

**RESOLUTION NO. 2010-27**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AN AMENDMENT TO VILLAGE BAZAAR SHARED PARKING AGREEMENT.

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

SECTION 1. The First Amendment to Village Bazaar Shared Parking Agreement by and among by Pinciero, LLC, Plaza Waterfront Condominium Owners' Association, Inc., Plaza Waterfront Condominium Sales, LLC, The Velma Shepherd Revocable Trust Dated March 10, 1994 and the Town of Fountain Hills (the "Amendment") is hereby approved in the form attached hereto as Exhibit A and incorporated herein by reference.

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

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills, August 19, 2010.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
\_\_\_\_\_  
Jay T. Schlum, Mayor

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Richard L. Davis, Town Manager

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2010-27

[First Amendment to Village Bazaar Shared Parking Agreement]

See following pages.

**WHEN RECORDED, RETURN TO:**

Bevelyn J. Bender, Town Clerk  
Town of Fountain Hills  
16705 E. Avenue of the Fountains  
Fountain Hills, Arizona 85269

**FIRST AMENDMENT TO  
VILLAGE BAZAAR SHARED PARKING AGREEMENT**

This FIRST AMENDMENT TO VILLAGE BAZAAR SHARED PARKING AGREEMENT (this "First Amendment") is entered into August 10<sup>th</sup>, 2010 (the "Effective Date"), by and among PINCIERO, LLC, an Arizona limited liability company ("Pinciero"), PLAZA WATERFRONT CONDOMINIUM OWNERS' ASSOCIATION, INC., an Arizona non-profit corporation ("PWCOA"), PLAZA WATERFRONT CONDOMINIUM SALES, LLC, an Arizona limited liability company ("PWCS") and THE VELMA SHEPHERD REVOCABLE TRUST Dated March 10, 1994 ("Shepherd") (each of Pinciero, PWCOA, PWCS and Shepherd shall also be collectively referred to as the "Developers") and the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation (the "Town").

RECITALS

A. The Town and Victoria Properties, Inc., an Arizona corporation ("Victoria") entered into that certain agreement entitled Village Bazaar Shared Parking Agreement, dated April 6, 2000 (the "Original Agreement"), recorded as Document No. 2000-0414682 in the Official Records of Maricopa County, for the purpose of establishing alternative parking requirements for the commercial and residential development (the "Project") located at the northeast corner of Saguaro Boulevard and El Lago Boulevard in Fountain Hills, Arizona, comprised of Lots 1 and 3 of the Plaza Fountainside subdivision and the Plaza Waterfront Condominiums (the "Property").

B. The Developers are the successors in interest, or the representatives of the successors in interest, to Victoria.

C. Pinciero and Shepherd own Lots 1 and 3, respectively, of the Plaza Fountainside subdivision portion of the Property.

D. PWCOA is the "Association" formed pursuant to the Condominium Declaration for Plaza Waterfront Condominiums dated as of June 1, 2005, and recorded as Document No.

2005-1418392 in the Official Records of Maricopa County (the "Declaration") and PWCS, doing business under the trade name "Plaza Waterfront Condominium Development", is the successor "Declarant" of the Declaration and pursuant to the terms of the Declaration, PWCOA and PWCS have the duty and authority to manage, on behalf of Plaza Fountainside Limited Partnership, certain "Common Elements" that are subject to the Original Agreement.

E. Pursuant to Subsection 1.5 of the Original Agreement, the limitations set forth therein related to the maximum amount of usable floor area for restaurant usage (6,000 square feet) could be renegotiated between the Town and the Developer if, after the Project and adjacent improvements to Fountain Park were completed, it could be shown that excess unutilized parking existed.

F. The Project and the adjacent improvements to Fountain Park are now complete and the Developer has submitted to the Town a parking study prepared by Carl Walker, Inc., dated June 2, 2010 (the "Parking Study") which shows that excess parking exists.

