

RESOLUTION 2017-27

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

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

SECTION 1. The First Amendment to Development Agreement between the Town of Fountain Hills and Palisades Resorts, 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, September 5, 2017.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Linda M. Kavanagh, Mayor



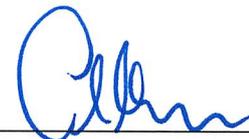
Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Grady E. Miller, Town Manager



Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION 2017-27

[First Amendment]

See following pages.

WHEN RECORDED RETURN TO:

Town of Fountain Hills
ATTENTION: TOWN CLERK
16705 East Avenue of the Fountains
Fountain Hills, AZ 85268

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FIRST AMENDMENT TO DEVELOPMENT AGREEMENT FOR

COPPERWYND RESORT EXPANSION

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TOWN OF FOUNTAIN HILLS, ARIZONA,
An Arizona municipal corporation

AND

PALISADES RESORTS, LLC
A Delaware limited liability company

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE
TOWN OF FOUNTAIN HILLS AND
PALISADES RESORTS, LLC
(COPPERWYND RESORT EXPANSION)**

This First Amendment to Development Agreement (the "First Amendment") is entered into as of September 5, 2017 (the "Effective Date"), by PALISADES RESORTS, LLC, a Delaware limited liability company ("Palisades"), and the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation ("Town"), which are referred to collectively herein as the "Parties" or individually as a "Party."

RECITALS

A. The Parties entered into that certain Development Agreement dated March 16, 2017, Maricopa County Recorder's No. 2017-0203700 (the "Development Agreement"), in connection with the further development and expansion of the "Existing Resort" located at 13225 N. Eagle Ridge Drive, Fountain Hills, Arizona.

B. Terms used but not defined herein shall have the meaning set forth in the Development Agreement.

C. In the furtherance of meeting the Hotel Quality Requirements in a manner that permits the Existing Resort to continue to operate during the pendency of the construction of the New Hotel, Palisades, in conjunction with the pending operator of the New Hotel, desires to make certain modifications to the development and expansion plans for the New Hotel. The architectural design of the buildings and the quality of the construction pursuant to the modified plans will remain consistent with the Town's standards, as described below.

D. The Town is willing to agree to the modified plans as provided herein.

E. Pursuant to ARS § 9-500.05(C), the Parties now desire to amend the Development Agreement according to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing introduction and recitals, the promises contained in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. **Modified Phasing Plan.** Section 2.3 of the Development Agreement is hereby amended to reflect modifications to the phasing plan (the "Modified Plan") as follows (deletions shown in strike-through text; additions in all caps text):

2.3 **Phasing Plan.** Palisades intends to construct the Project in three phases, as shown on Exhibit B-2. Specifically, Palisades intends that Phase 1 shall include design and construction of approximately the first ~~428~~ 140 additional rooms and approximately ~~9,800~~ 7,890 square feet of convention space, as shown on Exhibit B-3; Phase 2 shall include design and construction of up to ~~60~~ 110 additional rooms, as shown on Exhibit B-4; and Phase 3 shall include design and construction of up to ~~442~~ 50

additional rooms AND APPROXIMATELY 3,870 SQUARE FEET OF CONVENTION SPACE, as shown on Exhibit B-5. Uses for the additional supporting areas to be added include a pool pavilion, a casual dining restaurant, possible tennis courts, a possible spa expansion, and additional meeting and event space. The Parties agree that such additional supporting areas shall be included in Phase 1, Phase 2 or Phase 3 substantially as depicted on Exhibit B-3, Exhibit B-4 and Exhibit B-5, respectively. Palisades shall seek approval of the Town Council for any "substantial alteration" of the phasing as appropriate to support the build-out of the additional guest rooms and as set forth in Exhibit B-3, Exhibit B-4 and Exhibit B-5, which approval of such substantial alterations may be withheld for any reason. For purposes of this Section 2.3, a "substantial alteration" means (A) a deviation of more than 20% of the number of guest rooms for any phase or (B) a change in phase or a change in size of more than 20% of total square feet for the convention space. The Parties agree that Palisades shall not be required to submit for approval of the Town Council any alteration to the phasing depicted herein that is not a substantial alteration, but such changes shall be reflected on revised exhibits to this Agreement. Any modifications to the phasing plan shall be attached hereto as substitute exhibits. The Town hereby approves: (A) the Phasing Plan attached hereto as Exhibit B-2, and (B) the phasing detail for Phase 1, Phase 2 and Phase 3, as set forth in Exhibit B-3, Exhibit B-4 and Exhibit B-5, respectively.

