

RESOLUTION 2016-13

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE TOWN AND N-SHEA GROUP, LLC AND PARK PLACE PROPERTIES, LLC.

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

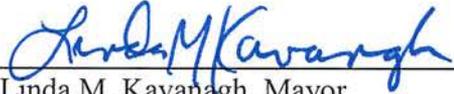
SECTION 1. The Development Agreement between the Town of Fountain Hills and N-Shea Group, LLC and Park Place Properties, LLC is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

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

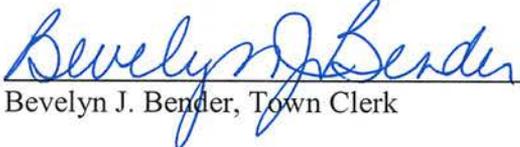
PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, June 16, 2016.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Linda M. Kavanagh, Mayor



Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Grady E. Miller, Town Manager



Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2016-13

[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
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into June 17, 2016 (the “**Effective Date**”) by and between the Town of Fountain Hills, an Arizona municipal corporation (the “**Town**”), and N-Shea Group, LLC, an Arizona limited liability company (the “**Developer**”), and is acknowledged by Park Place Properties, LLC, an Arizona limited liability company (the “**Owner**”). The Town and Developer are sometimes referred to herein as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. Developer has real estate purchase contracts for the acquisition from Owner of approximately 9.32 acres of real property located at the southeast and southwest corners of Verde River Drive and Avenue of the Fountains, Fountain Hills, Arizona, as more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the “**Property**”).

B. It is Developer’s intention to develop the Property in phases as a multifamily and retail project, including but not limited to retail shopping areas, restaurants, offices, 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 Developer requires assurances from the Town that 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 Developer that Developer will, subject to market conditions, complete the acquisition of the Property in one or more phases and thereafter timely develop the Project on the Property generally 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 the “**Development Schedule**” described herein. Prior to construction on the Property, the Land Use Plan shall be refined into one or more Concept Plans (as described below) for approval by the Town’s Planning and Zoning Commission (the “**Commission**”) and the Town Council of the Town of Fountain Hills (the “**Town Council**”), as hereinafter provided by 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 introduction and recitals, 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 introduction and recitals are true and correct and incorporated by this reference as if fully set forth herein.

2. Term and Effective Date. Developer, its successors and assigns, shall have the right to implement development on the Property in accordance with this Agreement for a period of six years after the Effective Date, 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 substantially fulfill any of its obligations as set forth in Section 6 below, this Agreement shall immediately terminate upon expiration of the applicable cure period without further act by Developer or the Town Council. This Agreement shall become effective only upon execution by Owner and the Parties below.

3. Land Use Plan; Concept Plan.

3.1 Land Use Plan. The Town hereby approves the Land Use Plan. Developer acknowledges that such Land Use Plan is not a “Concept Plan” as such term is defined in the Town of Fountain Hills Zoning Ordinance (the “**Zoning Ordinance**”) and agrees that a “Concept Plan” (as described in the Zoning Ordinance) must be submitted for approval in compliance with Section 3.2 below.

3.2 Concept Plan Approval; Developer's Right to Terminate.

Notwithstanding the Town Council's Approval of this Agreement, Developer must also receive approval by the Commission and Town Council of each "Concept Plan" prepared in accordance with the "Concept Plan" requirements set forth in the Town's Zoning Ordinance as modified by this Agreement (wherever used in this Agreement, "**Concept Plan**" shall mean the plan submitted in accordance with Section 2.04 of the Zoning Ordinance, as modified by this Agreement, for the applicable "Phase" as set forth in Section 3.3 below). For the purposes of this Agreement, the Parties agree that "any other information, which the plan reviewer may find necessary to establish compliance with this and other ordinances" under Chapter 2, Section 2.05(B)(20) of the Zoning Ordinance, shall be limited to the following: (A) circulation patterns of vehicles and pedestrians; (B) site lighting; (C) off-site improvements intended to be completed; (D) traffic impact study; (E) color architectural elevations per Phase; (F) color and materials boards; (G) parking structure, ramps and connections to the buildings; and (H) any additional information requested by the Commission or the Council during the public meetings on the Concept Plan. The Concept Plan shall set forth the development standards, mix of uses and phasing for the Project that are consistent with the phasing plan shown in the Land Use Plan, in accordance with the Town Center Commercial District ("**TCCD**") zoning category provisions in the Zoning Ordinance, the Town's General Plan designations for the Property, the Downtown Area Specific Plan, and the amendments to each of the foregoing set forth in this Agreement, 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. While Developer understands and acknowledges that the Concept Plan may be approved or denied by the Commission and/or the Town Council, the Town acknowledges and agrees that (i) if the Concept Plan is denied by the Commission or the Town Council, or (ii) if the Commission and/or the Town Council impose(s) requirements, exactions or fees in addition to those expressly described in this Agreement as a condition to approval of any Concept Plan, then, in either case, Developer may elect to unilaterally terminate this Agreement with respect to such portion of the Property affected by such Concept Plan, whereupon this Agreement shall have no further force or effect with respect to such portion of the Property (and Developer may record a notice of termination in the real property records of Maricopa County, Arizona to provide public notice of such termination). A Concept Plan, once approved, shall not be materially amended or modified without the Town Council and Developer's approval.

3.3 Trifurcated Concept Plan Process. At Developer's option, the Concept Plan submittals required herein may be split into three: submittal one would encompass "**Phase 1**" as shown on the Land Use Plan (the "**Phase 1 Concept Plan**"); submittal two would encompass "**Phase 2**" as shown on the Land Use Plan (the "**Phase 2 Concept Plan**"); and submittal three would encompass "**Phase 3**" as shown on the Land Use Plan (the "**Phase 3 Concept Plan**"). Phase 1, Phase 2 and Phase 3 may be collectively referred to herein as the "**Phases**", and may be referred to individually as a "**Phase**".

4. Use of Town Property. The Town Council, in the sole discretion and subject to existing state and local laws and ordinances, has determined that it is necessary in furtherance of the economic development in the Town to make available for use by Developer certain Town property in conjunction with the Project. The Town agrees to allow Developer's use of such Town property, in the manner described below, conditioned upon Developer's completion of the public improvements described in this Section.

4.1 Rights-of-way. The Town agrees to timely provide, in favor of Developer at no cost, all construction easements, permits or approvals required to construct the necessary improvements to or within Town rights-of-way. Developer shall apply for such permits and provide the required information, but there shall be no fees related to the application and issuance of the easements, permits or approvals. The Town's obligations in this Section 4.1 are subject to Developer's provision of necessary insurance and indemnification substantially in the form attached hereto as Exhibit C, and repair of any Town rights-of-way to substantially the condition existing prior to Developer's improvements (excepting such improvements), to the extent such damage is caused by the development of the Project. The cost waivers in this Section shall not apply to permits for utility work within the Town's rights-of-way by utility companies or their subcontractors.

4.2 New Town Parking Lots. The Town hereby agrees to allow Developer to construct two parking lots containing a total of not less than 130 parking spaces on portions of the Town's real property located (A) adjacent to the southwestern-most portion of the Property (the "**Paul Nordin Lot**"), and (B) immediately east of the Town-owned parking lot utilized for law enforcement parking adjacent to Avenue of the Fountains (the "**AOTF Lot**"), both as more particularly shown on the Land Use Plan. The Paul Nordin Lot and the AOTF Lot are together referred to herein as the "**New Town Parking Lots.**" The New Town Parking Lots may contain parking spaces that are 17 feet deep with a 2-foot overhang over the landscape buffer for those parking spaces that face a landscape buffer. All identified disabled parking spaces must meet ADA standards. All other spaces shall be designed and constructed according to Town standards. Developer agrees and understands that the use of the Town's real property to construct the New Town Parking Lots is conditioned upon the following:

A. Paul Nordin Lot Additional Requirements. Developer shall construct the Paul Nordin Lot not later than the date of a certificate of occupancy for any building in Phase 3 of the Project. Developer shall design and construct the Paul Nordin Lot consistent with Chapter 8 of the Zoning Ordinance. Developer shall design and construct the Paul Nordin Lot in a manner that avoids or remedies conflicts with the existing Fountain Hills Sanitary District and Salt River Project facilities, unless such conflicts are approved by the respective owner entity, in writing, prior to issuance of any permit related to construction of the Paul Nordin Lot.

B. AOTF Lot Additional Requirements. Developer shall construct the AOTF Lot not later than the date of a certificate of occupancy for any building in Phase 1 of the Project. Developer shall design and construct the AOTF Lot: (1) in a manner that (a) avoids or remedies conflicts with the existing Fountain Hills Sanitary District and Salt River Project facilities, unless such conflicts are approved by the

respective owner entity, in writing, prior to issuance of any permit related to construction of the AOTF Lot, and (b) accommodates the Town's drainage to and through that area (but not onto the Avenue of the Fountains right-of-way), and the Parties shall execute a permanent drainage easement over that portion of Developer's property located west of Verde River Drive, in the form attached hereto as Exhibit D, as necessary to ensure perpetual transmission of drainage flows from the adjacent Town property; and (2) with a 3' high wall along its western edge to provide a barrier between the AOTF Lot and the law enforcement parking area on the adjacent Town property. Developer expressly agrees and understands that construction of the AOTF Lot and maintenance thereof does not include any rights to utilize parking on the existing Town-owned lot immediately west of the AOTF Lot (shown on Exhibit B) which lot may be reserved for law enforcement purposes.

