

1 When recorded, return to:
2 Paradise Valley Town Attorney
3 6401 East Lincoln Drive
4 Paradise Valley, Arizona 85253
5
6
7

8 **ORDINANCE NUMBER 2016-13**
9

10 **AN ORDINANCE OF THE TOWN OF PARADISE VALLEY,**
11 **ARIZONA, AMENDING THE ZONING ORDINANCE**
12 **ARTICLE II, DEFINITIONS, AND ARTICLE IX, CLUSTER**
13 **PLAN DISTRICT; PROVIDING FOR SEVERABILITY; AND**
14 **PROVIDING FOR AN EFFECTIVE DATE.**
15

16 WHEREAS, in accordance with Article II, Sections 1 and 2, constitution of Arizona, the
17 Town Council has considered the individual property rights and personal liberties of the
18 residents of the Town before adopting this ordinance.

19
20 **NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF**
21 **THE TOWN OF PARADISE VALLEY, ARIZONA THAT:**
22

23 Section 1. Article II, Definitions, Section 201, is hereby amended as follows (with deletions
24 shown as ~~striketroughs~~ and additions shown in **bold type**):
25

26 Cluster Plan (CP) District: A development approach that may be used in the R-43 or R-35
27 Cluster Plan zoning district that retains the same house per acre ratio as the R-43 or R-35, zoning
28 districts permitting reduced lot sizes in order to allow undeveloped land to be preserved as open
29 space. This approach may be utilized to preserve natural features ~~or~~, **to provide greater than**
30 **normal setbacks from heavily traveled thoroughfares or to allow flexibility in the development**
31 **of parcels on the perimeter of the Town.**
32

Section 2. Article IX, Cluster Plan District, is hereby amended as follows (with deletions shown as ~~striketroughs~~ and additions shown in **bold type**):

Article IX CLUSTER PLAN DISTRICT

Section 901. Purpose:

The purpose of this section is to provide a zoning district as an alternate zoning to R-43 and R-35 single family residential districts, and thereby making provisions for variations in lot sizes within tracts of eight (8) acres or more while maintaining the necessary requirements for open space within each tract as a whole, in order to preserve the natural beauty of the Town of Paradise Valley:

1. A cluster plan may be approved only for the following reasons:

- (a) To preserve areas which have natural features of scenic beauty of significance to the general public.
- (b) To provide greater than normal residential setbacks from heavily traveled thoroughfares without reducing the number of residential lots that might otherwise be created within the provisions of this Ordinance.
- (c) **To allow flexibility for development of parcels on the perimeter of the Town which lack physical access to Town streets and which meet the criteria set forth in the first paragraph of Section 912.**

1 Nothing in this article shall confer upon any applicant a right or claim to have a cluster plan
2 approved as a matter of course. Such approval shall vest in the sound discretion of the Town
3 Planning Commission (hereinafter called Commission), and of the Town Council at a public
4 hearing with due regard to the public safety, health, morals, and welfare of the Town.

5
6 Section 902. Variation in Lot Sizes:

7 The owner of a tract of land in a R-43 or R-35 Residential Zoning District may, upon obtaining
8 the approval of a cluster plan in accordance with the provisions of this Article, vary the lot sizes
9 within the tract of land from those required by the applicable zoning district. Applications for
10 the approval of such cluster plans shall be made in accordance with the provisions of Section
11 908.

12
13 Section 903. Maximum Number of Lots:

14 The maximum number of lots within a tract of land that may be authorized under this Article
15 shall be computed by dividing the “gross acreage” as that term is hereinafter defined, by the
16 maximum lot area requirement of the single family dwelling district in which the lot is located.

17 The term “gross acreage” as used herein, shall include the land within the exterior boundaries of
18 a tract, less the following:

- 19
20 1. The area comprising easements of record for public utilities facilities such as electric
21 transmission lines, sewer lines, and water mains, except in those cases where the owner
22 shall satisfy the Commission that the existence of the easement does not prevent the use
23 of the area comprising the easement for development;

2. An area representing probable street rights of way if the tract were to be developed as a subdivision without regard to the provisions of this Article.

Gross acreage shall not include any portion of the tract, which the owner does not propose to alienate, either as a lot sold to a purchaser, or as common lands conveyed to trustees. The Commission may by rule adopt regulations calculated to insure compliance by the owner with the provisions of the proposed cluster plan pertaining to conveyance of lots and common lands.

Section 904. Inclusion of Common Lands.

Lands shall be set aside from the remainder of the tract for common use by all of the owners of the residential lots, in accordance with the provisions of this section, and such common lands shall be included in the gross acreage for purposes of computing the maximum number of lots authorized under this Article. Except in the case of bridle paths designated as such in the cluster plan, no animals other than domestic pets shall be permitted on common lands. Common lands shall be set aside only for the following uses:

1. Private recreational facilities, such as swimming pools, which are limited to the use of the owners or occupants of the lots located within the tract, or their guests;
2. Parks and parkway areas, and areas which have natural features of scenic beauty worthy of preservation;
3. Bridle paths, golf courses, or hiking trails for the use of the owners of the said lots, or for the use of the general public.

1 Section 905. Conveyance of Common Lands:

2 All common land designated in the plan as such, or whose acreage shall be utilized in the
3 determination of the maximum number of lots that are authorized, shall be conveyed in fee
4 simple by warranty deed from the owner to trustees. A proposed form of trust indenture shall be
5 included in each application for approval of a cluster plan. Such trust indenture shall provide,
6 among other things, that the trustee shall hold title for the sole benefit, use, and enjoyment of the
7 lot owners, present and future, of said subdivision for a term of years certain, which term shall
8 not be less than twenty (20) years. The trust indenture shall further provide that upon the
9 expiration of the said term of years, or upon the cessation of the subdivision, fee simple title to
10 the said land shall be vested in said lot owners as tenants in common. In addition, there shall be
11 included in the plan a proposed form of covenant for inclusion in the deeds to the lots, which
12 covenant shall provide a suitable means for the maintenance and upkeep of the common lands,
13 and shall obligate the lot owner and his successors for a proportionate share of the cost of such
14 upkeep and maintenance. By including the form of such a covenant in the plan, the owner
15 represents and warrants that such a covenant will be included in the original deed to each lot in
16 such a manner as to run with the land and bind succeeding lot owners. The warranty deeds and
17 trust indentures shall be attached as exhibits to the cluster plan together with the opinion of an
18 attorney admitted to practice in Arizona, addressed to the Commission, to the effect that the said
19 deeds and trust indentures comply in form and in substance with the provisions of this
20 Ordinance. The indentures shall be recorded in the office of the Maricopa County Recorder
21 simultaneously with the recording of the final plat of the subdivision, as provided in the
22 subdivision regulations of the Town. Each deed from the owner to a purchaser of a lot, which is
23 subject to the cluster plan, shall include the covenant.

