

RESOLUTION NO. 2012-01

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING THE DEVELOPMENT AGREEMENT WITH AVENUE OF THE FOUNTAIN, LLC.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. The Development Agreement between the Town of Fountain Hills and Avenue of the Fountain, LLC (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, February 2, 2012.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

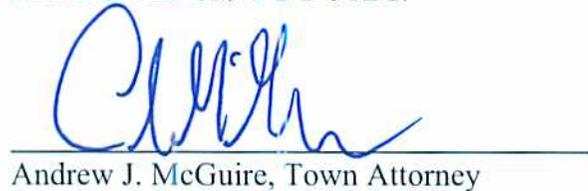

Jay T. Schlum, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Julie Ghetti, Interim Town Manager


Andrew J. McGuire, Town Attorney

**EXHIBIT A
TO
RESOLUTION NO. 2012-01**

[Development Agreement]

See following pages.

WHEN RECORDED RETURN TO:
Town of Fountain Hills
Attn: Town Clerk
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

DEVELOPMENT AGREEMENT
FOR

THE AVENUE

A
TOWN CENTER PROJECT

TOWN OF FOUNTAIN HILLS, ARIZONA,
an Arizona municipal corporation

AND

AVENUE OF THE FOUNTAIN, LLC,
an Arizona limited liability company

February 2, 2012

**DEVELOPMENT AGREEMENT BETWEEN THE
TOWN OF FOUNTAIN HILLS AND AVENUE OF THE FOUNTAIN, LLC**

THIS DEVELOPMENT AGREEMENT (this "Agreement") dated January 2, 2012, (the "Effective Date") is made and entered into by and between the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation (the "Town") and AVENUE OF THE FOUNTAIN, LLC, an Arizona limited liability company (the "Developer"). The Town and Developer are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

A. Developer has a real estate purchase contract for the acquisition of approximately 4.76 acres of that certain real property located at the southwest corner of Avenue of the Fountains and Verde River Drive, Fountain Hills, Arizona, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. It is the Developer's intention to develop the Property as an entertainment, retail and office project, including but not limited to retail shopping areas, restaurants, offices, theaters and related uses (the "Project").

C. The Town desires that the Property be developed as an integral part of the Town Center area of Fountain Hills. The Town has determined that encouraging the development of the Property pursuant to this Agreement will result in significant planning, economic and other public purpose benefits to the Town and its residents by, among other things (i) the construction of public improvements, (ii) the development of the Property in a manner consistent with the Town's General Plan, (iii) an increase in sales tax revenues to the Town arising from or relating to the development of the Property and (iv) the creation of new jobs and otherwise enhancing the economic welfare of the residents of the Town.

D. The Parties understand and acknowledge that the ultimate development of the Project on the Property is a project of such magnitude that the Developer requires assurances from the Town that the Developer will have the ability to complete the development of the Project as contemplated by this Agreement. The Parties further understand and acknowledge that the Town seeks assurances from the Developer that the Developer will complete the acquisition of the Property and thereafter develop the Project on the Property in accordance with the Land Use Plan attached hereto as Exhibit B and incorporated herein by reference (the "Land Use Plan") and in accordance with a Concept Plan prepared by the Developer consistent with the Land Use Plan and submitted for approval by the Town's Planning and Zoning Commission (the "Commission") and the Mayor and Town Council of the Town of Fountain Hills (the "Town Council"), as hereinafter provided in this Agreement.

E. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered into pursuant to the terms of ARIZ. REV. STAT. § 9-500.05, in order to facilitate the proper development of the Property by providing for, among other things (i) conditions, terms, restrictions and requirements for the Property by the Town, (ii)

the intensity and height of such uses and (iii) other matters related to the development of the Property. The terms of this Agreement shall constitute covenants running with the Property as more fully described in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated by this reference as if fully set forth herein.

2. Term and Effective Date. The Developer, its successors and assigns, shall have the right to implement development on the Property in accordance with this Agreement for a period of four (4) years from the date this Agreement is approved by the Town Council, at which time this Agreement shall automatically terminate as to the Property without the necessity of any notice, agreement or recording by or between the Parties (the "Term"); provided, however, that provisions of this Agreement that specifically survive the termination of this Agreement shall remain in full force and effect, subject only to the termination provisions herein specifically related thereto; provided further, however, that if Developer fails to completely fulfill any portion of its obligations as set forth in Section 6 below by the deadline for performance associated with each such obligation, this Agreement, and the Parking Easement (as defined below) shall immediately terminate upon expiration of the applicable cure period without further act by the Town Council. This Agreement shall become effective only upon approval by the Town Council.

3. Land Use Plan. Developer has previously submitted to the Town the Land Use Plan attached hereto as Exhibit B. Developer acknowledges and agrees that such Land Use Plan is not a "Concept Plan" as defined in the Town of Fountain Hills Zoning Ordinance (the "Zoning Ordinance"), and notwithstanding the Town Council's Approval of this Agreement, Developer must also receive approval by the Commission and Town Council of a Concept Plan prepared in accordance with the Concept Plan requirements set forth in the Zoning Ordinance. The Concept Plan shall set forth the development standards, mix of uses and phasing for the Project that are consistent with the Town Center Commercial District ("TCCD") zoning category provisions in the Zoning Ordinance, the Town's General Plan designations for the Property and the Downtown Area Specific Plan, hereinafter referred to as the "Concept Plan"), which Concept Plan may be approved or denied by the Commission in its sole discretion. Developer further agrees that, due to the nature of this Project, the Concept Plan shall be subject to additional review by the Town Council, which may approve or deny the Concept Plan in its sole discretion. The Developer agrees and understands that its efforts to prepare the documents necessary for the Concept Plan application were undertaken at its own risk, and that the Developer may not rely upon this Agreement as any guarantee that the Commission or the Town Council will approve the Concept Plan. Further, once approved by the Town Council, the Concept Plan shall not be amended or modified without Town Council approval.

4. Use of Town Property.

a. Rights-of-way. The Town, in the sole discretion of the Town Council, and subject to existing state and local laws and ordinances, has determined that it is necessary to further economic development to make available for use by the Developer certain Town property in conjunction with the Parking Easement (defined below). Further, subject to the Developer's provision of necessary insurances and indemnifications acceptable to the Town, the Town acknowledges and agrees to allow the Developer to use, at no cost, portions of the Town's rights-of-way adjacent to the Project for construction, operation and maintenance of sanitary sewer interceptor facilities associated with Project, as such facilities are shown on the approved Concept Plan. Town also agrees to provide, in favor of the Developer at no cost, all construction easements or approvals necessary to construct the necessary improvements to or within Town rights-of-way.

b. Parking Easement. The Town hereby agrees to allow Developer to use certain portions of the Town's open public parking located at the Civic Center on a no-fee, non-exclusive, shared-use basis to provide additional parking for the theater multiplex planned as part of the Project, subject to and in accordance with the terms and conditions of the reciprocal parking easement agreement attached hereto as Exhibit C and incorporated herein by reference (the "Parking Easement"). The Parking Easement shall be executed and recorded by the Parties concurrently with the execution and recordation of this Agreement. Except as specifically set forth in Section 2 above, the Parking Easement shall survive the expiration of the Term of this Agreement, and shall thereafter be terminable only in accordance with the terms of the Parking Easement. The Parties acknowledge and agree that, pursuant to Section 18.11 of the Zoning Ordinance, the Walker Parking-ULI based, Shared Parking Model, developed by Walker Parking (the Town parking consultant), will be utilized to determine the shared parking demand for the Project and that the first three peer review fees associated with the use of this alternate Shared Parking Model are not applicable to the Project.

c. New Town Parking Lots. The Town hereby agrees to allow Developer to construct two parking lots containing a total of 155 spaces located on the Town's real property located adjacent to the Property as shown on Exhibit D, attached hereto and incorporated herein by reference (the "New Town Parking Lots"). The Developer agrees and understands that the use of the Town's real property to construct the New Town Parking Lots is conditioned upon Developer designing and constructing the southernmost of the New Town Parking Lots in a manner that reasonably prevents off-site light intrusion onto the residential housing units immediately to the south of the southernmost of the New Town Parking Lots.

5. Conditions to Town's Obligations. The Town shall not be required to take any action contemplated by this Agreement until Developer has fully performed its obligations as set forth in subsections 6(a) - (j) below.

6. Developer's Obligations. Developer shall perform all of its duties as set forth in this Section and according to the "Schedule of Performance" attached hereto as Exhibit E and incorporated herein by reference. Developer's failure to timely perform its obligations as set

forth below shall constitute a breach of this Agreement and shall cause the immediate termination thereof as set forth in Section 2 above.

a. Zoning Adherence and Performance. Developer agrees to develop the Project in accordance with the TCCD zoning district and the Concept Plan, as reviewed and approved or denied by the Commission in its sole discretion and then approved or denied by the Town Council in its sole legislative discretion. Developer has previously submitted a completed Concept Plan application to the Town staff in sufficient time to ensure that the Town staff can submit it to the Commission for its review and approval or denial prior to the Town Council's consideration of this Agreement. Developer agrees to accept and comply with any conditions associated with the final approval of the Concept Plan approval by the Town Council.

b. Acquisition of the Property. Developer agrees to complete the acquisition of the Property (close escrow and confirm ownership) for development of the Project not later than sixty (60) days after the Effective Date.

c. Construction Documents. Developer shall prepare and submit to the Town for the Town's review and approval, the construction documents for the Project, as shown on Exhibit B, in accordance with the Schedule of Performance and the Town codes and ordinances.

d. Construction on Property. Developer shall submit complete Construction Documents for the phases of the Project, receive building permits for vertical construction of the phases of the Project according to such construction documents and commence construction on the Project in accordance with the Schedule of Performance. For the purposes of this subsection, (1) "vertical construction" shall mean construction of exterior walls of restaurant, retail, entertainment and office buildings on the Property and (2) "commencement of construction" shall mean the mobilization of sufficient construction resources to the Property to complete the phases of the Project according to the Schedule of Performance and the Town's codes and ordinances. Developer further agrees and acknowledges that it shall not be permitted to begin physical construction on the Property until, and if, the Town Council approves the Concept Plan.

e. Traffic Study. Developer shall submit for review to the Town a traffic impact analysis prepared by a qualified professional identifying (1) the Project impacts on traffic circulation in the area surrounding the Project, including but not limited to the area bounded by El Lago Boulevard, Saguaro Boulevard, Avenue of the Fountains and La Montana Drive and (2) the Developer's proposed mitigation for the impacts identified (the "Traffic Study"). The Traffic Study shall be submitted to the Town and the mitigation agreed to between the Parties by not later than the first vertical construction related to the Project and the required mitigation shall be completed prior to the first certificate of occupancy for the Project.

f. Building Permits. Developer agrees and understands that no permits for the construction of the Project will be issued prior to Town Council approval of the Concept Plan. Developer shall secure all grading, building and construction permits, which may be required by the Town and any other governmental agency prior to starting any site grading or construction activities on the Property. However, the Parties further agree that subject to

appropriate assurances in such form and amount as required by the Town Engineer and Town Attorney to ensure the restoration of the Project site, the Town agrees that it will issue certain grading permits for the Project prior to the Developer's completion of the construction documents for, and the Town Engineer's approval of, the building and construction documents for the Project; provided, however, no such grading permits shall be issued by the Town to the Developer until (1) the necessary assurances are received and approved by the Town Attorney and Town Engineer and (2) the Developer has either (A) taken ownership of the Property or (B) obtained and delivered to the Town written authorization from the property owner granting Developer the necessary authority to enter the Property and conduct grading operations.

g. Developer Public Improvements. Developer shall design and construct all public improvements associated with the Project including, but not limited to, the New Town Parking Lots in a manner consistent with the Developer's parking areas adjacent thereto. Upon completion and acceptance by the Town, the Developer shall dedicate all such public improvements to the Town.

h. Phased Development. The Town acknowledges that Developer plans to develop the Property in two phases generally set forth in Exhibit B, as more particularly described in the Concept Plan as approved by the Town Council. The Town will review and approve the public infrastructure needs of each phase (the "Infrastructure Improvements") as part of its approval of the construction documents of each phase. The Developer shall construct or cause to be constructed and installed any and all portions of the Infrastructure Improvements. The Town Engineer may require that the Developer construct portions of the Infrastructure Improvements not directly related to the phase being constructed by the Developer if, in the Town Engineer's sole discretion, he determines that the construction sequence requested by the Developer will be detrimental to the Town or to the public.

