

**REIMBURSEMENT AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
THE FIREROCK COMMUNITY ASSOCIATION, INC.**

THIS REIMBURSEMENT AGREEMENT (this “Agreement”) is entered into as of May 18, 2017, between the Town of Fountain Hills, an Arizona municipal corporation (the “Town”), and The Firerock Community Association, Inc., an Arizona non-profit corporation (the “Association”). The Town and Association are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Association is the record owner of real property located at the intersection of Shea Boulevard and Firerock Country Club Drive in Fountain Hills, Arizona (the “Association Property”).

B. In conjunction with construction of a residential project in the Firerock area of Fountain Hills, Toll Brothers was required to construct public art or make a contribution to the Town’s public art fund (the “Public Art Requirement”). According to the Town’s Zoning Ordinance, the Public Art Requirement was required to be met prior to first certificate of occupancy for the Toll Brothers project.

C. Toll Brothers worked with the Association to design a suitable public art landscape installation to be constructed on the Association Property (the “Art Feature”). Toll Brothers required certificates of occupancy to be issued prior to the time the Art Feature could be constructed, but was still committed to contributing to the Art Feature. Pursuant to a letter agreement dated November 30, 2016, the Town permitted Toll Brothers to meet its Public Art Requirement by depositing \$143,555.86 (the “Art Contribution”) with the Town; the agreement included a commitment by the Town to hold the funds for a reasonable period of time to allow the Association the opportunity to determine the feasibility of the Art Feature.

D. The Association has worked with Toll Brothers and the Fountain Hills Cultural and Civic Association Public Art Committee (the “Art Committee”) to design the Art Feature on the Association Property; the Art Committee voted unanimously to approve the design. The Association has engaged an architect and an engineer to prepare the final drawings necessary to initiate final bids and to obtain permits for work to commence.

E. The Art Feature is anticipated to cost between \$250,000 and \$300,000. The Association has agreed it will be solely responsible for the entire cost of the Art Feature (including all design and engineering costs and all change orders), minus the Art Contribution. This Agreement is intended to establish the process by which the Association’s costs for the Art Feature will be partially reimbursed by the Town, up to the amount of the Art Contribution.

AGREEMENT

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

1. Project Execution and Management. The Association will engage a general contractor to assist in the management of the Art Feature construction and installation (the "Project"). The Association shall be solely responsible for securing contracts with qualified vendors for complete construction of the Project (the "Project Contracts"). The Association shall provide the Town with fully-executed copies of the Project Contracts not later than 10 days after execution of all Project Contracts.

1.1 Open to Public. Upon completion of the Project, the Art Feature shall be continuously open for viewing by the general public.

1.2 Maintenance. Upon completion of the Project, the Art Feature shall be maintained at the sole cost of the Association.

2. Reimbursement Process. Subject to the reimbursement provisions below, the Association will be solely responsible for payment of all expenses for the Project. The Association will timely pay all Project expenses pursuant to the Project Contracts and then invoice the Town for reimbursement according to this Agreement. The Association agrees that requests for reimbursement will be limited to amounts paid to third parties related to construction and installation of the Art Feature; no amounts shall be reimbursed to the Association for its indirect costs related to the Art Feature. No more frequently than once per month, the Association may submit Project draws through forms substantially similar to AIA document G702 and/or G703 relating to the reimbursement benchmarks below. Invoices will be accompanied by (i) evidence of the Association payment, (ii) copies of the invoices that were paid by the Association and which relate only to the Art Feature, and progress pictures of the Project and/or site inspections as may be applicable, and (iii) a notation as to the Project Contract pursuant to which the work listed in the invoice was performed. Invoices shall not include anticipated, but not yet made, payments. The Town shall reimburse the Association according to the benchmark schedule below until the full amount of the Art Contribution has been paid. Once verified by the Town, invoices shall be paid within 30 days. Reimbursement of a portion of the Maximum Reimbursement Amount may be requested after achieving the following benchmarks:

- Not to exceed 20% (\$28,711.16) following excavation and forming.
- Not to exceed 30% (\$43,066.76) following installation of steel, gunite, and rough plumbing.
- Not to exceed 30% (\$43,066.76); following completion of plumbing, tile, coping and pebble finish.

- Final payment of the remaining amount of the Art Contribution (minus all payments above) upon completion of the project, including any punch-list items, and inspection and acceptance by the Town.

