renovated in such location).
  - d. Areas directly adjacent to restroom buildings shall be landscaped with plant materials sufficient to appropriately screen buildings when said landscaping is mature.
38. The area adjacent to public right-of-way surrounding the Golf Course and within Area A along 56<sup>th</sup> Street and McDonald Drive currently is landscaped with an oleander hedge, which in part straddles the Property boundary (“Oleander Hedge”). The Oleander Hedge may remain in its current location, provided Owner shall maintain the Oleander Hedge to a height of not less than six (6) feet and not more than ten (10) feet, except in those areas where the golf course operator determines golf ball safety requires a taller Oleander Hedge. All oleanders in other areas may be removed. If the Oleander Hedge appears likely to die due to oleander leaf scorch disease or other natural causes, Owner shall, within five months after the determination has been made that the oleander hedge will die due to such disease or cause, replace the oleander hedge with another similar suitable “hedge” material, which shall be determined by submitting to the Town Manager, for his review and approval (within thirty days after its submittal) a plan to replace the oleanders with a similar suitable hedge. The replacement hedge may be maintained to a height of not less than six

(6) feet and not more than ten (10) feet, except in those areas where the golf course operator determines golf ball safety requires a taller hedge.

39. Walls and fences along 56<sup>th</sup> Street and McDonald Drive bordering the Golf Course are permitted. If such wall or fence is existing, it can remain and be repaired or replaced in its existing location. If such wall or fence is in a new location, it can be immediately adjacent to the property line (but outside of any public right-of-way), provided that any such wall or fence is limited to six (6) feet in height and meets view fence opacity requirements in Article XXIV of the Town Zoning Ordinance. If a new solid, non-view fence/wall is proposed, it must meet height and setback requirements in Article XXIV of the Town Zoning Ordinance. At the corner of 56<sup>th</sup> Street and McDonald, all improvements and landscaping (including the Oleander Hedge) shall be in compliance with Town Code Section 8-1-13. Walls and fences may be built in any location in Area A consistent with the Initial Renovation or a Major Renovation, provided such walls and fences do not exceed a height of six (6) feet and comply with Article XXIV of the Town Zoning Ordinance.
40. Golf cart storage may be in Area A, provided, however, that such storage shall be in subterranean structures only with related walls (for screening and to protect ramps, not to exceed a height of six (6) feet). The foregoing shall not restrict the at-grade staging and use of golf carts. If necessary, temporary (not to exceed eighteen (18) months from the commencement of the temporary use) at-grade golf cart storage (including a temporary structure for same) shall be allowed within Area A while a permanent golf cart storage structure is being constructed; such temporary structure shall observe the Town's Open Space Criteria.
41. Golf Course, maintenance areas and practice area hours of operation shall be no earlier than 5:00 am and no later than sixty (60) minutes after sunset, provided that practice areas in proximity to the Resort Hotel or Clubhouse may be used for other Resort ancillary uses.
42. Golf Course mowing shall not begin prior to 5:00 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 original purchase.
  - b. The foregoing shall not prevent the continued use of maintenance equipment currently owned or used by Owner.

## **AREA B - RESORT HOTEL, RESORT RESIDENTIAL, GOLF FACILITIES**

43. Area B may be developed to include any Resort Hotel, Resort Residential, portions of the Golf Course, Golf Facilities, Clubhouse, and any Resort Ancillary Facilities and Uses. Area B may be developed and redeveloped in one or more phases from time to time in multiple buildings or structures of various height and character, subject to these stipulations. Facilities or structures initially developed for a particular use may be converted or reused from time to time for other allowed uses provided that all other requirements of these stipulations are still met. Area B may be subdivided with one or more plats and/or maps from time to time. Resort Residential is allowed in Area B in various forms including attached or detached homes on subdivided lots or in one or more horizontal property regimes as reflected in one or more maps. The maximum Floor Area of Resort Residential development in Area B shall be three hundred thousand (300,000) square feet. The height of any proposed new building or structure, or any portion thereof, shall not exceed the height in each area shown on Sheet 5 measured in accordance with Stipulations 25-28 herein. All demolition required under Stipulation 12 for Area B shall have been completed before any building permits are issued for vertical construction.
44. The Principal Resort Hotel may also be constructed in one (1) or more buildings in Area B provided all such buildings must have an integrated theme and share design cohesiveness, including architecture, signage, pedestrian and service vehicle connections to the primary Resort Hotel structure (the structure which includes guest reception and registration). The Minimum Hotel Keys shall be located in proximity (which may be across private drives or parking areas) to such primary Resort Hotel structure and utilized solely for Resort and Resort-related purposes, including only transient occupancy by guests of the Resort. Notwithstanding the foregoing, Clubhouse and Golf Facilities can be located in the Resort Hotel structure(s); provided, however, the Floor Area of such facilities which are solely dedicated to such use shall not count toward the minimum Floor Area for the Principal Resort Hotel Improvements. Facilities located within Clubhouse buildings which also provide function or service for the Principal Resort Hotel such as fitness, spa, restaurants, locker rooms, meeting rooms, offices, and storage shall be included in the minimum Floor Area requirement.
45. Each Resort Hotel Owner shall establish a single, unified rental management program and process for all Hotel Keys which are a part of such Resort Hotel.
46. The Clubhouse, including any golf cart storage, may either remain in its current location within Area B as of the Approval Date (the "Existing Clubhouse Setbacks") shown on Sheet 5 of the Approved Plans or be

moved to any other location in Area B. If the existing location is utilized, the Clubhouse can be renovated in its existing location or torn down in whole or in part, and a new Clubhouse can be built in whole or in part. If torn down and rebuilt, in whole or in part, (i) the Clubhouse can be rebuilt utilizing the Existing Clubhouse Setbacks within the Existing Clubhouse footprint and (ii) the height of such new and/or renovated Clubhouse within the Existing Clubhouse footprint shall be limited to sixteen (16) feet until a twenty (20) foot setback is reached, at which point the height may be increased as allowed by Sheet 5 of the Approved Plans. Any portion of a building or structure outside of the Existing Clubhouse footprint area will observe the setbacks and heights set forth on Sheet 5 of the Approved Plans.