i. Infrastructure Assurance. Prior to the commencement of construction of any Infrastructure Improvements, the Developer shall provide appropriate assurances in such form and amount as required by the Town Attorney and Town Engineer to ensure that the installation of Infrastructure Improvements within the Property or other Infrastructure Improvements directly related to such building permit or permits will be completed (the "Infrastructure Assurance").

j. Dedication and Acceptance. Upon completion by Developer of any Infrastructure Improvements, the Developer shall promptly (1) notify the Town in writing of the presumptive completion of such Infrastructure Improvements and (2) dedicate to the Town, at no cost to the Town, such Infrastructure Improvements free and clear of all liens and encumbrances and in accordance with Town standards applicable to such dedication and acceptance. So long as such Infrastructure Improvements are constructed in accordance with Town standards, as verified by the inspection of the completed Infrastructure Improvements by the Town Engineer, all punch list items have been completed and the Infrastructure Improvements are free of any liens and encumbrances, the Town shall accept the Infrastructure Improvements. The Town shall notify the Developer, in writing, of the Town's acceptance of the Infrastructure Improvements. Acceptance of any Infrastructure Improvement is expressly conditioned upon Developer providing a warranty for such Infrastructure Improvement consistent with Town standards and as

provided in Subsection 6(k) below. Subject to the limitation set forth below, after acceptance of any Infrastructure Improvements, the Town thereafter shall maintain, repair and operate such Infrastructure Improvements at its own cost, which obligation shall survive any termination of this Agreement. Notwithstanding the Town's maintenance obligations set forth above, the Developer shall be solely responsible for the cost of operating (including, but not limited to costs for water, electricity and dust control) and maintaining the New Town Parking Lots constructed on Town property as set forth in Subsection 4(c) above, such maintenance to be conducted at the same intervals and standards as the Developer's parking areas, subject to prior notice to, and approval by, the Town Engineer. Developer, at no cost to Town, shall dedicate, convey or obtain, as applicable all rights-of-way, rights of entry, easements and/or other use rights, wherever located, as useful or necessary for the operation and maintenance of the Infrastructure Improvements as required by the Town.

k. Warranty. Developer or its assignee shall give to the Town a one-year warranty for all Infrastructure Improvements or other such warranty as required by the Town Engineer, which warranty shall begin on the date that the Town accepts the Infrastructure Improvements as provided in this Section. Any material deficiencies in material or workmanship identified by Town staff during the one-year warranty period shall be brought to the attention of the Developer or its assignee that provided the warranty, which shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the Town Engineer. Continuing material deficiencies in a particular portion of the Infrastructure Improvements shall be sufficient grounds for the Town to require (1) an extension of the warranty for an additional one-year period and (2) the proper repair of or the removal and reinstallation of, that portion of the Infrastructure Improvements that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Developer agrees to repair any damage to the Infrastructure Improvements caused by Developer's construction activities on the Property. Nothing contained herein shall prevent the Town or Developer from seeking recourse against any other third party for damage to the Infrastructure Improvements caused by such third party.

8. Fee Limitations.

a. Generally. The Parties agree that the Developer shall pay review, permit and development fees associated with the Project up to seven hundred twenty-five thousand dollars (\$725,000) (the "Fee Cap"); the responsibility for any commercial review, permit and development fees in excess of seven hundred twenty-five thousand dollars (\$725,000) shall be borne by the Town; provided, however, that the seven hundred twenty-five thousand dollar cap on such fees shall only extend for a period of five (5) years from the Effective Date (such date is referred to herein as the "Cap Termination Date") whether or not Developer has reached seven hundred twenty-five thousand dollars (\$725,000) in aggregate fees for the Project. After the Cap Termination Date, the Developer shall pay the then-applicable review, permit and development fees, without discount or cap.

b. Excluded Fees and Costs. Developer expressly agrees and understands that the Fee Cap does not include (1) any fees paid to third parties (i.e., Chaparral City Water

Company or Fountain Hills Sanitary District) or (2) any fees applicable to the Town's public art requirements as set forth in Section 19.05 of the Zoning Ordinance.

c. Calculation of Fee Cap. In calculating the Fee Cap, all development impact fees due to the Town for the Project shall be counted first, followed by fees related to review by professionals other than the Town Staff (a/k/a outside plan review or inspection fees), followed by application fees.

d. Method of Reimbursement/Operational Requirement. Fees shall be paid by the Developer in the full amount when due. Fees paid in excess of the Fee Cap shall be rebated to the Developer on the date that is five (5) years from the date of certificate of occupancy for the movie theater portion of the Project (the "Fee Cap Rebate Date") provided that the theater (1) opens to the public for use as a first-run movie theater not later than sixty (60) days following issuance of a certificate of occupancy for the theater (the "Opening Date") and (2) operates continuously from the Opening Date until the Fee Cap Rebate Date.

9. Default. If either Party fails to perform any obligation, and such Party fails to cure its nonperformance within thirty (30) days after notice of nonperformance is given by the non-defaulting Party, such Party will be in default (the "Cure Period"). In the event of such default, the non-defaulting Party may terminate this Agreement and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within thirty (30) days, then the defaulting Party will have such additional periods of time as part of the Cure Period as may be reasonably necessary under the circumstances, provided the defaulting Party immediately commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such Cure Period exceed sixty (60) days.

10. General.

a. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (1) delivered to the Party at the addresses set forth below; (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below; or (3) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Town: Town of Fountain Hills
 16705 East Avenue of the Fountains.
 Fountain Hills, Arizona 85268
 Attn: Town Manager

With a copy to: GUST ROSENFELD, P.L.C.
 One East Washington, Suite 1600
 Phoenix, Arizona 85004-2553
 Attn: Andrew J. McGuire, Esq.

If to Developer: Avenue of the Fountain, LLC
15933 E. Trevino Drive
Fountain Hills, Arizona 85268
Attn: George Kasnoff

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received: (1) when delivered to the Party; (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage; or (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

b. Amendment. No amendment or waiver of any provision in this Agreement will be binding (1) on the Town unless and until it has been approved by the Town Council and has become effective or (2) on Developer unless and until it has been executed by an authorized representative.

c. Headings; References. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the meaning of any provision or the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

d. Time of the Essence. Time is of the essence with regard to performance under the terms and provisions of this Agreement, and any amendment, modification or revision thereof, with respect to the actions and obligations of each person bound by the terms hereof.

e. Attorney's Fees. If either Party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other Party of any of the terms hereof, the losing Party shall pay to the prevailing Party reasonable attorney's fees, costs and expenses, including expert witness fees, incurred in connection with the prosecution or defense of such action. For the purpose of this Agreement, the terms "attorney's fees, costs and expenses" shall mean the fees and expenses of counsel to the Parties hereto, which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees, costs and expenses" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

f. Recordation. This Agreement shall be recorded in its entirety in the Maricopa County Recorder's Office not later than ten (10) days after it is fully executed by the Developer and the Town.

g. Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

h. Good Standing; Authority. Each Party represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona with respect to Developer, or a municipal corporation within Arizona with respect to the Town and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

i. Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns.

j. Third Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder.

k. No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties hereto in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each Party hereto shall be considered a separate owner, and no Party hereto shall have the right to act as an agent for another Party hereto, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

l. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

m. Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

n. Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

o. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

p. Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (local time, Phoenix, Arizona) on the last day of the applicable time period provided herein.

q. Conflict of Interest. Pursuant to ARIZ. REV. STAT. § 38-503 and § 38-511, no member, official or employee of the Town shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of ARIZ. REV. STAT. § 38-511.

r. Severability. Every provision of this Agreement is and will be construed to be a separate and independent covenant. If any provision in this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable will not be affected by that invalidity or unenforceability. Each provision in this Agreement will be valid and will be enforced to the extent permitted by law and the Parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

s. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the Parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained.

t. Estoppel Certificate. Upon Developer's written request, the Town will execute, acknowledge and deliver to Developer and all parties identified by Developer, including without limitation assignees, transferees, tenants, purchasers, investors, lenders, and mortgagees, a written statement certifying (1) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating modifications) and (2) whether there are any existing breaches or defaults by Developer then known to the Town under this Agreement, and if so, specifying the same. The Town will deliver the statement to Developer or such requesting party within fifteen (15) days after request. The Town acknowledges that any such assignee, transferee, tenant, purchaser, investor, lender, or mortgagee may rely upon such statement as true and correct.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS
an Arizona municipal corporation

By: 
Jay T. Schlum, Mayor

ATTEST:

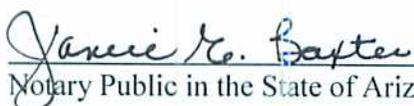

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on February 21, 2012, by Jay T. Schlum, the Mayor of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.




Notary Public in the State of Arizona

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Developer”

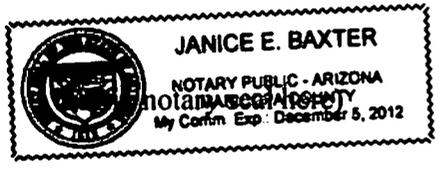
AVENUE OF THE FOUNTAIN, LLC
an Arizona limited liability company

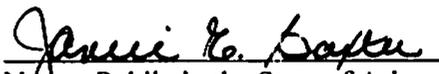
By: 
George Kasnoff, Manager

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on February 14, 2012, by George Kasnoff, Manager of AVENUE OF THE FOUNTAIN, LLC, an Arizona limited liability company, on behalf of such limited liability company.




Notary Public in the State of Arizona.

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT FOR THE AVENUE
A TOWN CENTER PROJECT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC**

[Legal Description of the Property]

Parcel No 1:

Approx. Acreage: 4.76 Acres

Lot 1, A FINAL REPLAT OF BLOCK 2, PLAT NO. 208, FOUNTAIN HILLS, ARIZONA, according to Book 615 of Maps, page 48, records of Maricopa County, Arizona:

Except all minerals as reserved unto the United States of America in Patent of said land recorded February 28, 1956 in Docket 1839, page 426, records of Maricopa County, Arizona; and

Except all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or other material which or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value; and

Except all underground water in, under or flowing through said land, and water rights appurtenant thereto.

EXHIBIT B
TO
DEVELOPMENT AGREEMENT FOR THE AVENUE
A TOWN CENTER PROJECT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

[Land Use Plan]

See following pages.

EXHIBIT C
TO
DEVELOPMENT AGREEMENT FOR THE AVENUE
A TOWN CENTER PROJECT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

[Reciprocal Parking Easement Agreement]

See following pages.

WHEN RECORDED RETURN TO:
Town of Fountain Hills
Attn: Town Clerk
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

RECIPROCAL PARKING AGREEMENT
FOR
THE AVENUE
A
TOWN CENTER PROJECT

TOWN OF FOUNTAIN HILLS, ARIZONA,
an Arizona municipal corporation

AND

AVENUE OF THE FOUNTAIN, LLC,
an Arizona limited liability company

February 2, 2012

RECIPROCAL PARKING EASEMENT AGREEMENT

THIS RECIPROCAL PARKING EASEMENT AGREEMENT (this "Agreement") is entered into February 2, 2012, by and between AVENUE OF THE FOUNTAIN, LLC, an Arizona limited liability company ("Developer") and the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation (the "Town"). The Town and Developer are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

A. Developer is under contract to purchase approximately 4.76 acres of that certain real property located at the southwest corner of the intersection of Avenue of the Fountains and Verde River Drive in Fountain Hills, Arizona, as more particularly described in Exhibit 1 attached hereto and incorporated herein by reference (the "Developer Parcels"). Developer intends to construct an entertainment, retail and office development project (the "Project"), including the construction of a multiplex movie theater complex (the "Theater Complex") and a retail and office complex (the "Retail Complex"), on the Developer Parcels in substantially the form as set forth on the Land Use Plan attached hereto and incorporated herein by reference as Exhibit 2 (the "Land Use Plan").

B. Town is the owner of that certain real property located at the southeast corner of Avenue of the Fountains and La Montana Drive in Fountain Hills, Arizona, more particularly described and depicted in Exhibit 3 attached hereto and incorporated herein by reference (the "Town Parcels"). A portion of the Town Parcels is currently utilized for surface parking.

C. The Developer Parcels and the Town Parcels are contiguous to one another, and are hereinafter sometimes collectively referred to as the "Parcels" or individually as a "Parcel."