3. Eligible Reimbursement Items. Invoices presented to the Town will be inclusive of all Project costs, fountain and pool equipment, boulder and rock outcroppings, feature lighting, design fees, civil engineering costs, construction costs, and any applicable taxes, but specifically not including any costs for necessary permits or inspections. Invoices presented for reimbursement shall not include any costs related to purchase or installation of landscape materials; all such materials (anticipated to be in excess of \$30,000) shall be purchased and installed at the sole expense of the Association. The Association may request reimbursement for mobilization and work deposits.

4. Maximum Reimbursement Amount. The Art Contribution is the maximum amount the Association may request for reimbursement. All Project expenses in excess of the Art Contribution shall be paid by the Association.

5. Permits and Inspections. The Association shall be responsible for any and all permits required for the Project and for complying with all Town inspections required or requested. The Town shall determine if any special Project site inspections will be required and the Association shall take responsibility to notify the identified person to request these site inspections.

6. Change Orders. Change orders related to the Art Feature must be reviewed and approved by the Town. The Town shall timely review and reject or approve all change orders. The Town's approval shall not be unreasonably delayed, withheld or denied. In the event the Town fails to timely approve or reject a change order, the Association shall have the right to proceed with the change order "at its own risk." If the Town rejects any such change order, such rejection shall be accompanied by a written statement specifying and explaining the Town's reasons for rejecting such change order. Furthermore, if the Town rejects the change order, the Association shall have the right, but not the obligation to proceed with the change order at its own cost and expense; work related to any such change orders shall be in compliance with all applicable Town codes and regulations.

7. Subject to Appropriations. Funding for this Project has been appropriated for the 2016-2017 fiscal year and is recommended for Town Council approval in the 2017-18 fiscal year budget. To the extent the Project requires additional funding beyond fiscal year 2017-2018, the Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative decision of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its obligations, this Agreement shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of Town's

obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep the Association informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. The Association hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this Section 7.

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

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

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

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

If to the Association: _____

Attn: _____

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. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or the Association of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

11. Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

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

15. Assignment. This Agreement may be assigned, in whole or in part, by the Association only upon the prior, written approval of the Town, as evidenced by the Town Manager's signature thereon, which approval may be withheld by the Town for any reason.

16. Benefits and Burdens. The benefits and burdens of this Agreement shall be binding upon and shall inure to the Town and Association and their respective heirs, successors or assigns, as applicable.

17. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

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

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

20. 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.

21. Conflict of Interest. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

22. Rights and Remedies are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party. In the event that either the Town or Association shall bring or commence an action to enforce the terms and conditions of this Agreement, or to obtain damages against the other party arising from any breach under or violation of this Agreement, then the prevailing Party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

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

24. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

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

26. Nonliability of Town Officials and Employees. No officer, official, employee, agent or representative of Town shall be personally liable to the Association or any successor in interest, in the event of any default or breach by Town for any amount which may become due to the Association or its successors in interest, or on any obligation incurred under the terms of this Agreement. No officer, official, employee, agent or representative of the Association shall be personally liable to the Town or any successor in interest in the event of any default or breach by the Association for any amount which may become due to the Town or its successors in interest or on any obligation interest under the terms of this Agreement.

27. Non-Discrimination. The Town and Association agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunities, immigration, non-discrimination and affirmative action. To that end, the Association shall not discriminate in the conduct and operation of its business against any person or group of persons because of race, religion, color, sex, age, national origin, ancestry, handicap or Vietnam veteran or disabled veteran status of such person or group of persons.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this instrument as of the date and year set forth above.

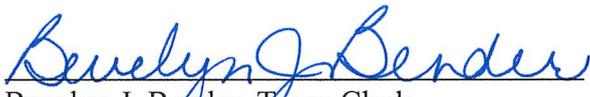
“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation



Grady E. Miller, Town Manager

ATTEST:



Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On August 16, 2017, before me personally appeared Grady E. Miller, the Town Manager 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 he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.





Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Association”

The Firerock Community Association, Inc.
an Arizona non-profit corporation

By: Sandra Nogue

Name: SANDRA NOGUE

Title: PRESIDENT

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On July 17, 2017, before me personally appeared Sandra Nogue, the President of The Firerock Community Association, Inc., an Arizona non-profit corporation whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

Ashly Sanders
Notary Public

(Affix notary seal here)