1 Section 906. Minimum Reduced Size of lots:

2 No lot developed under the provisions of this section shall be reduced in area or frontage below
3 the minimum standards set forth in the following table **except as set forth in Section 912:**

4

| | Minimum Reduced | Minimum Reduced |
|-----------------------|-----------------|-----------------|
| <u>Density</u> | <u>Area</u> | <u>Frontage</u> |
| R-43 (one acre) | 20,000 sq. ft. | 120 feet |
| R-35 (35,000 sq. ft.) | 20,000 sq. ft. | 100 feet |

9

10 Section 907. Maintenance of Average Lot Size:

11 Lots developed under this Article may be reduced in area below the minimum lot size required
12 by the residential district zone in which the subdivision is located (but not below the minimum
13 standards set forth in the preceding paragraph) provided that the gross acreage, when divided by
14 the number of lots created, shall equal the minimum lot size required by the applicable district.

16 Section 908. Cluster Plan Procedure:

17 The owner of any tract of land comprising an area of not less than eight (8) acres may submit to
18 the Commission a re-zoning request for a cluster plan for the use and development of all of the
19 said tract of land for residential purposes; the plan shall include all information which the
20 Commission may by rule require, and shall include a request that the entire tract in question be
21 zoned "CP." No cluster plan shall be submitted to the Commission for its approval until a
22 preliminary plat of the tract, which is the subject of the cluster plan, has likewise been submitted,

1 as required by the subdivision regulations of the Town. The preliminary plat shall show in detail
2 each variation from lot size otherwise required which is sought under the proposed cluster plan.

3
4 Every cluster plan submitted under this section shall be considered by the Commission at a
5 public hearing. Such public hearing shall be held only after one publication of a public notice of
6 the time, place and date of such hearing is given in a newspaper of general circulation in the
7 Town of Paradise Valley at least fifteen (15) days prior to such hearing, and after there has been
8 posted on the affected property at least fifteen (15) days prior to the said hearing a notice of the
9 hearing.

10
11 The Commission shall, after such public hearing, submit to the Town Council its
12 recommendation of approval or disapproval of the cluster plan. Approval of a cluster plan shall
13 not be recommended by the Commission until it shall have also approved the preliminary plat for
14 subdivision of the land, which is the subject of the cluster plan in accordance with the
15 subdivision regulations of the Town.

16
17 Upon submission of the Commission's recommendation, the Town Council shall arrange to hold
18 its public hearing to consider whether the cluster plan shall be approved. Like notice for the
19 hearing of the plan before the Town Council shall be given as is the case of the hearing of the
20 plan before the Commission.

1 Section 909. Other Provisions Applicable.

2 If the Town Council shall approve the cluster plan, development in conformity with the plan may
3 be undertaken, even though the location of the buildings to be erected in the area, and the yards
4 and open spaces contemplated by the plan, depart in respect herein above authorized from the
5 district regulations of the district in which the tract is located. Such development of the tract
6 shall be subject to the applicable provisions of the Town subdivision regulations pertaining to the
7 installation of required improvements and submission of the final plat. In the event that the
8 approval of the preliminary plat becomes void by reason of the lapse of time under the provisions
9 of the Town subdivision regulations, the approval of the cluster plan by the Town Council shall
10 likewise become void.

11
12 Land use within any tract zoned “CP” shall be subject to all other applicable provisions of this
13 Ordinance, and of other ordinances of the Town, except as herein expressly otherwise provided.
14 Notwithstanding the fact that a cluster plan may have been approved for lots located in either and
15 R-43 or an R-35 district, which plan permits one or more of said lots to be varied below the
16 minimum area regulation applicable to the district in which they are located; (a) no guest house
17 shall be permitted on any such lot which does not meet the minimum area regulations applicable
18 to the district in which it is located, without regard to the provisions of this article **except as set**
19 **forth in Section 912**; (b) no horses shall be kept on a lot located in an R-43 district unless such
20 lot meets the minimum area regulations applicable to the district without regard to the provisions
21 of this article.

1 Section 910. Variance and Re-Zoning.

2 No variance from a plan approved under the provisions of this article shall be granted by the
3 Board of Adjustment of the Town. No application for re-zoning of all or any portion of a tract
4 zoned “CP” shall be entertained. All land designated as common land in the cluster plan finally
5 approved by the Town Council shall be used for no other purpose than a common land.

6
7 Section 911. Rescission of Cluster Plan Approval:

8 The owner of a tract of land for which a cluster plan has been approved may apply to the
9 Commission and to the Town Council, in accordance with the procedure set forth in Section 908
10 of this article, to rescind the approval of the cluster plan. If the Commission and the Town
11 Council shall be satisfied that the land use of the tract is consistent with, or will be substantially
12 restored to, the use required by the zoning in effect on the tract at the time the cluster plan was
13 approved, they may approve the application for rescission. In the event of such approval, the use
14 of the land within the tract shall be governed by the provisions applicable to the district in which
15 the tract is located as of the date the cluster plan was approved.

