

RESOLUTION NO. (R)21-43

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING TOWN MANAGER MARY JACOBS TO SIGN, ON BEHALF OF THE TOWN OF ORO VALLEY, AN AGREEMENT WITH THE 1) EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION, INC. AND 2) SHADOWS OF THE RIDGE HOMEOWNERS ASSOCIATION AND 3) SHADOWS OF THE RIDGE AT EL CONQUISTADOR PATIO HOMEOWNERS ASSOCIATION TO AID IN THE CONTINUING OPERATIONS OF THE 9-HOLE PUSCH RIDGE GOLF COURSE; AND DIRECTING THE TOWN MANAGER, TOWN CLERK, TOWN LEGAL SERVICES DIRECTOR, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION

WHEREAS, the Town owns the 9-hole Pusch Ridge Golf Course; and

WHEREAS, El Conquistador Resort Patio Homes Association, Inc., Shadows of the Ridge Homeowners Association and Shadows of the Ridge at El Conquistador Patio Homeowners Association (the "Associations") are associations with governance authority over certain residences and common areas in the Oro Valley community; and

WHEREAS, the properties over which the Associations have governance authority directly abut or are proximate to the 9-hole Pusch Ridge Golf Course; and

WHEREAS, the Town, and the Associations desire to enter into the Agreement attached hereto as Exhibit "A" as an incentive for the Town to continue operating the 9-hole Pusch Ridge Golf Course; and

WHEREAS, it is in the best interest of the Town to authorize Town Manager Mary Jacobs to sign, on behalf of the Town, the Town of Oro Valley's Agreement with the Associations, attached hereto as Exhibit "A", to aid in the continuing operation of the 9-hole Pusch Ridge Golf Course.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Town Council of the Town of Oro Valley, Arizona that:

SECTION 1. Town Manager Mary Jacobs is authorized to sign, on behalf of the Town, the Town of Oro Valley's Agreement with the Associations, attached hereto as Exhibit "A".

SECTION 2. The Mayor and other administrative officials of the Town of Oro Valley are hereby authorized to take such steps as necessary to execute and implement the terms of the Agreement.

SECTION 3. the Town Manager, Town Clerk, Town Legal Services Director, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

SECTION 4. All Oro Valley resolutions or motions and parts of resolutions or motions of the Council in conflict with the provision of this Resolution are hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Resolution or the Town of Oro Valley's Agreement with the Associations, attached hereto as Exhibit "A" is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by Mayor and Town Council, the Town of Oro Valley, Arizona, this 8th day of September, 2021.

TOWN OF ORO VALLEY

Joseph C. Winfield, Mayor

ATTEST:

APPROVED AS TO FORM:

Michael Standish, Town Clerk

Tobin Sidles, Legal Services Director

Date: _____

Date: _____

EXHIBIT “A”

PUSCH RIDGE 9-HOLE GOLF
AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by the TOWN OF OROVALLEY, an Arizona municipal corporation ("the Town") with EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION, INC., an Arizona nonprofit corporation ("HOA 1"), SHADOWS OF THE RIDGE HOA #1, an Arizona nonprofit corporation ("HOA 2"), and SHADOWS OF THE RIDGE, an Arizona Nonprofit Corporation ("HOA 3") (collectively "Associations"). In this document, the Town and the Associations are collectively referred to as the "Parties," and each is sometimes individually referred to as a "Party."

RECITALS

A. The Town, as of the date of this Agreement, owns and operates three golf courses. (The "Town Golf Courses").

B. The Town Golf Courses consist of the 18-hole Conquistador Golf Course, 18-hole Canada Golf Course, and 9-hole Pusch Course.

C. The Associations are homeowner associations with governance authority over certain real property adjacent to the Pusch Course, including member residences and common areas.

D. In 2020, the Town considered closing and/or repurposing the 9-hole Pusch Course.

E. The Associations objected to the Town closing or repurposing the Pusch Course based on the beauty and uniqueness of the course and the potential negative impact that either action would have upon their members' property values.

F. The Parties thereafter discussed ways to resolve these differences.

G. Included in these discussions were proposals for the Associations to make financial contributions to the Town in exchange for the Town continuing to operate the 9-hole Pusch Course.

H. On February 17, 2021, the Mayor and Council for the Town passed a motion to continue operating the 9-hole Pusch Course with certain contingencies.