47. The maximum height of any building which contains only Resort Residential units (as opposed to a mixture of Resort Residential units and Hotel Keys) in Development Area B shall not exceed two stories or twenty-eight (28) feet, as measured according to the terms of Stipulations 25-28. Only primary Resort Hotel structures and other buildings that contain only Hotel Keys, Vacation Club units, and/or Resort Ancillary Facilities and Uses may be within three (3) story buildings, but in no event may any such building exceed 36 feet in height as measured according to the terms of Stipulations 25-28. Resort Residential units are allowed within a seventy (70) foot setback from Lincoln Drive only in the area specified on Sheet 5 of the Approved Plans, provided no portion of such units located between seventy (70) feet and one hundred (100) feet setback from Lincoln Drive shall exceed sixteen (16) feet above Original Natural Grade (as measured pursuant to Stipulation 25-28) and are one story.
48. The following guidelines shall be incorporated in the design of any structure in excess of twenty-eight (28) feet above Original Natural Grade. The Town Manager will review any request by Owner to modify these guidelines to respond to the specific architectural character proposed for each project component, by unique requirements of a specific function or building type, or by specific challenges presented by existing site conditions. Any such review by the Town Manager shall not unreasonably restrict such modifications as long as the intent of the guidelines is reasonably addressed.
  - a. No building should have an uninterrupted length greater than one hundred fifty (150) feet without an architectural feature to break the massing. Such feature may include any one of a change in color, orientation, material or offset. Any single building the portion of which lies within two hundred (200) feet of Lincoln Drive shall not have an east-west dimension in excess of three hundred (300) feet and there shall be a physical separation between such building and the buildings adjacent to such building of not less than one-tenth (1/10) of

one (1) foot of separation for each foot of the east-west dimension. By way of example, a building having a two hundred and fifty (250) foot east-west dimension shall maintain a twenty-five (25) foot separation to the buildings adjacent to the east and/or west of such building.

- b. The east/west dimension of the portions of all buildings taller than twenty-eight (28) feet measured as provided in Stipulations 25-28 herein, the portions of which are within the buildings closest to Lincoln Drive and which lie within three hundred (300) feet of Lincoln Drive, shall not exceed four hundred fifty (450) lineal feet. The north/south dimension of the portions of all buildings taller than twenty eight (28) feet measured as provided in Stipulations 25-28 herein, the portions of which are within the buildings closest to 56<sup>th</sup> Street and which lie within two hundred (200) feet of 56<sup>th</sup> Street, shall not exceed three hundred fifty (350) lineal feet.
  - c. Vertical planes of buildings with a height greater than twenty-four (24) feet measured as provided in Stipulations 25-28 herein shall have an observable design change in plane, material, color, relief, or other appropriate design element(s) to create visual relief.
  - d. A reasonable and appropriate mix of building materials and building elements (such as stone, stucco, steel, timbers, windows, trellises, brise soleil, etc.) shall be utilized to break up continuous wall planes, and placed to help visually “ground” the buildings.
  - e. Recognizing that diversity and variation can help to create visual interest, as well as the fact that different building types will have different design requirements, a consistent design theme shall nonetheless be utilized throughout Area B to maintain a common design thread and help create a unified character and level of quality.
  - f. Roof overhangs may be utilized as an appropriate design response in the desert, as are other solar control and shade elements.
49. If walls and fences are constructed along Lincoln Drive and 56<sup>th</sup> Street, including within the setbacks shown on Sheets 5 and 5.1 (but not within the right-of-way easement along Lincoln Drive), such walls and fences shall be in accordance with Article XXIV of the Town Zoning Ordinance (except walls and fences along 56<sup>th</sup> Street shall have a minimum setback of fifteen (15) feet) and shall be measured from property lines; provided that a wall or fence that does not comply with Article XXIV may be approved by the Town Manager. If necessary to screen a parking structure contemplated by Stipulation 54.b, a wall along 56<sup>th</sup> Street shall be allowed to be six (6) feet tall on top of a two (2) foot berm between the right-of-way easement along Lincoln Drive to a point which is up to two hundred

(200) feet south, but no further than the northerly most drive entry from 56<sup>th</sup> Street into Areas B and C. Said wall shall also meet the fifty (50) foot corner vision criteria in Town Code Section 8-1-13. Walls and fences may be built in any other location in Area B, including on or adjacent to interior property lines created by new plats or maps.

50. Common use pools (that is, pools intended for joint use by Resort guests as opposed to occupants of a single Resort Unit) shall, if installed, be set back a minimum of two hundred (200) feet from the western property line of Area A and shall be setback a minimum of sixty-five (65) feet from any Mountain Shadows West property line. Pools intended for use by a single Resort Unit shall be set back a minimum of forty (40) feet from exterior property boundaries. Setbacks are to be measured from the edge of the water surface of any such pool.
51. The maximum hours of public operation of the following specific uses/facilities shall be as set forth below:
  - a. Vendor deliveries (generally): 6 am - 7 pm. US Mail, private courier services such as UPS or FedEx, and emergency deliveries: at any time.
  - b. Pools, spas and jacuzzis (except pools, spas and jacuzzis located indoors or in enclosed private yards including yards such as presidential suites or Resort Hotel suites, 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 related retail - 5:30 am – 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 (use of such facilities by those who are not guests of the Resort, or owners or renters within the Resort and their guests shall be limited to 5 am – midnight).
  - l. Trash pickup: 7 am – 7 pm

