

ORDINANCE 2010.12

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EXHIBIT A

MARCH 10, 2010

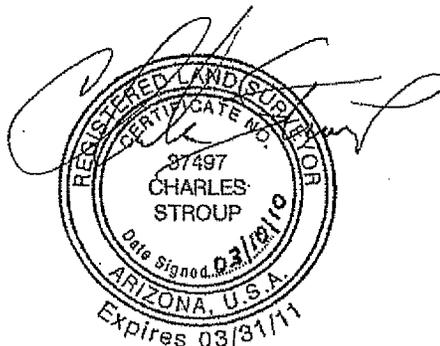
JOB #9039-10-01

LEGAL DESCRIPTION ABANDONMENT OF 20.00 FOOT WIDE DRAINAGE, PUBLIC UTILITY, IRRIGATION AND BRIDAL PATH EASEMENT.

A PORTION OF THE SOUTHEAST QUARTER IN SECTION 14, TOWNSHIP 01 NORTH, RANGE 04 EAST OF THE GILA AND SALT RIVER MERIDIAN IN THE COUNTY OF MARICOPA, STATE OF ARIZONA. ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED #1998-1127286 ON RECORD AT THE MARICOPA COUNTY RECORDERS OFFICE, STATE OF ARIZONA. ALSO BEING A PORTION OF LOT 16 IN CALLE DE CABALLOS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 97 OF MAPS, PAGE 33, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

THE WESTERLY 20.00 FEET, EXCEPT THE SOUTHERLY 20.00 FEET OF LOT 16, CALLE DE CABALLOS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 97 OF MAPS, PAGE 33.

THE ABOVE DESCRIBED ABANDONMENT CONTAINS 8,007 SQUARE FEET OR 0.1838 OF AN ACRE MORE OR LESS.



MAP OF
ABANDONMENT AREA/
SKETCH TO ACCOMPANY
LEGAL DESCRIPTION

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	6°33'45"	175.00	20.04
C2	19°53'42"	175.00	60.77
C3	26°27'27"	175.00	80.81



Expires 03/31/11

HOOK ENGINEERING, INC.