16
17 **Section 912. Cluster Plan Adjacent to Major Arterial Streets and Floodways:**

18 **The provisions of this Section 912 shall apply only to parcels of eight (8) acres or more that**
19 **meet the following criteria: (1) the parcel is adjacent to a major arterial roadway with**
20 **average daily traffic greater than 35,000 vehicles per day, (2) the parcel is adjacent to the**
21 **Indian Bend Wash; and, (3) the parcel is not adjacent to an R-43 district.**

For parcels that meet the criteria of the preceding paragraph, and notwithstanding any other provision in this Ordinance to the contrary, the following shall apply:

1. The minimum lot size shall be 16,500 square feet.
2. The maximum number of stories shall be one.
3. The minimum lot frontage shall be 100 feet.
4. Side yard setbacks with street frontage and front yard setbacks for primary buildings shall be 20 feet.
5. Rear yard setbacks for primary buildings shall be 25 feet.
6. Side yard setbacks with no street frontage for primary buildings shall be 7 feet.
7. The maximum floor area ratio shall not exceed 50%.
8. Rear yard setbacks (with or without street frontage) for accessory buildings and structures and pools shall be 10 feet. Front yard setbacks for accessory buildings and structures and pools shall be 20 feet.
9. Side yard setbacks (with or without street frontage) for accessory buildings and structures and pools shall be 7 feet. The maximum height of accessory buildings and structures shall be 16 feet.
10. Front yard setbacks for garage structures that do not have a garage door facing the street shall be 10 feet, provided that for all square footage of any such garage between the 10 foot and 20 foot front yard setback there shall be at least an equal amount of square footage behind the 20 foot setback that shall not be enclosed.

1 **11. The height of structures shall be measured as the vertical distance from the**
2 **Regulatory Flood Elevation, as defined in Section 5-11-1 of the Town Code, adjacent**
3 **to the parcel.**

4
5 SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, or portion of
6 this ordinance or any part of these amendments to the Town Code adopted herein by reference is
7 for any reason held to be invalid or unconstitutional by the decision of any court of competent
8 jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

9
10 SECTION 4. Effective Date. This ordinance shall become effective when (a) the final plat for
11 “The Villas at Cheney Estates” subdivision has been approved by the Town Council and
12 recorded with the Maricopa County Recorder’s Office and (b) the owner of the Property has
13 provided to the Town a duly executed Proposition 207 waiver in the form attached as Exhibit B,
14 which Proposition 207 waiver need not be submitted to the Town until after the final plat for
15 “The Villas at Cheney Estates” subdivision has been approved by the Town Council. The final
16 plat for “The Villas at Cheney Estates” subdivision and the Proposition 207 waiver shall be
17 recorded at the same time.

18
19 PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise Valley, Arizona,
20 this _____ day of _____, 2017.

1 _____
2 Michael Collins, Mayor

3
4
5 SIGNED AND ATTESTED THIS _____ DAY OF _____ 2017.

6
7 ATTEST: APPROVED AS TO FORM:

8
9
10 _____
11 Duncan Miller, Town Clerk Andrew Miller, Town Attorney

12
13

CERTIFICATION

I, Duncan Miller, Town Clerk, certify that this is a correct copy of Ordinance Number 2016-13 duly adopted by the Town Council of Paradise Valley at a meeting held on the this _____ day of _____, 2017. This Ordinance appears in the minutes of the meeting, and has not been rescinded or modified and is now in effect. I further certify that the municipal corporation is duly organized and existing, *and* has the power to take the action called for by the foregoing ordinance.

Duncan Miller, Town Clerk

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EXHIBIT A: PROPERTY DESCRIPTION

[Add legal description]

1 When recorded, return to:
2 Paradise Valley Town Attorney
3 6401 East Lincoln Drive
4 Paradise Valley, Arizona 85253
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8 **ORDINANCE NUMBER 2016-14**
9

10 **AN ORDINANCE OF THE TOWN OF PARADISE VALLEY,**
11 **ARIZONA, AMENDING THE ZONING ORDINANCE AND**
12 **ZONING MAP OF THE TOWN OF PARADISE VALLEY**
13 **PROVIDING REZONING OF 9.6 ACRES OF PROPERTY**
14 **LOCATED AT THE NORTHWEST CORNER OF THE**
15 **NORTHERN AVENUE ALIGNMENT AND SCOTTSDALE**
16 **ROAD - FROM R-43 SINGLE FAMILY RESIDENTIAL**
17 **DISTRICT AND SPECIAL USE PERMIT – COUNTRY CLUB**
18 **AND GOLF COURSE TO R-43 CP SINGLE FAMILY**
19 **RESIDENTIAL DISTRICT CLUSTER PLAN; PROVIDING**
20 **FOR SEVERABILITY; AND PROVIDING FOR AN**
21 **EFFECTIVE DATE.**
22

23 WHEREAS, the Town of Paradise Valley Planning Commission held a public hearing on
24 October 3, 2017, in the manner prescribed by law, for the purpose of considering Ordinance
25 2016-13, a text amendment of Article II, Definitions, and Article IX, Cluster Plan District, of the
26 Town’s Zoning Ordinance, to allow for modifications to the cluster plan provisions for the
27 development known as “The Villas at Cheney Estates” regarding lot size, height measurement,
28 and setbacks, and recommended this application for Town Council approval with the effective
29 date being the same as the rezoning for said development by Ordinance 2016-14; and
30

31 WHEREAS, the Town of Paradise Valley Planning Commission held a public hearing on
32 October 3, 2017, in the manner prescribed by law, for the purpose of considering Ordinance
33 2016-14, a conditional rezoning of the Property from “R-43 Single Family Residential District”
34 (minimum 43,560 square-foot lots) and “Special Use Permit – Country Club and Golf Course” to
35 the “R-43 Single Family Residential District Cluster Plan” (minimum 16,500 square-foot lots), and

recommended approval to the Town Council with the conditions outlined in Section 2 of this ordinance; and

WHEREAS, the Town of Paradise Valley Planning Commission, held a public meeting October 3, 2017, in the manner prescribed by law, for the purpose of considering an eight-lot Preliminary Plat known as “The Villas at Cheney Estates,” and recommended this application for Town Council approval; and

WHEREAS, as required by Section 6-2-3 of the Town Code, the final plat must be presented to the Planning Commission for consideration within twelve months from the date of preliminary plat approval; otherwise such preliminary approval shall become null and void unless a time extension is granted by the Town Council; and

