

RESOLUTION NO. 2012-21

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ACCEPTING A LICENSE AGREEMENT FROM EAGLES NEST COMMUNITY ASSOCIATION, INC.

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

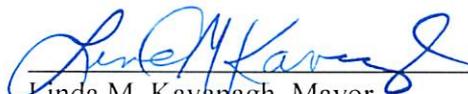
SECTION 1. A license agreement in substantially the form attached hereto as Exhibit 1 and incorporated herein by reference, on, over and across certain real property, generally located at the southeast corner of Golden Eagle Boulevard and Desert Fox Parkway, is hereby accepted by the Town of Fountain Hills (the "Town") from Eagles Nest Community Association, Inc.

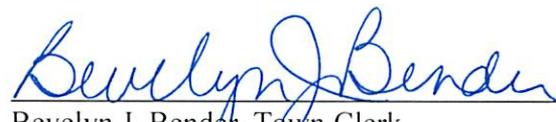
SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, December 20, 2012.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:


Linda M. Kavanagh, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Kenneth W. Buchanan, Town Manager

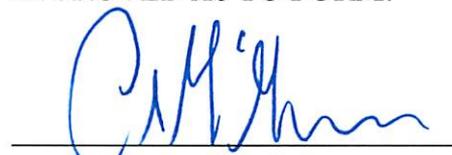

Andrew J. McGuire, Town Attorney

EXHIBIT 1
TO
RESOLUTION NO. 2012-21

[License Agreement]

See following pages.

When recorded, return to:
Bevelyn J. Bender
Town Clerk
Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is effective as of December 20, 2012, by and between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Eagles Nest Community Association, Inc., an Arizona nonprofit corporation (the "Association").

RECITALS

A. The Association owns a parcel of real property located at the southeast corner of Golden Eagle Boulevard and Desert Fox Parkway in the Town of Fountain Hills, Arizona, generally referred to as Tract B of Eagles Nest, Parcel 10 (the "Association Property"), which is occupied and used by the Association for its activities.

B. Pursuant to the approval of the Final Plat for Eagles Nest, Parcel 10, EN at Fountain Hills, LLC ("EN") constructed a parking lot, restroom facilities and related improvements (the "Public Facilities") on what is now the Association Property, the cost of which was reimbursed by the Town pursuant to a Reimbursement Agreement between the Town and EN, dated January 20, 2005. The Public Facilities were to be used in conjunction with the Town's public trail system.

C. The Town and the Association entered into a Public Facilities Operations Agreement, dated September 28, 2005 (the "Operations Agreement"), for the operation and maintenance of the Public Facilities. Section 3.6 of the Operations Agreement required that the Town be provided with a license to access and use the Public Facilities in accordance with the Operations Agreement.

D. The Association and the Town desire to enter into this Agreement whereby the Association shall grant a non-exclusive license to the Town for access, parking and use related to the Public Facilities upon the terms and conditions set forth in this Agreement.

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 are hereby acknowledged, the Town and the Association hereby agree as follows:

1. Parking, Access and Use License.

1.1 Grant of Parking License. The Association hereby grants and conveys to the Town for the benefit of the Town and members of the general public to whom the Town allows public access as provided herein and in the Operations Agreement, a perpetual, non-exclusive license for vehicular and pedestrian ingress and egress, vehicular parking, and access to the Public Facilities (the "License") on, over and across the area of the Association Property as depicted on Exhibit A, attached hereto and incorporated herein by reference (the "License Area").

1.2 Permitted Uses of the License. The License is to be used by members of the general public to whom the Town allows public access, solely for the purposes of utilizing the Public Facilities and parking motor vehicles while accessing the Town's trail system. The Association may also use the License Area in accordance with the Operations Agreement.

1.3 Maintenance and Repairs. The Public Facilities shall be repaired, maintained and replaced according to, and shall be subject to, all restrictions and terms of the Operations Agreement.

1.4 Insurance and Indemnity. The Town agrees to obtain and provide the insurance in accordance with the terms of Section 4.1 of the Operations Agreement and to indemnify the Association as provided in Section 4.2 of the Operations Agreement for all matters covered therein as such may apply to the use of the License and those provisions are hereby incorporated into this Agreement.

2. Termination; Reverter.

2.1 Termination by Abandonment. A default under the Operations Agreement shall be deemed to be a default hereunder and such a default or other default hereunder that is not cured as provided therein shall entitle the Association to terminate this Agreement. In any event, this Agreement shall terminate concurrently with the termination of the Operations Agreement. Upon any termination of this Agreement, the License shall be null and void and all rights to the License Area shall revert to the Association.

2.2 Continuing Obligations. Upon the termination of this Agreement the parties shall have no further rights or obligations hereunder except that the obligations and rights of the parties regarding indemnification for the period this Agreement was in effect shall survive.

3. 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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

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

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

If to Association: Eagles Nest Community Association, Inc.
13620 North Saguaro, Suite 200
Fountain Hills, Arizona 85268
Attn: Jeremy Hall, President

With copy to: MCO Properties Inc.
1330 Post Oak Boulevard, Suite 2000
Houston, Texas 77056
Attn: David V. Suson, Esq.

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 subsection. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) 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 other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

4. Declarations of the Association. The Association hereby declares to the Town that to the actual knowledge of the Association's officers, legal representatives and members, the Association: (i) is seized of good and sufficient title and interest in the Association Property, (ii) has full power and authority to enter into, execute and perform this Agreement and (iii) the execution, delivery and performance of this Agreement has been duly authorized by the Association.

5. Attorneys' Fees. Either party may enforce this instrument by appropriate legal action and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys' fees and court costs.

6. Future Easements. Nothing contained in this Agreement shall prohibit the Association from conveying future easements for access, utility or other purposes through, over, under, upon, in, across and along the Association Property to the owners of properties which abut the Association Property or to government or quasi-governmental agencies; provided however,

“Association”

EAGLES NEST COMMUNITY
ASSOCIATION, INC., an Arizona
nonprofit corporation

By: *Jeell*

Name: *JEREMY HALL*

Title: *PRESIDENT*

(ACKNOWLEDGEMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on November 30, 2012,
by Jeremy Hall, the President of EAGLES NEST COMMUNITY
ASSOCIATION, INC., an Arizona nonprofit corporation, on behalf of such corporation.

 Cassandra B Hansen
Notary Public in and for the State of Arizona

(affix notary seal here)



EXHIBIT A
TO
LICENSE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
EAGLES NEST COMMUNITY ASSOCIATION, INC.

[Map of License Area]

See following pages.

TOWN OF FOUNTAIN HILLS

PARKING LOT, PUBLIC RESTROOMS & TRAIL / SIDEWALK LICENSE MAP

EAGLES NEST PARCEL 10, TRACT B