3221 N. 24th st. #10 Phoenix, AZ 85016
602-954-0166

JOB #9031-10-01

DATE 03/10/10

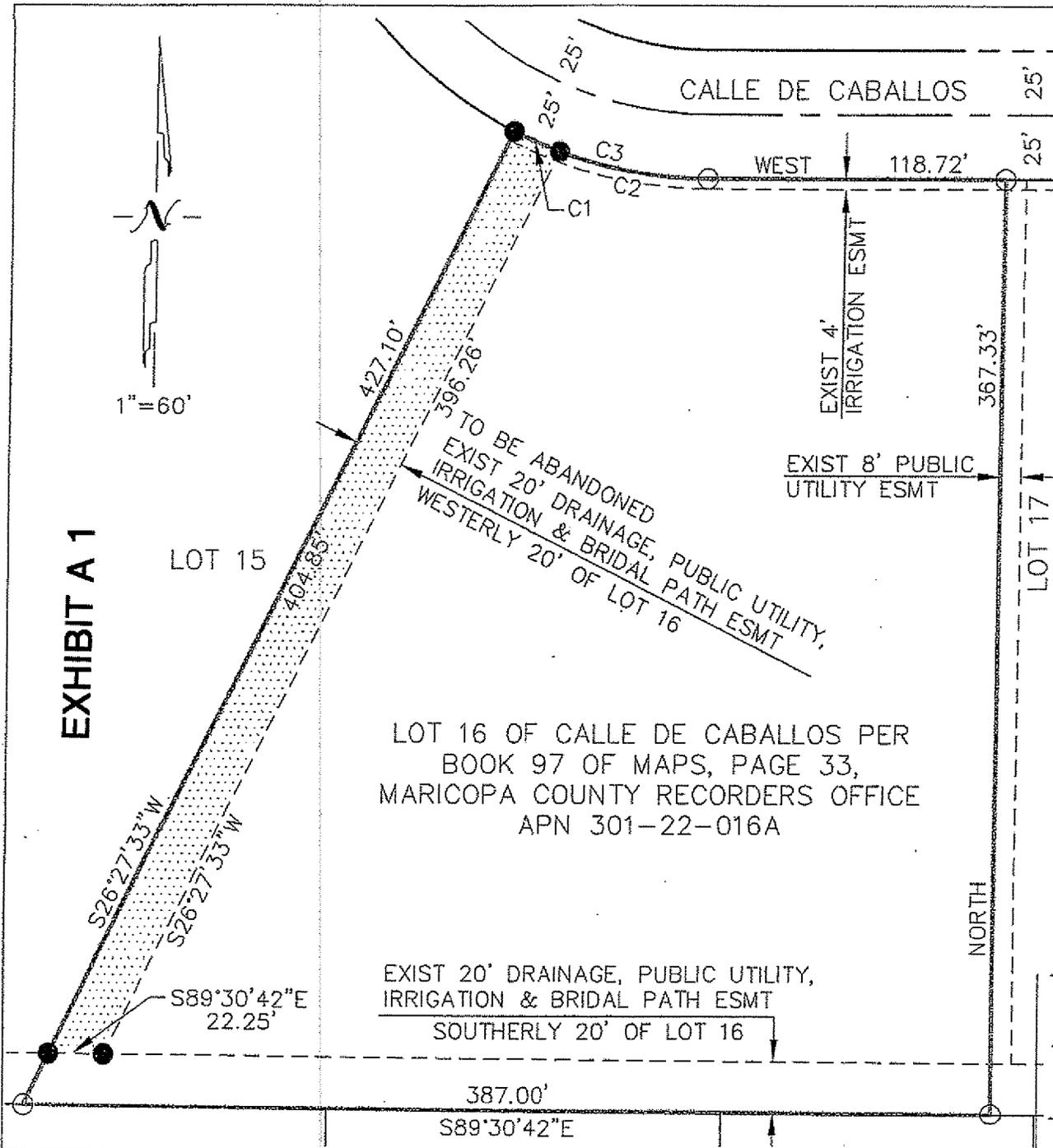


EXHIBIT A 1

LOT 15

LOT 17

LOT 16 OF CALLE DE CABALLOS PER
BOOK 97 OF MAPS, PAGE 33,
MARICOPA COUNTY RECORDERS OFFICE
APN 301-22-016A

EXIST 20' DRAINAGE, PUBLIC UTILITY,
IRRIGATION & BRIDAL PATH ESMT
SOUTHERLY 20' OF LOT 16

CALLE DE CABALLOS

WEST 118.72'

EXIST 4' IRRIGATION ESMT

EXIST 8' PUBLIC UTILITY ESMT

NORTH

1"=60'

427.10'

396.26'

404.85'

367.33'

387.00'

S89°30'42"E

S89°30'42"E
22.25'

S26°27'33"W

S26°27'33"W

C3
C2
C1

TO BE ABANDONED, PUBLIC UTILITY,
EXIST 20' DRAINAGE, IRRIGATION & BRIDAL PATH ESMT
WESTERLY 20' OF LOT 16

EXHIBIT B

EARL, CURLEY & LAGARDE, P.C.

ATTORNEYS AT LAW

Telephone (602) 265-0094
Fax (602) 265-2195

3101 North Central Avenue
Suite 1000
Phoenix, Arizona 85012

March 19, 2010

VIA HAND-DELIVERED

Constance Sheller
City of Tempe
Land Services Department
31 E. Fifth Street
Tempe, AZ 85281

RECEIVED

MAR 19 2010

City of Tempe
Engineering Division

RE: Request for Abandonment
1315 E. Calle de Caballos (Lot 16)

Dear Constance,

The purpose of this letter is to request the abandonment of an existing 20-foot easement ("Easement") that runs along the entire western property line of the above-mentioned single-family lot, which is currently owned by my clients, Garylyn and Rose Bergdale. The existing multi-purpose easement was initially established for drainage, public utilities, irrigation and equestrian uses (i.e. "bridle path") when the property was first subdivided in 1961. The subdivision has been built-out for decades and subsequent easements for the variety of uses that were proposed to be placed within the subject easement have been established by other easement areas that are far more conveniently located adjacent to the remaining residential lots within the Calle de Caballos subdivision.