G. The Town and Developer now wish to amend the Agreement to increase allowed restaurant usage using existing excess parking identified in the Parking Study and to reflect the completed nature of the Project and adjacent Fountain Park improvements.

### AGREEMENT

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

1. Expansion of Allowable Restaurant Space. Section 1.5 of the Agreement is hereby deleted in its entirety and replaced with the following:

1.5 Commercial Space Usage and Parking. Notwithstanding any other language or exhibits contained in this Agreement, the permitted distribution of commercial uses in the Project shall not require more than 266 parking spaces, to be calculated as follows: (A) the required number of parking spaces for office and retail uses shall be one parking space per 250 square feet of gross leasable space; and (B) the required number of parking spaces for restaurant uses shall be one parking space per 50 square feet of usable floor area. Utilizing such standards, the Project shall be entitled to calculate the parking requirements using the shared parking model provided in Chapter 18 of the Town of Fountain Hills Zoning Ordinance. Based on such shared parking calculation model, there shall not be more than 9,000 square feet of "usable floor area" for restaurant use within the Project, including the usable floor area of any patios actually established and set aside for restaurant use.

2. Map Exhibits. Prior to issuance of a building permit for any proposed additional restaurant improvements on the Property, Developers shall submit to the Town a map, in a form

acceptable to the Town, showing the areas allocated to existing retail and restaurant use and the proposed additional restaurant use on the Property, including a calculation of the square footage for each such space individually, and additionally in the aggregate with respect to the areas to be devoted to restaurant uses.

3. Re-Establishment of Loading Zone. Developers shall, not later than 30 days after the Effective Date and in any event prior to submittal of plans for restaurant expansion within the Property, submit dimensioned plans to the Town with sufficient detail to clearly demonstrate the steps Developers will take to make the necessary alterations to the pavement, curbs and landscaping to re-establish the loading zone as depicted on Exhibit 1, attached hereto and incorporated herein by reference (the "Loading Zone Improvements"). Additionally, Developers shall provide the Town with sufficient evidence to ensure that the re-established loading zone does not infringe upon the required fire lane for the Property. Developers shall commence construction of the Loading Zone Improvements not later than 30 days after receipt of approval to proceed from the Town Engineer or authorized designee, which Loading Zone Improvements shall be completed according to the approved plans not later than 45 days after commencement.

4. Revised Notice Provisions. Section 4 of the Original Agreement, Notices and Filings, is hereby deleted in its entirety and replaced with the following:

4. NOTICES AND FILINGS

4.1 Manner of Service. 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 address 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:

To Developer:

Pinciero, LLC  
Attn: Dan Brink  
10220 East Desert Cove Avenue  
Scottsdale, AZ 85260

Plaza Waterfront Condominium Owners'  
Association, Inc.  
Attn: Arcadia Management Group, Inc.  
P.O. Box 10  
Scottsdale, AZ 85282

Plaza Waterfront Condominium Sales, LLC  
c/o Arcadia Management Group, Inc.  
Attn: Gary Shaw  
P.O. Box 10  
Scottsdale, AZ 85282

Velma Shepherd Revocable Trust  
Attn: William Travis, Co-Trustee  
5628 West Walnut Avenue  
Visalia, CA 93277

To the Town:

Town of Fountain Hills  
Attn: Town Clerk  
16705 E. Avenue of the Fountains  
Fountain Hills, AZ 85268

With a Copy to:

Andrew McGuire, Town Attorney  
Gust Rosenfeld, P.L.C.  
One East Washington, Suite 1600  
Phoenix, Arizona 85004

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.

4.2 Mailing/Delivery Effective. 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.

5. Effect of Amendment. In all other respects, the Original Agreement is hereby affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Original Agreement shall remain in full force and effect.

6. Non-Default. By executing this First Amendment, the Developers affirmatively assert that the Town is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Original Agreement.

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first written above.

