

When recorded mail to:

Town of Paradise Valley
Town Attorney
6401 E. Lincoln
Paradise Valley, AZ 85253

DRAFT

**GRANT OF ACCESS EASEMENT OVER PRIVATE ROADWAY
AND PRIVATE ROADWAY MAINTENANCE AGREEMENT**

Pursuant to Article 6-3-3 of the Paradise Valley Town Code, this Grant of Access Easement over Private Roadway and Private Roadway Maintenance Agreement ("Agreement") is made and entered into as of this ____ day of April, 2016, by and between BH Nauni Valley, LLC, a Delaware limited liability company ("Grantor"), and the TOWN OF PARADISE VALLEY, an Arizona municipal corporation ("Grantee" or "Town").

1. Grantor is the fee simple owner of that certain tract of land located in the Town of Paradise Valley, County of Maricopa, State of Arizona, as shown on Exhibit A and located at the following address: 6001 N. Nauni Valley Drive (the "Property").
2. Grantor has access easement rights over the real property located adjacent to the Property that serves as a private road, as described on Exhibit B.
3. Subject to Paragraph 8 below, Grantor grants to Grantee an access easement rights in, over and across the real property shown on Exhibit B (the "Private Roadway") for the purposes outlined in this Agreement. Grantee has accepted same by its approval of Exhibit B and the acceptance of the access easement and this Agreement (as evidenced by the execution of this Agreement by the Mayor of the Town).
4. Grantor, for Grantor, its successors, and assigns (hereinafter "Owners") covenants with the Grantee and its successors and assigns, that Grantor and Owners, at all times after the effective date of this instrument, at its own cost and expense, will clean and maintain the Private Roadway, and will keep the Private Roadway area cleaned and maintained in a proper and workmanlike manner, and in compliance with all applicable ordinances, codes, rules and regulations. Grantor, and all future Owners, lessees, and residents of all or any part of the Property are bound by the provisions of this Agreement. This Agreement cannot be terminated, released, amended or modified without the express prior written consent of Grantee.
5. If for any reason the Grantor (or Owners) does not fulfill its duty to clean and maintain the Private Roadway, the Grantee shall have the right of self-help, in addition to powers and

enforcement authorized by the Town of Paradise Valley Town Code and Arizona state law, and in connection with such rights, shall have the right to enter the Private Roadway area and, as needed to access the Private Roadway area, the Property, to clean or to maintain, and to be compensated by Grantors (or Owners) for the full and actual amount of the cleaning and maintenance as required by this Agreement and applicable ordinances, codes and regulations.

6. The Grantors (or Owners) of the Property shall be liable to the Town for reasonable maintenance costs incurred by the Town pursuant to Paragraph 4 above, together with interest at the legal rate and reasonable attorneys' fees. If those amounts are not paid within thirty (30) days after written demand to the Grantors (or Owners) for payment of maintenance costs incurred by the Town pursuant to Paragraph 4, the Town may record a Notice of Claim of Lien against the Property to secure the payment of such amounts, a copy of which will be forwarded to Grantor, or, as appropriate, the Owners.

6. The Town shall have the right, at its option, to enforce collection of any amounts owed to the Town under Paragraph 4 above in any manner allowed by law, including, without limitation, bringing an action against Grantor, or, as appropriate, the Owners of the Property to pay such amounts or bringing an action to foreclose its lien against the Property in the manner provided by law for the foreclosure of a realty mortgage. The Town shall have the power to bid at any foreclosure sale and to purchase the Property so sold. This Agreement shall be in addition to any other agreements, law, ordinances or regulations relating to drainageways, easements and the subject matter herein.

7. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, assigns, affiliates, agents and tenants. This Agreement, the Grant of Easement over the Private Roadway and other rights and obligations created, granted and conveyed shall run with the land as a burden upon the Property.

8. Grantor warrants that (i) it is the owner of the Property, (ii) it has access rights over the real property shown on Exhibit B, (iii) it has the full right, power and authority to grant the same access rights described in section (ii), and (iv) the execution hereof by Grantor does not conflict with or constitute a default under any agreement to which Grantor is a party or by which Grantor of the Private Roadway is bound. Grantor and Grantee hereby acknowledge that (i) the Property and the Private Roadway is subject to that plat for Nauni Valley Ranch, as recorded in Plat Book 44 of Maps, Page 9, (ii) that the Grantor represents and warrants that its right, power and authority to grant the Private Roadway is limited to the rights it possesses.

9. This Agreement shall terminate only upon mutual written agreement between the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written:

GRANTOR:

BH Nauni Valley, LLC,
a Delaware limited liability company

By: _____
Name: Darryl Berger
Its: Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of April, 2016, by Darryl Berger, the Manager of BH Nauni Valley, LLC, on behalf thereof.

Notary Public
My Commission Expires: _____

GRANTEE:

TOWN OF PARADISE VALLEY

By: _____
Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew Miller, Town Attorney

Exhibit A – The Property

PARCEL NO. 1

LOT TWELVE (12), NAUNI VALLEY RANCH, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE MARICOPA COUNTY RECORDER IN BOOK 44 OF MAPS, PAGE 9.

PARCEL NO. 2

TRACT D, NAUNI VALLEY RANCH, A SUBDIVISION RECORDED IN BOOK 44 OF MAPS, PAGE 9, RECORDS OF MARICOPA COUNTY, ARIZONA.

Exhibit B – The Private Roadway Easement

*[insert legal description of the Private Roadway Easement area and sketch, if available, of
same]*