D. Developer desires to grant to Town and its successors and assigns a nonexclusive easement for ingress, egress, parking and pedestrian access on, over and across the area of land within the Developer Parcels shown on Exhibit 4, attached hereto and incorporated herein by reference, which at all times shall contain at least 181 unrestricted parking spaces therein (the "Developer Parking Easement Area"). The Developer Parking Easement Area contains a total of 210 parking spaces; however 29 of these spaces are restricted use spaces.

E. Town desires to grant to Developer and its successors and assigns a nonexclusive easement for ingress, egress, parking and pedestrian access on, over and across the area of land within the Town Parcels shown on Exhibit 5, attached hereto and incorporated herein by reference, which shall at all times contain at least 478 unrestricted public parking spaces therein (the "Town Parking Easement Area"). The Town Parking Easement Area contains a total of 560 parking spaces; however 82 of these spaces are restricted use spaces. The Town agrees to grant to Developer a temporary construction easement over, on and across that portion of the Town Parking Easement Area that the Town Public Works Director deems, in his sole discretion, to be necessary for the purpose of constructing the Developer Improvements (as defined below). Prior to utilizing the Town Parking Easement Area, Developer shall, at its sole cost and expense, design and construct paved parking facilities on the currently unpaved portion of the Town

Parking Easement Area and the currently unpaved portions of the Developer Parking Easement Area (i) in accordance with Town codes, ordinances and regulations and (ii) consistent with the quality of the parking facilities existing on the Town Civic Center. The aforementioned parking facilities are collectively hereinafter referred to as the "Developer Improvements."

F. The Developer Parking Easement Area and the Town Parking Easement Area are hereinafter sometimes individually referred to as an "Easement Area" and collectively as the "Easement Areas." Each party acknowledges that the Easement Areas may be relocated pursuant to Section 3 of this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree as follows.

1. Covenants. Developer and Town hereby declare and agree that the Developer Parcels and the Town Parcels are, or will be, upon closing of the Developer's purchase of the Developer Parcels, owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, occupied and used subject to the easements established in this Agreement, each and all of which are imposed upon and against the Parcels as mutual beneficial and equitable servitudes in favor of the mutual use and benefit of the Parcels, Developer, Town, their successors and assigns and all subsequent owners and lessees of the Parcels, and any portions thereof, and their respective heirs, successors, representatives and assigns, and are hereby expressly declared to be binding upon the Parcels, and any portions thereof, and shall run with the land until terminated as set forth in Section 4 below and each and every part thereof, inure to the benefit of and be a burden upon the Parcels, and any portions thereof, and shall bind the respective heirs, successors and assigns of the Parcels, or any portions thereof.

2. Reciprocal Easements. Each Party ("Granting Party") hereto expressly grants to the other (the "Benefited Party") and to its successors and assigns, for the benefit of the Benefited Party's Parcel, a non-exclusive and perpetual right and easement for ingress, egress, parking and pedestrian access on, over and across the Easement Area on the Granting Party's Parcel (each referred to herein as an "Easement"), subject to termination as set forth in Section 4 below. Notwithstanding anything in this Agreement to the contrary, Developer hereby agrees that the Town shall have the right to temporary exclusive use of that portion of the Town Parking Easement Area located between the Town Hall and the Town Community Center for certain Town events (i.e. paper shredding event) and private events in the area of Town Hall (i.e. The Great Fair) to ensure that the Town may carry out its governmental functions. Reciprocally and notwithstanding anything in this Agreement to the contrary, Town hereby agrees that the Developer shall have the right to temporary exclusive use and control of the Developer Parking Easement Area (210 spaces) during the same certain Town events (i.e. paper shredding event) and private events in the area of Town Hall (i.e. The Great Fair) to ensure adequate non-event customer parking for the Theater Complex; provided, however, that in no event shall such reserved parking be utilized for paid parking areas related to such nearby uses.

3. Temporary Relocation of Easements. The Town may relocate the Town Parking Easement Area and Developer may relocate the Developer Parking Easement Area only as set forth herein, and subject to the conditions of, this Section 3, but in no event shall Developer be permitted to relocate the Developer Parking Easement Area at any time while the Theater Complex is in operation as a movie theater. In the event that either Granting Party desires or finds it necessary from time to time to voluntarily or involuntarily temporarily relocate its respective Easement Area, such relocated Easement Area (a) must not be located more than six hundred (600) feet from the boundary of the Benefited Party's Parcel, (b) must provide an amount of parking greater than or equal to the existing Easement Area that is being relocated and (c) must not be in a configuration or location that will materially interfere with the Benefited Party's use of the respective Easement Area. The Granting Party must provide at least sixty (60) days prior, written notice of such relocation. If such relocation is reasonably anticipated to materially interfere with the Benefited Party's use of the Easement Area for its intended purpose, the Benefited Party will have the right to require the Granting Party to provide, at its sole cost and expense, a reasonably acceptable alternative facility for the Benefited Party's interim use, prior to the commencement and completion of any such relocation. The failure of the Benefited Party to require such alternate facility within such sixty (60) day period shall be deemed the Benefited Party's approval of the relocation of the Easement Area.

4. Effective Date; Termination of the Agreement.

a. Effective Date. Notwithstanding any other provisions of this Agreement to the contrary, the Easements granted pursuant to this Agreement shall become effective only upon (1) Developer's (or its assignee's) close of escrow and confirmation of ownership of the Developer Parcels by no later than sixty (60) days after the date first set forth above and (2) the Developer's full completion of all of its obligations set forth in that certain Development Agreement for The Avenue, a Town Center Project, between the Town and Developer of equal date herewith (the "Development Agreement"); provided, however, that the Easements shall become effective to the extent necessary for Developer to utilize the Easements in conjunction with the "Phase 1a" improvements so long as such Phase 1a improvements are completed as set forth in, and according to, the Schedule of Performance on Exhibit E of the Development Agreement.

b. Termination of this Agreement. This Agreement shall be null and void, both Parties obligations hereunder shall be extinguished, the Easements granted herein shall be extinguished and this Agreement shall immediately terminate without further action of either Party if Developer fails to fulfill all of its obligations under the Development Agreement. The automatic termination and extinguishment of the Easements shall occur as set forth herein even if the Developer partially fulfills its obligations under the Development Agreement, including but not limited to timely completion of the "Phase 1a" improvements described in Exhibit E of the Development Agreement.

5. Termination of the Easements. In addition to termination of this Agreement as set forth in Section 4 above and notwithstanding any other provisions of this Agreement to the contrary, the Parties hereto agree that the Easements granted herein shall terminate, in whole or in part as set forth below in this Section 5, at such time as the Theater Complex use ceases on the

Developer Parcels for a period in excess of one hundred eighty (180) consecutive days. The Easements shall fully terminate and neither Party shall have any further rights or obligations herein if Developer fails to do any of the following: (a) if the Theater Complex is damaged to an extent that causes it to be closed to the general public for business, Developer shall (1) give notice to the Town, not later than thirty (30) days from the last date the Theater Complex was utilized as a movie theater (the "Theater Closing Date"), of its intent to repair the Theater Complex and reopen it to the general public for business within two hundred seventy (270) consecutive days from the Theater Closing Date and (2) complete all necessary repairs to the Theater Complex and reopen it to the general public for business within two hundred seventy (270) consecutive days from the Theater Closing Date; or (b) if the Theater Complex is closed to the general public for business for any reason not involving damage to the Theater Complex, Developer shall (1) give notice to the Town not later than sixty (60) consecutive days from the Theater Closing Date of its intentions to retrofit the Theater Complex for use as retail commercial space, (2) cause such alterations and improvements to the Theater Complex as necessary for its reuse as retail commercial space within three hundred sixty-five (365) consecutive days of the Theater Closing Date and (3) execute leases for the occupancy of not less than 75% of the former Theater Complex space to "Retail Commercial Users" (such Retail Commercial Users being defined herein as businesses which, by their nature, generate transaction privilege taxes to the Town), with leases commencing not later than three hundred sixty-five (365) consecutive days from the Theater Closing Date. In the event that Developer meets all of the terms and conditions set forth in clauses (a) (1) – (2) above in this Section 5, this Agreement shall remain in full force and effect. In the event that Developer meets all of the terms and conditions set forth in clauses (b) (1) – (3) above in this Section 5, this Agreement shall remain in full force and effect, except that the Town Easement Area shall be modified to that area necessary to provide parking for the Retail Commercial Users in accordance with the shared parking model approved in conjunction with the Concept Plan. If the Easements granted herein terminate for any reason set forth in this Agreement, the Parties agree to execute all necessary documents to remove the encumbrance of this Agreement from the title to the Parcels.

6. Operation and Maintenance. Each of the Parties hereto agrees to repair and maintain the Easement Area located on its respective Parcel, including lighting, pavement, striping and planters, in good condition and repair for the benefit of itself and the Benefited Party. In no event will either Party or their respective tenants, guests or invitees be charged for parking on an Easement Area on either Parcel. As further clarification and in no way limiting the broad rights of access by the public to use of the Easement Areas granted in this Agreement, the Developer Parking Easement Area shall at all times be available for free public parking; provided, however, that Developer has the limited option to restrict parking as set forth in Section 2 above. Notwithstanding the foregoing, Developer shall be solely responsible for the cost of operating (including, but not limited to costs for water, electricity and dust control) and maintaining the portion of the Town Parking Easement Area shown in Exhibit 6, attached hereto and incorporated herein by reference, such maintenance to be conducted at the same intervals and standards as the Developer's parking areas, subject to prior notice to, and approval by, the Town Engineer.

7. Taxes. Each of the Parties hereto agree to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing jurisdiction all real property taxes and assessments which are levied against the Easement Area located within their respective Parcels.

8. Indemnification. Each of the Parties hereto, and their successors and assigns, shall, to the extent permitted by law, indemnify, defend and hold the other Party harmless for, from and against any and all liability, damage, expense, causes of action, suits, claims or judgments including attorney's fees and costs, arising from personal injury, death or property damage and occurring on its own Parcel to the extent caused by the negligence of the non-owning Party, unless caused by the willful misconduct or gross negligence of the Party indemnified hereby. The provisions of this Section will survive for a period of one (1) year following the termination of this Agreement.

9. Insurance. Each of the Parties shall, at its sole cost and expense, carry commercial general liability insurance, naming the other Party as additional insured, covering injury, death, disability or illness of any person, or damage to property, occurring in, on or about its Parcel, with liability limits not less than Two Million Dollars (\$2,000,000). The policies of insurance provided herein shall be issued by insurance companies qualified to do business in the State of Arizona and reasonably acceptable to the Parties. Each such insurance company shall have a rating of at least A, Class IX in Best's Key Rating Guide. Copies of the insurance policies that each Party if required to carry hereunder, shall be delivered to the other Party within five (5) days after the date on which this Agreement is recorded. The policies of insurance must contain a provision that the company writing said policy will give to the other Party thirty (30) days' notice in writing of any modification, cancellation or lapse of effective date of any reduction in the amount of insurance. Not more frequently than every five (5) years, if, in the opinion of either Party the amount of the commercial general liability insurance coverage at that time is not adequate, the Parties shall meet and discuss additional insurance as may be reasonable for comparable facilities in the greater metropolitan Phoenix area.

10. Mutual Release/Waiver of Subrogation. Each of the Parties hereby release the other from any and all liability or responsibility for any loss, injury or damage to their respective Parcels, caused by any fire or other casualty or accident during the term of this Agreement. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each Party hereto hereby agrees if required by said policies to give to each insurance company which has issued to it policies of insurance written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

11. Eminent Domain.

a. Owner's Right to Award. Nothing herein shall be construed to give any Party hereto any interest in any award or payment made to the other Party hereto in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Party's Parcel or giving the public or any government any rights in said Parcel. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of an Easement Area, the award

attributable to the land and improvements of such portion of the Easement Areas shall be payable only to the owner of the Parcel on which that portion of the Easement Area is located, and no claim thereon shall be made by the owners of any other portion of the Easement Areas.

b. Collateral Claims. Each of the Parties hereto may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from the other owner.

c. Restoration. The owner of any portion of the Easement Areas lost as a result of condemnation shall promptly repair and restore the remaining portion of the Easement Areas as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

12. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (a) delivered to the Party at the addresses set forth below; (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below; or (c) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Town: Town of Fountain Hills
16705 East Avenue of the Fountains.
Fountain Hills, Arizona 85268
Attn: Town Manager

With a copy to: GUST ROSENFELD, P.L.C.
One East Washington, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire, Esq.