WHEREAS, the Town of Paradise Valley Planning Commission, held a public hearing October 3, 2017, in the manner prescribed by law, approving a private road Conditional Use Permit at the development known as “The Villas at Cheney Estates,” pursuant to its authority granted under Section 1103.4 of the Town’s Zoning Ordinance; and

WHEREAS, the Town of Paradise Valley Planning Commission, held a public hearing October 3, 2017, in the manner prescribed by law, recommending that the Town Council approve Ordinance 2016-15 for a Special Use Permit (SUP) for private roadway gates at the development known as “The Villas at Cheney Estates,” with the effective date being the same as Ordinance 2016-14; and

1 WHEREAS, the Town of Paradise Valley Planning Commission, held a public meeting
2 October 3, 2017, in the manner prescribed by law, for the purpose of considering two entry
3 subdivision wall signs at the development known as “The Villas at Cheney Estates,” and
4 recommended this application for Town Council approval with the effective date being the same
5 as Ordinance 2016-14; and
6

7 WHEREAS, the Town of Paradise Valley Town Council held a public hearing
8 on _____, 2017, in the manner prescribed by law, for the purpose of
9 considering Ordinance 2016-13, a text amendment of Article II, Definitions, and Article IX,
10 Cluster Plan District, of the Town’s Zoning Ordinance, and approved said ordinance with the
11 effective date being the same as Ordinance 2016-14; and
12

13 WHEREAS, the Town of Paradise Valley Council held a public hearing
14 on _____, 2017, in the manner prescribed by law, to hear and take
15 action on Ordinance 2016-13, the conditional rezoning of the Property from “R-43 Single Family
16 Residential District” (minimum 43,560 square-foot lots) and “Special Use Permit – Country Club
17 and Golf Course” to the “R-43 Single Family Residential District Cluster Plan” (minimum 16,500
18 square-foot lots), amending the Zoning Ordinance and Zoning Map; and
19

20 WHEREAS, the Town of Paradise Valley Town Council, concurrently held a public
21 meeting/hearing on _____, 2017, in the manner prescribed by law, to
22 hear and take action on an eight-lot Preliminary Plat known as “The Villas at Cheney Estates,”
23 Ordinance 2016-15 for a Special Use Permit (SUP) for private roadway gates for said plat, and

1 an application for two entry subdivision wall signs for said plat, with the understanding that the
2 Planning Commission had granted approval of the private road Conditional Use Permit for said
3 plat under the authority of Section 1103.4 of the Town's Zoning Ordinance; and
4

5 WHEREAS, the rezoning to "R-43 Single Family Residential District Cluster Plan" is
6 consistent with and conforms to the both the "Low Density Residential" and "Private Open
7 Space" designations of the Land Use Map of the Town's adopted General Plan in accordance
8 with Section 306, Amendments, of the Town Code and Arizona Revised Statutes §9-462.01(F)
9 as amended by Resolution 2016-20; and
10

11 WHEREAS, in accordance with Article II, sections 1 and 2, constitution of Arizona, the
12 Town Council has considered the individual property rights and personal liberties of the
13 residents of the Town before adopting this ordinance; and
14

15 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF**
16 **THE TOWN OF PARADISE VALLEY, ARIZONA THAT:**
17

18 **SECTION 1. Rezoning.** The parcel of land legally described under Exhibit A (the "Property")
19 is hereby rezoned from "R-43 Single Family Residential District" (minimum 43,560 square-foot
20 lots) and "Special Use Permit – Country Club and Golf Course" to the "R-43 Single Family
21 Residential District Cluster Plan" (minimum 16,500 square-foot lots), subject to the conditions set
22 forth in Section 2, and subject to Sections 3 and 4 of this ordinance. Promptly after the Effective
23 Date, the Town's Official Zoning Map shall be amended to reflect the new "R-43 Single Family
24 Residential District Cluster Plan" Zoning District; if such zoning is later invalidated as
25 contemplated by Section 3 of this ordinance, then the Official Zoning Map will be changed back

1 from “R-43 Single Family Residential District Cluster Plan” to “R-43 Single Family Residential
2 District” and “Special Use Permit – Country Club and Golf Course.”

3
4 SECTION 2. Conditions.

5 1. This rezoning shall apply to the property as described in the legal description prepared by
6 Eric G. Coffey, dated June 6, 2017 (the “Property”) and attached as Exhibit A.

7
8 2. Prior to the final plat of this Property being acted upon by the Planning Commission
9 and/or Town Council, the appropriate documentation shall be provided to the Town
10 regarding “The Villas at Cheney Estates” subdivision having a 100-year assured water
11 supply.

12
13 3. The text amendment of Ordinance 2016-03 (MI-16-03), Preliminary Plat (PP-16-03),
14 Conditional Use Permit (CUP-16-02) for the private road, Special Use Permit of
15 Ordinance 2016-15 (SUP-16-03) for the private roadway gates, subdivision entry signs
16 (MI-17-03), and final plat for the Property of “The Villas at Cheney Estates” shall be
17 approved by the Town.

18
19 4. The applicant shall provide a duly executed Proposition 207 waiver in the form attached
20 as Exhibit B as specified in Section 4 of this ordinance.

21
22 5. Prior to recordation of the final plat for this Property, an assurance shall be provided to
23 the Town to complete any improvements in the Scottsdale Road right-of-way and grading

1 within the drainage easement on lots 6 and 7 in the event the developer/owner fails to do
2 so.

3
4 6. Prior to recordation of the final plat, the owner of the Property shall be responsible to
5 provide an assurance to the Town for the improvement of a bicycle and/or pedestrian
6 route within the Northern Avenue alignment adjoining the Property. This assurance shall
7 cover the cost to install the route and landscaping adjoining the Property. Such assurance
8 shall expire five years after recordation of the final plat. If the final Paradise Valley
9 Bicycle and Pedestrian Plan as adopted by the Town Council does not include a
10 recreational path within the Northern Avenue alignment between Scottsdale Road and
11 Golf Drive, then the owner of the Property shall have no obligation to install any bicycle
12 and/or pedestrian path and the assurance shall be cancelled. The owner of the property
13 shall not be obligated to install such bicycle and/or pedestrian path until the Town has
14 installed a similar path from Golf Drive to the western edge of the Property.