C. New Town Parking Lots Maintenance and Repair. For such time as a Parking Easement Agreement (defined below) is in effect, Developer shall be responsible for the perpetual maintenance, repair and operational duties described in the applicable Parking Easement Agreement.

D. Non-Exclusive Use. The parking spaces located in the New Town Parking Lots may be included in Developer's calculation of required off-street parking according to Section 5.3 below, but such spaces shall be open for public use and shall not be reserved for exclusive use of any building or unit on the Property.

4.3 New Town Parking Lots; Easements. The Town hereby agrees to allow Developer to use the New Town Parking Lots on a non-exclusive, shared-use basis to provide additional parking for the Project, subject to and in accordance with the terms and conditions of a parking easement agreement for each such lot substantially in the form attached hereto as Exhibit E and incorporated herein by reference (each a "**Parking Easement Agreement**"). Each Parking Easement Agreement shall be executed and recorded by the Parties immediately prior to acceptance by the Town of the improvements to each such parking lot pursuant to Subsection 6.2(K) below. The easement created by each Parking Easement Agreement shall be terminable only in accordance with the terms of such Parking Easement Agreement.

4.4 Art Walk, Streetscape and Pedestrian Pathway Improvements. Developer is required, pursuant to Subsection 19.05(I) of the Zoning Ordinance to make certain contributions to public art (the "**Public Art Requirement**"). The Town hereby agrees to allow Developer to meet the Public Art Requirement by (i) constructing the improvements described in this Section 4.4 and (ii) paying a reduced art fee as set forth in Section 7 below. In connection with construction of the Open Space Improvements (as defined below), Developer shall be allowed to utilize certain additional Town property, conditioned upon the following:

A. Art Walk. Subject to the provisions of Subsection 4.4(D) below, Developer shall design and construct a pedestrian pathway on the parcel of Town property located immediately east of, and adjacent to, the Town's Community Center (the "**Art Walk**") as generally shown on the Land Use Plan. Such improvements shall: (1) include, at a minimum (a) an ADA-compliant pathway, (b) art nodes for future

installation of art pieces, (c) landscaping, (d) seating, (e) lighting, and (f) electrical fixtures, all as shall be further described in the Phase 3 Concept Plan; and (2) be constructed to the same or better standards, finishes and materials as the Town's recently completed Avenue Plaza. The Art Walk shall be connected to the existing improvements in the Centennial Circle area. Developer shall be responsible for coordinating the Art Walk design with the Town's Community Services Department and the Art Committee of the Fountain Hills Cultural and Civic Association.

B. Avenue of the Fountains Streetscape. Subject to the provisions of Subsection 4.4(D) below, Developer shall design and construct improvements to the Avenue of the Fountains streetscape in accordance with the Phase 1 Concept Plan or Phase 2 Concept Plan, as applicable. Such streetscape improvements shall: (1) include (a) ADA-compliant sidewalks and ramps, (b) a ramada at the west cross walk to match the location of the Town-constructed ramada on the north side of the Avenue of the Fountains, as generally shown on the Land Use Plan (the "**Ramada**"), and an architectural feature (at the east crosswalk as generally shown on the Land Use Plan) similar in design to the Town-constructed ramada on the north side of Avenue of the Fountains (the "**Architectural Feature**"), (c) landscaping, (d) seating, (e) lighting, and (f) electrical fixtures as described in the applicable Concept Plan (collectively, the "**Streetscape Improvements**"); and (2) be constructed to the same or better standards, finishes and materials as the Town's improvements on the north side of Avenue of the Fountains.

C. Avenue of the Fountains Pocket Park. Developer shall design and construct a pocket park along the Avenue of the Fountains in the location shown on Exhibit B (the "**Pocket Park**"). The Pocket Park shall be constructed: (1) to the same or better standards, finishes and materials as the Town's recently completed Avenue Plaza and in accordance with the Phase 1 Concept Plan; and (2) in a manner that relocates the existing Salt River Project facilities to an area outside the Pocket Park.

D. Timing of Construction. The Streetscape Improvements, the Pocket Park and the Art Walk (collectively, the "**Open Space Improvements**") shall be designed and constructed, in conjunction with each specific Phase (as set forth in the Land Use Plan), and shall be completed and accepted by the Town before a certificate of occupancy issues for that particular Phase.

4.5 Maintenance. Notwithstanding the provisions of Subsection 6.2(K) below, Developer shall be responsible for maintenance of Developer's landscape improvements for all of the street rights-of-way immediately adjacent to the Property, except for the Avenue of the Fountains Streetscape Improvements. Upon acceptance of the Art Walk and the Streetscape Improvements, in each instance pursuant to Subsection 6.2(K) below, the Town shall be responsible for maintenance of such improvements. Developer shall be responsible for maintenance of the Pocket Park according to the obligations set forth in the Parking Easement Agreement related to the AOTF Parking Lot.

5. Approved Deviations from Zoning Ordinance Provisions.

5.1 Residential Density Increase for the Project. The permitted residential density within the Project is hereby increased to no more than 45 dwelling units per acre with an overall cap of 420 dwelling units.

5.2 Modification of Commercial to Residential Ratio for the Project. The mixed-use development guidelines set forth in Subsection 18.03(C)(5) of the Zoning Ordinance are modified to allow up to 10:1 multi-family gross floor area to commercial gross floor area. The Parties agree that this ratio is calculated Project-wide and includes any buildings within Phase 2 and Phase 3 that are permitted to be 100% residential.

5.3 On-Site Parking Reduction for the Project. The Town and Developer agree that, prior to consideration of each Concept Plan by the Commission, Developer shall provide a parking analysis, prepared by an engineering firm with qualifications and experience in preparing such analyses, showing that the required parking (as calculated pursuant to this Section 5.3) is shown on that Concept Plan to accommodate the uses for each building in the portion of the overall Project that is covered by that Concept Plan. The parking requirements in Sections 7 and 18 of the Zoning Ordinance shall apply unless modified in this Agreement. In determining the required parking, the following modifications to the Zoning Ordinance are hereby approved:

A. Commercial Parking. The parking requirements in Sections 18.11 and 7.04 of the Zoning Ordinance are hereby modified so that the overall number of commercial on-site parking spaces is reduced by 20%. Additionally, Developer may count, as part of the overall required on-site commercial parking requirement: (1) the immediately-adjacent on-street parking spaces, and (2) the parking spaces to be included in the portion of the New Town Parking Lots that will be constructed in conjunction with that Phase of development. Developer agrees that street parking is used for calculation purposes only and shall not be reserved or used exclusively for businesses within the Project. Further, in order to ensure that the street parking adjacent to the Project is not utilized for residential purposes, the Town may restrict the timing or type of parking permitted in such immediately-adjacent street areas.

B. Residential Parking. The parking requirements in Sections 18.11 and 7.04 of the Zoning Ordinance are hereby modified so that the overall number of multiple-dwelling residential on-site parking spaces and guest parking spaces is reduced by 20% for all dwelling unit sizes; provided, however, that each residential unit shall have at least one dedicated, reserved parking space within 300' of such unit. Developer shall not (1) include as part of the overall required on-site residential parking requirement the immediately-adjacent on-street parking spaces and (2) designate as reserved for residential uses any of the parking spaces to be included in the portion of the New Town Parking Lots that will be constructed in conjunction with that Phase of development.

C. Parking Space Modifications. The Project's parking areas may contain parking spaces that are 17 feet deep with a 2-foot overhang over the landscape buffer for those parking spaces that face a landscape buffer; all other spaces shall be

designed and constructed according to Town standards; provided, however, that all disabled parking spaces shall meet ADA requirements.

5.4 Decrease in Size and Number of Loading Zones for the Project. The off-street loading and unloading space requirements set forth in Subsection 7.04(H) of the Zoning Ordinance are modified to permit the required dimensions of the loading zones to be reduced from 12'x45' to 10'x30', and to reduce the number of loading zones required on the Property to four.

5.5 Increase of Building Height for the Project. Subject to the limitations herein, the maximum building height restrictions in Section 18.14 of the Zoning Ordinance are modified to allow a maximum building height of 54', including all equipment parapets/screens, except for "Building F", as shown on the Land Use Plan, which shall be limited to not more than three stories and shall not exceed 40' in height. No building in the Project may contain more than three residential floors.

5.6 Exterior Elevation Offsets for the Project. The exterior offset requirements set forth in Subsection 18.03(C)(4) of the Zoning Ordinance are modified to (A) decrease upper story exterior wall plane offsets (either vertical or horizontal) from a minimum of 20% to a minimum of 10%, and (B) increase the maximum length, from 10 feet to 25 feet, of any upper story wall plane that is not offset.