If to Developer: Avenue of the Fountain, LLC
15933 E. Trevino Drive
Fountain Hills, Arizona 85268
Attn: George Kasnoff

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received: (a) when delivered to the Party; (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage; or (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

13. Remedies.

a. Injunctive Relief. The Parties hereto acknowledge and agree that they have bargained for specific performance of the covenants, conditions, rights, easements, and rights-of-way contained in this Agreement, and all other provisions hereof, and that each Party entitled to enforcement of the terms hereof shall be entitled to injunctive relief, including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions, both mandatory and prohibitory. Subject to the limitations contained in this Agreement, the Parties hereto shall have all remedies, at law or in equity, in order to enforce the terms of this Agreement.

b. Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Party to cure a breach of this Agreement within thirty (30) days following written notice thereof by the non-defaulting Party (unless, with respect to any such breach the nature of which cannot reasonably be cured within such thirty (30) day period, the defaulting Party commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, which completion must occur not later than sixty (60) days from the notice), the non-defaulting Party shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank of America (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (1) an emergency, (2) blockage or material impairment of the Easement rights, and/or (3) the unauthorized parking of vehicles on a Parcel, the non-defaulting Party may immediately cure the same and be reimbursed by the defaulting Party upon demand for the reasonable cost thereof together with interest as above described.

14. Duration. Unless otherwise cancelled or terminated as set forth herein, all the Easements granted in this Agreement shall continue in perpetuity.

15. Document Execution, Modification and Cancellation. This Agreement (including exhibits) may be modified or cancelled only by the unanimous agreement by the owners of both of the Parcels; provided, however that if the Developer Parcels are owned by more than one person or entity, only the consent of such owners holding a real property interest in the Developer Easement Area shall be required to sign on behalf of Developer.

16. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

17. Time of the Essence. Time is of the essence with regard to performance under the terms and provisions of this Agreement, and any amendment, modification or revision thereof, with respect to the actions and obligations of each person bound by the terms hereof. In accepting an interest in a Parcel, each owner, tenant, lessee, user, and mortgagee, and trust deed beneficiary shall be deemed to take its interest knowingly and willingly subject to this time is of the essence clause.

18. Recitals. The foregoing recitals are true and correct and incorporated by this reference.

19. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any person and the same shall remain in full force and effect.

20. Attorney's Fees. If either Party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other Party of any of the terms hereof, the losing Party shall pay to the prevailing Party reasonable attorney's fees, costs and expenses, including expert witness fees, incurred in connection with the prosecution or defense of such action. For the purpose of this Agreement, the terms "attorney's fees, costs and expenses" shall mean the fees and expenses of counsel to the Parties hereto, which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "attorneys' fees, costs and expenses" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

21. Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties hereto in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise. Each Party hereto shall be considered a separate owner, and no Party hereto shall have the right to act as an agent for another Party hereto, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

22. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any Parcel or any portion of any Parcel to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party person, nor shall any third party person be deemed to be a beneficiary or any of the provisions contained herein.

23. Enforcement. All of the provisions of this Agreement shall be enforceable as equitable servitudes constituting covenants running with the land pursuant to applicable law. It is expressly agreed that each covenant to do or refrain from doing some act on a parcel owned by the covenantor (a) is for the benefit of the land of the covenantees, (b) runs with both the land owned by the covenantor and the land owned by the covenantees, and (c) shall benefit and be binding upon each successive owner during his ownership of any portion of the land affected hereby and each person having any interest herein derived through any owner of the land affected hereby.

24. Remedies Cumulative. This Agreement shall create privity of contract with an estate with and among all grantees of all or any part of the Parcels that contains a real property

interest in either Developer Parking Easement Area or the Town Parking Easement Area, and their respective heirs, executors, administrators, successors and assigns. In the event of a breach or an attempted or threatened breach of any part of this Agreement by any Party hereto, the other Party shall be entitled forthwith to full and adequate relief by injunction and all other available legal and equitable remedies.

25. Estoppel Certificate. Upon Developer's written request, the Town will execute, acknowledge and deliver to Developer and all parties identified by Developer, including without limitation assignees, transferees, tenants, purchasers, investors, lenders and mortgagees, a written statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if there have been any modifications, that this Agreement is in full force and effect, as modified, and stating the modifications) and (b) whether there are any then existing breaches or defaults by Developer then known to the Town under this Agreement, and, if so, specifying the same. The Town will deliver the statement to Developer or such requesting Party within fifteen (15) days after request. The Town acknowledges that any such assignee, transferee, tenant, purchaser, investor, lender or mortgagee may rely upon such statement as true and correct.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS
an Arizona municipal corporation

By: J T Schlum
Jay T. Schlum, Mayor

ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on February 21, 2012, by Jay T. Schlum, the Mayor of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.

Janice E. Baxter
Notary Public in the State of Arizona



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Developer”

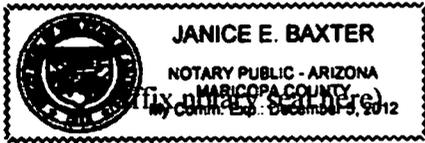
AVENUE OF THE FOUNTAIN, LLC
an Arizona limited liability company

By: 
George Kasnoff, Manager

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on February 14, 2012, by George Kasnoff, Manager of AVENUE OF THE FOUNTAIN, LLC, an Arizona limited liability company, on behalf of such limited liability company.



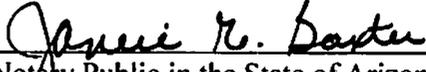

Notary Public in the State of Arizona.

EXHIBIT 1
TO
RECIPROCAL PARKING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

[Legal Description of Developer Parcels]

Parcel No 1:
Approx. Acreage: 4.76 Acres

Lot 1, A FINAL REPLAT OF BLOCK 2, PLAT NO. 208, FOUNTAIN HILLS,
ARIZONA, according to Book 615 of Maps, page 48, records of Maricopa County,
Arizona:

Except all minerals as reserved unto the United States of America in Patent of said land
recorded February 28, 1956 in Docket 1839, page 426, records of Maricopa County,
Arizona; and

Except all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals,
fossils and fertilizers of every name and description, together with all uranium, thorium,
or other material which or may be determined to be peculiarly essential to the production
of fissionable materials, whether or not of commercial value; and

Except all underground water in, under or flowing through said land, and water rights
appurtenant thereto.

**EXHIBIT 2
TO
RECIPROCAL PARKING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC**

[Project Land Use Plan]

See following pages.

EXHIBIT 2 - PAGE 2 - LAND USE PLAN

| FOUNTAIN HILLS STANDARD SHARED PARKING MODEL - WALKER - ULI | | | | | | | SHARED PARKING PROPOSED | | | |
|---|---------------|---------------|--------------|---------------|--|---------------|---|---------------|-------------|--------|
| PROJECT NAME: THE AVENUE | | | | | | | | | | |
| DATE: 1/11/2012 | | | | | | | | | | |
| BUILDING AREA SUMMARY | | | | | | | Type | Town Existing | Project New | Totals |
| Phase 1a Theater Complex | | | | | | | Street | 44 | 0 | 44 |
| Building Q (12 Screen, 2225 seat, Movie Theater) | Theaters | 52,962 | | | | | 405 | 365 | 770 | |
| | Mezzanine | 7,400 | | | | | 0 | 0 | 0 | |
| Building M (1 Story Retail) | Restaurant | | 2,200 | 2,178 | | 4,378 | | | | |
| Building N (1 Story Retail) | Retail | | | 5,200 | | 5,200 | | | | |
| | Residential | | | | | | | | | |
| | Office | | | | | | | | | |
| | Total SQ. FT. | | | | | 69,940 | | 365 | 814 | |
| Phase 1b Retail/Office Complex | | | | | | | Shared Parking Inventory | | | |
| Sub-Totals | | | | | | | Street Parking | | | |
| Building B (1 Story Retail, 2 Story Office) | | | | 14,708 | | 29,416 | Town Hall - Ave of the Fountains 25 | | | |
| Building C (1 Story Retail, 2 Story Office) | | | 1,998 | 11,932 | | 27,211 | Project - Ave of the Fountains 19 | | | |
| | | | | | | | Surface Parking | | | |
| | | | | | | | Existing Town Hall (42 restricted use) 365 | | | |
| | | | | | | | Existing Sheriff's Office (40 restricted use) 40 | | | |
| | | | | | | | New Town Hall Property 20 | | | |
| | | | | | | | New Town's Project Property 135 | | | |
| | | | | | | | New Project - On-Site (24 restricted use) 210 | | | |
| | TOTALS | 60,362 | 4,198 | 34,018 | | 56,627 | Total Shared Parking 814 | | | |
| | | | | | | | Dwelling Units | | | |
| Town Hall (Existing 1 and 2 story Civic Use) | Office | | Com. Mtg. | | | | Accessible Parking: 365 spaces X 2% = 8 spaces required; 9 provided | | | |
| | | 54,901 | 31,115 | 88,016 | | | | | | |

(Includes Courts and Sheriff's Office)

Walker - Standard Parking Model

THE AVENUE - Projected Shared Use Parking Needs

| Land Use | Walker ULI Parking Ratios | WEEKDAY | | | | | Walker-ULI Demand Late Dec. 2:00 PM | |
|---------------------------------------|---------------------------|--------------------------------|----------------------|---------------------|---------------------|------------------------------------|-------------------------------------|-----|
| | | Walker - ULI Unadjusted Demand | Month Adj. Late Dec. | Pk. Hr. Adj 2:00 PM | Non Captive Daytime | Drive Ratio Daytime | | |
| Retail | 34,018 Sq.Ft. | 2.90 | 99 | 80% | 100% | 90% | 100% | 71 |
| Employee | 34,018 Sq.Ft. | 0.70 | 24 | 90% | 100% | 100% | 98% | 21 |
| Fine/Casual Dining | 4,198 Sq.Ft. | 12.46 | 52 | 95% | 65% | 90% | 100% | 29 |
| Employee | 4,198 Sq.Ft. | 2.22 | 9 | 100% | 90% | 100% | 98% | 8 |
| Nightclubs | - Sq.Ft. | 15.22 | 0 | 95% | 0% | 100% | 100% | 0 |
| Employee | - Sq.Ft. | 1.22 | 0 | 100% | 10% | 100% | 98% | 0 |
| Cineplex | 2,226 Seats | 0.19 | 423 | 100% | 75% | 100% | 100% | 317 |
| Employee | 2,226 Seats | 0.01 | 22 | 100% | 60% | 100% | 98% | 13 |
| Community Center | 31,115 Sq.Ft. | 5.50 | 171 | 10% | 100% | 100% | 100% | 17 |
| Employee | 31,115 Sq.Ft. | 0.51 | 16 | 80% | 100% | 100% | 98% | 12 |
| Hotel - Leisure | - Rooms | 0.9 | 0 | 100% | 70% | 100% | 90% | 0 |
| Restaurant/Lounge | - Sq.Ft. | 10.00 | 0 | 95% | 33% | 40% | 100% | 0 |
| Employee | - Rooms | 0.25 | 0 | 100% | 100% | 100% | 98% | 0 |
| Residential Reserved | - Units | 2.00 | 0 | 100% | 100% | 100% | 100% | 0 |
| Office 100K to 500K sq.ft. | 111,528 Sq.Ft. | 0.25 | 28 | 80% | 100% | 100% | 100% | 22 |
| Employee | 111,528 Sq.Ft. | 3.13 | 349 | 80% | 100% | 100% | 98% | 274 |
| Subtotal Customer/Guest Spaces | | | 773 | | | | | 457 |
| Subtotal Employee Spaces | | | 420 | | | | | 328 |
| Subtotal Resident Spaces | | | 0 | | | | Walker-ULI | 0 |
| Total Parking Spaces | | | 1193 | | | Percentage Reduction 34% | | 785 |
| | | | | | | Parking Spaces Provided | | 814 |
| | | | | | | Excess (Shortage) Parking Provided | | 29 |