The existing utility map from the City's Engineering Department validates that there are no existing wet utilities within the subject easement. Further, each lot accommodates an 8-foot PUE ("Public Utilities Easement") that runs along the east and west property lines in addition to a 4-foot PUE that is directly accessed for utility maintenance and/or repair from the front property lines along the Calle de Caballos roadway. In addition, each lot was built to retain the required amount of drainage so as to avoid cross-drainage between the various parcels and the surrounding residential communities. So, from a drainage, irrigation and utility perspective, the easement that was created almost 50 years ago is significantly antiquated and unnecessary.

Further, the existing 20-foot bridle path that surrounds the entire outer perimeter of the subdivision is physically accessed by centrally located "Tracts A and B", which are also used as training and/or corral areas. These large tract areas are far more convenient for the neighborhood to access than from the far southwest corner of the site (*See Attached Aerials*). In short, the existing 20-foot multi-purpose easement is no longer needed.

Finally, during the Calle de Caballos ("CDC") Annual HOA meeting on December 5, 2009, the HOA made a unanimous decision to support the subject abandonment request as it was determined that the subject easement is no longer necessary for the neighborhood's benefit, specifically with regard to accessing the bridle path that is accessed from the above-mentioned 'Tract(s) A & B' within the subdivision (*See Attached CDCHOA Meeting Minutes*).

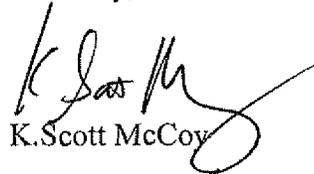
March 19, 2010
Page 2

EXHIBIT B continued

Therefore, we request to abandon the existing easement on the subject property with the acknowledgement that this area will not be improved with permanent structures unless otherwise approved by the City of Tempe.

Should you have any questions or need further information, please feel free to contact me, or a member of my Staff, Kirste Kowalsky at (602) 265-0094.