- m. Outdoor venues, events, or functions with music and/or amplified sound shall comply with the allowable noise levels as defined by the Town's current noise ordinance.
52. Each owner of any 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 are not counted towards the Minimum Hotel Keys requirement, but would be considered a rental of a Resort Unit in excess of the Minimum Hotel Keys requirement). No Resort Unit that is not a Hotel Key within Area B may be used for any use or purpose other than residential use; provided, however, that such Resort Units may be included in the Resort Rental Management Program or used as provided in Stipulation 8 above.
53. Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.) may be used to service the Resort (including Area B and other Areas), 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) – Any parking provided or required under this Special Use Permit for Area B may, at the Owner's choice, be located at-grade, below grade or a combination thereof in one or more parking structures or in one or more surface parking areas within Area B. The Owner shall submit plans (which initially may be conceptual or schematic drawing(s)) of any proposed parking structures to the Town Manager for determination whether they comply with this Stipulation 54. The following provisions shall apply to any above or below grade parking structures and surface parking areas:
- a. Parking structures fully (other than ramps leading to or from) below grade (under a building or otherwise) are allowed, including within the one hundred foot (100) set back along Lincoln Drive (but not within the twenty five (25) foot roadway easement along Lincoln) and the forty (40) foot setback on 56th Street (provided there is at least a fifteen (15) foot landscape setback along 56<sup>th</sup> Street).
  - b. Parking structures are also allowed, including within the areas described in (a) above, which have their highest level (excluding screen walls) not more than three (3) feet above Original Natural Grade (measured as provided in Stipulations 25-28), provided they are screened from any public right of way by a wall which complies with Stipulation 49 and the illustrations shown on Sheet 2.1. The top of such screen wall must be a minimum of five (5) feet above the highest parking surface of such parking structure, measured on the exterior side.

- c. Any parking structure which has its highest level (excluding screen walls) more than three (3) feet above Original Natural Grade (measured as provided in Stipulations 25-28) must have a setback of two hundred (200) feet from Lincoln Dr. and 56<sup>th</sup> Street and one hundred (100) feet from an exterior Property boundary. The portion of any such parking structure more than three (3) feet above Original Natural Grade that provides required parking for Resort Residential shall be included in the maximum Floor Area calculation for Resort Residential in Area B.
  - d. Surface parking lots are allowed within Area B, subject to the following setback requirements:
    - i. Lincoln Drive: twenty five (25) feet
    - ii. 56<sup>th</sup> Street: fifteen (15) feet
    - iii. Any exterior property boundary: forty (40) feet; provided any parking located within the existing parking area adjacent to the existing Clubhouse (see Sheet 5) shall be allowed in such locations (including within the existing maintenance shed area).
    - iv. Any surface parking area within one hundred (100) feet of Lincoln Dr. or 56<sup>th</sup> Street shall be appropriately screened by a six (6) foot wall in compliance with Stipulation 49.
    - v. All surface parking lots may include appropriate signs, lighting (provided any lighting shall comply with Stipulation 100) and landscape as provided in this SUP or the Town's Special Use Permit Guidelines as applicable or otherwise approved by the Town Manager.
55. Buses and other vehicles may be used to shuttle guests or employees to or from areas not located on the Resort, and between the Resort and other destinations (e.g., airport, shopping facilities, golf courses, etc.). All parking on any public street by any Resort guest, any Owner or their guests, employees of the Resort, any invitee of any Owner, any occupant of any portion of the Resort or any parking service provider is prohibited. Any agreement which allows any person to use the Resort for any purpose shall contain an acknowledgment that parking on any public street is prohibited. Any automobile rental facilities shall be limited to the storage of ten (10) rental cars on site.
56. At any time when the parking demand within the Resort is expected to exceed onsite capacity, the Owners of the affected areas shall initiate a

parking management plan which may include valet parking or offsite parking arrangements (but not the use of parking on any public street within the Town).

### **AREA C - RESTAURANT/RETAIL**

57. Area C is designated as an area which allows a limited amount of Area C Retail within the one hundred (100) foot set back from Lincoln Dr., subject to Stipulations 57-65. Facilities or structures initially developed for a particular use in Area C may be converted or reused or redeveloped from time to time for other allowed Area C uses. Area C may be used for any use allowed in Area B, including Area C Retail, subject to the following limitations:
  - a. If no building or other structure within Area C is built and remains within the one hundred (100) foot set back from Lincoln Drive (other than allowed parking structures or parking lots and their related signs, lighting and landscape), then any use allowed in Area B shall be allowed in Area C, including Area C Retail, provided that the three hundred thousand (300,000) square feet limitation on maximum Floor Area of Resort Residential development shall not be increased.
  - b. If any building or structure within Area C is built and remains within the one hundred (100) foot set back from Lincoln (other than allowed parking structures or parking lots and their related signs, lighting and landscape) as allowed by Stipulation 61 below, then only ten thousand (10,000) square feet of Floor Area of Area C Retail may be developed in Area C, in addition to outdoor dining, seating or public gathering areas (provided the covered portions of which shall be included in the maximum Floor Area as allowed above).
58. The hours of public operation for uses within Area C are as set forth in Stipulation 51.
59. The drive entry to parking areas located within Area C shall be off of 56<sup>th</sup> Street or through a Lincoln Drive access that is primarily intended to provide access to the Resort in general. No new entrance off of Lincoln Drive that is primarily intended to provide access to Area C Retail in Area C shall be permitted.
60. Massing and articulation shall be designed in a manner that is generally consistent with the architectural style of the overall Resort, as determined by the Town Manager.
61. Notwithstanding a one hundred (100) foot minimum setback for buildings along Lincoln Drive, as shown on Sheet 5 of the Approved Plans, up to

two buildings (plus related outdoor seating areas, covered or uncovered patios, service, trash and loading areas) may be situated within the setback area, provided that the total lineal frontage of all buildings parallel to Lincoln Drive within the setback area shall not exceed one hundred and fifty (150) feet, the buildings shall be set back not less than forty (40) feet from Lincoln Drive or 56<sup>th</sup> Street, and such buildings within this reduced setback area shall not exceed twenty (20) feet in height as measured according to the terms of Stipulation 25 - 28. Any such buildings set within this reduced setback area may only be used for Area C Retail, and shall not exceed ten thousand (10,000) feet of Floor Area (other than parking structures or areas and related lighting, landscaping, and signs allowed hereunder).