2. **Revised Exhibits.** The Parties agree to modify Exhibit B-1 through Exhibit B-8 and Exhibit E of the Development Agreement to reflect the changes to the Conceptual Site Plan, the Phasing Plan and phasing detail for each phase, and the Conceptual Elevation Detail, contemplated by the Modified Plan. Accordingly, the modified Exhibit B-1 through Exhibit B-8 and Exhibit E, in the forms attached hereto and incorporated herein by reference, hereby replace such numbered exhibits in the Development Agreement. The Parties acknowledge that, given the conceptual nature of the elevations and land use plan, it is possible structures may be constructed in a location slightly different than what is shown in Exhibit B-1 through Exhibit B-8, but agree that any such slight changes in location will not be considered a substantial change for purposes of Section 2.4 of the Development Agreement so long as such location changes do not reduce parking on the Property or materially reduce the depicted resort amenities.

3. **Modification to Height Requirements.** Section 3 of the Development Agreement is hereby amended as follows (deletions shown in strike-through text; additions in all caps text):

3. **Height Requirements.** The PAD Rezoning is intended to modify the requirements of Section 16.11 of the Zoning Ordinance to allow for a portion of the buildings in the Project, as depicted in greater detail in the Phase 1 Conceptual Elevation Detail in Exhibit B-6, the Phase 2 Conceptual Elevation Detail in Exhibit B-7, and the Phase 3 Conceptual Elevation Detail in Exhibit B-8, to exceed the height limitation set forth in Section 16.11, but in no event shall any portion of any of the buildings in the Project exceed 50' THE FOLLOWING in height, as measured from existing grade, EXCLUSIVE OF ELEVATOR OVERRUN, MECHANICAL EQUIPMENT AND ANY ASSOCIATED SCREENS OF SAME: (I) FOR THE PHASE 1 BUILDING, 75' OVERALL HEIGHT ON THE SOUTHERNMOST PORTION OF THE BUILDING AS DEPICTED IN EXHIBIT B-6, AND 50' FOR THE NORTHERNMOST PORTION OF THE BUILDING DEPICTED ON EXHIBIT B-6; (II) FOR THE PHASE 2 BUILDING, 60'; AND (III) FOR THE PHASE 3 BUILDINGS, 50'. Except as specifically modified in the PAD Rezoning, all height requirements of Section 16.11 of the Zoning Ordinance shall apply.

4. **Consistency; Modification.** Except as modified by this First Amendment, all of the terms and conditions of the Development Agreement shall remain in full force and effect. This First Amendment and the Development Agreement shall not be further modified in any manner other than by a written amendment executed by the Town and Palisades or its successors or assigns. If any clause, sentence or other portion of this First Amendment shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

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

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

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

8. **Recording of Agreement.** Within 10 days after execution of this First Amendment by the Town, such First Amendment shall be recorded in the Maricopa County Recorder's Office.

[SIGNATURES ON FOLLOWING PAGES]

Palisades:

PALISADES RESORTS, LLC, a Delaware limited liability company

By: Crown Rock Ventures LLC, an Arizona limited liability company

By: 
William D. Hinz II, Manager

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On August 30, 2017, before me personally appeared William D. Hinz II, the Manager of Crown Rock Ventures, LLC, an Arizona limited liability company, as Manager of PALISADES RESORTS, LLC, a Delaware 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 Palisades Resorts, LLC.


