

**ORDINANCE NUMBER 665**

**AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA, AMENDING THE ZONING ORDINANCE AND AMENDING THE ZONING MAP FROM R-43/R-10 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 5641 EAST LINCOLN DRIVE, GENERALLY SOUTH OF LINCOLN DRIVE AND EAST OF 56<sup>TH</sup> STREET; 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/R-10 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/R-10 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, of which the Property is a part, and allowed uses.

- h. Provides for phasing of development and ensuring that the primary use of the property will be as part of 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; and
- j. 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.

SECTION 2. Rezoning. A parcel of land, as described in Exhibit “A” attached hereto, is hereby rezoned from R-43/R-10 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:

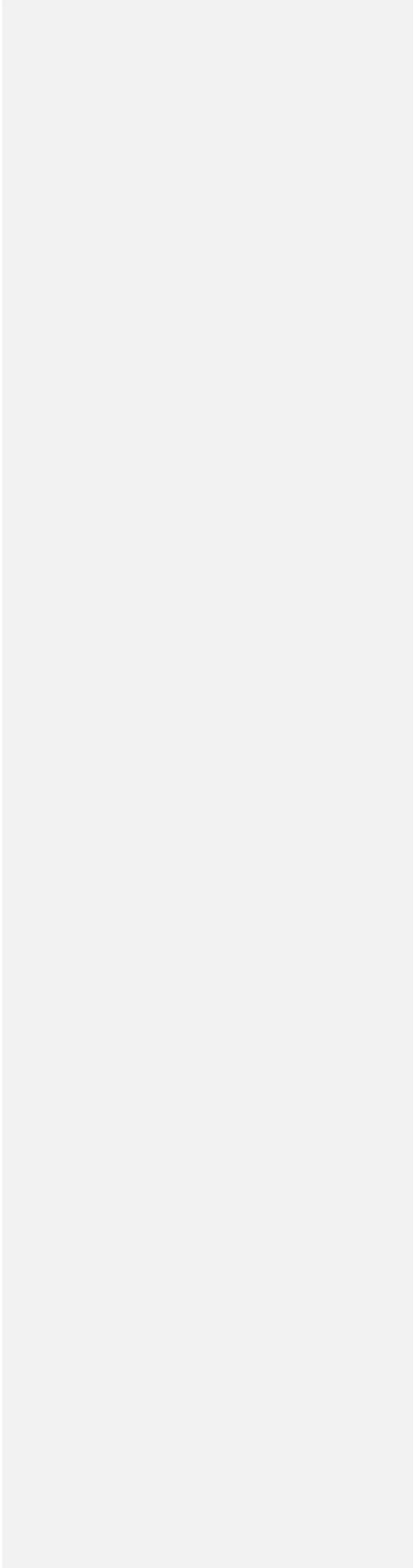
ATTEST:

\_\_\_\_\_

\_\_\_\_\_

Andrew M. Miller, Town Attorney

Duncan Miller, Town Clerk



**EXHIBIT "A"**  
**TO**  
**ORDINANCE NUMBER 665**

Legal Description

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

*[Insert legal description of a portion of Lot 68 and the southern egress area]*

**EXHIBIT “B”  
TO  
ORDINANCE NUMBER 665**

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

**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 (the “Owner”), Special Use Permit No. 12-5a (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. 665 or otherwise in these Stipulations.

The Property is comprised of approximately [REDACTED] acres of land south of Lincoln Drive and east of 56<sup>th</sup> Street in the Town of Paradise Valley, Arizona, as more particularly described on Exhibit “A” to Ordinance No. 665, as defined below. The SUP is being granted by the Town to permit the continued use and operation of the Property as a portion of 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 for Lot 68.

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 Estate” lots, common areas, driveways, 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 Ordinance 653.

“2013 Development Agreement for Lot 68” 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 "1," attached hereto and incorporated herein by this reference.

"Area E" and "Area F" means the Property and other adjoining property as shown on Sheet 2 (Area F) 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 (Area F) of the Approved Plans.

"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.

"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 for Lot 68 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 for Lot 68, 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 for Lot 68 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 (Area F) of the Approved Plans).

“Lot 68” means that portion of 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) described on Exhibit A.

“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.

“Ordinance 653” means the ordinance adopted by the Town relating to portions of the Resort situated on nearby property.

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

“Owner” means MTS Land, LLC, a Delaware limited liability company, and its 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 any Resort Estates lot. An 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.

“Principal Resort Hotel Owner” means the owner of the Principal Resort Hotel, as defined in Ordinance 653.

“Property” means the land described in Exhibit “A” to Ordinance Number 665.

“Resort” means the property that is subject to Ordinance 653 and the Property, together with all facilities and other improvements existing, developed or redeveloped and used or useful on the adjacent property and the Property in general conformance with Ordinance 653 or the Approved Plans and/or the Stipulations, as applicable.

“Resort Estates” means all of the lots to be improved with residences in Area E in accordance with Ordinance 653 and, if applicable, Area F.

“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 Rental Management Program” has the same meaning as in Ordinance 653.

“Resort Unit” has the same meaning as in Ordinance 653.

“Southern Egress” means that portion of the Property described on Exhibit A.

“Special Use Permit” or “SUP” means Special Use Permit No. 12-5a, 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 Estate) 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 Property 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 Property 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 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 for Lot 68, 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 for Lot 68. 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 this SUP and/or the 2013 Development Agreement for Lot 68, 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 for Lot 68, 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 for Lot 68, (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 for Lot 68.