15
16 7. The final plat, Conditional Use Permit (CUP-16-02) for the private road, Special Use
17 Permit (SUP-16-03) for the private roadway gates, and subdivision entry signs (MI-17-
18 03) for the Property of “The Villas at Cheney Estates” are only valid if and when the
19 Zoning Ordinance Text Amendment (MI-16-03) and Rezoning (MI-16-04) for the
20 Property become effective; and at such time as the Letter of Map Revision (LOMR)
21 through the Federal Emergency Management Agency (FEMA) is completed, as reflected
22 in the Conditional Letter of Map Revision (CLOMR) comments from FEMA dated July
23 19, 2017, as amended.

1
2 8. A trust indenture establishing title to the common areas must be executed in accordance
3 with Section 905, Conveyance of Common Lands, of the Zoning Ordinance.
4

5 9. Prior to the issuance of the first certificate of occupancy for any single-family dwelling
6 in the subdivision, the applicant shall complete the following items related to the
7 Property:

- 8 a. Drainage and floodplain improvements,
- 9 b. Private roadway in accordance with Conditional Use Permit (CUP-16-02),
- 10 c. Water, sewer, electric, and natural gas utilities,
- 11 d. Subdivision wall and related perimeter landscaping,
- 12 e. Right turn deceleration lane improvements as required by the City of Scottsdale,
- 13 and
- 14 f. Private roadway gates, landscaping, and lighting of Special Use Permit (SUP-16-
15 03).

16 10. Development of the Property of “The Villas at Cheney Estates” subdivision, homes, and
17 related structures shall be in compliance with the following:

- 18 a. All applicable Federal, State of Arizona, and Town Ordinances, including the
19 Zoning Ordinance Text Amendment (MI-16-03) cluster plan standards,
- 20 b. All applicable floodplain regulations, including the required improvements
21 necessary to obtain the Letter of Map Revision (LOMR), and
- 22 c. The final plat for the Property of “The Villas at Cheney Estates.”

1 SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, or portion of
2 this ordinance or any part of these amendments to the Town Code adopted herein by reference is
3 for any reason held to be invalid or unconstitutional by the decision of any court of competent
4 jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

5
6 SECTION 4. Effective Date. This ordinance shall become effective when (a) the final plat for
7 “The Villas at Cheney Estates” subdivision has been approved by the Town Council and
8 recorded with the Maricopa County Recorder’s Office and (b) the owner of the Property has
9 provided to the Town a duly executed Proposition 207 waiver in the form attached as Exhibit B,
10 which Proposition 207 waiver need not be submitted to the Town until after the final plat for
11 “The Villas at Cheney Estates” subdivision has been approved by the Town Council. The final
12 plat for “The Villas at Cheney Estates” subdivision and the Proposition 207 waiver shall be
13 recorded at the same time.

14 PASSED AND ADOPTED by the Mayor and Town Council of the Town of Paradise Valley,
15 Arizona, this ____ day of _____, 2017.

16
17 _____
18 Michael Collins, Mayor

19
20 SIGNED AND ATTESTED TO THIS _____ DAY OF _____ 2017

21
22 ATTEST:

23
24
25 _____
26 Duncan Miller, Town Clerk

27
28 APPROVED AS TO FORM:

29
30
31
32 _____
33 Andrew M. Miller, Town Attorney
34

1
2
3 **CERTIFICATION**
4

5 I, Duncan Miller, Town Clerk, certify that this is a correct copy of Ordinance Number 676 duly adopted by the
6 Town Council of Paradise Valley at a meeting held on the this ____ day of _____, 2017. This Ordinance
7 appears in the minutes of the meeting, and has not been rescinded or modified and is now in effect. I further certify
8 that the municipal corporation is duly organized and existing, *and* has the power to take the action called for by the
9 foregoing ordinance.
10
11
12
13
14
15

Duncan Miller, Town Clerk

1 When recorded, return to:
2 Paradise Valley Town Attorney
3 6401 East Lincoln Drive
4 Paradise Valley, Arizona 85253
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7

8 **ORDINANCE NUMBER 2016-15**
9

10 **AN ORDINANCE OF THE TOWN OF PARADISE VALLEY,**
11 **ARIZONA, GRANTING A SPECIAL USE PERMIT FOR**
12 **PRIVATE ROADWAY ACCESS GATES AND RELATED**
13 **IMPROVEMENTS UNDER THE TERMS OF ARTICLE XI,**
14 **SPECIAL USES AND ADDITIONAL USE REGULATIONS,**
15 **FOR THE VILLAS AT CHENEY ESTATES LOCATED AT**
16 **THE NORTHWEST CORNER OF THE NORTHERN AVENUE**
17 **ALIGNMENT AND SCOTTSDALE ROAD; PROVIDING FOR**
18 **SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE**
19 **DATE.**
20

21 WHEREAS, applications were filed on September 26, 2016 and July 25, 2017, on behalf
22 of Town Triangle, L.L.C., and Folkman Properties, LLC (the “Applicant”) for a
23 Special Use Permit SUP-16-03 (the “Application”), for private roadway gates and related
24 improvements located at the northwest corner of Northern Avenue Alignment and Scottsdale
25 Road, Maricopa County, Arizona (the “Property”); and
26

27 WHEREAS, the Applicant has submitted several other applications to develop the
28 Property for eight (8) single-family residential lots including: a Text Amendment (MI-16-03) to
29 Article II, Definitions, and Article IX, Cluster Plan District, of the Town’s Zoning Ordinance, to
30 allow for modifications to the cluster plan provisions; a Rezoning (MI-16-04) of the Town’s
31 Zoning Ordinance to change the zoning district from “R-43 Single Family Residential District”
32 and “Special Use Permit – Country Club and Golf Course” to “R-43 Single-Family Residential
33 District Cluster Plan;” a Preliminary Plat (PP-16-03) for eight lots with a minimum lot size of