Notary Public

(Affix notary seal here)

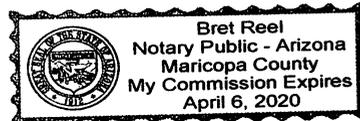


EXHIBIT B-1
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Conceptual Site Plan for the Property]

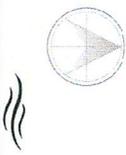
See following pages.

EAGLE LOT 3
 36' 50" x 26' 25" M.C.A.
 AERIO DEVELOPMENT LLC
 2004-071989 M.C.A.



**Overall Development:
 Project Data:**

Program
 300 keys (previous 286 + 34 new elite keys)
 11,760 sf meeting space
 existing spa & restaurant with
 expanded pool bar



COPPERWYND
 RESORT & CLUB

Overall Site Plan
 Updated Conceptual Planning Package



B1

Copperwynd Resort
 Project Address: 13255 N. Eagle Ridge Dr.
 Phoenix, AZ 85024
 Project Number: A71418
 Issue Date: 06/11/2017
Allen + Sims Partners

EXHIBIT B-2
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phasing Plan for the Property]

See following pages.

EXHIBIT B-3
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phase 1 Detail for the Property]

See following pages.

EXHIBIT B-4
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phase 2 Detail for the Property]

See following pages.



B4

Phase 2 : Project Data
Program
250 keys
Remove 32 existing | previous 140 + 110 new
(keys)
7,890 sq ft meeting space
existing spa & restaurant to remain with new
juice bar



SCALE: 1" = 40'
SHEET

APR 27-18-05
MORGO CANYON LLC
2014-0115666 M.C.P.

EXHIBIT B-5
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phase 3 Detail for the Property]

See following pages.



Phase 3 : Project Data

Program
 300 keys (previous 250 + 50 new elite keys)
 11,760 sf meeting space
 existing spa & restaurant to remain with
 expanded pool bar



Overall Site Plan I Phases 1, 2 & 3
 Updated Conceptual Planning Package



B5

Copperwynd Resort

Project Address: 13725 N. Eagle Ridge Dr
 Fountain, IL 61142

Project Number: AP1618

Issue Date: 06/11/2017

Allen & Pugh Partners

1100 N. ...

EXHIBIT B-6
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phase 1 Conceptual Elevation Detail]

See following pages.



Elevation Study | West Elevation | Arrival Side



Elevation Study | East Elevation | Pool

B6

Copperwynd Resort

13200 N. Eagle Bendway Dr.
Bozeman, MT 59717

Project Number: A311418

Issue Date: 08/11/2017

Allen + King Partners

Architectural rendering of the Copperwynd Resort & Club building, showing the arrival side. The building is a long, multi-story structure with a prominent central entrance and a series of balconies on the right side. The rendering shows the building on a slight rise with some landscaping.

EXHIBIT B-7
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phase 2 Conceptual Elevation Detail]



EXHIBIT B-8
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Phase 3 Conceptual Elevation Detail]