5.7. Provision of Wi-Fi. Developer shall install and operate free, public Wi-Fi internet infrastructure along the Avenue of the Fountains in conjunction with Phase 1 and Phase 2. Such Wi-Fi internet infrastructure shall provide coverage extending along the "Avenue Plaza" within the Avenue of the Fountains from La Montana Drive to Saguaro Boulevard and shall be operational for (A) the segment adjacent to Phase 1 prior to issuance of a certificate of occupancy for Phase 1, and (B) the segment adjacent to Phase 2 prior to issuance of a certificate of occupancy for Phase 2. Each segment shall be certified to the Town by the system designer/provider as meeting the coverage requirements of this Section 5.7. Developer shall be solely responsible for the operation and maintenance of each segment of the Wi-Fi internet infrastructure for a period of four years after the date the Town issues the certificate of occupancy for Phase 1. Developer may satisfy its operation and maintenance responsibility with respect to the Wi-Fi internet infrastructure by executing and delivering to the Town one or more agreements with a third-party provider reasonably acceptable to the Town, which agreement(s) shall incorporate Developer's responsibilities under this Section 5.7. The Town's acknowledgment of the transferred responsibility shall be evidenced by an estoppel certificate issued by the Town pursuant to Subsection 9.20(C) below.

5.8 Residential-Only Buildings. Subsection 18.03(C)(2) is hereby modified to allow for residential-only use of Building "F" in Phase 2 and all buildings in Phase 3, substantially as shown on the Land Use Plan.

6. Obligations of the Parties.

6.1 Pre-conditions to Town's Obligations. The Town's obligations in this Agreement are specifically conditioned upon Developer timely performing its obligations as set forth in Subsections 6.2(A) - (K) below. The Town's obligations, as applicable, shall automatically renew at the beginning of each Phase that is undertaken by Developer according to the Development Schedule described in Section 6.2 below.

6.2 Developer's Obligations. Developer shall perform all of its duties as set forth in this Section in accordance with the "**Development Schedule**" attached hereto as Exhibit F and incorporated herein by reference. The Town and Developer recognize and acknowledge that market conditions and market demands impact when certain development is supported. As such, as long as Developer is using commercially reasonable efforts to adhere to the Development Schedule, the Town shall consider Developer's requests for modification of the Development Schedule in order to allow Developer to construct certain Phases (as described in Subsection 6.2(I) below) based on then-existing market conditions and market demands. In no event shall construction on any Phase commence more than six years following the Effective Date of this Agreement. 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. Upon its acquisition of the applicable portion of the Property, Developer agrees to develop that portion of the Project in accordance with the TCCD zoning district (except as modified herein) and the applicable Concept Plan as reviewed and approved by the Commission in its sole discretion and then approved by the Town Council in its sole legislative discretion. Developer shall submit a completed Concept Plan application for each Phase to the Town staff in sufficient time to ensure that the Town staff can review such Concept Plan, receive corrections from Developer, and submit the completed Concept Plan to the Commission for its review and approval or denial prior to the Town Council's consideration of the Concept Plan. Subject to Developer's termination rights in Section 3.2 above, Developer agrees to comply with any conditions associated with the final approval of each Concept Plan.

B. Acquisition of the Property. Developer agrees to complete the acquisition (close escrow and confirm ownership) of the portion of the Property associated with each Phase of Project not later than 120 days following Town Council approval of the applicable Concept Plan relating to that Phase.

C. Construction Documents. Developer shall prepare and submit to the Town for the Town's review and approval (whether by Town staff for the items set forth in Subsection 6.2(D) below or by third party plan review entity, as applicable), the construction documents for the improvements to be constructed in connection with the Project shown on the Concept Plan in accordance with the Development Schedule and the Town's codes, ordinances and this Agreement.

D. Third Party Review and Inspection. Developer agrees and understands that the Town has concluded it lacks sufficient resources to provide plan review and inspection services within the review time periods Developer desires for the Project, causing the Town to require an outside consultant to perform the tasks on the Town's behalf. The Developer will be required to pay the direct costs incurred by the Town resulting from its contract for the services of an outside firm to provide plan review and inspection in connection with the Project. The Town shall perform all plan review and inspections related to fire safety and planning and zoning; the Fountain Hills Sanitary District will perform all plan review and inspections related to sanitary sewer; and Epcor will perform all plan review and inspections related to the Project's potable water supply. If a third-party plan review and inspection firm is retained, Developer shall only be responsible to pay the percentage of the Town's then-current building permit fee, as determined by the Town Manager at the time the Town and Developer execute a third-party review agreement, to cover the cost of the planning and zoning/landscape plan review and inspection. Developer shall be responsible for 100% of the cost of the plan review and inspection fees related to fire safety.

E. Building Permits. Developer shall secure all grading, building and construction permits in accordance with the Town code and ordinances, or as required by any other governmental agency, prior to starting any site grading or construction activities on the Property. Developer is permitted to submit for review building and construction permits prior to Concept Plan approval for a Phase. The Town shall coordinate with the third party plan review firm to ensure the plans submitted adhere to this Agreement and the applicable Concept Plan, including any changes to such Concept Plans required by the Town Council as part of its approval. Notwithstanding the allowance for early building and construction plan submittal set forth in this Subsection 6.2(E), Developer agrees and understands that no permits for the construction of a Phase will be issued prior to Town Council approval of the Concept Plan for the portions of the Project within that Phase.

F. Construction on Property. After final approval of the applicable Concept Plan by the Commission and the Town Council and acquisition of the Property according to Subsection 6.2(B) above, Developer shall commence construction of each Phase within a commercially reasonable timeframe according to the Development Schedule and after receipt of all building permits for vertical construction of such Phase. For the purposes of this Agreement, (1) "**vertical construction**" shall mean construction of retaining walls, exterior walls, footings or slabs of restaurant, retail, entertainment and residences on the Property and (2) "**commence construction**" shall mean the mobilization of sufficient construction resources to the Property to complete the applicable Phase according to the Development Schedule and the Town's codes and ordinances.

G. Traffic Study. Developer has submitted for review and approval to the Town a traffic impact analysis prepared by a qualified professional identifying (1) the Project impacts (including those created by the Morningstar assisted living facility) 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 required mitigation for each Phase shall be completed prior to the issuance of a certificate of occupancy for each Phase.

H. Developer Public Improvements. Developer shall design and construct all necessary public infrastructure improvements in accordance with the approved plans and specifications for each Phase, including, the New Town Parking Lots and the Open Space Improvements (collectively, the "**Public Infrastructure Improvements**"). The Developer shall construct or cause to be constructed and installed any and all portions of the Public Infrastructure Improvements in accordance with the approved applicable Concept Plan and the Town's adopted standards. Upon completion by Developer and acceptance by the Town, Developer shall dedicate all such Public Infrastructure Improvements to the Town; provided, however that such dedication and acceptance shall not relieve Developer of its maintenance obligations as set forth in this Agreement or in the Town's codes, ordinances and regulations, to the extent such codes, ordinances and regulations are not in conflict with this Agreement.

I. Phased Development. The Town acknowledges that Developer plans to develop the Property in three Phases, as generally shown in the Land Use Plan, as shall be more particularly described in the applicable Concept Plan as approved by the Town Council. The Town will review and approve the portions of the Public Infrastructure Improvements necessary for each Phase as part of its approval of the construction documents of each Phase. The Town Manager may require that Developer construct portions of the Public Infrastructure Improvements outside of the then-current Phase if, in the Town Manager's reasonable opinion, the construction sequence requested by Developer for its construction activities associated with the Phase will pose a threat to public safety or to existing Town infrastructure.

J. Infrastructure Assurance. Prior to the commencement of construction of any the Public Infrastructure Improvements associated with Phase 1, Developer shall deposit, with an escrow agent mutually acceptable to the Town and Developer, \$100,000.00 to ensure that installation of the AOTF Parking Lot, the Ramada and the Pocket Park (the "**Phase 1 Infrastructure Assurances**"), which deposit shall promptly be released to the Developer upon Developer's completion and the Town's acceptance of the AOTF Parking Lot, the Ramada and the Pocket Park. Developer and the Town shall mutually agree upon the amount to be escrowed for Phases 2 and 3, if any, at the time of Concept Plan submittal for each of those Phases, but only for such Public Infrastructure Improvements directly related to such Phases (all such escrowed amounts collectively referred to herein as the "**Public Infrastructure Assurances**"). The form of escrow instructions mutually acceptable to the Town and Developer is attached hereto as Exhibit G. The Public Infrastructure Assurances shall be deposited for a Phase at the time permits are requested for any construction on that Phase.

K. Dedication and Acceptance. Upon completion by Developer of any Public Infrastructure Improvements, the Town's designated building inspector shall

promptly notify the Town in writing of the completion of such Public Infrastructure Improvements. Developer shall dedicate to the Town, at no cost to the Town, such completed Public 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 Public Infrastructure Improvements are constructed in accordance with Town standards, as verified by the Town's inspection of the completed Public Infrastructure Improvements, all punch list items have been completed and the Public Infrastructure Improvements are free of any liens and encumbrances, the Town shall accept the Public Infrastructure Improvements, and such acceptance shall not be unreasonably withheld or delayed. The Town shall promptly notify Developer, in writing, of the Town's acceptance of the Public Infrastructure Improvements. Acceptance of any Public Infrastructure Improvement is expressly conditioned upon Developer providing a warranty for such Public Infrastructure Improvement, as provided in Subsection 6.2(L) below. Subject to the limitation set forth below, after acceptance of any Public Infrastructure Improvements, the Town thereafter shall maintain, repair and operate such Public Infrastructure Improvements at its own cost, which obligation shall survive any termination of this Agreement. Notwithstanding the Town's maintenance obligations set forth above, 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 the applicable Parking Easement Agreement, such maintenance to be conducted at the same intervals and standards as Developer's parking areas, subject to prior notice to, and approval by, the Town Manager. Developer shall be solely responsible for the maintenance of all Public Infrastructure Improvements until dedicated to, and accepted by, the Town as provided above.