1 16,500 square-feet; and a Conditional Use Permit (CUP-16-02) to make the roads within the
2 proposed subdivision private; and
3

4 WHEREAS, the Town of Paradise Valley Council provided a Statement of Direction (the
5 “SOD”) to the Planning Commission at a public meeting on June 8, 2017, within the allowable
6 time limits prescribed in Article 2-5, Committees and Commissions, of the Town Code; and
7

8 WHEREAS, this SOD gave guidance to the Town of Paradise Valley Planning
9 Commission to evaluate the private roadway access gates for overall safety and conceptual
10 design; and
11

12 WHEREAS, the Town of Paradise Valley Planning Commission held a public hearing on
13 October 3, 2017, in the manner prescribed by law, for the purpose of considering the request to
14 approve private roadway gates and related improvements on the property located at the
15 northwest corner of the Northern Avenue alignment and Scottsdale Road (the “Property”), and
16 recommended approval with conditions; and
17

18 WHEREAS, the Town of Paradise Valley Council held a public hearing on _____
19 _____, 2017, in the manner prescribed by law, to hear and take action on Ordinance Number
20 2016-15 regarding said request to approve private roadway gates and related improvements as
21 recommended by the Planning Commission; and
22

1 WHEREAS, the Town of Paradise Valley Council finds that the Applicant met the
2 requirements of Section 2-5-2.F, Citizen Review Process, including holding Citizen Review
3 sessions on October 25, 2016, November 1, 2016, September 14, 2017, and September 19, 2017
4 to provide a reasonable opportunity for the Applicant, adjacent landowners, and other potentially
5 affected citizens to discuss issues or concerns they may have with the Application; and
6

7 WHEREAS, Mobility Policy 4.4.1.2 of the Town of Paradise Valley General Plan
8 discourages the installation of private roadway gates. However, given the access and proximity
9 of the subject property onto the major arterial of Scottsdale Road, the constraints in improving
10 the Northern Avenue alignment, and the existence of private roadway gates for residential
11 subdivisions along Scottsdale Road being common, private roadway gates are justified in this
12 instance.
13

14 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF**
15 **THE TOWN OF PARADISE VALLEY, ARIZONA THAT:**
16

17 SECTION 1. The Property is granted the use and installation of private roadway access gates
18 and related improvements subject to the conditions set forth in Section 2, and subject to Section
19 4 of this ordinance.

20
21 SECTION 2. Conditions.
22

- 23 1. SUP-16-03 shall allow for private roadway gates and related improvements on portions
24 of the property described in the legal description prepared by Eric G. Coffey, dated June
25 6, 2017 (the "Property") and attached as Exhibit A.
26

1 2. All improvements shall be in substantial compliance with the following:

2 a. The concept plan, concept details, planting plan, hardscape plan, and lighting plan
3 prepared by Refined Gardens, dated May 2016, attached as Exhibit B, and
4

5 b. The Wall and Gate Plan prepared by Cullum Homes and Strong-Kennedy
6 Architects attached as Exhibit C.

7 3. The related applications to develop the Property shall be approved by the Town,
8 specifically the Text Amendment (MI-16-03), Rezoning (MI-16-04), Preliminary Plat
9 (PP-16-03), Conditional Use Permit (CUP-16-02), and Subdivision Signs (MI-17-03),
10 along with recordation of the final plat for the Property.

11 4. Lighting in the gate area shall comply with the Town Code and the Town Special Use
12 Permit Guidelines, with details on all lighting such as location, quantities, fixture type,
13 lumens, and foot-candle requirements to be as generally shown on the referenced plans of
14 Condition 2. The referenced plans of Condition 2 shall control in the event of an
15 inconsistency.

16 5. All landscaping in the gate area shall comply with the Town Landscape Guidelines, with
17 details on location, quantities, plant type, and plant size to be as generally shown on the
18 referenced plans of Condition 2.

19
20 6. The owner of the Property, or successors, shall provide the Town, in a form acceptable to
21 the Town Attorney, a grant of access easement and a private roadway maintenance
22 agreement for the private roadway, private roadway gates, emergency access gate, and

1 any related roadway/gate improvements on this Property. This form shall be reviewed by
2 the Town Attorney, be in compliance to applicable local and state laws, and be recorded
3 with the Maricopa County Recorder's Office. Said form shall be recorded prior to or on
4 the Effective date of this ordinance.

- 5
- 6 7. To minimize impact of stacking by motorized vehicle use near the entry gates, the
7 developer and/or homeowner association shall contract with one landscape maintenance
8 provider for lot and tract maintenance.
- 9

10 SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, or portion of
11 this ordinance or any part of these amendments to the Town Code adopted herein by reference is
12 for any reason held to be invalid or unconstitutional by the decision of any court of competent
13 jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

14

15 SECTION 4. Effective Date. This ordinance shall become effective when (a) the final plat for
16 "The Villas at Cheney Estates" subdivision has been approved by the Town Council and
17 recorded with the Maricopa County Recorder's Office and (b) the owner of the Property has
18 provided to the Town a duly executed Proposition 207 waiver in the form attached as Exhibit B,
19 which Proposition 207 waiver need not be submitted to the Town until after the final plat for
20 "The Villas at Cheney Estates" subdivision has been approved by the Town Council. The final
21 plat for "The Villas at Cheney Estates" subdivision and the Proposition 207 waiver shall be
22 recorded at the same time.

23

24

1 PASSED AND ADOPTED by the Mayor and Town Council of the Town of Paradise Valley,
2 Arizona, this ____ day of _____, 2017.