62. If walls and fences are constructed along Lincoln Drive and 56<sup>th</sup> Street, including within the setbacks shown on Sheets 5 and 5.1 (but not within the right-of-way easement along Lincoln Drive), such walls and fences shall be in accordance with Article XXIV of the Town Zoning Ordinance (except walls and fences along 56<sup>th</sup> Street shall have a minimum setback of fifteen (15) feet) and shall be measured from property lines; provided that a wall or fence that does not comply with Article XXIV may be approved by the Town Manager. If necessary to screen a parking structure contemplated by Stipulation 54.b, a wall along 56<sup>th</sup> Street shall be allowed to be six (6) feet tall on top of a two (2) foot berm between the right-of-way easement along Lincoln Drive to a point which is up to two hundred (200) feet south, but no further than the northerly most drive entry from 56<sup>th</sup> Street into Areas B and C. Said wall shall also meet the fifty (50) foot corner vision criteria in Town Code Section 8-1-13. Walls and fences may be built in any other location in Area C, including on or adjacent to interior property lines created by new plats or maps.
63. Except as allowed by Stipulation 62, walls and fences along 56<sup>th</sup> Street shall have a maximum six (6) foot height with a setback of fifteen (15) feet. Walls and fences along 56<sup>th</sup> Street must incorporate design standards similar to the walls on the east side of 56<sup>th</sup> Street to provide continuity of design.
64. In addition to the Floor Area allowed for Area C uses, parking facilities shall be allowed, including use of such facilities by occupants, guests or employees of other areas within the Resort.
65. Parking structures are allowed in Area C, which comply with Stipulation 54(a) and (b). Surface parking areas are allowed in Area C, which comply with Stipulation 54(d).

#### **AREA D - OPEN SPACE**

66. Area D is intended to be improved and used only for open space/art and shall not be developed, except for landscaping and hardscaping including but not limited to: pathways, seat walls, benches, sculptures, gazebos, trellises, entry monument signage, water features and underground storm water retention systems. Public access to Area D may be restricted in any manner to protect health, safety, and the character of the Resort. No roadways or other vehicular access shall be permitted on or across Area D. No parking of vehicles shall be permitted on any portion of Area D.
67. Final plans for Area D shall be prepared by a licensed landscape architect and reviewed and approved by the Town Manager. The intent of such final plans shall be to provide visual appeal, access and enjoyment of Area D as a park-like area with pedestrian connection to 56<sup>th</sup> Street and Lincoln Drive. Perimeter walls adjacent to Lincoln Drive and 56<sup>th</sup> Street shall be limited to three (3) feet above Original Natural Grade, as measured according to the terms of Stipulation 25-28, to retain soil, direct the flow of pedestrian traffic as part of the landscape design and to control the flow of water. Interior walls greater than three (3) feet in height may be approved by the Town Manager. Final plans shall also harmonize the offsite hardscape and landscape elements in any proposed offsite improvements for areas of 56<sup>th</sup> Street and Lincoln Drive directly adjacent to Area D. Subject to mutually agreed upon terms (including but not limited to the nature and type of any art), Owner shall grant a perpetual easement at no cost to the Town to place, access, maintain, repair and replace (at the Town's election and expense) art on Area D.
68. Final plans for Area D shall be submitted for review by the Town Manager prior to issuance of the first building permit for any Resort Estate (Area E) home. Work for Area D as set forth on approved final plans shall be completed prior to the issuance of the first certificate of occupancy for any Resort Estate home in Area E. The maintenance obligations for Area D shall be the responsibility of the homeowners' association required to maintain the private streets and common areas within Area E and the owners of such other Areas as determined through associations created by Owners.

## **AREA E - RESORT ESTATES**

69. Area E may only be improved with single-family residential homes and uses incidental or accessory thereto (such as barbecues, fences, fireplaces, pools, spas, etc.), as well as common amenity features (as provided for in Stipulation 79). Use of common amenity features may be accessible and usable by the Resort Estate owners and their invitees and other owners of homes in Mountain Shadows East and Mountain Shadows West. No residential unit within Area E may be used for any use or purpose other than single-family residential use as described in the Town's Zoning

Code; provided, however, that such residential units may be included in the Resort Rental Management Program. Overnight storage of recreational vehicles and boats either on individual lots (if outside of a garage) or on private streets shall be prohibited. There are no Floor Area restrictions in Area E.

70. The minimum lot size for any Resort Estate lot shall be eight thousand (8,000) square feet, except for those lots in the area shown in Sheet 5.1 of the Approved Plans where lot size is limited to a minimum ten thousand (10,000) square feet.
71. All platted private streets providing access between the Resort Estates lots or to and from such lots to the public right-of-way shall be thirty (30) feet (or more if determined by Owner) in width and shall have a minimum twenty-six (26) foot wide paved surface area.
72. Each Resort Estate lot shall have a minimum width of sixty (60) feet, provided, however, that those lots limited to a minimum ten thousand (10,000) square foot lot size (in the area shown on Sheet 5.1 of the Approved Plans) shall have a minimum width of seventy (70) feet. On lots that are not rectangular, the minimum width shall be measured at the center point of the lot.
73. Each owner of a Resort Estate may occupy it, permit its guest(s) to occupy it, or make it available for rental, including for transient occupancy uses, or residential uses. Each Resort Estate may only be rented as a single unit unless otherwise allowed by the Zoning Ordinance as it may be amended from time to time.
74. A single-family detached residence may be constructed on each Resort Estate lot shown on any future plat.
75. The following requirements shall apply to each residence to be constructed on each such lot:
  - a. Minimum Setbacks
    - i. Front yard – ten (10) feet
    - ii. Side yard – seven (7) feet (between adjacent primary structures; zero (0) lot lines are allowed with respect to two (2) adjoining residences; provided, however, that the aggregate side yard separation shall be not less than fourteen (14) feet). The allowed side yards are illustrated on Sheet 5.1 of the Approved Plans.
    - iii. Side yard with frontage – ten (10) feet