Sincerely,



K. Scott McCoy

SCM/kk

Attachments: As Stated

O:\INDEX\Bergdale\Abandonment\Request Letter for Abandonment.doc

1315 E. Calle de Caballos

EXHIBIT B2

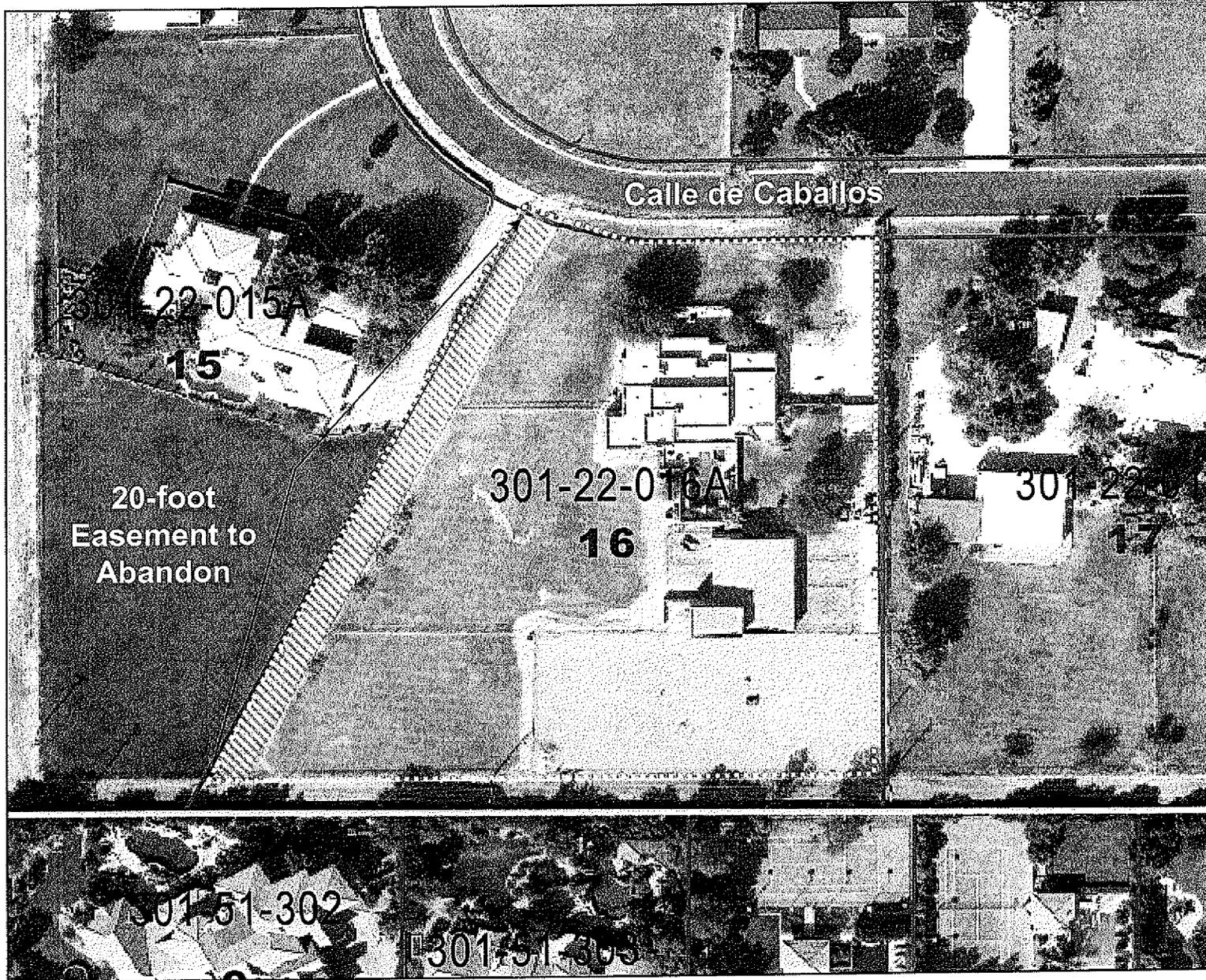
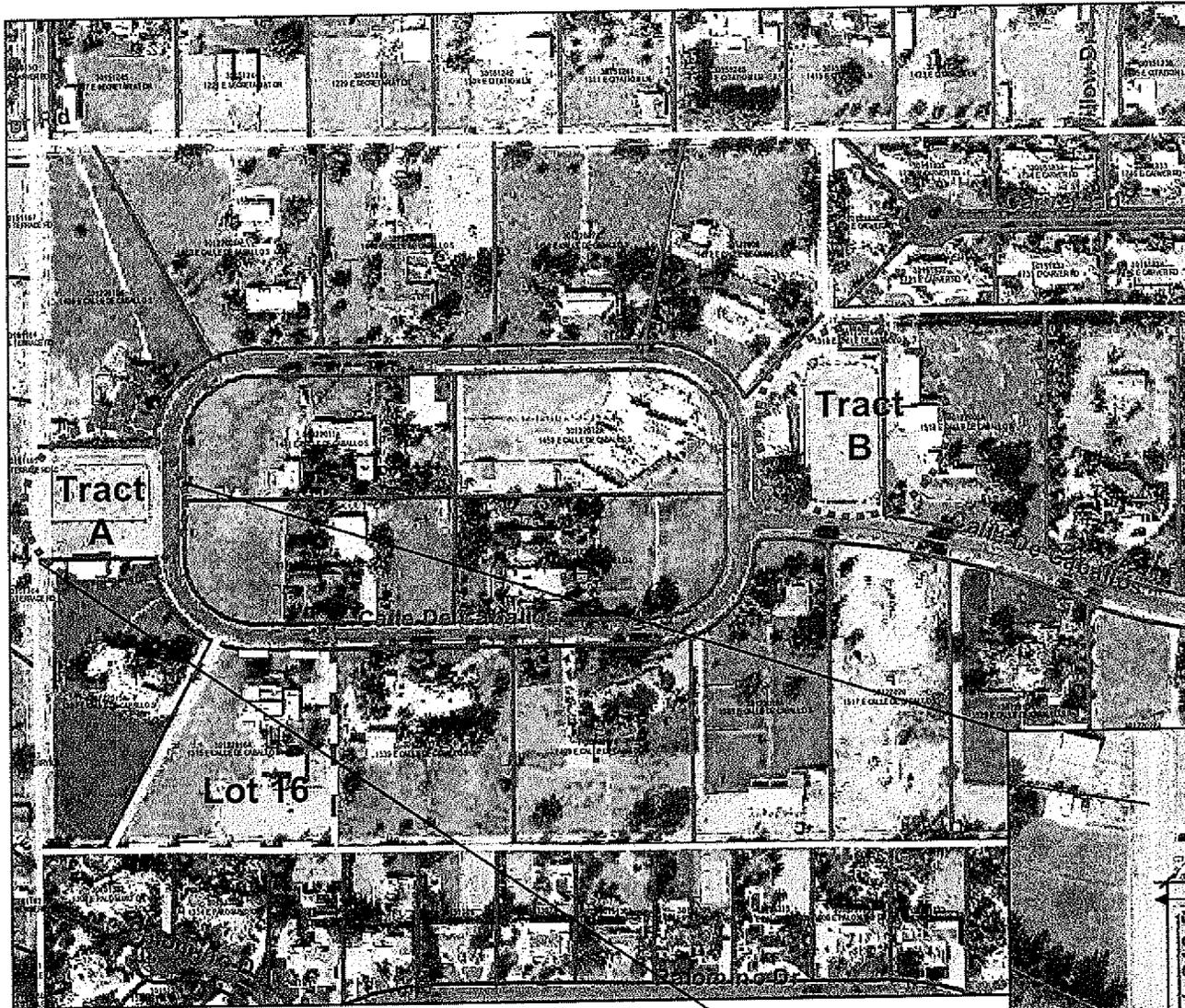
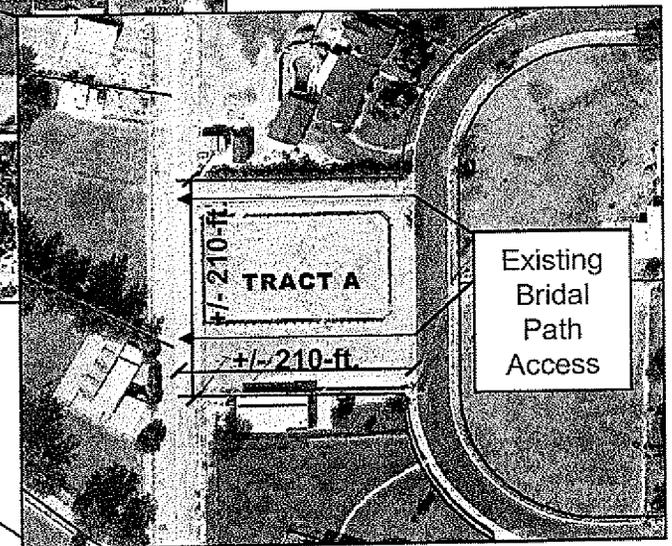


