

RESOLUTION NO. 2010-10

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, GRANTING AN ACCESS EASEMENT TO BRIAN SCHADER.

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

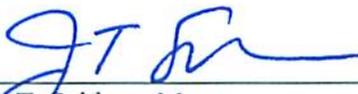
SECTION 1. That an access easement through, over, under and across a parcel of certain real property, generally located north of Paradox Drive, is hereby granted to Brian Schader, in the form attached hereto as Exhibit A and incorporated herein by reference.

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. 2010-10**

[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

ACCESS EASEMENT AGREEMENT

GRANTOR: The Town of Fountain Hills, an Arizona municipal corporation
GRANTEE: Brian Schader

**THIS EASEMENT IS EXEMPT FROM RECORDING FEE
AND AFFIDAVIT OF VALUE PURSUANT TO A.R.S. § 11-1134(A)(2).**

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is entered into _____
_____, 2010, by and between the Grantor and Grantee for the purposes set forth
below.

RECITALS

A. The Grantor and Grantee desire to enter into this Agreement for Grantor to grant to the Grantee a non-exclusive, continuous and perpetual easement (the "Easement") over certain real property, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference (the "Easement Area"), for full and free pedestrian and vehicular ingress and egress over, across and upon the Easement Area, subject to the reversionary interests to the Grantor as set forth below.

B. The Grantor is the record owner of the described property and has full authority to grant the Easement to the Grantee.

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 to Grantee, his successors and assigns, the continuous and perpetual easement through, over, upon, in, across and along the Easement Area for the benefit of the Grantee, his successors, assigns, heirs, executors or personal representatives, tenants, lessees, guests, invitees, or the guests or invitees of the tenants, for the purpose of full and free pedestrian and vehicular ingress and egress related to necessary access to buildings on Grantee's property.

2. Reversion. In the event that the Grantee (i) records a document to formally abandon use of the Easement granted herein, (ii) abandons or removes buildings on the lot for which the Easement is used for access, or (iii) fails to make such improvements as required by subsections 3.2, 3.3 and 3.4 below, all of the Grantee's rights hereunder shall cease and shall revert to Grantor.

3. Maintenance and Use of the Easement. Grantor shall not maintain the Easement Area in a manner that impairs the ability or capacity of the Grantee to fully utilize the Easement.

3.1 Grantor shall not construct, install or place, or permit to be constructed, installed or placed upon the property described herein any fence, wall, structure or other improvement which shall interfere with or impede the Grantee's access to the Easement or the Grantee's right to maintain the Easement Area; provided, however, that gating on the driveway access to the rear of the lot (subject to a Town Encroachment Permit for that work), will be allowed as long as a Knox lock (or Knox Box) is provided for Fire Department and utility provider access.

3.2 The Grantee shall, at his sole expense, not later than six months from the date of recording of this Agreement, grade or otherwise improve or cause to be improved the surface of the Easement Area described herein to facilitate the Grantee's right of ingress and egress thereto and to ensure that the Easement Area meets the requirements of the Fountain Hills Town Code and State statutes with respect to dust-proof materials to be used for any driveway or parking area.

3.3 Grantee shall obtain an Easement Abandonment from the Grantor and public utilities (or remove the encroaching features) within the 20' public utility easement/drainage easement at the rear of Plat 506B, Block 1, Lot 59.

3.4 Grantee shall scarify and hydro-seed, or otherwise re-vegetate (under an Encroachment Permit from the Grantor), adjoining disturbed areas on Grantor-owned property (outside of any finished driveway surfaces and defined access widths needed by the Grantor or public utilities), not later than six months from the date of recording of this Agreement.

4. No Assignment. Grantee shall have no right or authority to assign, in whole or in part, any of his 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 may be given or withheld in Grantor's sole discretion.

5. Liens and Encumbrances. The Grantee 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 Grantee's construction of improvements on the Easement Area or the use by Grantee of the Easement Area.

6. Indemnification. Grantee 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 Grantee, his successors in interest, assigns, agents, employees, visitors or invitees. Grantee shall not be entitled to the

indemnification provided herein for any damages, costs, expenses, attorneys' fees, claims or liabilities to the extent such arise out of a negligent act, omission or willful misconduct of the Grantee, his officers, employees, agents, contractors, tenants, invitees, licensees or guests.

7. 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, successors and tenants of the parties hereto.

8. Attorney's 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.

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

10. Entire Agreement. This instrument contains the entire agreement between the parties relating to the use of the Easement Area for access purposes. 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.

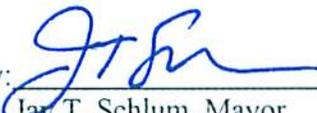
11. Cancellation by Town. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

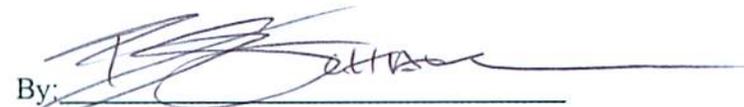
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

"Grantor"

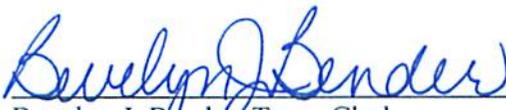
"Grantee"

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation

By: 
Jay T. Schlum, Mayor

By: 
Brian Schader

ATTEST:


Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on MAY 25, 2010, 2010,
by Jay T. Schlum, the 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

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

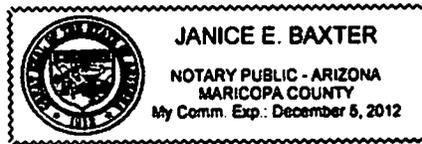
This instrument was acknowledged before me on _____, 2010,
by Brian Schader, in his individual capacity.

Brian Schader
June 2, 2010

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

My Commission Expires:

December 5, 2012



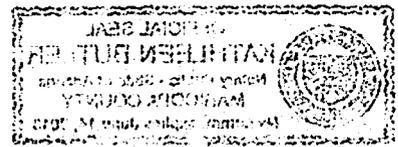
Page 1 of 1

AMERICAN BAR ASSOCIATION

MEMBER

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MEMBER

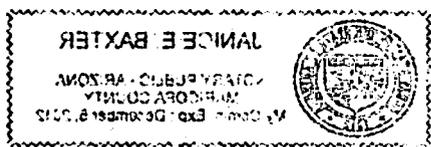
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**EXHIBIT A
TO
ACCESS EASEMENT AGREEMENT**

[Map of Easement Area]

CURVE TABLE		
DELTA	RADIUS	LENGTH
1 02°41'50"	425.00'	20.01'
2 05°29'35"	1140.00'	109.29'
3 01°15'23"	1140.00'	25.00'
4 120°00'00"	20.00'	41.89'

TOWN OF FOUNTAIN HILLS GRANT OF EASEMENT EXHIBIT "A"

PLAT 506B BLOCK 1 PARCEL A (TO LOT 59)

LINE TABLE		
BEARING	DISTANCE	
1 N 50°25'13" E	13.38'	
2 N 65°35'00" W	22.25'	
3 N 19°36'37" W	25.00'	
4 N 10°22'50" E	10.00'	
5 N 65°35'00" W	41.23'	
6 N 65°35'00" W	23.79'	