I. One of these contingencies directed Town staff to negotiate with the Associations for their financial contributions as specifically stated in the minutes of the February 17, 2021 Regular Meeting of the Mayor and Council for the Town.

J. This Agreement is intended to memorialize the Parties' agreements, satisfy the then stated contingencies, and to avoid future disagreements.

In consideration of the above accurately stated Recitals, the mutual promises and covenants stated in this Agreement, and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Definitions:** For the purposes of this agreement the term “Year” means a “Golf Year” running from a time to be determined by the Town on or about November 1, to on or about May 1.
2. **The Associations’ Obligation to the Town:** The Associations will annually, for up to five (5) consecutive years starting on February 1, 2022, pay the Town as delineated in this Section. After year three (3), continued payment to the Town by the Associations’ shall be contingent upon continued operation of the Pusch Ridge as a golf course as determined by the Oro Valley Town Council once Town Staff returns with their analysis as required in Section 4 of this Agreement:
 - a. El Conquistador Resort Patio Homes, \$28,800;
 - b. Shadows of the Ridge HOA #1, \$1,950;
 - c. Shadows of the Ridge, \$3,300.
3. The Town, as a reminder, will submit an invoice to the Associations at least thirty (30) days before each of these annual payments and payment is due as provided above in Section 2, of this agreement.
4. The Associations will exercise all rights it has under its respective declarations, covenants, conditions and restrictions and other governing documents including rights to levy assessments, impose liens, and otherwise collect sufficient funds from the respective Association members in order to pay this financial obligation to the Town.
5. **Town Obligation to Continue Operating the 9-hole Pusch Ridge Course, operated as a Golf Course:** The Town will act in good faith to continue operation of the Pusch Ridge course as a golf course for three (3) years and up to five (5) years as follows, contingent upon continued operation of the Pusch Ridge as a golf course as determined by the Oro Valley Town Council once Town Staff returns with their analysis as required in this Section:
 - a. The Town will fund through the 0.5% sales tax any ongoing operating deficit less the agreed contribution from the HOAs for a period of up to five (5) Golf Years, subject to the provisions of this agreement. **If, in any given year that this Agreement is in effect, the operating deficit of the Pusch Course is zero or the course is able to generate a profit, the parties agree to meet to consider possible changes to the Associations’ and Town’s obligations under this agreement.** Any such changes shall be formalized in accordance with section 14 of this agreement before becoming enforceable.
 - b. Should the Town find a Lessee for the Pusch Ridge Course, then this agreement shall become null and void releasing the parties from performing any of their obligations and/or obligations as delineated in this agreement. The effective date for nullification of this agreement under this section shall be the same as the effective date for the lease of the Pusch Ridge Course to a Lessee.
 - c. The Parties agree that outside of any Golf Year, or whenever the Pusch Ridge

Course is otherwise legitimately closed for golf play, the Town agrees to maintain the Pusch Ridge Course only in a manner that is reasonable and customary for an Arizona golf course when not open for golf play.

- d. The Town will fund ongoing maintenance and the restoration of the course for a projected opening in fall 2021 on or near November 1, 2021.
 - e. The Town will oversee the Town's golf management company regarding management of the operation.
 - f. The Town will promote the use of the golf course along with its other courses.
 - g. Nothing in this Agreement limits the Town from expanding golf play outside of any given Golf Year. On a continuing basis the Town will evaluate the possibility to expand the operation of the Course but is not obligated to do so.
 - h. By the end of year three (3), Town Staff shall have evaluated and returned to the Oro Valley Town Council with an analysis of the continued feasibility, capital improvement requirements including alternatives for water usage, potential new configurations and the possibility of a third-party lease for the Pusch Course to determine ongoing Course feasibility in accordance with Town Council's direction in February and March 2021.
 - i. If the Oro Valley Town Council decides it is feasible to continue to operate the Pusch Course as provided in this Section, this Agreement shall remain in full force and effect for an additional two (2) years.
 - ii. If the Oro Valley Town Council decides it is no longer feasible to continue to operate the Pusch Course as provided in this Section, this Agreement shall terminate immediately relieving the Parties from any further compliance with the terms and conditions of this Agreement.
6. **Security to the Town:** The El Conquistador Resort Patio Homes' financial obligation to the Town is secured by the commitment of its Board of Directors to maintain at least the following cash balances in a single bank account held by a national banking association doing business in Pima County, Arizona, and by its further commitment to levy and collect assessments from its members should there ever during such periods of time be unforeseen conditions causing or threatening to cause such account to have less funds than as stated:

\$30,000.00 between January 1, 2022 and March 31, 2022;
\$30,000.00 between January 1, 2023 and March 31, 2023;
\$30,000.00 between January 1, 2024 and March 31, 2024;
\$30,000.00 between January 1, 2025 and March 31, 2025;
\$30,000.00 between January 1, 2026 and March 31, 2026.