L. Warranty. Developer or its assignee shall give to the Town a one-year warranty for all Public Infrastructure Improvements, which warranty shall begin on the date that the Town accepts the Public Infrastructure Improvements as provided in Subsection 6.2(K). Any material deficiencies in material or workmanship identified by Town staff during the one-year warranty period shall be brought to the attention of Developer or its assignee that provided the warranty, who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the Town. Continuing material deficiencies in a particular portion of the Public 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 Public Infrastructure Improvements that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, Developer agrees to repair any damage to the Public 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 third party for damage to the Public Infrastructure Improvements caused by such third party.

M. Site Drainage. Developer agrees and understands that the Town's willingness to permit reduced parking requirements on the Project site is based upon,

among other things, Developer's use of underground storm water detention and retention. Accordingly, Developer (1) shall not modify Project drainage in a manner inconsistent with underground storm water facilities, and (2) shall submit for the Town's approval as part of the applicable Concept Plan, plans for underground storm water facilities for each Phase.

7. Public Art Fee Obligation. In addition to Developer's obligation to construct the Open Space Improvements according to Section 4.4 above, Developer shall, as the remainder of its Public Art Requirement, pay the Town 50% of the public art fee calculated at the time of building permit and due at the time of certificates of occupancy for each Phase, as shown in Exhibit B). After issuance of the Phase 1 certificate of occupancy, and in conjunction with the Town's review of the Phase 2 Concept Plan, Developer may request that the Town evaluate the total cost of the already-completed public art components of Phase 1 and the estimated cost of the public art components of Phase 2 and Phase 3. Any adjustment to the Public Art Requirement shall be set forth in an amendment to this Agreement.

8. Default; Cure. If either Party fails to perform any obligation, and such Party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting Party (the "**Cure Period**"), such Party shall be in default. 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; provided, however, if the nature of the defaulting Party's nonperformance is such that it cannot reasonably be cured within 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. Except as may be otherwise agreed in writing by the Parties, in no event shall any such Cure Period exceed 60 days. Any default of this Agreement in connection with Transferred Property (defined below) shall affect only the Transferred Property and shall not be a default under this Agreement as to the part of the Property that is not affected by a Transfer (defined below). Any default of this Agreement in connection with a portion of the Property that is not Transferred Property shall affect only such portion of the Property and shall not be a default under this Agreement as to the Transferred Property.

9. General.

9.1 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: N-Shea Group, LLC
14555 N. Scottsdale Road, Suite 240
Scottsdale, Arizona 85254
Attn: Bart M. Shea

With a copy to: DKL Law, PLLC
14555 N. Scottsdale Road, Suite 240
Scottsdale, Arizona 85254
Attn: David W. Lunn, Esq.

If to Owner: Park Place Properties, LLC
1221 Cleveland Street
Wilmette, Illinois 60091
Attn: Sam Gambacorta

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.

9.2 Entire Agreement; Amendment. This Agreement (including Exhibits A - G attached hereto, which are incorporated herein by this reference) is intended to be and constitutes the entire agreement between the Parties with respect to the subject matter hereof; and may be amended only by an instrument in writing signed by the Town, Developer and the then-current owner of any portion of the Property affected by such amendment. No amendment or waiver of any provision in this Agreement shall be binding (A) on the Town unless and until it has been approved by the Town Council and has become effective, (B) on Developer unless and until it has been executed by an authorized representative of Developer, or (C) on the then-current owner of the Property unless it has been executed by an authorized representative of such owner. Any amendment to this Agreement in connection with Transferred Property (defined below) shall affect only the Transferred Property and shall not be an amendment of this Agreement as to the part of the Property that is not affected by a Transfer (defined below). Any amendment to this Agreement in connection with a portion of the Property that is not Transferred

Property shall affect only such portion of the Property and shall not be an amendment of this Agreement as to the part of the Property that is affected by a transfer.

9.3 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.

9.4 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 hereof, with respect to the actions and obligations of each person bound by the terms hereof.

9.5 Attorney's Fees. If either Party or Owner commences an action against another to interpret or enforce any of the terms of this Agreement or because of the breach by the other 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 term "**attorney's fees, costs and expenses**" shall mean the fees and expenses of counsel to the Parties or Owner, as applicable, 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 all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings.

9.6 Recordation. This Agreement shall be recorded by the Town in its entirety in the Maricopa County Recorder's Office not later than 10 days after it is fully executed by the Parties and Owner. This Agreement shall run with the title to the Property, and be binding upon all successor owners of the Property, and all other persons having any right, title or interest in or to the Property; provided, however, upon (A) receipt of a certificate of occupancy for any portion of the Property and (B) completion of all Developer obligations under this Agreement related to that portion of the Property and associated warranty obligations to the Town, as provided in Section 6.2(L) above, such completion to be evidenced by an estoppel certificate issued by the Town under Section 9.20(C) below, the then-current owner of such portion of the Property shall be permitted to terminate this Agreement as to such portion of the Property by instrument recorded in the real property records of Maricopa County, Arizona.

9.7 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; Owner and each Party and the then-current owner of the Property each hereby waives the right to object to venue in Maricopa County for any reason.

9.8 Good Standing; Authority. Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona. Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona. The Town represents that it is a municipal corporation within Arizona. Both Parties and the Owner

represent and warrant that the individual executing this Agreement on behalf of their respective entities are authorized and empowered to bind the entity on whose behalf each such individual is signing.

9.9 Assignment. Developer shall transfer or assign (“**Transfer**”) all of its rights and obligations under this Agreement with respect to any portion of the Property to any person or entity (“**Transferee**”) who acquires such portion of the Property, which Transfer shall occur when the Transferee takes title to such portion of the Property. Developer shall be released from its obligations under this Agreement and any associated easement agreement with respect to the portion of the Property that is transferred (“**Transferred Property**”), so long as all of the following conditions have been met:

A. Proper Notice. Developer has given the Town notice of the Transfer, which shall include a legal description of the Transferred Property and the name, address and telephone number for notice purposes, of the Transferee.

B. Acceptance by Transferee. The Transferee has agreed, in writing, to be subject to all of the provisions of this Agreement applicable to the Transferred Property and any applicable easement agreement associated with the Transferred Property.

9.10 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 signatory hereto, and no such other person or entity shall have any right or cause of action hereunder.

9.11 No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties hereto, nor shall this Agreement cause them to be considered joint ventures or members of any joint enterprise. Each party hereto shall be considered a separate entity, 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.

9.12 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.

9.13 Further Documentation. The parties hereto agree in good faith to execute such further or additional instruments and documents and to take such further commercially reasonable acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement, in each case, at no additional expense to the party hereto who does not initiate the request.

9.14 Fair Interpretation. The Parties and Owner 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.

9.15 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.

9.16 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 that 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.

9.17 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.

9.18 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.

9.19 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.

9.20 Estoppel Certificate. Upon Developer's (or the owner of a Transferred Property's) written request, the Town will execute, acknowledge and deliver to the requesting party and all other parties identified by the requesting party, including without limitation assignees, transferees, tenants, purchasers, investors, title insurance companies, lenders, and mortgagees, a written statement certifying (A) 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), (B) whether there are any existing breaches or defaults then known to the Town under this Agreement, and if so, specifying the same, and/or (C) the status of any remaining Developer obligations, including warranty obligations under Section 6.2(L) above with respect to Public Infrastructure Improvements, specifically including the applicable Phase under which such warranty obligations were incurred and whether any

obligations remain with respect to such Phase. The Town will deliver the statement to the requesting party within 15 days after request. The Town acknowledges that the requesting party and any such assignee, transferee, tenant, purchaser, investor, title company, lender, or mortgagee may rely upon such statement as true and correct.

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

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation



Linda M. Kavanagh, Mayor

ATTEST:



Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On June 20, 2016, before me personally appeared Linda M. Kavanagh, the Mayor of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document, on behalf of the Town of Fountain Hills.



(Affix notary seal here)



Notary Public

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

“Developer”

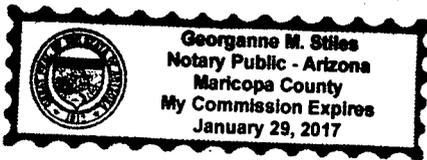
N-SHEA GROUP, LLC,
an Arizona limited liability company

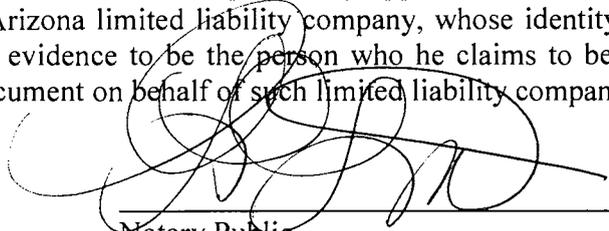
By: 
Bart M. Shea, Member

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On JUNE 17th, 2016, before me personally appeared Bart M. Shea, Member of N-SHEA GROUP, LLC, an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of such limited liability company.




Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Legal Description of the Property]

TOWN OF FOUNTAIN HILLS EXHIBIT A

LOT 1 OF A FINAL REPLAT OF BLOCK 2, PLAT 208
AND
LOT 5 OF A FINAL REPLAT OF BLOCK 7, PLAT 208

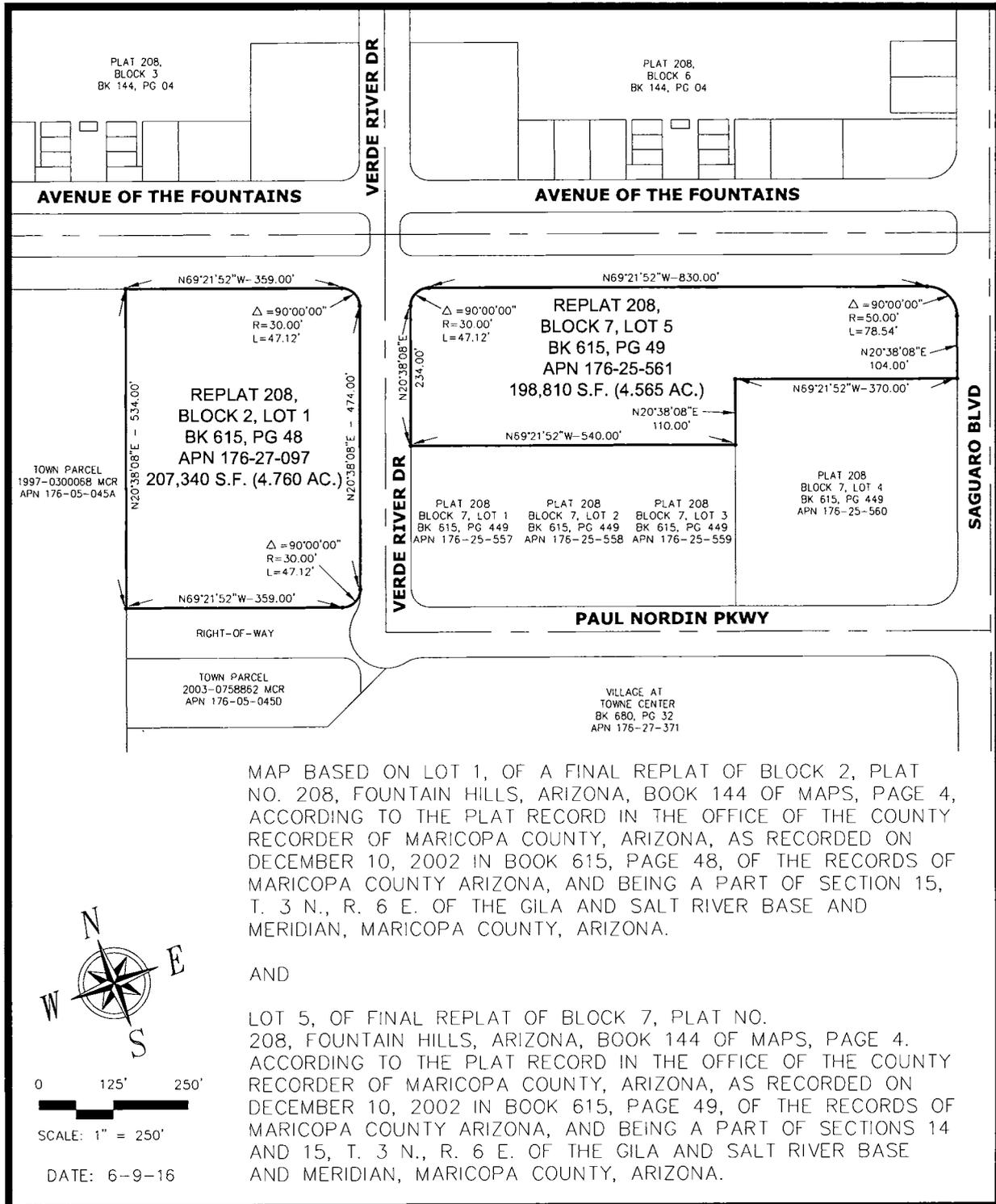


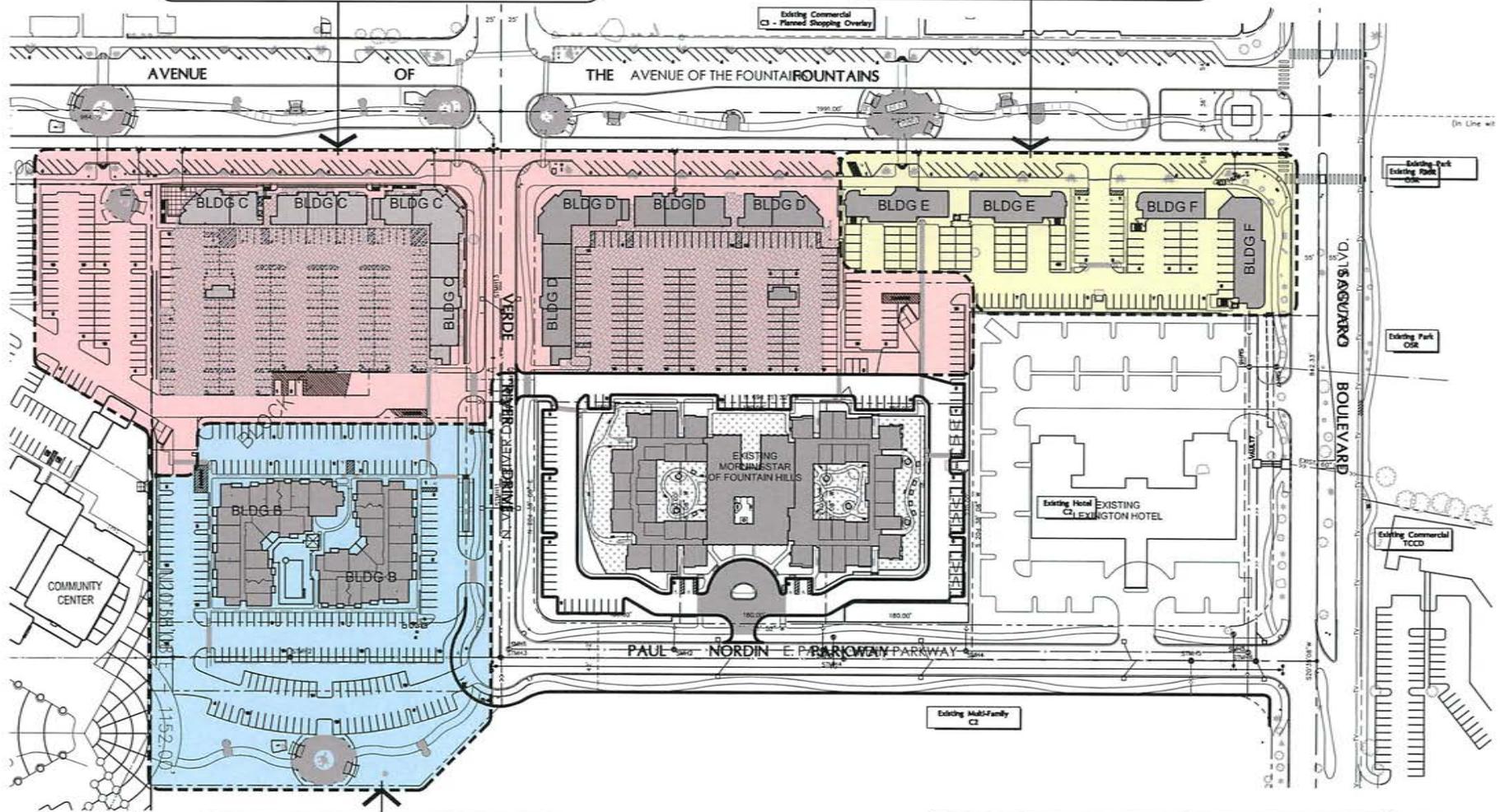
EXHIBIT B
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Approved Land Use Plan]

PHASE I
 BLDGS 'C' & 'D' - (4) STORY MIXED-USE
 230 UNITS - 35,000 SF COMMERCIAL
 INCLUDES THE FOLLOWING IMPROVEMENTS:
 - AOTF LOT (PARKING, LIGHTING, POCKET PARK, SEATING, RAMADA)
 - AOTF STREETSCAPE UPGRADE FROM WEST SIDE OF NEW AOTF PARKING LOT TO N.W.C. OF PHASE II (LANDSCAPE, LIGHTING & SIDEWALKS)
 - STREETSCAPE MODIFICATION ON WEST AND EAST SIDES OF N. VERDE RIVER DRIVE FROM AOTF INTERSECTION TO NEW DRIVES (LANDSCAPE & SIDEWALK MODIFICATIONS)
 - TRASH COMPACTORS