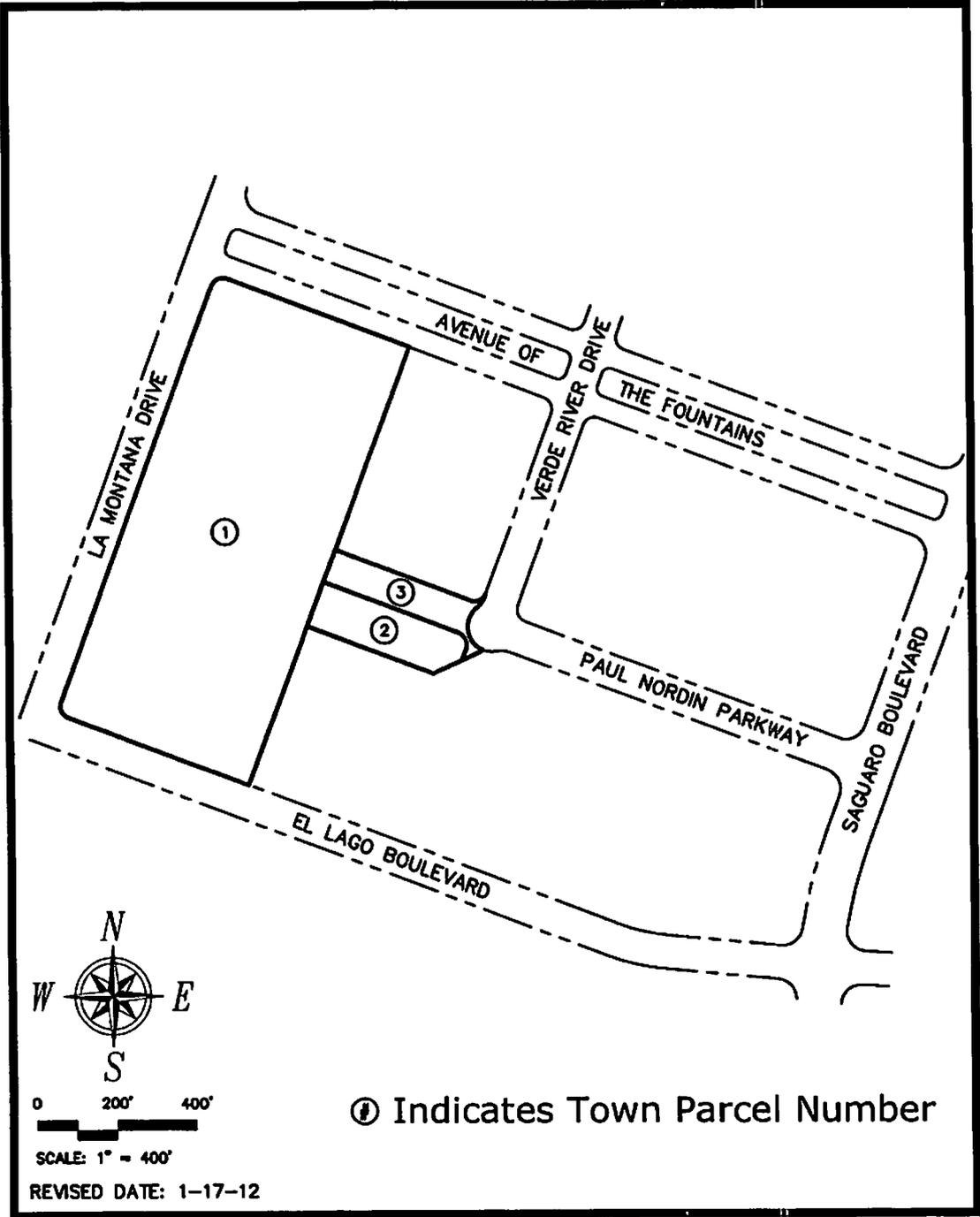
| Land Use | Walker ULI Parking Ratios | WEEKEND | | | | | Walker-ULI Demand Late Dec. 8:00 PM | |
|---------------------------------------|---------------------------|--------------------------------|----------------------|---------------------|---------------------|------------------------------------|-------------------------------------|-----|
| | | Walker - ULI Unadjusted Demand | Month Adj. Late Dec. | Pk. Hr. Adj 8:00 PM | Non Captive Daytime | Drive Ratio Daytime | | |
| Retail | 34,018 Sq.Ft. | 3.2 | 109 | 80% | 65% | 90% | 100% | 51 |
| Employee | 34,018 Sq.Ft. | 0.8 | 27 | 90% | 75% | 100% | 98% | 18 |
| Fine/Casual Dining | 4,198 Sq.Ft. | 13.86 | 58 | 95% | 100% | 90% | 100% | 50 |
| Employee | 4,198 Sq.Ft. | 2.46 | 10 | 100% | 100% | 100% | 98% | 10 |
| Nightclubs | - Sq.Ft. | 17.56 | 0 | 95% | 75% | 100% | 100% | 0 |
| Employee | - Sq.Ft. | 1.56 | 0 | 100% | 100% | 100% | 98% | 0 |
| Cineplex | 2,226 Seats | 0.26 | 579 | 100% | 100% | 100% | 100% | 579 |
| Employee | 2,226 Seats | 0.01 | 22 | 100% | 100% | 100% | 98% | 22 |
| Community Center | 31,115 Sq.Ft. | 5.50 | 171 | 10% | 30% | 100% | 100% | 5 |
| Employee | 31,115 Sq.Ft. | 0.51 | 16 | 80% | 20% | 100% | 98% | 2 |
| Hotel - Leisure | - Sq.Ft. | 1.00 | 0 | 100% | 90% | 100% | 90% | 0 |
| Restaurant/Lounge | - Sq.Ft. | 10.00 | 0 | 95% | 70% | 20% | 100% | 0 |
| Employee | - Sq.Ft. | 0.18 | 0 | 100% | 55% | 100% | 98% | 0 |
| Residential Reserved | - Units | 2.00 | 0 | 100% | 100% | 100% | 100% | 0 |
| Office 100K to 500K sq.ft. | 111,528 Sq.Ft. | 0.03 | 3 | 80% | 0% | 100% | 100% | 0 |
| Employee | 111,528 Sq.Ft. | 0.32 | 36 | 80% | 0% | 100% | 98% | 0 |
| Subtotal Customer/Guest Spaces | | | 920 | | | | | 685 |
| Subtotal Employee Spaces | | | 111 | | | | | 52 |
| Subtotal Resident Spaces | | | 0 | | | | Walker-ULI | 0 |
| Total Parking Spaces | | | 1032 | | | Percentage Reduction 29% | | 737 |
| | | | | | | Parking Spaces Provided | | 814 |
| | | | | | | Excess (Shortage) Parking Provided | | 77 |

**EXHIBIT 3
TO
RECIPROCAL PARKING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC**

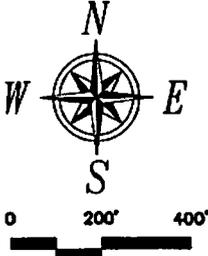
[Legal Descriptions and Depictions of Town Parcels]

See following pages.

Town Parcels - Overall Graphic



Ⓛ Indicates Town Parcel Number



SCALE: 1" = 400'
REVISED DATE: 1-17-12

Town Parcel 1

A parcel of land being a portion of FOUNTAIN HILLS ARIZONA, FINAL PLAT NO. 208 as recorded on November 30, 1971 in Book 144 of Maps, Page 4 of the Records of Maricopa County, Arizona and as shown in the Affidavits of Correction recorded October 19, 1972 in Docket 9768, Page 659 and recorded May 30, 1974 in Docket 10676, Page 710, and situated in Section 15, Township 3 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and including Lots 11 through 29, part of Lot 10, the Northwest 1.00 foot of Lot 30, and part of Parcel "A" all in Block 1 of said Plat 208; and Lots 8 through 29, part of Lots 30 through 33, the Northwest 1.00 foot of Lot 7, and a part of Parcel "B"; all in Block 2 of said Plat 208; together with a portion of Paul Nordin Parkway (formerly Stewart Vista Avenue and previously Cascade Avenue) as shown on said Plat 208, said parcel being more particularly described as follows:

Commencing at the intersection of El Lago Boulevard and La Montana Drive as shown on said Plat, thence North 20 degrees 38 minutes 08 seconds East along the centerline of La Montana Drive, a distance of 72.00 feet;

Thence South 69 degrees 21 minutes 52 seconds East a distance of 42.00 feet to the Easterly Right of Way of said La Montana Drive, to the **TRUE POINT OF BEGINNING**;

Thence North 20 degrees 38 minutes 08 seconds East along the said Easterly Right of Way line a distance of 1092.00 feet to the beginning of a tangent curve concave Southerly and having a radius of 30.00 feet;

Thence departing La Montana Drive around the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds an arc length of 47.12 feet to the Southerly Right of Way of Avenue of the Fountains;

Thence South 69 degrees 21 minutes 52 seconds East along said Avenue, a distance of 481.00 feet;

Thence departing Avenue of the Fountains, South 20 degrees 38 minutes 08 seconds West, a distance of 1152.00 feet to the Northerly Right of Way of El Lago Boulevard;

Thence North 69 degrees 21 minutes 52 seconds West along said Boulevard, a distance of 481.00 feet to the beginning of a tangent curve concave Easterly and having a radius of 30.00 feet;

Thence departing El Lago Boulevard along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds an arc length of 47.12 feet to the **TRUE POINT OF BEGINNING**.

EXCEPT all minerals as reserved unto the United States of America in Patent of said land recorded February 28, 1956 in Docket 1839, page 426, records of Maricopa County, Arizona.

EXCEPT all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value.

EXCEPT all underground water, in under or flowing said land and water rights appurtenant thereto.

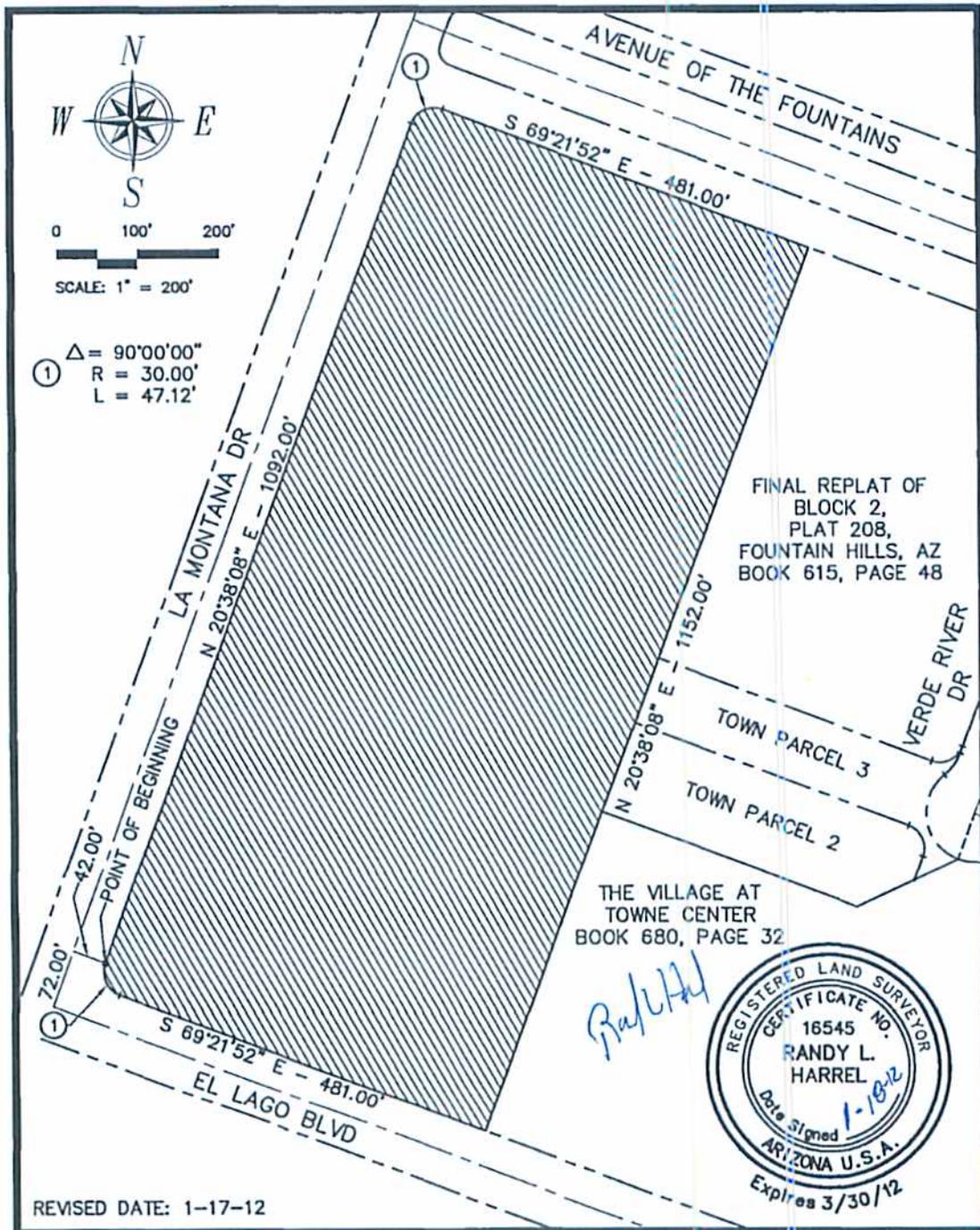
This parcel contains an area of 13.5052 acres more or less.