EXHIBIT B3

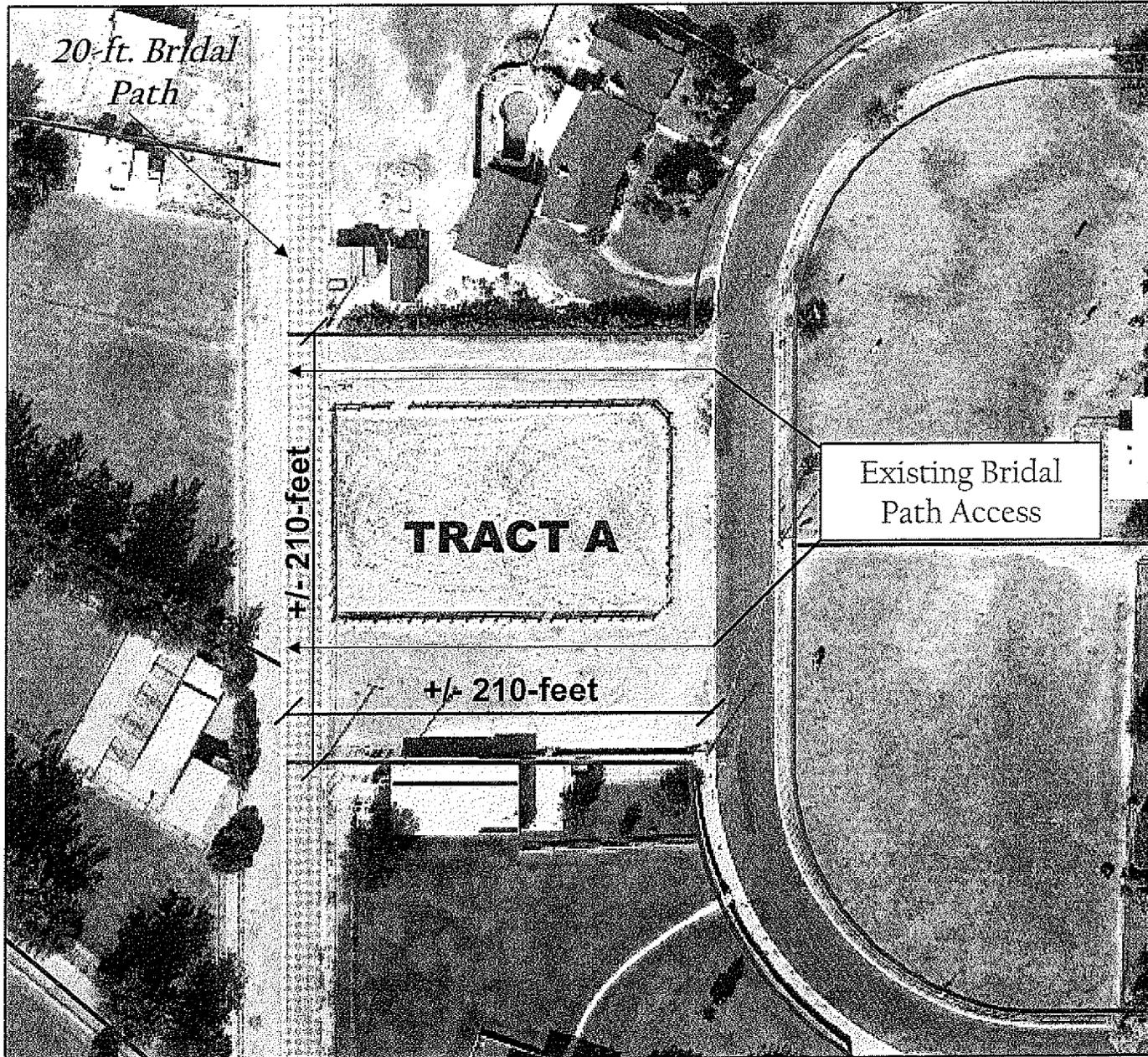


Bridal Path Access: "Tracts A & B"