3
4 _____
5 Michael Collins, Mayor
6

7 SIGNED AND ATTESTED TO THIS ____ DAY OF _____ 2017
8

9 ATTEST:
10

11
12 _____
13 Duncan Miller, Town Clerk
14

15 APPROVED AS TO FORM:
16

17
18
19 _____
20 Andrew M. Miller, Town Attorney
21
22
23

24 **CERTIFICATION**
25

26 I, Duncan Miller, Town Clerk, certify that this is a correct copy of Ordinance Number 676 duly adopted by the
27 Town Council of Paradise Valley at a meeting held on the this ____ day of _____, 2017. This Ordinance
28 appears in the minutes of the meeting, and has not been rescinded or modified and is now in effect. I further certify
29 that the municipal corporation is duly organized and existing, *and* has the power to take the action called for by the
30 foregoing ordinance.
31
32
33
34

35 _____
36 Duncan Miller, Town Clerk

When recorded, return to:
Paradise Valley Town Attorney
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

WAIVER OF RIGHTS AND REMEDIES

UNDER A.R.S. § 12-1134

This agreement regarding Waiver of Rights and Remedies under A.R.S. § 12-1134 (this "Agreement") is made on this _____ day of _____, 2017, between TOWN TRIANGLE, LLC, an Arizona limited liability company, and FOLKMAN PROPERTIES, LLC, an Arizona limited liability company (collectively, "Owner"), and the TOWN OF PARADISE VALLEY, an Arizona municipal corporation (the "Town"), regarding the property located in the Town at the northwest corner of Scottsdale Road and the Northern Avenue alignment, which is more particularly described by the legal description (the "Property," attached hereto as Exhibit A).

The Owner agrees and consents to all the conditions of approval (the "Conditions of Approval," attached hereto as Exhibit B) that are set forth in the final approvals by the Town Council and/or Planning Commission regarding the following applications related to the Property: Text Amendment (MI-16-03) to Article II, Definitions, and Article IX, Cluster Plan District, of the Town's Zoning Ordinance, to allow for modifications to the cluster plan provisions for this proposed development such as lot size, height measurement, and setbacks; Rezoning (MI-16-04) to change the zoning district from "R-43 Single Family Residential District" and "Special Use Permit – Country Club and Golf Course" to the "R-43 Single Family Residential District Cluster Plan"; Preliminary Plat (PP-16-03) for up to eight residential single-family lots; Conditional Use Permit (CUP-16-02) to make the road(s) within the proposed subdivision private; Special Use Permit (SUP-16-03) for private roadway gates; Subdivision Signs (MI-17-03), and Final Plat.

The Owner has voluntarily applied for the change in its land use entitlements referenced in these above applications; and agrees that the Conditions of Approval to develop an up to eight-lot single-family residential subdivision on the Property do not diminish the value of the Property.

By signing this Agreement, the Owner acknowledges that the Owner waives any right to claim diminution in value or claim for just compensation for diminution in value with regard to the Property under A.R.S. § 12-1134 related to the approval of said applications.

This Agreement, any exhibits attached hereto, and any addendum, constitute the entire understanding and agreement of the Owner and the Town and shall supersede all prior agreements or understandings between the Owner and the Town only with respect to said applications. This Agreement may not be modified or amended except by written agreement by the Owner and the Town.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona.

This Agreement shall become effective when the final plat for "The Villas at Cheney Estates" is recorded in the Official Records of the County Recorder's Office, Maricopa County, Arizona. The Town Clerk shall file this Agreement in the Official Records of the County Recorder's Office, Maricopa County, Arizona at the same time that the final plat for said plat is recorded.

This Agreement runs with the land and is binding upon all present and future owners of the Property.

This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

The Owner warrants and represents that TOWN TRIANGLE, LLC and FOLKMAN PROPERTIES, LLC are the owners of fee title to the Property.

Dated this _____ day of _____, 2017.

“OWNER”

TOWN TRIANGLE, LLC, an Arizona limited liability company

By:_____

Name: _____

Title: _____

State of Arizona)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2017
by _____, the _____ of TOWN TRIANGLE, LLC, an Arizona
limited liability company, for and on behalf thereof.

My commission expires: _____
Notary Public

“OWNER”

FOLKMAN PROPERTIES, LLC, an Arizona limited liability company

By:_____

Name: _____

Title: _____

State of Arizona)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2017
by _____, the _____ of FOLKMAN PROPERTIES, LLC, an
Arizona limited liability company, for and on behalf thereof.

My commission expires: _____
Notary Public

“TOWN”

TOWN OF PARADISE VALLEY,
an Arizona municipal corporation

Kevin Burke, Town Manager

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew Miller, Town Attorney

EXHIBIT A: PROPERTY

[add legal]

EXHIBIT B: CONDITIONS OF APPROVAL

The Conditions of Approval for the Property of “The Villas at Cheney Estates,” are as follows:

Zoning Ordinance Text Amendment (MI-16-03)

Subject to Ordinance Number 2016-13, providing for severability and providing for an effective date.

Rezoning (MI-16-04)

Subject to Ordinance Number 2016-14 that includes the following conditions:

1. This rezoning shall apply to the property as described in the legal description prepared by Eric G. Coffey, dated June 6, 2017 (the “Property”) and attached as Exhibit A.
2. Prior to the final plat of this Property being acted upon by the Planning Commission and/or Town Council, the appropriate documentation shall be provided to the Town regarding “The Villas at Cheney Estates” subdivision having a 100-year assured water supply.
3. The text amendment of Ordinance 2016-03 (MI-16-03), Preliminary Plat (PP-16-03), Conditional Use Permit (CUP-16-02) for the private road, Special Use Permit of Ordinance 2016-15 (SUP-16-03) for the private roadway gates, subdivision entry signs (MI-17-03), and final plat for the Property of “The Villas at Cheney Estates” shall be approved by the Town.
4. The applicant shall provide a duly executed Proposition 207 waiver in the form attached as Exhibit B as specified in Section 4 of this ordinance.
5. Prior to recordation of the final plat for this Property, an assurance shall be provided to the Town to complete any improvements in the Scottsdale Road right-of-way and grading within the drainage easement on lots 6 and 7 in the event the developer/owner fails to do so.
6. Prior to recordation of the final plat, the owner of the Property shall be responsible to provide an assurance to the Town for the improvement of a bicycle and/or pedestrian route within the Northern Avenue alignment adjoining the Property. This assurance shall cover the cost to install the route and landscaping adjoining the Property. Such assurance shall expire five years after recordation of the final plat. If the final Paradise Valley Bicycle and Pedestrian Plan as adopted by the Town Council does not include a recreational path within the Northern Avenue alignment between Scottsdale Road and Golf Drive, then the owner of the Property shall have no obligation to install any bicycle and/or pedestrian path and

the assurance shall be cancelled. The owner of the property shall not be obligated to install such bicycle and/or pedestrian path until the Town has installed a similar path from Golf Drive to the western edge of the Property.