PHASE II
 BLDGS 'E' - (4) STORY MIXED-USE
 BLDGS 'F' - (3) STORY RESIDENTIAL
 72 UNITS - 8,000 SF COMMERCIAL
 INCLUDES THE FOLLOWING IMPROVEMENTS:
 - AOTF STREETSCAPE UPGRADE FROM N.E.C. OF PHASE I TO INTERSECTION OF SAGUARO BLVD (LANDSCAPE, LIGHTING & SIDEWALKS)
 - STREETSCAPE FROM AOTF TO N.E.C. OF ADJOINING LEXINGTON HOTEL PROPERTY (LANDSCAPE & SIDEWALKS)

PHASE III
 BLDG 'B' - (3) STORY MULTI-FAMILY
 102 UNITS
 INCLUDES THE FOLLOWING IMPROVEMENTS:
 - STREETSCAPE ALONG NORTH VERDE DRIVE FROM PHASE I TO CUL-DE-SAC AT PAUL NORDIN PKWY (LANDSCAPE & SIDEWALK MODIFICATIONS)
 - ARTWALK PARK & PARKING LOT



north

 SCALE: N.T.S.

EXHIBIT 'B' LAND USE PLAN
PARK PLACE MASTER PLAN
 FOUNTAIN HILLS, ARIZONA



EXHIBIT C
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Insurance and Indemnification Requirements]

See following page.

INSURANCE AND INDEMNIFICATION

1. Insurance.

1.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Developer, Developer shall purchase or cause its contractors to purchase and maintain, at no expense to the Town, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein is a material default and may result in termination of this Agreement.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Developer. The Town reserves the right to review any and all of the certificates of insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Developer from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work performed in connection with the Project is satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Developer's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Developer. Developer shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Developer shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Contractors. If any work under this Agreement is contracted in any way, Developer shall execute written agreements with its contractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Developer. Developer shall be responsible for executing any agreements with its contractors and obtaining certificates of insurance verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Developer will provide the Town with suitable evidence of insurance in the form of certificates of insurance and appropriate endorsements with respect to the insurance policies as required by this Agreement, issued by Developer's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and endorsements of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Developer's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and endorsements required by this Agreement shall be identified by referencing this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Developer’s insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Developer under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is required.

1.2 Required Insurance Coverage.

A. Commercial General Liability. Developer shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insureds clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Developer shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Developer’s owned, hired and non-owned vehicles assigned to or used in the performance of the Developer’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Workers’ Compensation Insurance. Developer shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Developer’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

1.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 15 days' prior written notice to the Town.

2. Indemnification. To the fullest extent permitted by law, the Developer shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon negligent acts, errors, mistakes or omissions, or intentional misconduct, in connection with the work or services of the Developer, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

EXHIBIT D
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Sample AOTF Drainage Easement]

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

This Agreement is exempt from the real estate transfer fee and Affidavit of Property Value pursuant to A.R.S. §11-1134(A)(2)

DRAINAGE EASEMENT AGREEMENT

GRANTOR: _____

GRANTEE: TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

THIS DRAINAGE EASEMENT AGREEMENT (this "Easement Agreement") is entered into _____, by and between Grantor and Grantee for the purposes set forth below. Grantor and Grantee are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

A. Grantor is the owner of that certain real property at the southwest corner of the intersection of Verde River Drive and the Avenue of the Fountains in the Town of Fountain Hills, Arizona (the "Receiving Property") as described and depicted on Exhibit 1, attached hereto and incorporated herein by this reference.

B. Grantee is the owner of that certain real property at the southeast corner of the intersection of La Montana Drive and the Avenue of the Fountains in the Town of Fountain Hills, Arizona (the "Town Property") as described depicted on Exhibit 1, which property is adjacent to Grantor's Receiving Property.

C. Pursuant to the Development Agreement between the Town of Fountain Hills, N-Shea Group and Park Place Properties, LLC, dated _____, 2016 (the "Development Agreement"), Grantor will utilize a portion of the Town Property for parking, which parking will eliminate a retention basin necessary for drainage of the Town Property. Accordingly, Grantor has agreed to perpetually receive drainage from the Town Property.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference and the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a limited, non-exclusive, perpetual easement for drainage purposes, together with the necessary right of access, ingress and egress (the "Easement") over the portion of Receiving Property (the "Easement Area"), as depicted and more particularly described on Exhibit 1. Grantor shall design, construct and maintain drainage facilities on the Receiving Property (the "Drainage Facilities") in a manner that drains both the Receiving Property and the Town Property in a manner consistent with the design of the Drainage Facilities as approved by the Grantee.

2. Maintenance of Easement. Grantor hereby agrees that it is solely responsible for maintaining and repairing, as necessary, the Drainage Facilities in good working order and free and clear of any debris that might impede the flow of water through the Drainage Facilities. If Grantor fails to perform any obligations set forth herein, and fails to cure its nonperformance within three business days following written notice thereof from Grantee (unless, with respect to any such breach the nature of which cannot reasonably be cured within such three-day period, Grantee commences such cure within such three-day period and thereafter diligently prosecutes such cure to completion, which completion must occur not later than five days after the date of the notice), Grantee may cure Grantor's nonperformance. In the event of such cure by Grantee, Grantor hereby agrees to pay Grantee an amount equal to 125% of the total of all costs reasonably incurred by Grantee in the completion of such cure, including reasonable labor and material costs related to Grantee's employees. Notwithstanding the foregoing, the thirty-day notice required above shall not be required if Grantee must act to prevent imminent harm to the Town Property; in such instances, Grantee shall give such notice as is reasonable under the circumstances.

3. Indemnification. Grantor shall indemnify, defend and hold harmless Grantee and each council member, officer, employee, contractor or agent thereof (Grantor and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon (i) the negligent design and construction of the Drainage Facilities or (ii) failure to properly maintain the Easement Area by Grantee, its employees, agents or any tier of subcontractor acting on Grantor's behalf. The provisions of this Section will survive for a period of one year following the termination of this Easement Agreement.

4. No Other Interest. Grantee acknowledges and agrees that except for the Easement, Grantee claims no right, title or interest in or to any portion of the Receiving Property.

5. Permits; Compliance with Laws. Grantor shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for the purposes under this Easement Agreement. Grantor shall comply with all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including but not limited to, those governing the prevention, abatement and elimination of pollution or protection of the environment.

6. Assignment. Neither Grantor nor Grantee shall have the right or authority to assign, in whole or in part, any of its rights or obligations under this Easement Agreement, or any portion of this Easement Agreement to any third party without the prior, written consent of the other Party, which consent shall not be unreasonably delayed, conditioned or denied. Notwithstanding the foregoing, Grantor and Grantee acknowledge and agree that no such consent shall be required if the underlying property burdened or benefitted by this Easement Agreement is transferred or conveyed to a third party.

7. Running of Benefits and Burdens. All provisions of this Easement Agreement, including the benefits and burdens, run with the land and are binding upon and inure to Grantor, Grantee and their respective successors and assigns.

8. Additional Easements. Nothing contained in this Easement Agreement shall prohibit Grantor from conveying additional easements for access, drainage, utility or other purposes through, over, under, upon, in, across and along the Easement Area; provided, however, that no such additional rights or easements shall unreasonably impair the use of the Drainage Facilities.

9. Notices and Requests. Any notice or other communication required or permitted to be given under this Easement Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered to the Party at the addresses 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 Grantee: 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 Grantor: _____

Attn: _____

With a copy to: Real Capital Solutions, Inc.
371 Centennial Parkway, Suite 200
Louisville, CO 80027
Attn: Senior Counsel

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: (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 or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

10. 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.

11. Severability. Invalidation of any of the provisions contained in this Easement 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.

12. Attorney's Fees. If either Party commences an action against the other to interpret or enforce any of the terms of this Easement 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 Easement Agreement, the terms "attorney's fees, costs and expenses" shall mean the fees and expenses of counsel to the respective Parties, 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.

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

14. Applicable Law; Venue. This Easement Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Easement Agreement may be brought only in courts in Maricopa County, Arizona.

15. Counterparts. This Easement Agreement may be executed in counterparts, all of which are identical, each of which shall be deemed an original, and all of which counterparts, when executed, taken together shall constitute one and the same instrument.

16. Entire Agreement. This instrument contains the entire agreement between the Parties relating to the subject matter hereof. Any oral representations or modifications

concerning this instrument shall be of no force or effect, excepting a subsequent recorded modification, signed by Grantor and Grantee or their respective successors or assigns.

IN WITNESS WHEREOF, the Parties have executed this Drainage Easement Agreement on the date first set forth above.

“Grantee”

TOWN OF FOUNTAIN HILLS
an Arizona municipal corporation

Linda M. Kavanagh, Mayor

ATTEST:

Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2016, before me personally appeared Linda M. Kavanagh, the Mayor of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document, on behalf of the Town of Fountain Hills.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

EXHIBIT 1
TO
DRAINAGE EASEMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND

[Legal Description Town Property, Receiving Property and Easement Area]

See following pages.