- iv. Rear yard (other than adjacent to that portion of Lot 68 commonly known as Mountain Shadows East Drive) – twenty (20) feet
  - v. Rear yard (for lots adjacent to that portion of Lot 68 commonly known as Mountain Shadows East Drive) – minimum of twenty (20) and average of twenty-five (25) feet
- b. All zero (0) lot line structures shall comply with legal separation requirements in the applicable building code.
  - c. Minimum Floor Area of a residence on a lot is two thousand (2,000) square feet.
  - d. Heights shall be set forth on Sheet 5.1 of the Approved Plans.
76. Accessory structures that do not exceed six (6) feet in height above Original Natural Grade, including, but not limited to, pools, barbeques, fire pits, fireplaces, water features and other accessory structures, shall be allowed within the boundaries of each Resort Estate lot, provided they are located behind and screened from public streets and that portion of Lot 68 commonly known as Mountain Shadows East Drive by the allowed walls.
77. Accessory structures over six (6) feet above Original Natural Grade shall be allowed on each Resort Estate lot, provided they are limited to fifteen (15) feet above Original Natural Grade and comply with the following setbacks:
- a. Front yard – ten (10) feet
  - b. Side yard - five (5) feet
  - c. Side yard that abuts a street – ten (10) feet
  - d. Rear yard – ten (10) feet
- A freestanding guesthouse is not an allowed accessory structure.
78. Interior fences and walls:
- a. Fences or walls are allowed between lots or between a lot and any street or area used as a roadway (including Lot 68) provided they shall not exceed a height of six (6) feet above Original Natural Grade and shall maintain setback minimum of (except as provided for in Stipulation 79):
    - i. Front yard – ten (10) feet
    - ii. Side/Rear yards – zero (0) feet

- iii. Side/rear yards adjoining a public right-of-way – fifteen (15) feet
  - iv. Side/rear yards adjoining that portion of Lot 68 commonly known as Mountain Shadows East Drive and other private streets – five (5) feet
  - v. Side/rear yards adjoining all other rights of way (including but not limited to the egress drive shown on Sheet 5.1) zero (0) feet
- b. For fences or walls of 3 feet or less, the following setbacks shall apply:
- i. Front yard – five (5) feet
  - ii. Side/rear yards – zero (0) feet
  - iii. Side/rear yards adjoining a public right-of-way – fifteen (15) feet
  - iv. Side/rear yards adjoining that portion of Lot 68 commonly known as Mountain Shadows East Drive and other private streets – five (5) feet
  - v. Side/rear yards adjoining all other rights of way – zero (0) feet
79. Common areas and amenities may be constructed within Area E and may be modified or changed from time to time, which common areas and amenities may be used jointly by owners of Resort Estates lots, other Owners and guests of the Resort, and/or owners of lots in Mountain Shadows East and Mountain Shadows West. Such common areas and amenities can be constructed on any Resort Estate lot or other common area not within Area E. Common areas and amenities may include pools, spas, cabanas, restrooms, locker rooms, fitness areas and food service areas. The total Floor Area for all such amenity buildings in Area E shall not exceed five thousand (5,000) square feet and the height of all such buildings shall not exceed sixteen (16) feet. The height of perimeter walls surrounding such common areas or amenities shall not exceed eight (8) feet. The minimum setback from Lincoln Drive for all amenity buildings shall be fifty-five (55) feet.
80. If construction has not commenced on any Resort Estate lot by a date that is two (2) years after issuance of the initial building permit for the first element of work (excluding the issuance of grading and demolition permits), on such lot, then any such Resort Estate lot shall be landscaped as reasonably required by the Town Manager.
81. The Resort Estates lots shall be separated from that portion of Lot 68 commonly known as Mountain Shadows East Drive by a six (6) foot wall built five (5) feet from the property line between that portion of Lot 68 commonly known as Mountain Shadows East Drive and Area E as shown

on Sheet 5.1, except in those areas where a roadway easement is necessary to accommodate a Mountain Shadows East bypass lane associated with the Mountain Shadows East guardhouse. Said wall shall be constructed prior to the issuance of any building permits for the Resort Estate single-family home structures. No Resort Estate lots shall have a front yard adjoining that portion of Lot 68 commonly known as Mountain Shadows East Drive or have direct access onto that portion of Lot 68 commonly known as Mountain Shadows East Drive.

82. The final plat for Area E shall meet all requirements for on-site retention set forth in Town Code §5-10-3.
83. The Resort Estates, whose principal access is off of 56<sup>th</sup> Street, may be served by a guardhouse and/or gate, having a stacking distance for entry vehicles of at least one hundred and fifty (150) feet from a public right-of-way, and maintaining a minimum setback of twenty-five (25) feet from the property line along Lincoln Drive. The Floor Area of such guardhouse shall not exceed six hundred (600) square feet to allow for the guardhouse functions, restroom and mail drop. The maximum height of such guardhouse shall not exceed sixteen (16) feet above Original Natural Grade. Control fences and gates shall be allowed to control the flow of traffic, provided that the height shall not exceed eight (8) feet above Original Natural Grade. Such guardhouse and/or gate may be used by both the Resort Estates and Mountain Shadows East.
84. Walls and fences along Lincoln Drive shall be in accordance with Article XXIV of the Town Zoning Ordinance and shall be measured from property lines, provided that a wall or fence that does not comply with Article XXIV may be approved by the Town Manager. Walls and fences along the east side of 56<sup>th</sup> Street shall have a minimum setback of fifteen (15) feet from the public right-of-way. The walls must utilize similar design standards similar to the walls on the west side of 56<sup>th</sup> Street, to provide continuity of design.
85. Prior to issuance of a certificate of occupancy for the first Resort Estate lot, all of the following shall have occurred:
  - a. All demolition required under Stipulation 12 for Area E shall have been completed, grading permits for all of the Resort Estate lots shall have been issued, and grading pursuant to the approved grading plan for all such Resort Estate lots shall have been completed.
  - b. All curb cuts to those portions of Lincoln Drive east of 56<sup>th</sup> Street required by Stipulation 22 shall have been substantially completed.
  - c. All infra-structure required in conjunction with the final plat, such as storm drains, sewer, fire service, water, and electrical, serving such

Resort Estate lot is complete, including such items as access roads as are shown on any approved plat.