Bridal Path Access: "Tract A"- Horse Coral

EXHIBIT B4



Bridal Path Access: "Tract B"- Horse Coral

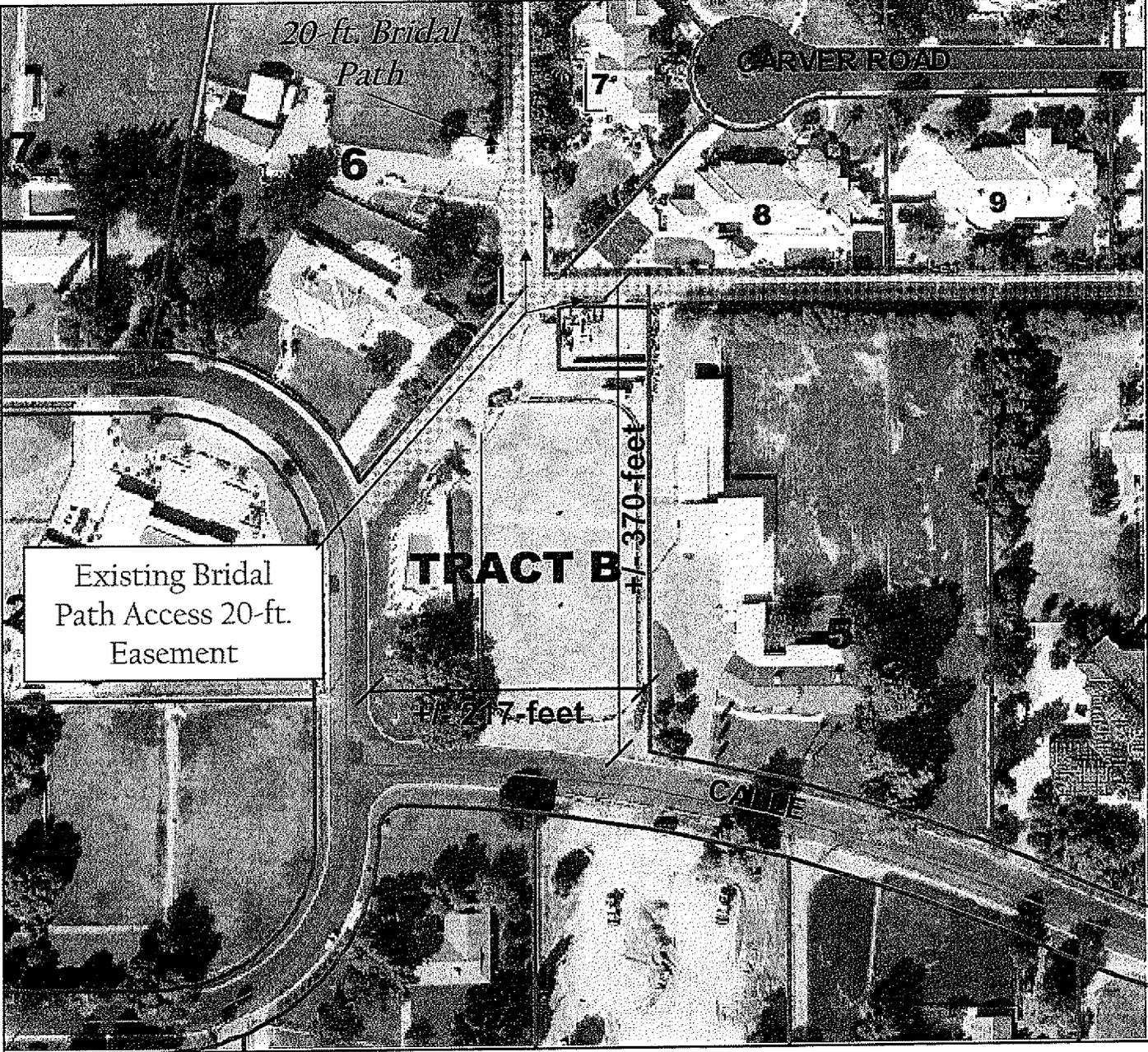


EXHIBIT B5

Recorded at the request of:
Old Republic Title Agency
When recorded, mail to:
GARLYN N. BERGDAL
1315 E. CALLE DE CABALLOS
TEMPE, AZ 85284

EXHIBIT C Document

Order No. 63 006890-SJS

QUITCLAIM DEED

For valuable consideration, receipt of which is hereby acknowledged, GARLYN N. BERGDAL AND ROSE A. BERGDAL, HUSBAND AND WIFE

do hereby quitclaim to GARLYN N. BERGDAL AND ROSE A. BERGDAL, TRUSTEES OF THE BERGDAL FAMILY TRUST DECEMBER 19, 1992

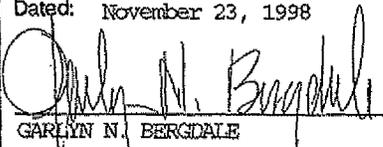
the following real property situated in MARICOPA County, Arizona: Lot 16, CALLE DE CABALLOS, according to Book 97 of Maps, page 33, records of Maricopa County, Arizona.

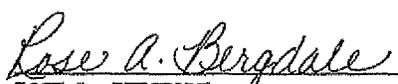
TOGETHER WITH an undivided 1/24th interest in Tract A and B; EXCEPT the South 50 feet of the North 70 feet of the East 70 feet of said Tract B, CALLE DE CABALLOS, according to Book 97 of Maps, page 33, records of Maricopa County, Arizona.

The beneficiaries of the Trust are: Garlyn N. Bergdale & Rose A. Bergdale
1315 E. Calle De Caballos, Tempe, AZ 85284

Exempt from Affidavit per ARS 42-1614, B8.