DRAFT

EXHIBIT E
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Sample Parking Easement Agreement]

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

PARKING EASEMENT AGREEMENT

THIS PARKING EASEMENT AGREEMENT (this "Easement Agreement") is entered into _____, 2016, by and between the Town of Fountain Hills, an Arizona municipal corporation ("Grantor"), and _____ ("Grantee"). Grantor and Grantee are sometimes referred to herein collectively as the "Parties," or individually as a "Party."

RECITALS

A. Grantor owns that certain real property located east of the southeast corner of Avenue of the Fountains and La Montana Drive in Fountain Hills, Arizona, more particularly described and depicted in Exhibit 1, attached hereto and incorporated herein by reference (the "Town Parcel").

B. Grantee owns that certain real property located at **[Phase 1: the southwest corner of Verde River Drive and Avenue of the Fountains] [Phase 3: immediately west of the corner of Verde River Drive and Paul Nordin Parkway]** in Fountain Hills, Arizona, as more particularly described and depicted in Exhibit 1 (the "Developer Property"). Developer intends to construct a multifamily and retail project in phases, including but not limited to retail shopping areas, restaurants, offices, and related uses (the "Project"), on the Developer Property. Grantee requires use of the Town Parcel for parking related to the Project.

C. Grantor desires to grant to Grantee and its successors and assigns a permanent nonexclusive easement for ingress, egress, parking and pedestrian access on, over and across the Town Parcel for use in connection with the Project.

D. Grantor further desires to grant to Grantee a temporary exclusive construction easement over, on and across the currently unpaved portion of the Town Parcel (the "Easement Area") for the purpose of designing and constructing paved parking facilities thereon in accordance with Town codes, ordinances and regulations as such may be modified by the Development Agreement between the Town of Fountain Hills and N-Shea Group, LLC and Park Place Properties, LLC, dated _____, 2016 (the "Development Agreement").

E. **[For Phase 1 only: Grantee agrees, as part of its maintenance obligations set forth below, to maintain the Pocket Park (as defined in the Development Agreement) to be constructed by Grantee on the Town Parcel.]**

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference and the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Grant of Easements. Grantor hereby expressly grants to Grantee and to its successors and assigns, for the benefit of the Developer Property the following easements through, on, over, under, upon, in, across and along the Town Parcel, subject to termination as set forth in Section 2 below:

1.1 Parking and Maintenance Easement. Grantor hereby grants a non-exclusive and perpetual right and easement (the "Parking and Maintenance Easement") for the purpose of ingress, egress, parking and pedestrian access, and on-going maintenance activities of the paved parking facilities. **[For Phase 1 only, add reference to the Pocket Park]**

1.2 Temporary Construction Easement. Grantor hereby grants an exclusive temporary right and easement (the "Construction Easement") for the purpose of ingress egress, design, installation and construction of the parking facilities. Together, the Parking and Maintenance Easement and the Construction Easement may be referred to herein as the "Easement". **[For Phase 1 only, add reference to the Pocket Park]**

2. Termination of the Easement. The Easement granted herein shall terminate (i) immediately upon termination of the Development Agreement with respect to **[Phase 1 / Phase 3]** caused by a breach of such agreement by the Developer (as such term is defined in the Development Agreement), (ii) at such time as **[Phase 1 / Phase 3]** has been abandoned for a period in excess of 180 consecutive days, or (iii) after completion of the parking facilities, the failure of Grantee to maintain the Easement Area as set forth in Section 3 below following the notice and cure process set forth in Section 7.2 below. Upon occurrence of any terminating event as set forth above, this Easement Agreement shall fully terminate and neither Party shall have any further rights or obligations herein. Notwithstanding the foregoing, the Construction Easement shall automatically terminate upon the Town's acceptance of the associated parking facilities.

3. Operation and Maintenance.

3.1 Parking Lot. Grantee shall be solely responsible for the (A) perpetual maintenance and repair of all pavement, markings, signage, dust control, landscaping, irrigation, electrical and lighting located within the Easement Area, and (B) payment of any electrical or water costs associated with the parking facilities located within the Easement Area. Such maintenance and repair shall be conducted at the same intervals and standards as Grantee's parking areas.

3.2 **[For Phase 1 only: Pocket Park. Grantee shall be solely responsible for maintaining the landscape improvements, irrigation, lighting and other improvements**

within the Pocket Park to the same or better standards as the “Avenue Plaza” area within the Avenue of the Fountains.]

4. Indemnification. Grantee shall indemnify, defend and hold harmless Grantor and each council member, officer, employee, contractor or agent thereof (Grantee and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon (i) the negligent design and construction of the Parking Lot **[For Phase 1 only: and the Pocket Park]** on the Easement Area, or (ii) failure to properly maintain the Easement Area by Grantee, its employees, agents or any tier of subcontractor acting on Grantee’s behalf. The provisions of this Section will survive for a period of one year following the termination of this Easement Agreement.

5. 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 real property, with liability limits not less than \$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 certificates evidencing the insurance policies that each Party is required to carry hereunder, shall be delivered to the other Party within five days after the date on which this Easement Agreement is recorded. The policies of insurance must contain a provision or endorsement that the company writing said policy will give to the other Party 30 days’ notice in writing of any modification, cancellation or lapse of effective date or any reduction in the amount of insurance. Not more frequently than every five years, if, in the reasonable 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.

6. Notices and Requests. Any notice or other communication required or permitted to be given under this Easement Agreement shall be in writing and shall be deemed to have been duly given if: (i) delivered to the Party at the addresses 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 Grantor: 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 Grantee: _____

Attn: _____

With a copy to: Real Capital Solutions, Inc.
371 Centennial Parkway, Suite 200
Louisville, CO 80027
Attn: Senior Counsel

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: (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 or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

7. 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 Easement Agreement within 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 30-day period, the defaulting Party commences such cure within such 30 day period and thereafter diligently prosecutes such cure to completion, which completion must occur not later than 60 days after the date of the notice), the non-defaulting Party shall have the right to perform such obligation contained in this Easement 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 2% (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (A) an emergency, (B) blockage or material impairment of the Easement rights, or (C) the unauthorized parking of vehicles on the Town 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.

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

9. Document Execution, Modification and Cancellation. This Easement Agreement (including exhibits) may be modified or cancelled only by agreement between Grantor and Grantee.

10. 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.

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

12. Severability. Invalidity of any of the provisions contained in this Easement 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.

13. Attorney's Fees. If either Party commences an action against the other to interpret or enforce any of the terms of this Easement 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 Easement Agreement, the terms "attorney's fees, costs and expenses" shall mean the fees and expenses of counsel to the respective Parties, 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.

14. Negation of Partnership. None of the terms or provisions of this Easement Agreement shall be deemed to create a partnership between or among the Parties 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.

15. No Other Interest. Grantee acknowledges and agrees that except for the Easement, Grantee claims no right, title or interest in or to any portion of the Town Parcel.

16. Assignment. Neither Grantor nor Grantee shall have the right or authority to assign, in whole or in part, any of its rights or obligations under this Agreement, or any portion of this Agreement to any third party without the prior, written consent of the other party, which consent shall not be unreasonably delayed, conditioned or denied. Notwithstanding the foregoing, the Parties acknowledge and agree that no such consent shall be required if the underlying property burdened or benefitted by this Easement Agreement is transferred or conveyed to a third party.

17. Running of Benefits and Burdens. All provisions of this Easement Agreement, including the benefits and burdens, run with the land and are binding upon and inure to Grantor, Grantee and their respective successors and assigns.

18. Additional Easements. Except during the duration of the Construction Easement, nothing contained in this Easement Agreement shall prohibit Grantor from conveying additional easements for access, drainage, utility or other purposes through, over, under, upon, in, across and along the Easement Area; provided, however, that no such additional rights or easements shall impair the use of the Easement. Notwithstanding the forgoing, if Grantor exercises its rights under this Section, Grantee shall not have any responsibility whatsoever for the repair or replacement of any damage or destruction to the Town Parcel, or for any damage or destruction to any improvements installed on the Easement Area by Grantee, caused by any such activity, and Grantor shall be solely responsible for such repair or replacement.

19. Counterparts. This Easement Agreement may be executed in counterparts, all of which are identical, each of which shall be deemed an original, and all of which counterparts, when executed, taken together shall constitute one and the same instrument.

20. Entire Agreement. This instrument contains the entire agreement between the Parties relating to the subject matter hereof. Any oral representations or modifications concerning this instrument shall be of no force or effect, excepting a subsequent recorded modification, signed by Grantor and Grantee or their respective successors or assigns.

21. Applicable Law; Venue. This Easement Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Easement Agreement may be brought only in courts in Maricopa County, Arizona.

[SIGNATURES ON FOLLOWING PAGES]

EXHIBIT 1
TO
PARKING EASEMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
_____, LLC

[Legal Description of the Town Parcel, the Easement Area and the Developer Property]

See following pages.

[Note: With respect to the Developer Property, insert legal description of the “Phase 1” property for the AOTF Lot easement; insert the legal description of the “Phase 3” property for the Paul Nordin Lot easement]

EXHIBIT F
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Development Schedule]

See following page.