Randy L. Harrel



REGISTERED LAND SURVEYOR
CERTIFICATE NO. 16545
RANDY L. HARREL
Date signed 1/28/12
ARIZONA, U.S.A.

Town Parcel 1 - Graphic



REVISED DATE: 1-17-12

Town Parcel 2

That portion of Fountain Hills Final Plat 208 Block 1 including the area encompassed by the applicable lots, parcels, and portions thereof, as recorded in Book 144 of Maps, Page 4 of the Records of Maricopa County, Arizona and situated in Section 15, Township 3 North Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said parcel being more particularly described as follows:

Commencing at the boat spike, being the intersection of Verde River Drive and Avenue of the Fountains, thence along the centerline of Verde River Drive south 20 degrees 38 minutes 08 seconds west a distance of 666.00 feet to the intersection of Verde River Drive and Paul Nordin Parkway (formerly Stewart Vista Avenue; previously Cascade Avenue)

Thence continuing, south 20 degrees 38 minutes 08 seconds west a distance of 60.00 feet to a point on the southerly Right of Way of Paul Nordin Parkway;

Thence departing said southerly Right of Way of Paul Nordin Parkway south 65 degrees 38 minutes 08 seconds west, a distance of 59.40 feet to the **TRUE POINT OF BEGINNING**;

Thence continuing, south 65 degrees 38 minutes 08 seconds west, a distance of 78.63 feet;

Thence north 69 degrees 21 minutes 52 seconds west, a distance of 333.40 feet;

Thence north 20 degrees 38 minutes 08 seconds east, (along the easterly line of Town Parcel 1) a distance of 115.60 feet to the southwesterly corner of Town Parcel 3);

Thence (along said boundary of Town Parcel 3), south 69 degrees 21 minutes 52 seconds east, a distance of 359.00 feet to a tangent curve being concave southwesterly and having a radius of 30.00 feet;

Thence along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds, an arc length of 47.12 feet;

Thence (along said boundary of Town Parcel 3), south 20 degrees 38 minutes 08 seconds west, a distance of 30.00 feet to the **TRUE POINT OF BEGINNING**.

EXCEPT all minerals as reserved unto the United States of America in Patent of said land recorded February 28, 1956 in Docket 1839, page 426, records of Maricopa County, Arizona.

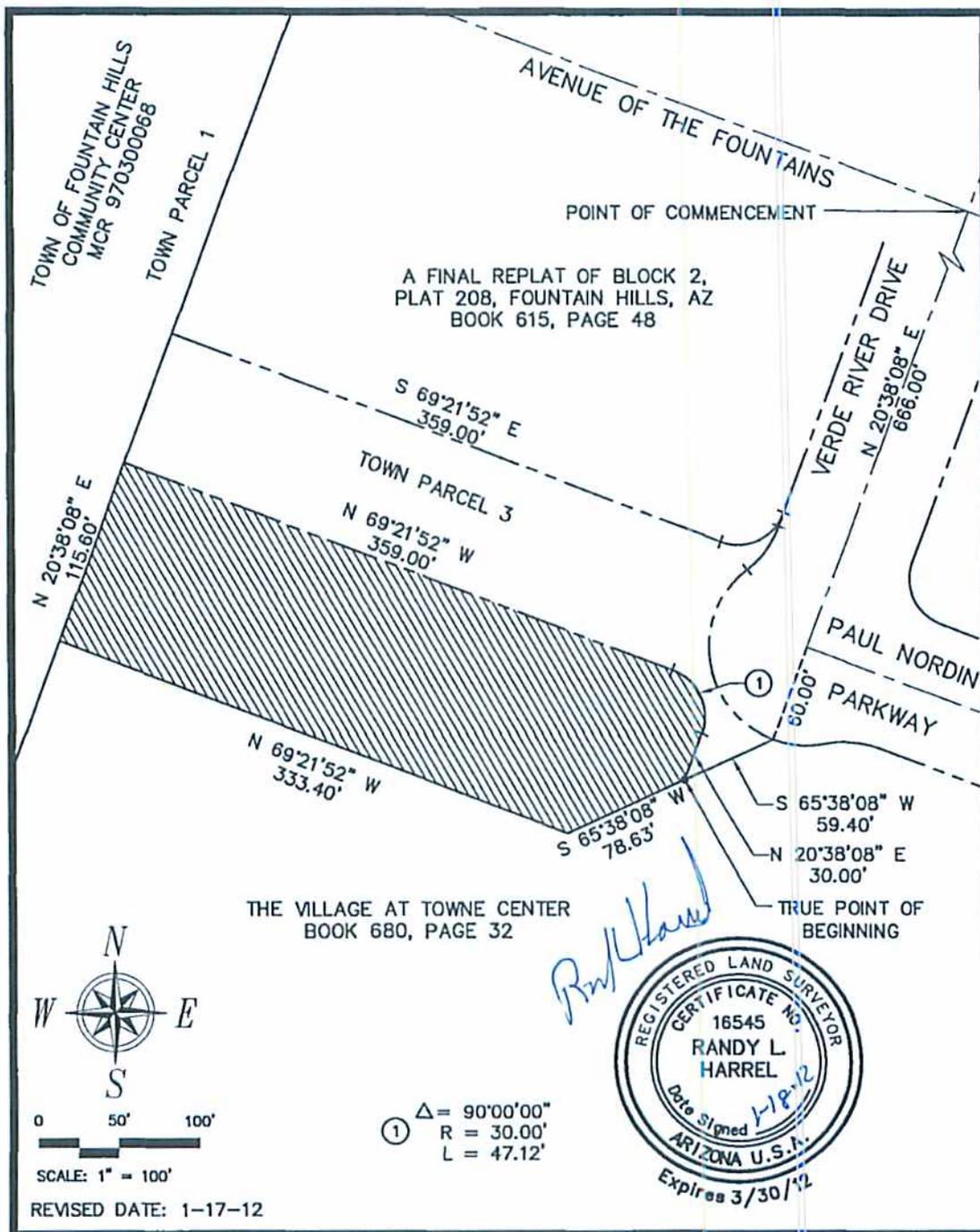
EXCEPT all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value.

EXCEPT all underground water, in under or flowing said land and water rights appurtenant thereto.

This parcel contains an area of 43,229 square feet or 0.99 acres more or less.



Town Parcel 2 - Graphic



Town Parcel 3

That portion of Fountain Hills Final Plat 208 Block 1, as recorded in Book 144, Page 4 of the Records of Maricopa County, Arizona and situated in Section 15, Township 3 North Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said parcel being more particularly described as follows:

Commencing at the boat spike, being the intersection of Verde River Drive and Avenue of the Fountains, south 20 degrees 38 minutes 08 seconds west a distance of 666.00 feet to the intersection of Verde River Drive and Paul Nordin Parkway (formerly Stewart Vista Avenue; previously Cascade Avenue)

Thence, continuing, south 20 degrees 38 minutes 08 seconds west a distance of 60.00 feet to a point on the southerly Right of Way of Paul Nordin Parkway, the **TRUE POINT OF BEGINNING**;

Thence departing said southerly Right of Way of Paul Nordin Parkway south 65 degrees 38 minutes 08 seconds west, a distance of 59.40 feet;

Thence north 20 degrees 38 minutes 08 seconds east, a distance of 30.00 feet to a tangent curve being concave northwesterly and having a radius of 30.00 feet;

Thence along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds, an arc length of 47.12 feet;

Thence north 69 degrees 21 minutes 52 seconds west, a distance of 359.00 feet;

Thence north 20 degrees 38 minutes 08 seconds east, a distance of 84.00 feet;

Thence south 69 degrees 21 minutes 52 seconds east, a distance of 359.00 feet to a tangent curve being concave northwesterly and having a radius of 30.00 feet;

Thence along the arc of said curve through a central angle of 90 degrees 00 minutes 00 seconds, an arc length of 47.12 feet;

Thence south 20 degrees 38 minutes 08 seconds west, a distance of 8.79 feet to a tangent curve being concave northwesterly and having a radius of 60.00 feet;

Thence along the arc of said curve through a central angle of 32 degrees 00 minutes 00 seconds, an arc length of 33.29 feet to a point of reverse curvature being concave easterly and having a radius of 60.00 feet;

Thence along the arc of said curve through a central angle of 122 degrees 00 minutes 00 seconds, an arc length of 127.54 feet the **TRUE POINT OF BEGINNING**.

EXCEPT all minerals as reserved unto the United States of America in Patent of said land recorded February 28, 1956 in Docket 1839, page 426, records of Maricopa County, Arizona.

EXCEPT all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value.

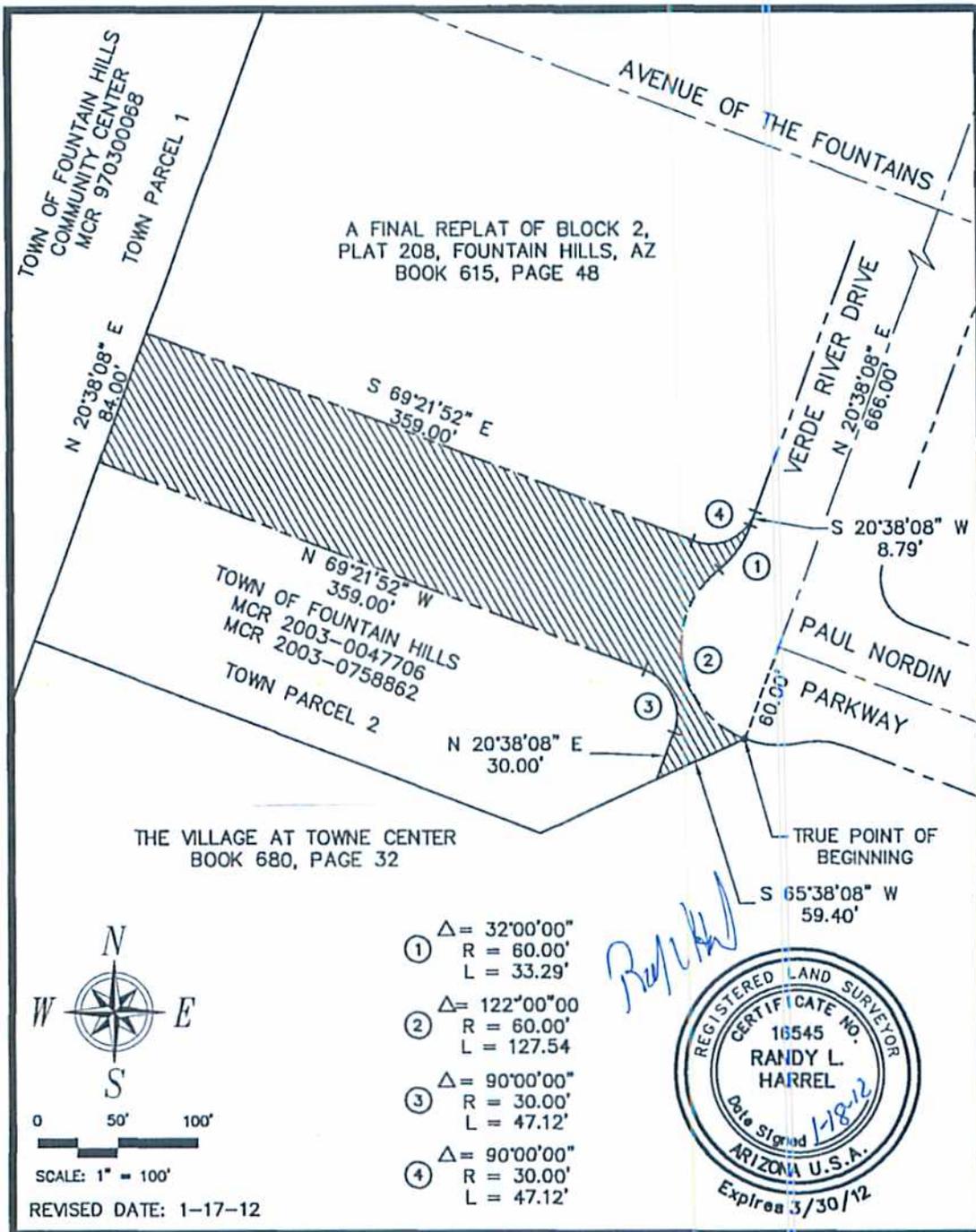
EXCEPT all underground water, in under or flowing said land and water rights appurtenant thereto.