Should the El Conquistador Resort Patio Homes default in their obligations hereunder, the Town may pursue its remedies including by legal process against such account. The name of the national banking institution and the account number has been provided to the Town prior to execution hereof, and the account and institution may be changed by written notice from the El Conquistador Resort Patio Homes to the Town.

Shadows of the Ridge HOA #1's financial obligation to the Town is secured by the commitment of its Board of Directors to maintain at least the following cash balances in a single bank account held by a national banking association doing business in Pima County, Arizona, and by its further commitment to levy and collect assessments from its members should there ever during such periods of time be unforeseen conditions causing or threatening to cause such account to have less funds than as stated:

- \$2,500.00 between January 1, 2022 and March 31, 2022;
- \$2,500.00 between January 1, 2023 and March 31, 2023;
- \$2,500.00 between January 1, 2024 and March 31, 2024;
- \$2,500.00 between January 1, 2025 and March 31, 2025;
- \$2,500.00 between January 1, 2026 and March 31, 2026.

Should Shadows of the Ridge HOA #1 default in its obligations hereunder, the Town may pursue its remedies including by legal process against such account. The name of the national banking institution and the account number has been provided to the Town prior to execution hereof, and the account and institution may be changed by written notice from Shadows of the Ridge HOA #1 to the Town.

Shadows of the Ridge's financial obligation to the Town is secured by the commitment of its Board of Directors to maintain at least the following cash balances in a single bank account held by a national banking association doing business in Pima County, Arizona, and by its further commitment to levy and collect assessments from its members should there ever during such periods of time be unforeseen conditions causing or threatening to cause such account to have less funds than as stated:

- \$3,800.00 between January 1, 2022 and March 31, 2022;
- \$3,800.00 between January 1, 2023 and March 31, 2023;
- \$3,800.00, between January 1, 2024 and March 31, 2024;
- \$3,800.00 between January 1, 2025 and March 31, 2025;
- \$3,800.00 between January 1, 2026 and March 31, 2026.

Should Shadows of the Ridge default in its obligations hereunder, the Town may pursue its remedies including by legal process against such account. The name of the national banking institution and the account number has been provided to the Town prior to execution hereof, and the account and institution may be changed by written notice from Shadows of the Ridge to the Town.

7. **Valid Authority to Execute:** Each individual signing this Agreement on behalf of an entity represents and warrants to all of the parties to this Agreement that said individual has the authority to execute this Agreement and bind the entity.

Moreover, the Associations each represent that they are separately legally authorized to execute and deliver this Agreement, and all other documents referenced herein, and has all necessary or required consents necessary to bind it, its members, and any sub-associations it oversees.

8. **Breach:** If any of the Parties become aware of a material breach of this Agreement by any party to this Agreement, it shall promptly notify all non-breaching Parties in writing of the claimed material breach with reasonable detail. Within thirty (30) calendar days of a claimed material breach, the parties will jointly meet and communicate with each other in person in a good faith effort to resolve the claimed material breach, and the party in claimed material breach has thirty (30) calendar days to cure said breach to the reasonable satisfaction of the other parties. Failure to timely cure said breach in accordance with this provision allows for the immediate termination of the entirety of this Agreement. In the event of a material breach by any of the Parties entitles the non-breaching Party, in its sole discretion, to pursue all legal rights and claims against the Party in breach, including but not limited to asserting its legal rights against the Party in breach for the breach and recover damages, enforce security rights, if any against the breaching Party under paragraph 4, above, and/or terminate this Agreement. Interest on unpaid or untimely paid monies to the Town shall accrue interest at the prime rate of interest as published in the Wall Street Journal on the date monies are due plus 3%. Any breach by the Town would require it to return all payments made by an Association during the payment year of said breach in a timely manner, or interest will accrue as stated above.
9. **Attorney Fees and Costs:** If any Party fails to perform any of its obligations under this Agreement, or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, taxable court costs and reasonable attorney fees
10. **Information and Cooperation:** The Parties agree to provide each other with any information, documents, and cooperation reasonably requested to fulfill the purpose of this Agreement. Moreover, each party will, whenever and as often as it shall be reasonably required by any other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to complete the transactions and agreements herein provided and to do any and all other acts and to acknowledge, execute, and deliver any and all documents which may be reasonably requested in order to reasonably carry out the intent and purposes of this Agreement.
11. **Construction:** This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to or considering any presumption or other rule of law requiring