7. The final plat, Conditional Use Permit (CUP-16-02) for the private road, Special Use Permit (SUP-16-03) for the private roadway gates, and subdivision entry signs (MI-17-03) for the Property of “The Villas at Cheney Estates” is only valid if and when the Zoning Ordinance Text Amendment (MI-16-03) and Rezoning (MI-16-04) for the Property become effective; and at such time as the Letter of Map Revision (LOMR) through the Federal Emergency Management Agency (FEMA) is completed, as reflected in the Conditional Letter of Map Revision (CLOMR) comments from FEMA dated July 19, 2017, as amended.
8. A trust indenture establishing title to the common areas must be executed in accordance with Section 905, Conveyance of Common Lands, of the Zoning Ordinance.
9. Prior to the issuance of the first certificate of occupancy for any single-family dwelling in the subdivision, the applicant shall complete the following items related to the Property:
 - a. Drainage and floodplain improvements,
 - b. Private roadway in accordance with Conditional Use Permit (CUP-16-02),
 - c. Water, sewer, electric, and natural gas utilities,
 - d. Subdivision wall and related perimeter landscaping,
 - e. Right turn deceleration lane improvements as required by the City of Scottsdale, and
 - f. Private roadway gates, landscaping, and lighting of Special Use Permit (SUP-16-03).
10. Development of the Property of “The Villas at Cheney Estates” subdivision, homes, and related structures shall be in compliance with the following:
 - a. All applicable Federal, State of Arizona, and Town Ordinances, including the Zoning Ordinance Text Amendment (MI-16-03) cluster plan standards,
 - b. All applicable floodplain regulations, including the required improvements necessary to obtain the Letter of Map Revision (LOMR), and
 - c. The final plat for the Property of “The Villas at Cheney Estates.”

Preliminary Plat (PP-16-03)

1. The final plat for “The Villas at Cheney Estates” shall be in substantial compliance with the Preliminary Plat, Sheets 1-3, prepared by CVL Consultants, dated August 31, 2017.

2. Prior to the final plat of this Property being approved by the Town Council, the appropriate documentation shall be provided to the Town regarding “The Villas at Cheney Estates” subdivision having a 100-year assured water supply.
3. A final subdivision wall and landscape plan shall be approved with the final plat for “The Villas at Cheney Estates.” This plan shall exclude the areas approved under the Special Use Permit of Ordinance 2016-15 (SUP-16-03) related to the private roadway gates, walls, and other improvements/landscaping depicted on such plan.
4. Prior to recordation of the final plat for said subdivision, the applicant shall provide to the Town Attorney a copy of the CC&R’s or other documents for review.
5. Within 60 days of approval of the final plat, the applicant shall submit to the Town mylars of the approved plans and an electronic version of these plans in a pdf format for the Town’s permanent record.

Conditional Use Permit (CUP-16-02)

1. This private roadway Conditional Use Permit (CUP) shall apply to the property as described in the legal description prepared by Eric G. Coffey dated September 11, 2017 (the “Property”).
2. This CUP shall be in substantial compliance with the roadway cross-sections as shown on the Preliminary Plat prepared by CVL Consultants, dated August 31, 2017, which are in general conformance with the Typical Local Cross-Section, Option B, of the Town’s General Plan.
3. The owner of the Property shall provide the Town a grant of access easement over the private roadway and a private roadway maintenance agreement pursuant to Ordinance Number 2016-15, allowing for private roadway gates of SUP-16-03.

Special Use Permit (SUP-16-03)

Subject to Ordinance Number 2016-15 that includes the following conditions:

1. SUP-16-03 shall allow for private roadway gates and related improvement on portions of the property described in the legal description prepared by Eric G. Coffey, dated June 6, 2017 (the “Property”) and attached as Exhibit A.
2. All improvements shall be in substantial compliance with the following:
 - a. The concept plan, concept details, planting plan, hardscape plan, and lighting plan prepared by Refined Gardens, dated May 2016, attached as Exhibit B, and

- b. The Wall and Gate Plan prepared by Cullum Homes and Strong-Kennedy Architects attached as Exhibit C.
3. The related applications to develop the Property shall be approved by the Town, specifically the Text Amendment (MI-16-03), Rezoning (MI-16-04), Preliminary Plat (PP-16-03), Conditional Use Permit (CUP-16-02), and Subdivision Signs (MI-17-03), along with recordation of the final plat for the Property.
4. Lighting in the gate area shall comply with the Town Code and the Town Special Use Permit Guidelines, with details on all lighting such as location, quantities, fixture type, lumens, and foot-candle requirements to be as generally shown on the referenced plans of Condition 2. The referenced plans of Condition 2 shall control in the event of an inconsistency.
5. All landscaping in the gate area shall comply with the Town Landscape Guidelines, with details on location, quantities, plant type, and plant size to be as generally shown on the referenced plans of Condition 2.
6. The owner of the Property, or successors, shall provide the Town, in a form acceptable to the Town Attorney, a grant of access easement and a private roadway maintenance agreement for the private roadway, private roadway gates, emergency access gate, and any related roadway/gate improvements on this Property. This form shall be reviewed by the Town Attorney, be in compliance to applicable local and state laws, and be recorded with the Maricopa County Recorder's Office. Said form shall be recorded prior to or on the Effective date of this ordinance.
7. To minimize impact of stacking by motorized vehicle use near the entry gates, the developer and/or homeowner association shall contract with one landscape maintenance provider for lot and tract maintenance.

Subdivision Signs (MI-17-03)

1. Subdivision signage and sign lighting for the Property of "The Villas at Cheney Estates" shall be in substantial compliance with the Wall and Gate Plan prepared by Cullum Homes.
2. Sign lighting shall not exceed two fixtures per sign, each fixture shall not exceed a lumen count of 1,080 lumens, and the illumination shall not exceed 0.75 foot-candles at the property line.