86. All exterior lighting shall comply with Stipulations 100-102.
87. 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 thirty-six (36) inches 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 from public right-of-way or properties not part of this Special Use Permit.
  - b. All wiring shall be contained within a structure, conduit or underground.
88. Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.) may be used to service the Resort Estates, and to transport and provide persons or service to guests of the Resort and owners of any Resort Units. These support vehicles shall not park on public streets.
89. Signage for Area E shall be approved as part of a Resort Sign Program to be reviewed and approved by the Town Manager pursuant to Stipulation 29.

**F. TEMPORARY USES/EASEMENT/MAINTENANCE**

90. Temporary event tents or pavilions may be erected on Area A and Area B of the Property in accordance with the Town Code Special Event Permit requirements (Chapter 8). No event tent shall be higher than twenty-four (24) feet above Original Natural Grade or closer to any exterior property line than the minimum setbacks shown for a twenty-four (24) foot height building. Placement of event tents shall have no material adverse impact on parking or circulation on site. Temporary event tents or structures shall not be allowed for more than fourteen (14) consecutive days.
91. The following stipulations shall be set forth in easements and/or CC&Rs or other recorded instruments (which may include recorded plats or maps), to be recorded on (or otherwise encumber title to) the Resort or such part thereof for which such stipulation is germane. Such recordation shall occur concurrently with or prior to recordation of any applicable final plats or final maps as the case may be for a particular phase of development. As a condition to approval of the final plat or final map, such recorded instruments (other than the plat or map itself) shall be approved by the Town Manager. Easements within any lot or parcel will

not affect setback measurements or determination of lot areas. Any lot within an Area can provide (by easement or otherwise) parking, drives, utilities, and signs for another lot within an Area, including lots owned by different Owners.

a. Easements

- i. Vehicular and pedestrian access easements providing access to public rights-of-way as reasonably determined by the Owner and benefiting all Owners within the Resort east of 56<sup>th</sup> Street, or the Resort west of 56<sup>th</sup> Street, as the case may be, shall be dedicated and maintained. The adequacy of such easements shall be reasonably approved by the Town Manager.
- ii. Utility and drainage easements shall be dedicated to the utility provider, the Town and/or the Owner as the case may be, as reasonably determined by the Town Manager. Any such easement shall be maintained in accordance with applicable requirements of the utility or the Town, as applicable. Where required by law, such easements shall be shown on the final plats or final maps.

b. General Maintenance Rights and Responsibilities

- i. The Resort may be developed in one or more phases as determined by Owner(s) from time to time. A general infrastructure plan for each phase shall be formulated by each Owner which shall set forth common elements for roadways, utilities (including fire service), lighting, gates, landscape, walls and other elements for the use, benefit, enjoyment and safety of all of Owner's guests, employees and other invitees of the Resort. Some of such common elements may benefit all phases of the Resort, while others may serve only one or more phases of the Resort.
- ii. A maintenance, repair and replacement regime shall be formulated by Owner(s) and incorporated into one or more CC&Rs which shall be a first priority lien (junior only to existing matters of record other than monetary liens and the 2013 Development Agreement) on the Resort or each particular phase, as the case may be. Said regime shall provide for governance through a master developer of the Resort or of a phase, or through an authorized or duly formulated association of certain, some or all Owners of the Resort or phased parts thereof. Said regime shall set forth and contain the minimum following elements:
  - (a) All exterior portions of all structures and all roadways, parking areas, landscaping, walls, pools and lighting shall be kept and maintained in a first class condition, commensurate

with a mixed use resort project serving multiple uses and Owners so that each part is benefited by the first class condition of each other part.

- (b) Adequate and reasonable assessments shall be made of each Owner to reasonably fund estimated budgets for the maintenance, repair, replacement and care of the completed Resort and/or each phase thereof.
  - (c) A governance mechanism to protect all Owners and insure the reasonable and adequate maintenance of all components of all phases of the Resort, including the power to access and enter upon the property of another for the purpose of enforcing the regime.
- iii. Architectural guidelines to insure that the requirements of the Special Use Permit are adhered to in the initial and any redevelopment of the Resort. Such architectural guidelines may be administered through an Owner as master developer of the Resort or phase therein, a master association for the Resort, or an association for a particular phase as the case may be, it being the intention of the Town that the Resort be developed in a cohesive, cooperative and harmonious manner which adheres to the requirements of this Special Use Permit and such other requirements Owner may formulate from time to time.
- iv. Town Self-Help Remedy. A covenant will be recorded on (encumbering) Areas B and E of the Property (which may be set forth in the CC&R's) providing the Town with a right to perform repair of access roads and parking lots to the extent that repair of the access roads and parking lots for any of these areas of the Property is required, in the opinion of the Town Manager, for safety. In the event that the Town Manager finds that the access roads and parking lots for any of these areas of the Property is not reasonably maintained, he shall provide notice to the Owners of the affected area, of the Town's intent to exercise the self-help remedies afforded to the Town under the covenant and that if such deficiency is not cured within a reasonable period of time, following mailing of the notice by first class mail and Owner's option to request a hearing before the Town Manager, the Town may, in addition to any other remedies available at law to the Town, enter the Property and remedy the deficiency. In the event the Town utilizes such remedy, the Owner of the affected property will be responsible to repay the Town for its reasonable costs and expenses incurred in performing such remedial 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 and/or record a lien on the segment of the Property on which the remedial work was performed, and enforce such lien as provided by Arizona law except the remedy of foreclosure.

