

RESOLUTION NO. 2012-09

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND AVENUE OF THE FOUNTAIN, LLC.

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

SECTION 1. The First Amendment to Development Agreement between the Town of Fountain Hills and Avenue of the Fountain, LLC, is hereby approved in the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and to execute all documents 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, April 5, 2012.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Jay T. Schlum, Mayor



Bevelyn J. Bender, Town Clerk



Kenneth W. Buchanan, Town Manager



Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2012-09

(First Amendment to Development Agreement)

See following pages.

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When Recorded Return To:
Town Clerk
Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is entered into April 5, 2012, 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").

RECITALS

A. The Town and the Developer entered into that certain Development Agreement dated February 2, 2012, recorded at Document Number 2012-0144723 in the Official Records of the Maricopa County Recorder's Office (the "Agreement"), relating to development of approximately 4.76 acres of real property located at the southwest corner of Avenue of the Fountains and Verde River Drive, Fountain Hills, Arizona (the "Property"). Unless otherwise defined herein, all capitalized terms used in this First Amendment shall have the meanings set forth in the Agreement.

B. The Agreement required that the Developer develop the Project on the Property in accordance with the Schedule of Performance attached thereto as Exhibit E. The Developer has requested, and the Town has agreed to grant, an amendment to the Agreement to extend the dates for Developer's performance of several Project-related activities.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Developer hereby agree as follows:

1. Exhibit Replaced. The Agreement is hereby amended by deleting Exhibit E thereto in its entirety and replacing it with a new Schedule of Performance in the form attached hereto and incorporated herein by reference, which shall be inserted into the Agreement as Exhibit E-1.

2. Consistency; Modification. Except as modified by this First Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. This First Amendment and the Agreement shall not be further modified in any manner other than by a

written amendment executed by the Town and the Developer or its successors or assigns. If any clause, sentence or other portion of this First Amendment shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

3. Non-Default. By executing this First Amendment, Developer affirmatively asserts that (i) the Town is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

4. Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the successors and assigns of the respective parties.

5. Conflict of Interest. This First Amendment is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this First Amendment without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this agreement on behalf of the Town or any of its departments or agencies is, at any time while the agreement or any extension of the agreement is in effect, an employee of any other party to the agreement in any capacity or a consultant to any other party of the agreement with respect to the subject matter of the agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this First Amendment 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 April 9, 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]

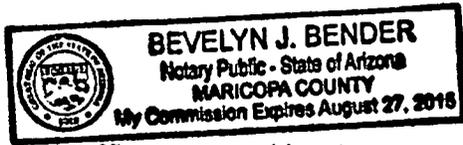
“Developer”

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 March 29, 2012, by George Kasnoff, Manager of AVENUE OF THE FOUNTAIN, LLC, an Arizona limited liability company, on behalf of such limited liability company.



(affix notary seal here)


Notary Public in the State of Arizona

EXHIBIT E-1
 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

6 Months	Complete Acquisition of the Property
8 Months	Developer to have submitted Construction Documents for Phase 1a Improvements, including Public Improvements.
10 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.