Development Schedule

Deadline to Perform Task
From Effective Date of Agreement

Task/Obligation

On or before 30 days	Submit completed full-Project Concept Plan or completed Phase 1 Concept Plan for approval
On or before 120 days following approval of a Concept Plan for a phase of the Project	Complete Acquisition of the portion of the Property included within the phase
On or before 9 Months	Developer to have submitted Construction Documents for Phase 1, including applicable portion of Public Infrastructure Improvements.
On or before 18 Months	Developer to have begun construction of Phase 1 Improvements.
On or before 48 Months	Developer to have submitted Construction Documents for Phase 2, including applicable portion of Public Infrastructure Improvements.
On or before 60 Months	Developer to have completed construction of Phase 1 improvements, including applicable portion of Public Infrastructure Improvements.
On or before 60 Months	Developer to have begun construction of Phase 2 improvements, including applicable portion of Public Infrastructure Improvements.
On or before 72 Months	Developer to have to have submitted Construction Documents for Phase 3, including applicable portion of Public Infrastructure Improvements.
On or before 72 Months	Developer to have completed construction of Phase 2 improvements, including applicable portion of Public Infrastructure Improvements.
On or before 72 Months	Developer to have begun construction of Phase 3 improvements, including applicable portion of Public Infrastructure Improvements.

EXHIBIT G
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
N-SHEA GROUP, LLC
AND
PARK PLACE PROPERTIES, LLC

[Escrow Instructions]

See following page.



1125-17th St., 500
Denver, CO 80202

ESCROW INSTRUCTIONS

File # _____

First American Title Insurance Company ("Escrow Agent"), hereby agrees to act as the escrow agent for money deposited with it by the other party(ies) _____, an _____ ("Developer") and the Town of Fountain Hills, an Arizona municipal corporation ("Town") to this Escrow Agreement (this "Agreement") under the terms and conditions set forth herein.

1. The undersigned Developer, hereby deposits, in escrow with Escrow Agent, \$100,000.00 USD. Notwithstanding the joint and several obligations set forth in Section 7 of the "General Provisions" attached hereto, Developer shall be solely responsible for payment of all charges, costs and expenses due to Escrow Agent.

2. The money set forth in Paragraph 1 above is escrowed with and to be held by Escrow Agent pending full and proper satisfaction of the following requirement(s):

- (a) Receipt of written acceptance from the Town of the AOTF Parking Lot, Ramada and Pocket Park (each as defined in the Development Agreement between the Town, Developer and Park Place Properties, LLC, dated _____, 2016 (the "Development Agreement")).
- (b) Certificate of completion signed by the Developer.
- (c) Signed "As-built" drawings certified by the survey of record _____.

3. Escrow Agent is authorized to disburse all escrowed funds upon satisfaction of all of the requirements identified in Paragraph 2 hereof, without the requirement for further authorization from the Town or Developer.

4. If the Development Agreement is terminated for any reason at any time after the Town's property under the AOTF Parking Lot has been disturbed or construction activity has commenced for the Ramada or the Pocket Park, and the requirements in paragraph 2 of this Agreement have not been met, the Escrow Agent is authorized to disburse to the Town escrowed funds in an amount certified by the Town to be reasonably necessary to restore the Town's property to the condition existing prior to execution the Development Agreement.

5. If the requirement(s) in paragraph 2 have not been satisfied on or before January 31, 2023, Escrow Agent is instructed to either obtain supplemental written instructions from the Town and Developer, or failing to do so, return the escrowed funds herewith to the parties delivering the same into escrow, subject to any amounts already disbursed pursuant to paragraph 4. In doing so, Escrow Agent shall be relieved of any further responsibility or liability in connection with the escrow thereof.

6. The Escrow Agent's fee to provide the services herein is _____.

7. This escrow is subject to the general conditions of escrow set forth in **Exhibit A** "General Provisions" which is attached hereto and incorporated herein by reference.

Dated: _____, 201__

_____:

Escrow Agent:

FIRST AMERICAN TITLE INSURANCE COMPANY

BY: _____

Name: _____

Title: _____

By: _____

Title: _____

TOWN OF FOUNTAIN HILLS:

Grady E. Miller, Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

EXHIBIT A
General Provisions

1. The Agreement may be supplemented, altered, amended, modified or revoked by writing only, signed by all of the parties hereto, and approved by the Escrow Agent.
2. No assignment, transfer, conveyance or hypothecation of any right, title or interest in and to the subject matter of this Agreement shall be binding upon the Escrow Agent unless written notice thereof shall be served upon the Escrow Agent and all fees, costs and expenses incident thereto shall have been paid and then only upon the Escrow Agent's consent thereto in writing.
3. Any notice required or desired to be given by the Escrow Agent to any party to this Agreement may be given by mailing the same addressed to such party at the most recent address of such party shown on the records of the Escrow Agent, and notice so mailed shall, for all purposes hereof, be as effectual as though served upon such party in person at the time of depositing such notice in the mail.
4. The Escrow Agent may receive any payment called for hereunder after the due date thereof unless subsequent to the due date of such payment and prior to the receipt thereof the Escrow Agent shall have been instructed in writing to refuse any such payment.
5. The Escrow Agent shall not be personally liable for any act it may do or omit to do hereunder as such agent, while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its own attorneys shall be conclusive evidence of such good faith.
6. The Escrow Agent is hereby expressly authorized to disregard any and all notices or warnings given by any of the parties hereto, or by any other person, firm or corporation, excepting only orders or process of court, and is hereby expressly authorized to comply with and obey any and all process, orders, judgments, or decrees of any court, and in case the Escrow Agent obeys or complies with any such process, order, judgment, or decree of any court, it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such process, order, judgment or decree be subsequently reversed, modified, annulled, set aside or vacated, or found to have been issued or entered without jurisdiction.
7. In consideration of the acceptance of this Agreement by the Escrow Agent, the undersigned agree, jointly and severally, for themselves, their heirs, legal representatives, successors and assigns to pay the Escrow Agent its charges hereunder and to indemnify and hold it harmless as to any liability incurred by it to any other person, firm or corporation by reason of its having accepted the same, or its carrying out any of the terms thereof, and to reimburse it for all its expenses, including among other things, attorney's fees and court costs incurred in connection herewith; and that the Escrow Agent shall have a first and prior lien upon all deposits made hereunder to secure the performance of said agreement of indemnity and payment of its charges and expenses, hereby expressly authorizing the Escrow Agent, to deduct such charges and expenses, without notice, from any funds deposited hereunder.
8. The Escrow Agent shall not be under any duty or obligation to ascertain the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver these instructions or any documents or papers or payments deposited or called for hereunder, and assumes no responsibility or liability for the validity or sufficiency of these instructions or any documents or papers or payments deposited or called for hereunder.

9. The Escrow Agent shall not be liable for the outlawing of any rights under any Statute of Limitations or by reason of laches in respect to the Agreement or any documents or papers deposited herewith.

10. In the event of any dispute between the parties hereto as to the fact of default, the validity or meaning of these instructions, or any other fact or matter relating to the transaction between the parties, the Escrow Agent is instructed as follows:

(a) That it shall be under no obligation to act, except under process or order of court, or until it has been adequately indemnified to its full satisfaction, and shall sustain no liability for its failure to act pending such process or court order or indemnification;

(b) That it may in its sole and absolute discretion, deposit the property described herein or so much thereof as remains in its hands with the then Clerk or acting Clerk of the Superior Court, State of Arizona, in whose jurisdiction the subject property lies, and interplead the parties hereto, and upon so depositing such property and filing its complaint in interpleader it shall be relieved of all liability under the terms thereof as to the property so deposited, and furthermore, the parties hereto for themselves, their heirs, legal representatives, successors and assigns do hereby submit themselves to the jurisdiction of said court.

11. If the subject matter of this Escrow consists in whole or in part of funds, the same shall not be commingled by the Escrow Agent with its own funds; provided however that anything contained in the Escrow Agreement of which these General Provisions are made a part, to the contrary notwithstanding, the Escrow Agent shall NOT BE REQUIRED TO DEPOSIT THE SAME IN ANY INTEREST BEARING OR INCOME PRODUCING ACCOUNT, AND SHALL NOT IN ANY WAY BE LIABLE TO ANY OF THE OTHER PARTIES TO THE ESCROW AGREEMENT FOR THE PAYMENT OF INTEREST UPON SAID FUNDS FOR THE PERIOD DURING WHICH THEY ARE HELD BY THE ESCROW AGENT OR FOR THE LOSS OF ANY PRINCIPAL OR INTEREST COMPRISING THE ESCROWED FUNDS RESULTING FROM THE BUSINESS FAILURE OF ANY INSTITUTION IN WHICH THE ESCROWED FUNDS WERE DEPOSITED. It is intended that the provisions hereof shall supersede any other terms, conditions, covenants or provisions contained in the Escrow Agreement which expressly or by implication are in conflict herewith. Notwithstanding the foregoing, Escrow Agent agrees that all funds received by Escrow Agent for deposit hereunder shall only be deposited in a federally insured bank.