- 92. Prior to the issuance of building permits (but not demolition permits) for a particular phase of development, Owner shall provide to the Town for each phase of development proposed, lighting, interior landscaping, circulation, parking, and interior signage plans (which may be the Resort Sign Guidelines). Such plans shall be reviewed and approved by the Town Manager taking into account this Special Use Permit, the 2013 Development Agreement, the Town’s Special Use Permit Guidelines and other relevant Town ordinances.

**G. PARKING & CIRCULATION**

- 93. Parking for each residence on a Resort Estate lot in Area E shall equal not less than two (2) parking stalls contained in an enclosed garage, plus a driveway to such garage capable of parking two (2) cars.

Parking for Areas A, B and C shall be calculated based upon a parking study prepared by a licensed engineer and approved by the Town Manager. Such parking study may be for one phase or Area (A, B or C) or for all of Area A, B and C, and may be updated from time to time as Areas A, B and C are developed, added to or redeveloped from time to time. The parking study for each such area or areas shall utilize the following criteria, and the Town Manager shall review the submitted parking study in accordance with the criteria set forth herein. The parking required for Areas A, B and C, or any particular phase thereof, shall be determined by first calculating the gross number of spaces required by Table 1 below. Internal capture of patrons shall be applied for each individual use and applied as a reduction to the gross parking required for the site as set forth in Table 2 below. After the consideration of internal capture, a shared parking analysis using the ITE methodology which considers the parking required for each use by time of day shall be applied. The result of all of these calculations shall be presented in a parking study prepared and sealed by a licensed engineer. Once the parking study is approved by the Town Manager, required parking for all new structures or uses shall be as set forth therein. If the net areas assumed in the parking study change, appropriate revisions (based upon this stipulation) to the parking study shall be made during the permitting process.

The parking rates to be applied to Areas A, B, and C structures, units, and uses are as follows:

Table 1

SUP	Category	Parking Requirement
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i.	Each Hotel Key	1.2 spaces
ii.	Each dwelling unit*	2 spaces
iii.	Restaurant	1 space per 50 square feet of net dining area
iv.	Meeting Rooms/ Auditoriums/ Group Assembly	1 space per two seats of public area (assumed to be 50 square feet)
v.	Retail	1 space per 300 square feet of net sales area
vi-a.	Office	1 space per 300 square feet of net occupied space
vi-b.	Service Establishment/Spa/Fitness/ Sales Establishments	1 space per 300 square feet of net occupied space

\* A dwelling unit is any Resort Unit that is not a Hotel Key.

The following notes apply for the measurement of floor space/units to be applied to the parking calculation for each of the categories shown above.

- i. A Hotel Key is one (1) unit containing any number of bedrooms so long as that unit cannot be separated into more than one (1) “locked” unit where each unit can be occupied separately.
- ii. A Resort Residential unit is one (1) unit containing any number of bedrooms so long as that unit cannot be separated into more than one (1) “locked” unit where each such “locked” unit can be occupied separately. Where a Resort Residential unit can be separately “locked,” parking shall equal one (1) space for each part which can be separately “locked” and occupied.
- iii. Net dining area is the net interior conditioned area measured from the interior surface of walls for areas within any restaurant designated for customer dining or bar (but excluding non-public areas).
- iv. Public area for meetings rooms is the net interior conditioned area measured from the interior surface of walls within rooms such areas as boardrooms, meeting rooms, and ballrooms used for meetings, auditoriums, and group assembly rooms excluding pre-function space, foyer (including lobbies and corridors), restrooms and phone booths, and also excluding non-public areas or exterior areas.
- v. Net sales area for retail is net interior conditioned area measured from the interior surface of walls for that portion of retail

establishments which is available to the public (excluding employee or other non-public areas).

vi-a. Net occupied area for office includes net interior conditioned area within any Resort Hotel or Clubhouse, measured from the interior surface of walls demised and used for offices such as administration, accounting, payroll and valet but excluding non-public areas.

vi-b. Net area for service establishments (including spas, fitness, sales offices) is the net interior conditioned area measured from the interior surface of walls used for treatment rooms, exercise rooms, and other similar spaces occupied by patrons of the spa or the publically accessible areas of any service or sales establishment (but excluding areas used exclusively by employees and non-public areas), but including any offices (not included in vi-a above).

Non-public areas shall all include all vertical and horizontal circulation such as corridors, hallways, stairways and elevations, all mechanical rooms or areas, equipment rooms, storage areas, closets, restrooms, garages, locker rooms, and areas used as lobby or reception.

Once the tabulation of parking is completed for each use using Table 1, the following reductions (using Table 2) shall be applied to each category based on their tendency to attract guests already using, staying, or residing at the Resort including existing residents of Mountain Shadows East and Mountain Shadows West.

Table 2

SUP	Category	Internal Capture Reduction
i.	Guest unit	0%
ii.	Dwelling unit	0%
iii.	Restaurant – associated with Resort Hotel/Clubhouse	60%
iii.	Restaurant – Poolside Grill	75%
iii.	Restaurant – separate building	50%
iv.	Meeting Rooms	50%
iv.	Auditoriums	50%
iv.	Group Assembly	75%
v.	Retail – associated with Resort Hotel/Clubhouse	100%
v.	Retail – separate building	50%
vi-a.	Office/Service Area –	0%

	Employee	
vi-b.	Office/Service Area – Public	100%
vi-c.	Office/Service Area – Spa/Fitness	90%

The parking requirements for each category should then be evaluated for sharing by use and time of day (shared parking study). Values for the percentage of usage by hour should be obtained from the ITE Parking Generation and ITE Shared Parking Manual. The parking by use should be summed for each hour for one weekday and one weekend day to determine the largest parking impact over a twenty-four (24) hour period. The resulting number will be considered the parking requirement for Area B and C, or any part thereof. Different Owners may coordinate and share parking as provided in the approved parking study.