This parcel contains an area of 33068.22 square feet or 0.76 acres more or less.

Randy L. Handel



Town Parcel 3 - Graphic



**EXHIBIT 4
TO
RECIPROCAL PARKING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC**

[Developer Parking Easement Area]

See following page.

EXHIBIT 4
Developer Parking Easement Area

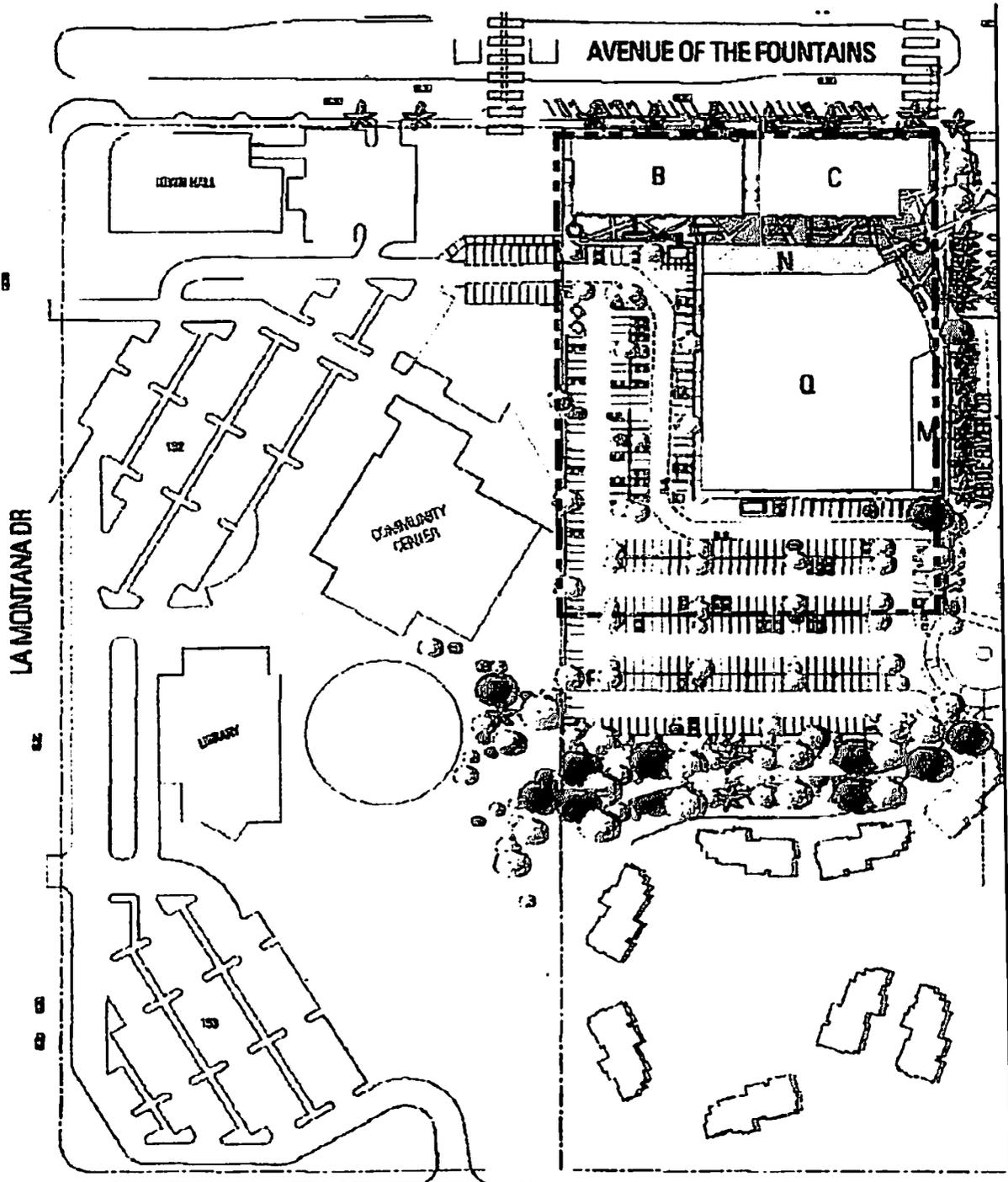


EXHIBIT 5
TO
RECIPROCAL PARKING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

[Town Parking Easement Area]

See following page.

EXHIBIT 5
Town Parking Easement Area

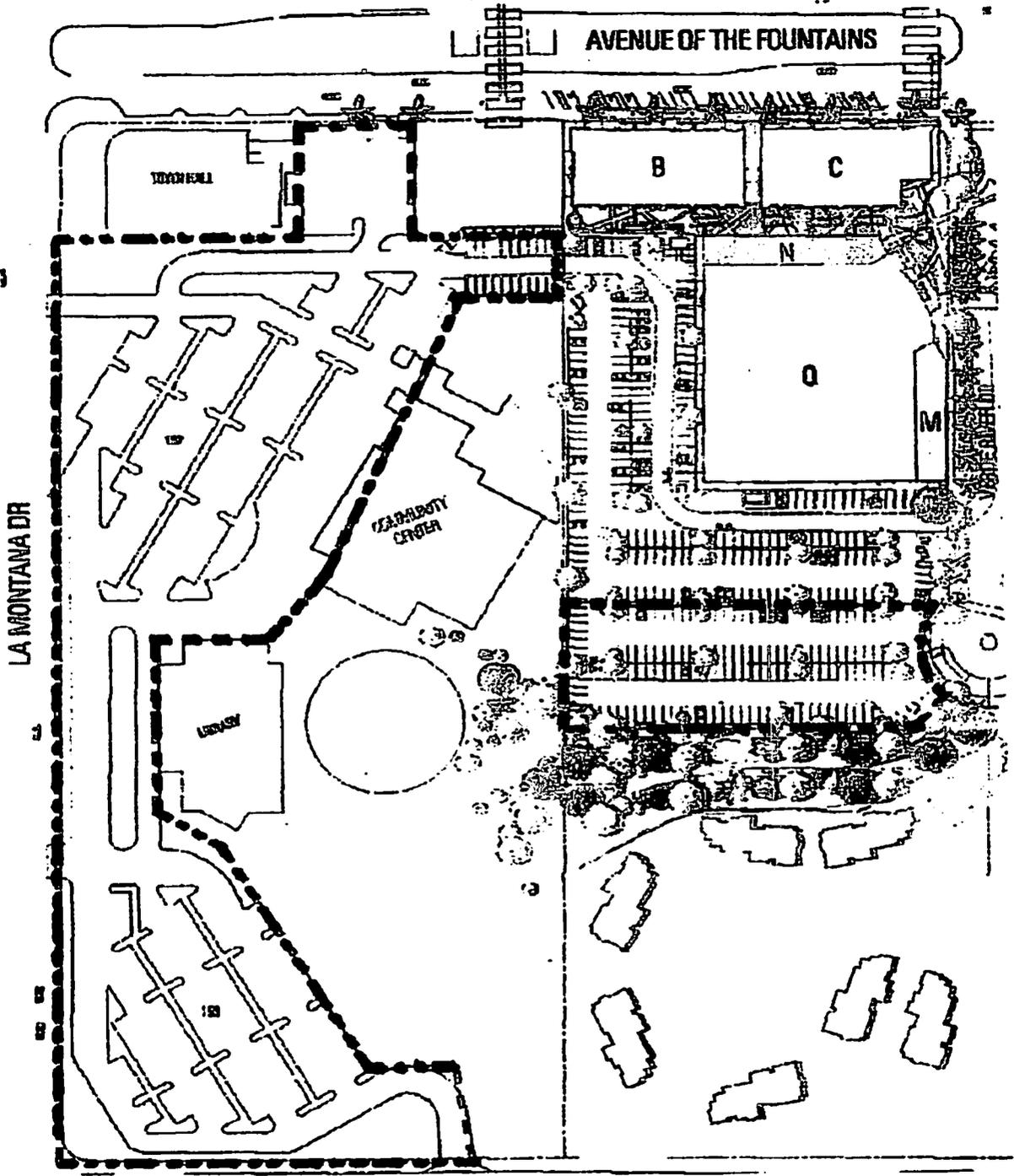
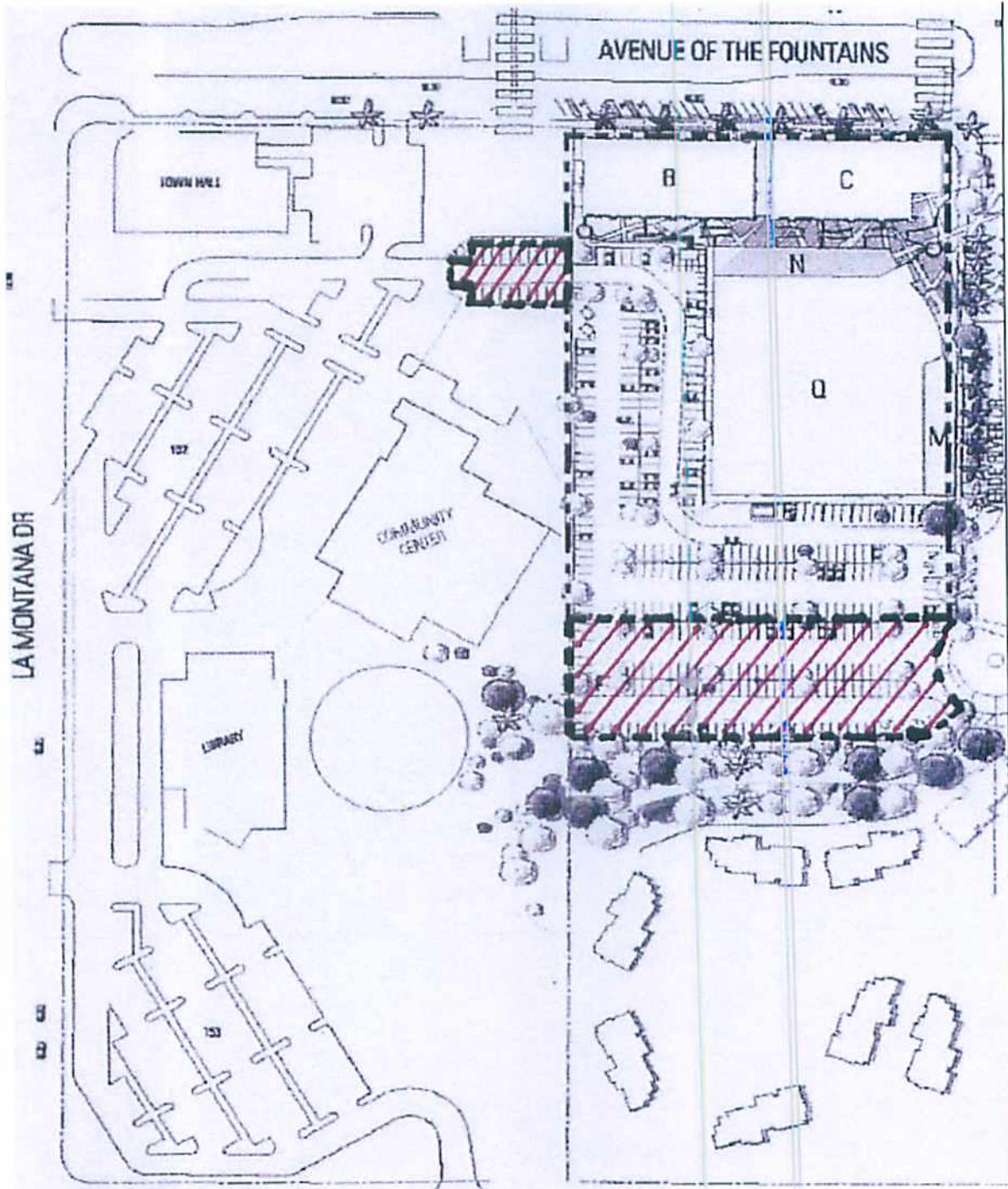


EXHIBIT 6
TO
RECIPROCAL PARKING AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

[Area of Developer Responsibility for Maintenance of Town Easement]

See following page.