construction against the party preparing this Agreement or any part hereof. If any provision or term of this Agreement shall be held or determined to be unenforceable, the balance of this Agreement shall nevertheless continue in full force and effect, unaffected by such holding or determination. In addition, the waiver of any provision does not constitute a waiver of any other provision or obligation hereunder.

12. **Governing Law:** This Agreement is governed, interpreted, and construed in accordance with the laws of the State of Arizona, without regard to its conflict of laws rules.
13. **Venue:** Any lawsuit to enforce any provision of this Agreement or to obtain any remedy with respect to this Agreement shall be brought in the Pima County Superior Court, and for this purpose the Parties expressly and irrevocably consent to the jurisdiction of the Pima County Superior Court
14. **Modification:** The terms of this Agreement cannot be modified except in a writing signed by the Parties.
15. **Captions:** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience, and do not define, limit, construe or describe the scope or intent of such sections or articles of this Agreement.
16. **Assigns, Representatives, and Successors:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors in interest and assigns; provided, however, that no assignment of this Agreement shall in any way relieve the assignor of its obligations under this Agreement.
17. **Effective Date/Term/Renewal:** This Agreement shall be effective from the date of execution by all parties, conditioned upon approval of the final terms of this Agreement by the Town Council. This Agreement shall remain in full force and effect through **May 1, 2026**, unless sooner terminated as provided herein. This Agreement may be extended only by written agreement of the Parties. At the Town's election, and with sufficient notice to each Association prior to the end of the initial Term, the Parties agree to negotiate in good faith for the purpose of establishing a successor to this Agreement.
18. **Complete Agreement:** This Agreement is the complete, entire, integrated Agreement between the Parties and supersedes all prior negotiations, representations, or agreements, whether written, oral, express, or implied. The Parties, in executing this Agreement, did not rely on any statement, representation, or warranty except as expressly set forth in this Agreement.
19. **Counterparts and Signatures:** This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original and all of which, taken together, shall constitute one and the same agreement. In addition, facsimile or otherwise electronically scanned signatures are deemed to be sufficient and originals. The date the last party signs this document is the date of execution.

20. **Force Majeure:** Notwithstanding any other term, condition, or provision hereof to the contrary, in the event any party hereto is precluded from satisfying or fulfilling any duty or obligation imposed upon such party by the terms hereof due to labor strikes, material shortages, war, civil disturbances, weather conditions, natural disasters, acts of God, or other events beyond the control of such party, the time period provided herein for the performance by such party of such duty or obligation shall be extended for a period equal to the delay occasioned by such events.

BY SIGNING BELOW, THE PARTIES WARRANT AND AGREE THAT THEY HAVE READ ALL OF THIS AGREEMENT, FULLY UNDERSTAND THE CONTENTS AND EFFECT OF THIS AGREEMENT, AND THAT THEY APPROVE OF AND VOLUNTARILY ACCEPT THE TERMS AND PROVISIONS OF THIS AGREEMENT.

TOWN OF ORO VALLEY, an Arizona municipal corporation

Mary Jacobs, Town Manager

ATTEST:

APPROVED AS TO FORM:

Michael Standish, Town Clerk

Tobin Sidles, Legal Services Director

Date

Date

By: Mary Jacobs, Town Manager, as Authorized.

Date: _____, 2021.

EL CONQUISTADOR RESORT PATIO HOMES ASSOCIATION

E-SIGNED by Ray Dissinger
on 2021-09-01 08:52:51 MST

By: Ray Dissinger, as Authorized.

Date: September 01, 2021, 2021.

SHADOWS OF THE RIDGE HOA #1

Paul Sedon

By: PAUL SEDON, as Authorized.

Date: Aug 31, 2021.

SHADOWS OF THE RIDGE

Jacqueline Doyle

By: Jacqueline Doyle, as Authorized.

Date: Sept. 1st, 2021.