TOWN:

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

By: Richard L. Davis  
Richard L. Davis, Town Manager

ATTEST:

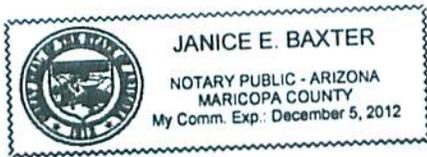
By: Bevelyn J. Bender  
Bevelyn J. Bender, Town Clerk

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

This instrument was acknowledged before me on August 23, 2010,  
by Richard L. Davis, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation, on behalf of the Town of Fountain Hills.

Janice E. Baxter  
Notary Public

My Commission Expires:



*[Faint handwritten signature]*

*[Faint handwritten signature]*

*[Faint handwritten signature]*

*[Faint handwritten signature]*

JANICE E. BAXTER  
NOTARY PUBLIC - ARIZONA  
MARICOPA COUNTY  
My Comm. Exp. December 31, 2012



DEVELOPER:

PINCIERO, LLC, an Arizona limited liability company

By: [Signature]

Name: Dan Brink

Title: Owner

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

by Dan Brink This instrument was acknowledged before me on AUGUST 10, 2010, by JANE M. LETOURNEAU the Owner of PINCIERO, LLC, an Arizona limited liability company, by and on behalf of the limited liability company.

[Signature]  
Notary Public

My Commission Expires:

**NON-EXPIRING  
COMMISSION**

Jane M. Letourneau  
P.O. BOX 3009  
SALMON ARM, B.C. V1E 4R8  
NOTARY PUBLIC  
PHONE (250) 832-9319

**DEVELOPER:**

**PLAZA WATERFRONT CONDOMINIUM OWNERS' ASSOCIATION, INC.,** an Arizona non-profit corporation

By: \_\_\_\_\_  
Name: Tom Young  
Title: Declarant

**PLAZA WATERFRONT CONDOMINIUM SALES, LLC,** an Arizona limited liability company

By: \_\_\_\_\_  
Name: Tom Young  
Title: manager

2  
P.B.V. -  
STATE OF Alberta )  
County of Canada ) ss.

This instrument was acknowledged before me on 10 August, 2010, by Tom Young, the declarant of PLAZA WATERFRONT CONDOMINIUM OWNERS' ASSOCIATION, INC., an Arizona non-profit corporation, by and on behalf of the corporation.

John D. Jenkins  
Notary Public

**John D. Jenkins**  
Barrister, Solicitor & Notary Public  
#200. 9906 - 102 St., Ft. Sask., AB  
T8L 2C3 (780) 998-4200

2  
My Commission Expires: until termination  
STATE OF Alberta )  
County of Canada ) ss.

This instrument was acknowledged before me on 10 August, 2010, by Tom Young, the manager of PLAZA WATERFRONT CONDOMINIUM SALES, LLC, an Arizona limited liability company, by and on behalf of the limited liability company.

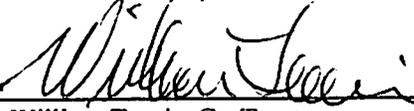
John D. Jenkins  
Notary Public

**John D. Jenkins**  
Barrister, Solicitor & Notary Public  
#200. 9906 - 102 St., Ft. Sask., AB  
T8L 2C3 (780) 998-4200

My Commission Expires: until termination  
1322557.5

**DEVELOPER:**

**VELMA SHEPHERD REVOCABLE TRUST**  
u/t/a Dated March 10, 1994

By:   
William Travis, Co-Trustee

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

This instrument was acknowledged before me on \_\_\_\_\_, 2010,  
by WILLIAM TRAVIS, the CO-TRUSTEE of THE VELMA SHEPHERD REVOCABLE  
TRUST Dated March 10, 1994, by and on behalf of the trust.