EXHIBIT 6



HIGHLIGHTED AREA OF DEVELOPER RESPONSIBILITY FOR MAINTENANCE OF TOWN PARKING EASEMENT

EXHIBIT D
TO
DEVELOPMENT AGREEMENT FOR THE AVENUE
A TOWN CENTER PROJECT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

[New Town Parking Lots]

EXHIBIT D

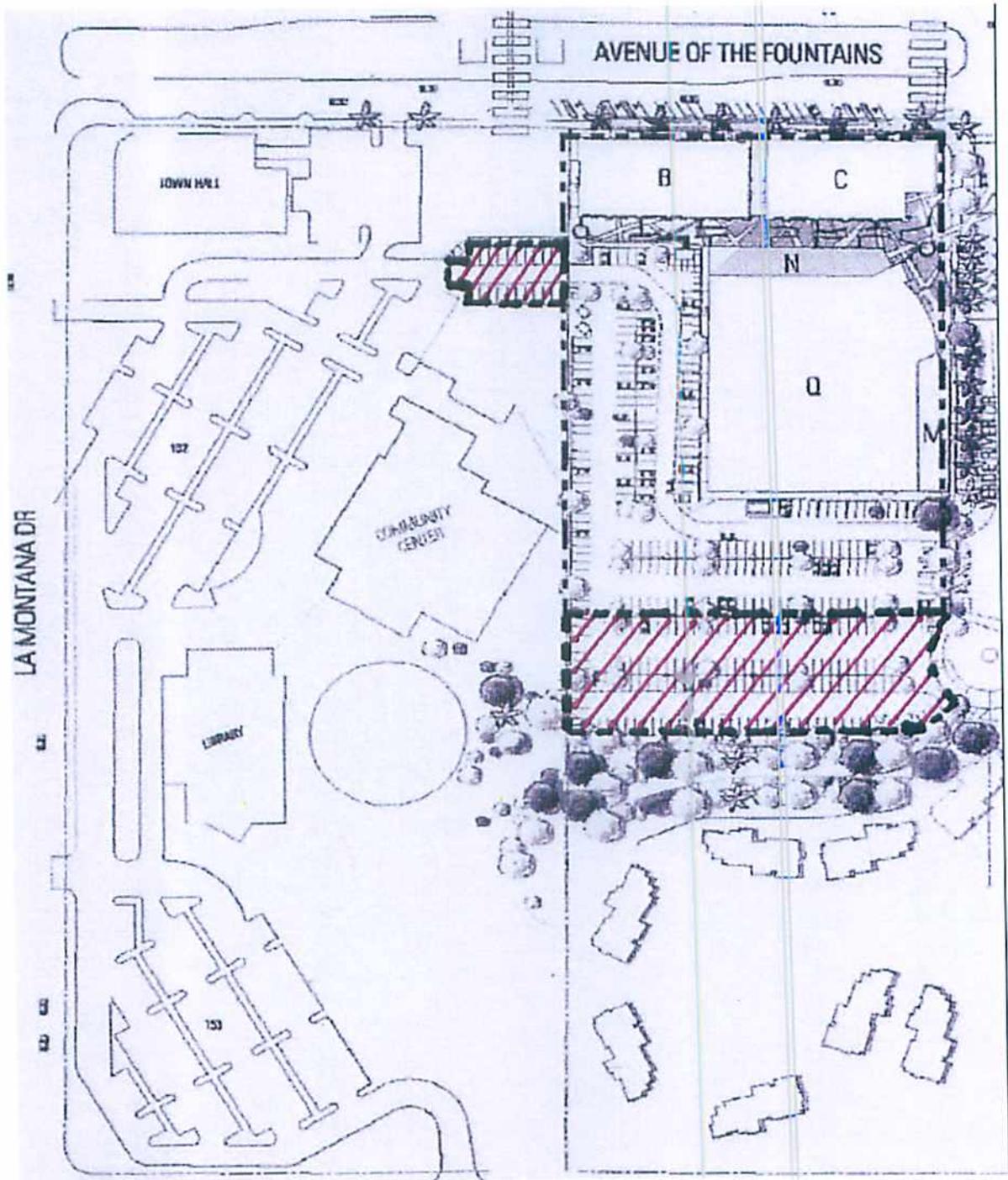


EXHIBIT E
TO
DEVELOPMENT AGREEMENT FOR THE AVENUE
A TOWN CENTER PROJECT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
AVENUE OF THE FOUNTAIN, LLC

SCHEDULE OF PERFORMANCE

Deadline to Perform Task
From Effective Date of Agreement

Task/Obligation

| | |
|-----------|--|
| 60 days | Complete Acquisition of the Property |
| 3 Months | Developer to have submitted Construction Documents for Phase 1a Improvements, including Public Improvements. |
| 6 Months | Developer to have begun construction of Phase 1a Improvements. |
| 18 Months | Developer to have completed construction of Phase 1a Improvements. Developer to have completed Public Improvements for Phase 1a. |
| 18 Months | Developer to have submitted Construction Documents for Phase 1b Improvements, including Public Improvements. |
| 24 Months | Developer to have begun construction of Phase 1b Improvements. |
| 48 Months | Developer to have completed construction of Phase 1b Improvements. Developer to have completed Public Improvements for Phase 1b. |

**WAIVER OF CLAIMS FOR DIMINUTION OF VALUE
UNDER ARIZ.REV.STAT. §§ 12-1134 – 1136
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PARK PLACE PROPERTIES, LLC**

THIS WAIVER OF CLAIMS FOR DIMINUTION OF VALUE UNDER ARIZ.REV.STAT. §§ 12-1134 – 1136 (this “Waiver”) is made 1/17/2012, 2012 between Park Place Properties, LLC, an Arizona limited liability company (the “Owner”) and Town of Fountain Hills, an Arizona municipal corporation (the “Town”), regarding the following real property (the “Property”):

See legal description set forth in Exhibit A attached hereto and incorporated as if fully set forth herein.

Owner is the current owner of all right, title and interest in the privately held portion of the Property. The Owner hereby declares its intentions to sell the Property to Avenue of the Fountain, LLC, an Arizona limited liability company, (the “Developer”) within 60 days after the date of this Waiver and that the Developer will thereafter develop the Property in accordance with agreements between the Town and the Developer.

1. **Waiver of Claims Pursuant to Ariz.Rev.Stat. § 12-1134 et seq.** The Owner agrees and understands that the Town is entering into this Waiver in conjunction with that certain document entitled Development Agreement between the Town and Avenue of the Fountain, LLC, an Arizona limited liability company, (the “Developer”), dated 1/17/2012, 2012 (the “Agreement”) in good faith and with the understanding that, if it acts consistently with the terms and conditions therein, it will not be subject to a claim for diminished value of the Property from the Owner, Developer or other parties having an interest in the Property. Owner agrees and consents to all the conditions imposed by the Agreement or in connection with the Concept Plan contemplated in the Agreement (the “Concept Plan”), including all stipulations adopted by the Town Council, and by signing this Waiver hereby waives any and all claims, suits, damages, compensation and causes of action the Owner may have now or in the future under the provisions of Ariz.Rev.Stat. §§ 12-1134 through and including 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting solely from the development of the Property consistent with the Agreement and the Concept Plan (including all stipulations adopted by Town Council). Owner acknowledges and agrees that the conditions imposed by the Agreement or the Concept Plan (including all stipulations adopted by Town Council) or a denial of the Concept Plan would not result in a reduction of the fair market value of the Property as defined in Ariz.Rev.Stat. § 12-1136. The Ownerer acknowledges that the Agreement and the Concept Plan may be adopted with stipulations imposed by the Town Council, in its sole discretion, prior to approval of the Agreement. Owner understands that its waiver of claims as set forth in this Waiver shall be deemed to extend to cover any changes to the Agreement and the Concept Plan, as applicable, and all stipulations to the Agreement and Concept Plan approved by the Town Council unless, not later than 48 hours following such Town Council approvals, Owner notifies the Town, in writing, of its disagreement with such stipulation(s). In the event that Owner timely notifies the Town of such disagreement, Owner shall not be deemed to have waived claims with respect to only the stipulations imposed or revised by the Town Council prior to approval of the Agreement or the Concept Plan; provided, however, that if Owner does not submit a separate waiver of such claims, in a form acceptable to the Town, prior to close of business on the fifth day following approval of the Agreement or the Concept Plan, as

applicable, then the Town may, after proper notice and hearing, rescind the resolution adopting the Agreement or the affirmative vote approving the Concept Plan, and if rescinded by the Town Council acting in its sole discretion, this Waiver shall act as a bar to a claim for diminished value based upon the rescinded Agreement or Concept Plan. The foregoing waiver of claims shall not be effective and shall be of no further force and effect (i) with respect to the Agreement in the event the Town Council disapproves the Agreement and (ii) with respect to the Concept Plan if the Town Council disapproves the Concept Plan.

2. **Entire Agreement; Modification.** This Waiver, any exhibits attached hereto, and any addendum, constitute the entire understanding and agreement of the Owner and the Town and shall supersede all prior agreements and understandings between the Owner and the Town regarding waiver of claims pursuant to Ariz.Rev.Stat. § 12-1134 *et seq.*, relating to the Property with respect to the Agreement and the Concept Plan. This Waiver may not be modified or amended except by written agreement by the Owner and the Town. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them by the Agreement.
3. **Applicable Law; Cancellation.** This Waiver is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. This Waiver is subject to the cancellation provisions of Ariz.Rev.Stat. § 38-511.
4. **Recording; Waiver Runs With Land.** Within ten days after the execution of this Waiver, the Town Clerk shall file the Waiver in the Official Records of the County Recorder's Office, Maricopa County, Arizona. This Waiver runs with the land and is binding upon all present and future owners of the above-referenced Property.
5. **Owner Authority.** The Owner warrants and represents that it is the owner of all right, title and interest to the Property, and that no other person has an ownership interest in the Property. The person who signs on behalf of the Owner personally warrants and guarantees to the Town they have the legal power to bind the Owner to this Waiver.

IN WITNESS WHEREOF, the Town and the Owner have executed this Waiver as of the date first set forth above.

"Owner"

PARK PLACE PROPERTIES, LLC
an Arizona limited liability company

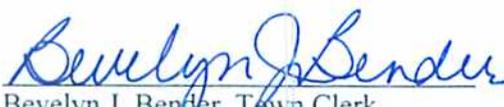
By: 
Sam A. Gambacorta, Manager

"Town"

TOWN OF FOUNTAIN HILLS
an Arizona municipal corporation

By: 
Jay T. Schlum, Mayor

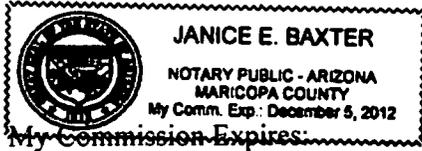
ATTEST:


Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on January 17, 2012, by Sam A. Gambacorta, Manager of PARK PLACE PROPERTIES, LLC, an Arizona limited liability company, on behalf of such limited liability company.

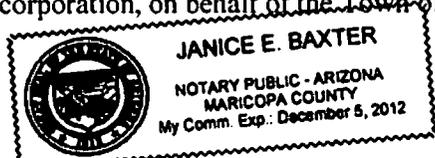


Janice E. Baxter
Notary Public in the State of Arizona

12/05/2012

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on February 7, 2012, by Jay T. Schlum, the Mayor of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



Janice E. Baxter
Notary Public in the State of Arizona

My Commission Expires:

12/05/2012

**EXHIBIT A
TO
WAIVER OF CLAIMS FOR DIMINUTION OF VALUE**

Legal Description of Property

Parcel No 1:

Lot 1, A FINAL REPLAT OF BLOCK 2, PLAT NO. 208, FOUNTAIN HILLS, ARIZONA, according to Book 615 of Maps, page 48, records of Maricopa County, Arizona:

Except all minerals as reserved unto the United States of America in Patent of said land recorded February 28, 1956 in Docket 1839, page 426, records of Maricopa County, Arizona; and

Except all oil, gases and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description, together with all uranium, thorium, or other material which or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value; and

Except all underground water in, under or flowing through said land, and water rights appurtenant thereto.