**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 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.
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 as set forth in Ordinance 653.
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 as set forth in Ordinance 653.
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. 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 right-of-way, the Town shall be solely responsible for constructing those improvements within the 56<sup>th</sup> Street right-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 (Area F) 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 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 or the Property subject to Ordinance 653), 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 to comply with any provision of these Stipulations shall not impact property in any other part of the Property, as long as such other parts of the property are not owned by the same Owner(s).
24. If applicable, the Owner shall arrange for construction phasing within any particular phase as set forth in Ordinance 653. 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 noted on Sheet 5.1 (Area F)), 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 (Area F) 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. Sheet 5.1(Area F) of the Approved Plans sets 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 within each particular area set forth on Sheet 5.1 (Area F) 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 (Area F) of the Approved Plans.
28. Maximum height shall be measured at such midpoint, as illustrated on Sheet 4 (Area F) 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. 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 Sheet 5.1 (Area F) 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, including Area F, has 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.

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, including Area F, 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 Area F, 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. Area of sign copy shall be calculated based on the definition of Free-standing Letter Sign in Article II of the Zoning Ordinance.

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 AREA F**

33. Area F may only be improved with (i) single-family residential homes and uses incidental or accessory thereto (such as barbecues, fences, fireplaces, pools, spas, etc.), (ii) swimming pool, pool houses, restrooms, fitness areas, food service areas, and other common recreational amenities (as provided for in Stipulation 43) accessible and usable by the Resort Estate owners and their invitees and other owners of homes in Mountain Shadows East and Mountain Shadows West, (iii) driveways and parking area, and (iv) landscaping. Any residential unit within Area F may not 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 F. Any residential unit in Area F may be integrated with and platted concurrently with residential units in Area E that is subject to Ordinance 653. Any Resort Estate lot may be located partially in Area F and partially in Area E.
34. The minimum lot size for any Resort Estate lot shall be ten thousand (10,000) square feet.
35. All platted private streets providing access between the Resort Estates lots (in Area E or Area F) 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.
36. Each Resort Estate lot 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.
37. 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.

38. A single-family detached residence may be constructed on each Resort Estate lot shown on any future plat.
39. 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(Area F) 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(Area F) of the Approved Plans.
40. 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.
41. 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.

42. 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 43):

- 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(Area F)) 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

43. Common areas and amenities may be constructed within Area F 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 in Area E and Area F, 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 or Area F. 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/Area F 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.

44. 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.
45. 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 F 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.
46. The final plat for Area F (which may be combined with Area E) shall meet all requirements for on-site retention set forth in Town Code §5-10-3.
47. Mountain Shadows East, whose principal access is off of Lincoln Drive, may relocate and reconstruct its existing guardhouse and/or gate within the easternmost portion of Lot 68 within Area F in accordance with plans approved by the Town Manager. Such guardhouse and/or gate shall have a stacking distance for entry vehicles of at least one hundred and fifty (150) feet from a public right-of-way and maintain a minimum setback of forty (40) 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 Mountain Shadows East.

48. 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.
49. Prior to issuance of a certificate of occupancy for any Resort Estate lot, 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.
50. All exterior lighting shall comply with Stipulations 63-65.
51. 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.
52. Unlicensed support vehicles (that is, golf carts, utility vehicles, etc.) may be used to service the Resort Estates (in Area E and Area F), 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.
53. Signage for Area F shall be approved as part of a Resort Sign Program to be reviewed and approved by the Town Manager pursuant to Stipulation 29.

**F. EASEMENT/MAINTENANCE**

54. 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 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 for Lot 68) 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.

55. 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 for Lot 68, the Town's Special Use Permit Guidelines and other relevant Town ordinances.

#### **G. PARKING & CIRCULATION**

56. Parking for each residence on a Resort Estate lot in Area F 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. No additional parking shall be required for amenities within Area F because the amenities are only for use by Resort Estate owners and their invitees and other owners of homes in Mountain Shadows East and Mountain Shadows West.
57. 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.
58. Trash service for the Area F shall be provided either directly by Owner or through one or more third party vendors.
59. 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**

60. 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.

61. At all times, the Property shall remain under unified management through one or more management agreements or associations, and shall be operated as part of 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**

62. 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**

63. 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 64 and 65, 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 Area F 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.
64. 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.

65. 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
Architectural Lighting	5
*Footcandle values are maintained values as defined by the IESNA	

**K. LANDSCAPE STANDARDS**

66. 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 Area F) 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**

67. The SUP shall be effective if, but only if, the 2013 Development Agreement for Lot 68, Ordinance 653, and the 2013 Development Agreement are approved by the Town Council.

**SCHEDULE "1"**  
**TO**  
**MOUNTAIN SHADOWS STIPULATIONS**

**Approved Plans**

Sheet Number	Title	Date
2 (Area F)	Land Use Plan	February 22, 2013
2.1 (Area F)	Floor Area Illustrations	February 22, 2013
3 (Area F)	Ingress/Egress Diagram	February 22, 2013
4 (Area F)	Original Natural Grade (O.N.G.) Plan	February 22, 2013
5.1 (Area F)	Allowed Setbacks & Heights – East	February 22, 2013

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**SCHEDULE "2"  
TO  
MOUNTAIN SHADOWS STIPULATIONS**

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