Sixty (60) parking spaces currently exist for Golf Course and Clubhouse. The number of parking spaces required for the Golf Course and Clubhouse will not exceed sixty (60) spaces so long as the size of the Golf Course is no larger than eighteen (18) holes, the size of the Clubhouse (including all uses designated as contained therein including such uses which are also available or used by Resort Owners, renters, or guests) does not exceed thirteen thousand (13,000) square feet of Floor Area, and the interior restaurant occupancy load does not exceed 205. If the Clubhouse is greater than thirteen thousand (13,000) square feet of Floor Area, or the interior restaurant occupancy load is greater than 205, additional parking shall be provided calculated in the manner above only for the excess amounts. Parking provided for the Golf Course and Clubhouse may be used in the shared parking study for Area B and C to calculate the total parking required for Areas A, B, and C.

94. All designated fire lanes shall maintain a vertical clearance of fourteen (14) feet above actual finished grade and a horizontal clearance of twenty (20) feet to allow passage of emergency vehicles, and must meet all Department of Transportation standards.
95. Trash service for the Resort shall be provided either directly by Owner or through one or more third party vendors.
96. 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 (generally not less than twenty-six (26) feet of pavement width) and design, as determined by the Town, to permit the provision of fire and police protection to the Property.

## **H. UNIFIED MANAGEMENT**

97. There shall be at least one (1) person designated by the Resort at all times who has been thoroughly briefed on the provisions of this Special Use Permit and who has the authority to resolve, or to refer to others for resolution, all problems related to compliance with this Special Use Permit. All calls from Town residents to the Town or Resort regarding noise or disturbances shall be referred to and addressed by such person(s). Maintenance of the Resort in general and all common areas specifically, shall be coordinated through a single unified management entity, which may be the Principal Resort Hotel Owner or a master association of Owners.
98. At all times, the Property shall remain under unified management through one or more management agreements or associations, and shall be operated as an integrated resort facility. Any allowed use within one Area can be associated with or used in conjunction with an allowed use within another Area, including but not limited to, parking, signs, facilities, and amenities.

## **I. CELLULAR ANTENNAS**

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

## **J. LIGHTING**

100. All exterior lighting, including on the exposed surface of any parking structure or parking lot or area, shall comply with the Town's Special Use Permit Guidelines as amended and supplemented by Stipulations 101 and 102, and shall be submitted to the Town Manager for review and approval. Notwithstanding the foregoing, pole lighting for parking structures or parking areas as allowed within the setback along Lincoln Drive or 56<sup>th</sup> Street in Areas B and C, as provided in Stipulations 54 and 65, shall be allowed with a sixty (60) foot setback from Lincoln Drive and 56<sup>th</sup> Street. Any other lighting for such parking facilities between the property line and such sixty (60) foot setback shall be wall mounted or within bollards at a height not greater than the adjacent screen walls.

101. If the Town receives a complaint from an offsite owner that the lamp or lighting or illumination device (as defined by the Town Zoning Ordinance Section 1023) within an exterior light fixture is visible from off the Property, the Town Manager may inspect the Property and require the Owner of such lighting fixture to shield such light source if the light emitting element is visible from outside the Property.
102. When determining project illumination, lighting shall be generally designed to comply with the maximum foot candles criteria in the table below. Project illumination shall be measured in the following manner: An area not less than two thousand five hundred (2,500) square feet or an area as determined by the Town Manager shall be used for sampling. Samples are to be taken on spacing not to exceed a ten (10) foot grid at the surface plane to produce an average reading for the measurements. In no event shall lighting, as measured at the ground surface at the exterior property line, exceed 0.5 foot candles.

USE AREA	MAX FOOTCANDLES *
Drive Entry/Intersections/Drop Off Areas	5
Interior Roadways	1
Parking Lots/Decks	1.6
Pathways	1
Service Areas; trash, loading, etc.	5
Pool Decks	5
Circulation Areas	5
Function Areas	5
Exterior Dining Areas (when in use for dining)	10
Landscaped Areas	5
Guestroom Entries	3
Guestroom Patios	5
Architectural Lighting	5
*Footcandle values are maintained values as defined by the IESNA	

**K. LANDSCAPE STANDARDS**

103. Perimeter landscaping plans (i.e., for those areas between the back of curb and southern edge of the twenty-five (25) foot roadway easement along Lincoln Drive and the area on 56<sup>th</sup> Street from the property line to the proposed perimeter walls adjoining Areas B, C, D and E) shall be submitted to the Town Manager for review and approval. Perimeter landscaping along Lincoln Drive shall be substantially compliant with the Town's Landscape Guidelines. If new construction allowed under this Special Use Permit does not start within 365 days from issuance of a

demolition permit, Owner must either, at Owner's option, replace landscaping or provide other screening where removal of existing landscaping/screening was necessary for demolition.

As a pre-requisite to obtaining a building permit for a particular phase of development, the Owner must demonstrate the existence of adequate perimeter screening for such phase prior to construction. For purposes of this requirement, adequate screening shall consist of an existing oleander hedge or a six (6) foot chain link fence with green screening.

**Other Agreements**

104. The SUP shall be effective if, but only if, the 2013 Development Agreement is approved by the Town Council.

**SCHEDULE “1”  
TO  
MOUNTAIN SHADOWS STIPULATIONS**

**Approved Plans**

Sheet Number	Title	Date
2	Land Use Plan	February 22, 2013
2.1	Floor Area Illustrations	February 22, 2013
3	Ingress/Egress And Sign Location Diagram	February 22, 2013
4	Original Natural Grade (O.N.G.) Plan	February 22, 2013
5	Allowed Setbacks & Heights – West	February 22, 2013
5.1	Allowed Setbacks & Heights – East	February 22, 2013
6	Conceptual Golf Course Improvements Plan	February 22, 2013

**SCHEDULE “2”  
TO  
MOUNTAIN SHADOWS STIPULATIONS**

**Town of Paradise Valley Zoning Ordinance in effect as of Approval Date**

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