

When recorded mail to:

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

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

This Grant of Access Easement over Private Roadway and Private Roadway Maintenance Agreement ("Agreement") is made and entered into as of this ____ day of _____, 2019, by and between Cullum Homes Inc., an Arizona corporation ("Grantor), and the TOWN OF PARADISE VALLEY, an Arizona municipal corporation ("Town").

1. Grantor is the fee simple owner of that certain real property located in the Town of Paradise Valley, County of Maricopa, State of Arizona, as described on Exhibit A and located at the 7525 N. Ironwood Drive Paradise Valley, Arizona 85253 (the "Property").
2. Grantor grants to Town non-exclusive access easement rights in, over and across that certain real property described on Exhibit B (the "Private Roadway") and Town 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). For purposes of this Agreement, "Property Owner" shall mean the fee simple owner(s) of residential lots within the Property and "Easement Owner" shall mean the fee simple owner(s) of the Private Roadway.
3. Notwithstanding anything to the contrary in this Agreement, Easement Owner may continue to use the Private Roadway for any and all lawful purposes so long as such uses do not materially and adversely interfere with the access granted in this Agreement. Town acknowledges and agrees that the use of the Private Roadway for uses consistent with Town-approved plats, plans, and ordinances do not materially or adversely interfere with the access granted in this Agreement. Easement Owner may design, construct, maintain, and operate a private right-of-way, gates, guardhouses, utilities, curbs, lighting, landscaping, and other improvements, equipment, and facilities (the "Facilities") as permitted by Town-approved plats, plans, and ordinances, as such documents may be amended, modified, supplemented, or replaced from time to time (collectively, the "Plans"), and in compliance with all applicable ordinances, codes, rules, and regulations ("Applicable Law"). Easement Owner may locate, relocate, modify, remove, and replace the Facilities from time to time so long as the remaining Facilities satisfy the Plans and Applicable Law.

4. Easement Owner, for itself and its successors and assigns, covenants with Town that at all times after the date of this Agreement, Easement Owner, at its own cost and expense, will keep or cause the upkeep of the Private Roadway and Facilities in a clean, proper, and workmanlike manner, and in compliance with Applicable Law. Upon assignment by Grantor of its right, title, or interest in and to the Private Roadway, Grantor's successors and assigns shall be bound by the obligations in this Paragraph 4 and Grantor shall be relieved of its obligations in this Paragraph 4 with respect to the Private Roadway.

5. If for any reason Easement Owner does not fulfill its duty to clean and maintain the Private Roadway as required by Paragraph 4 and such failure continues for sixty (60) days after written notice thereof from Town to Easement Owner (except in the case of imminent danger where only reasonable prior notice is required), Town 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 to clean or to maintain, and to be compensated by Easement Owner for Town's actual out-of-pocket costs and expenses of the cleaning and maintenance as required by this Agreement and Applicable Law (the "Costs"). Notwithstanding the foregoing, so long as Easement Owner has commenced to cure the failure within sixty (60) days after written notice thereof from Town and thereafter diligently prosecutes such cure to completion, Town shall not exercise any of its rights or remedies in this Paragraph 5 (except in the case of imminent danger).

6. If Easement Owner does not compensate Town for the Costs as contemplated in Paragraph 5 within thirty (30) days after written demand from Town to Easement Owner, the Property Owner(s) shall each be liable to Town for the Costs on a pro rata basis, as follows. Each Property Owner shall be liable for only the share of the Costs calculated by dividing the Costs by the number of residential lots within the Property. If those amounts are not paid within thirty (30) days after written demand for payment of the Costs from Town to Easement Owner, the Property Owner(s), and their lenders (as evidenced by a deed of trust or mortgage recorded in the Official Records of Maricopa County, each a "Lender"), then ten (10) business days after a second written demand in the same form and to the same parties, Town may record a Notice of Claim of Lien against the residential lots within the Property for which the lots' allocated Costs have not been paid (in each case, in an amount not to exceed the balance of unpaid Costs allocated on a per lot basis as described above) to secure the payment of such amounts, a copy of which will be sent to Easement Owner. Each written demand shall reference this Agreement and the Town's right to lien. Notwithstanding anything to the contrary in this Agreement, Easement Owner or any Lender may, but shall not be obligated to, satisfy payment obligations arising under this Agreement on behalf of any Property Owner(s).

7. After delivery of notice as required by Paragraphs 5 and 6 and passage of applicable cure periods, Town shall have the right, at its option, to enforce collection of any amounts owed to the Town under Paragraph 5 above in any manner allowed by law, including, without limitation, bringing an action against any Property Owner(s) to pay such amounts owed by those Property Owner(s) (as provided in Paragraph 6) or bringing an action to foreclose its lien filed pursuant to Paragraph 6 against the Property owned by such Property Owner(s) 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.

8. This Agreement shall be in addition to any other Applicable Laws relating to easements and the subject matter herein. 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 and other rights and obligations created, granted, and conveyed hereby shall run with the land as a burden upon the Property and the Private Roadway.

9. Grantor warrants that (i) it is the fee simple owner of the Private Roadway and the Property, (ii) it has full right, power and authority to grant the easement set forth herein and to execute this Agreement, and (iii) 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 is bound.

10. This Agreement cannot be terminated, released, amended, or modified without the express prior written consent of Town. This Agreement shall terminate only upon mutual written agreement between the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which combined shall constitute one and the same instrument.

11. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be given by personal delivery, by overnight courier, or by deposit in the U.S. mail, registered or certified, return receipt requested, postage prepaid, correctly addressed to the intended recipient at its address as shown in the property ownership records of the Maricopa County, Arizona Assessor.

12. Except as otherwise expressly provided herein, the provisions of this Agreement are not intended to and do not constitute a dedication for public use. There rights created are private and for the benefit only of the parties hereto and their successors and assigns.

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

GRANTOR:

Cullum Homes Inc.,
an Arizona corporation

By: _____
[Title, if an LLC, corporation or trust],

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____,
2019, by _____, the [Title, if an LLC, corporation or trust] of _____
_____, an Arizona corporation, on behalf thereof.

Notary Public

My Commission Expires: _____

TOWN:

TOWN OF PARADISE VALLEY

By: _____
Jerry Bien-Willner, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew Miller, Town Attorney

Exhibit A – The Property

Lavitt Manor II as recorded in Book____ of Maps, Page____, records of Maricopa County Recording, Arizona.

Exhibit B – The Private Roadway

Tract A, Lavitt Manor II, as recorded in Book____ of Maps, Page____, records of Maricopa County Recorder, Arizona.