\_\_\_\_\_  
Notary Public

My Commission Expires:

NOTARY PUBLIC  
STATE OF ARIZONA

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Luis Obispo }

On August 10, 2010 before me, Michelle Jean Moore, Notary Public,  
Date Here Insert Name of Officer

Personally appeared William S. Travis  
Name(s) of Signer(s)

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Michelle Jean Moore  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



Signer's name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

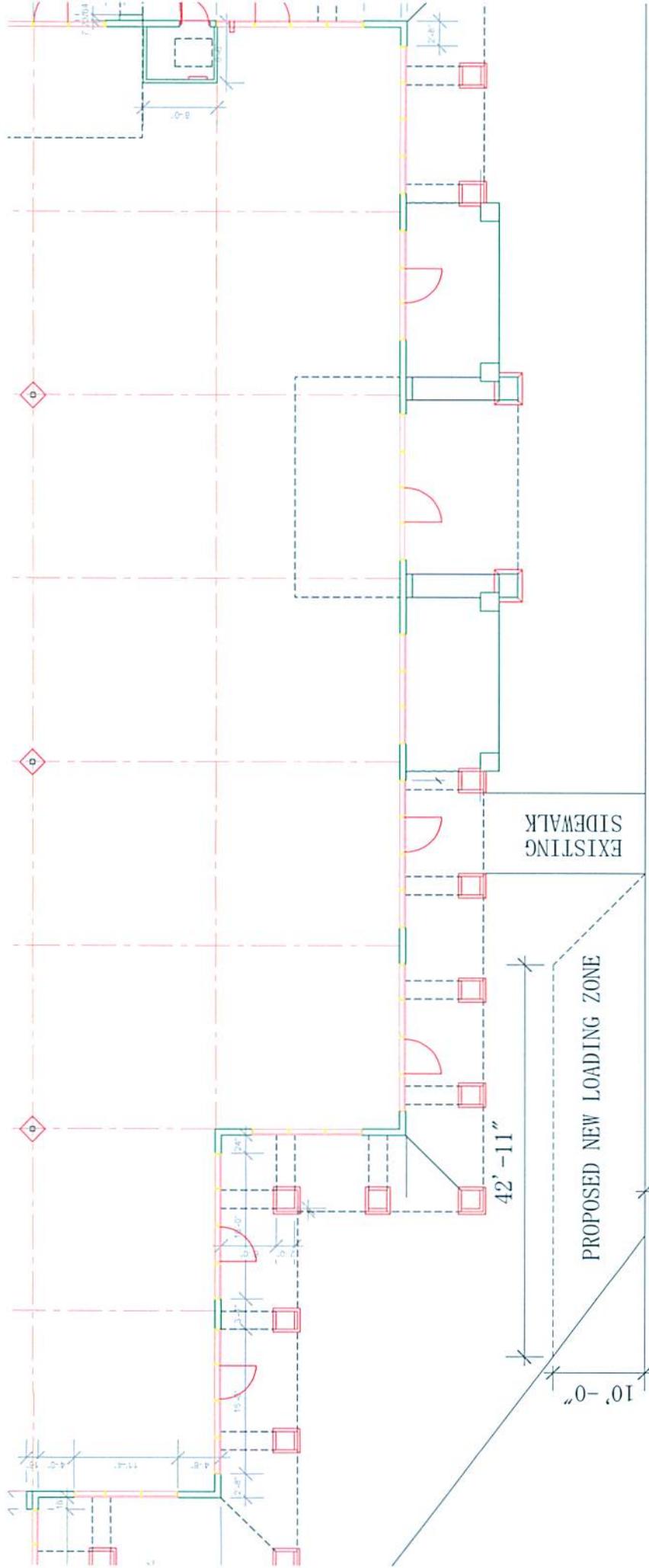
Signer is Representing: \_\_\_\_\_



**EXHIBIT 1  
TO  
FIRST AMENDMENT TO  
VILLAGE BAZAAR SHARED PARKING AGREEMENT**

[Loading Zone Depiction]

See following pages.



44'-2" CURB TO CURB EXISTING

EXISTING  
SIDEWALK

PROPOSED NEW LOADING ZONE

42'-11"

10'-0"

PLAZA FOUNTAINSIDE  
PROPOSED LOADING ZONE  
JUNE 1, 2010

