

**RESOLUTION NO. 2010-09**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ACCEPTING THE DEDICATION OF A PUBLIC UTILITY AND ACCESS EASEMENT.

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

SECTION 1. An easement through, over, under and across a parcel of certain real property, generally located north of Paradox Drive, is hereby accepted by the Town of Fountain Hills from Brian Schader, in the form attached hereto as Exhibit A and incorporated herein by reference, for public utility and access purposes.

SECTION 2. That the Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and to execute all documents 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, May 20, 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. 2010-09**

**[Public Utility and Access Easement Agreement]**

**See following pages.**

When Recorded Mail To:

Town Clerk  
Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268

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**PUBLIC UTILITY AND ACCESS EASEMENT AGREEMENT**

GRANTOR: Brian Schader

GRANTEE: Town of Fountain Hills, an Arizona municipal corporation (the "Town")

THIS PUBLIC UTILITY AND ACCESS EASEMENT AGREEMENT (this "Agreement") is entered into \_\_\_\_\_, 2010, by and between the Town and Grantor for the purposes set forth below.

**RECITALS**

A. Grantor is the record owner of certain real property at the location described and depicted on Exhibit A, attached hereto and incorporated herein by this reference (the "Easement Area").

B. The Town and Grantor desire to enter into this Agreement for Grantor to grant to the Town a non-exclusive, continuous and perpetual easement together with the necessary right of access, ingress and egress over the Easement Area (the "Easement"), for purposes of installing, operating, inspecting, maintaining, repairing, replacing or removing aboveground and underground public utility facilities, as more particularly described herein.

C. The Grantor specifically agrees and understands that the Town is not the sole provider of utilities within Fountain Hills and it is an express purpose of this Agreement to allow other utility providers to utilize the Easement Area for their respective facilities.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing 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 hereto agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys the Easement to the Town for the purposes of installing, operating, inspecting, maintaining, repairing, replacing or removing aboveground and underground public utility facilities including, but not limited to water, sewer, electrical, telecommunications, gas, storm drainage and such other public utility facilities (the "Facilities"), whether such Facilities are installed, operated, inspected, maintained,

repaired, replaced, removed or otherwise owned or controlled by the Town or a utility provider other than the Town, as may be permitted by law within such Easement.

2. Maintenance of the Easement. Grantor shall not maintain the Easement Area in a manner that impairs the ability or capacity of the Town or other public utility providers to fully utilize the Easement. Grantor shall not construct, install or place, or permit to be constructed, installed or placed upon the Easement Area any fence, wall, structure or other improvement or obstruction which shall interfere with or impede the Town's or other public utility providers' access to the Easement Area or the Town's right to maintain the Facilities in the Easement. The Town shall allow reasonable, typical landscaping within the Easement Area, including shrubs, groundcover and decomposed granite, except in a ten-foot clear zone around any sewer manholes or clean-out locations.

3. Indemnification. The Town shall, to the extent permitted by law, indemnify and hold Grantor harmless from any and all damages, costs, expenses, attorney fees, claims or liabilities arising from or relating to the use of the Easement Area by the Town, its successors in interest, assigns, agents, employees, visitors or invitees.

4. No Assignment. The Town shall have no 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 Grantor, which consent shall not be unreasonably delayed, conditioned or denied. Grantor specifically agrees and understands that it shall not be deemed an assignment under this Agreement for other utility providers to utilize the Easement for their respective purposes.

5. Liens and Encumbrances. The Town represents and warrants that it will maintain the Easement Area free and clear from any liens or encumbrances of any nature whatsoever in connection with Town's construction of improvements on the Easement Area or the use by Town of the Easement Area.

6. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the assigns and successors and tenants of the parties hereto.

7. Attorneys' Fees. Either party may enforce this instrument by appropriate legal action and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys' fees and court costs.

8. Additional Easements. Nothing contained in this Agreement shall prohibit Grantor from conveying additional easements for access, utility or other purposes through, over, under, upon, in, across and along the Easement Area to the owners of properties which abut the Easement Area or to government or quasi-governmental agencies; provided, however, that no such additional rights or easement shall impair the Town's use of the Easement herein granted.

9. Entire Agreement. This instrument contains the entire agreement between the parties relating to Town's use of the Easement for Facility installation, operation and

maintenance. Any oral representations or modifications concerning this instrument shall be of no force or effect, excepting a subsequent modification in writing, signed by the parties.

10. Cancellation by Town. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511 at which time, the Easement shall be extinguished.

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

“Grantor”

  
\_\_\_\_\_  
Brian Schader

ACCEPTED BY:

“Grantee”

TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation

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

ATTEST:

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

(ACKNOWLEDGMENTS)

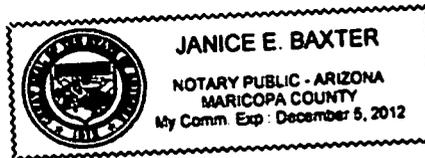
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on June 2, 2010,  
by Brian Schader, in his individual capacity.

Janice E. Baxter  
Notary Public in and for the State of Arizona

My Commission Expires:

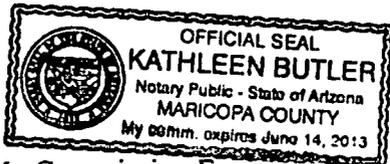
December 5, 2012



STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on MAY 25, 2010,  
by Jay T. Schlum, Mayor of the TOWN OF FOUNTAIN HILLS, an Arizona municipal  
corporation, on behalf of the Town of Fountain Hills.

Kathleen Butler  
Notary Public in and for the State of Arizona



My Commission Expires:

6/14/2013

JANICE F BAXTER  
NOTARY PUBLIC - ARIZONA  
MARICOPA COUNTY  
My Comm. Exp. September 2012



KATHLEEN BUTLER  
NOTARY PUBLIC - ARIZONA  
MARICOPA COUNTY  
My Comm. Exp. September 2012



**EXHIBIT A  
TO  
PUBLIC UTILITY AND ACCESS EASEMENT AGREEMENT**

**[Map of Easement Area]**

**See following pages.**

CURVE TABLE		
DELTA	RADIUS	LENGTH
1 02°41'50"	425.00'	20.01'
2 05°45'29"	425.00'	42.71'
3 03°22'13"	425.00'	25.00'

# TOWN OF FOUNTAIN HILLS EASEMENT ACQUISITION EXHIBIT "A"

PLAT 506B BLOCK 1 LOT 59 & PARADOX WASH

LINE TABLE		
BEARING	DISTANCE	
1 N 33°00'40" E	29.96'	
2 N 88°54'32" E	25.00'	
3 N 10°59'32" E	05.00'	
4 N 65°35'00" W	22.25'	
5 N 88°54'32" E	85.95'	