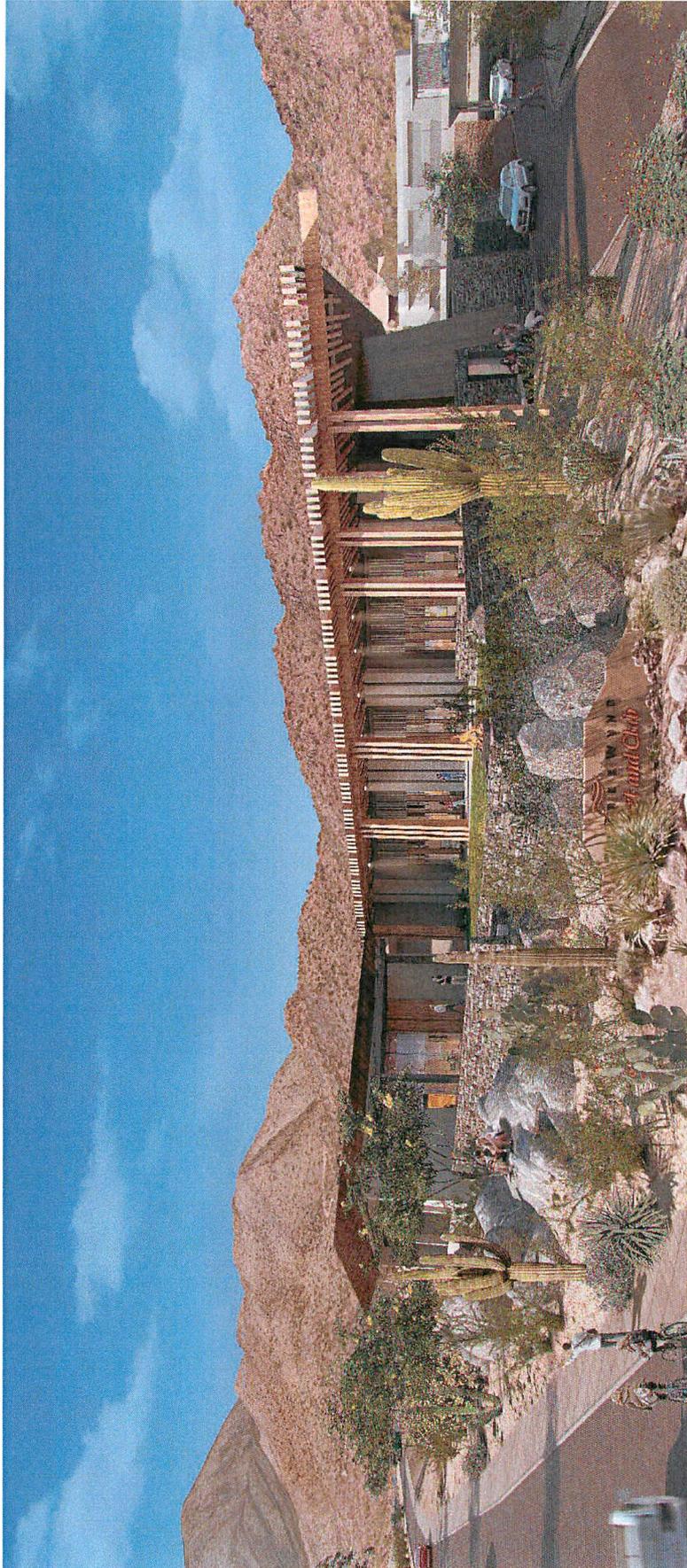


EXHIBIT E
TO
DEVELOPMENT AGREEMENT
FOR COPPERWYND RESORT EXPANSION
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
PALISADES RESORTS, LLC

[Schedule of Performance]

See following page.

SCHEDULE OF PERFORMANCE

Deadline to Perform Task From Effective Date of Agreement	Task/Obligation
Phase 1 – 140 Room Expansion	
12 Months	Developer to have submitted Site Plan and Construction Documents for Phase 1 improvements, including Public Infrastructure Improvements.
18 Months	Developer to have begun construction of Phase 1 improvements.
36 Months	Developer to have completed construction of Phase 1 improvements. Developer to have completed Public Infrastructure Improvements for Phase 1.
Phase 2 – 110 Room Expansion	
60 Months	Developer to have submitted Site Plan and Construction Documents for Phase 2 improvements, including Public Infrastructure Improvements.
72 Months	Developer to have completed construction of Phase 2 improvements. Developer to have completed Public Infrastructure Improvements for Phase 2.
Phase 3 – 50 Room Expansion	
12 Months prior to the expiration of the term of this Agreement	Developer to have submitted Site Plan and Construction Documents for Phase 3 improvements, including Public Infrastructure Improvements.
On or prior to the expiration of the term of this Agreement	Developer to have completed construction of Phase 3 improvements. Developer to have completed Public Infrastructure Improvements for Phase 3.