Dated: November 23, 1998

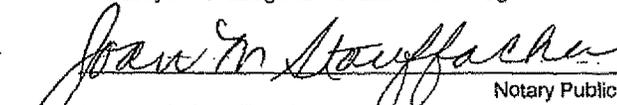

GARLYN N. BERGDAL


ROSE A. BERGDAL

STATE OF Arizona } ss.
County of Maricopa



This instrument was acknowledged before me
this 23rd day of November, 1998 by
Garlyn N. Bergdale & Rose A. Bergdale


Notary Public
My commission will expire: 8/21/00

STATE OF } ss.
County of

This instrument was acknowledged before me
this _____ day of _____, 19 _____ by

Notary Public
My commission will expire:

EXHIBIT D

Garlyn N. Bergdale
1315 E. Calle de Caballos
Tempe, Arizona 85284
602.989.2874

March 8, 2010

Constance Sheller
Real Estate Department
Engineering Division
City of Tempe
31 E. Fifth Street
Tempe, AZ 85281

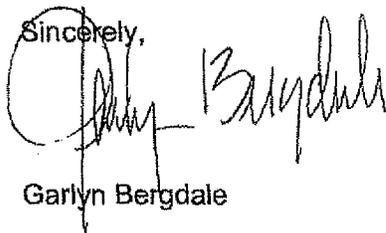
RE: 1315 E. Calle de Caballos
APN #301-22-016-A

Dear Constance:

As the owner of the above-referenced property, I hereby authorize K. Scott McCoy, along with the members of the firm Earl, Curley & Lagarde, P.C., 3101 N. Central Avenue Suite 1000, Phoenix, Arizona 85012, to file the necessary applications to the City of Tempe and to act as my representative regarding the proposed abandonment request.

If you should have any further questions, please feel free to contact me directly at (602) 989-2874.

Sincerely,

A handwritten signature in black ink, appearing to read "Garlyn Bergdale". The signature is written in a cursive style and is positioned to the right of the word "Sincerely,".

Garlyn Bergdale

EXHIBIT E

April 21, 2010

Dear Constance Sheller,

Thank you for your phone call earlier today. The CDC HOA Board believes there needs to be at least a 2/3rds signed instrument in order for the HOA to approve of the proposed abandonment. We believe this is an HOA issue, not a CDC Board issue. The Board and the Association are not one and the same.

Per my conversation with you, we understand the City Attorney believes, based upon our CC&R's, the City cannot withhold approval of abandonment based on the decision of the HOA.

Per our minutes of the Annual HOA meeting on December 5, 2009, the HOA believed the City would get back to the HOA with Mr. Bergdale's plan, so the HOA, not the Board, would decide whether or not to approve the plan. This was also discussed at our meeting on April 14, 2010 with Mr. Bergdale. Per my conversation with you this morning, we now know that this is not the case and the HOA will not be receiving any such plan from the City.

Mr. Bergdale has presented us with documentation to be signed by members of the HOA. As per our Board meeting with Mr. Bergdale on April 14, 2010, it was agreed that any such instrument would be presented and discussed by Mr. Bergdale to every home owner possible, and then offered to the Lot owner for their signature.

David Mitchelson
President
CDC HOA



**SIGN
HERE**

Sheller, Constance

From: Sheller, Constance
Sent: Thursday, April 22, 2010 12:22 PM
To: 'ddmitchels@cox.net'
Cc: Levesque, Ryan; Kent, Gregg; Springborn, Wendy; Collins, Lisa; McCoy, Cynthia
Subject: FW: Bergdale Easement Abandonment Request in Calle De Caballo Subdivision
Attachments: Board to Ms Sheller.doc

David,

As stated in your attached letter:

When I returned your phone call today, we did discuss:

Our legal staff has indicated that HOA and/or Board approval/denial cannot prevent easement abandonment requests from being placed on City Council Agendas for review.

Our legal staff has indicated that, per your request, we can include copies of your correspondences such as your HOA and/or Board letters/minutes in the City Council Agenda Packet

Ultimately it is up to the City Council to decide outcomes of "easement abandonment requests".

The City is not responsible for sending plans to HOA's and/or Board's, although we consider input when recieved.

Thank You for your correspondence on this application.

The "easement abandonment request" is currently being scheduled for a Public Hearing at the following City Council Meeting:

June 10, 2010,7:30 P.M.
Harry E.Mitchell Government Center
Tempe City Hall-City Council Chambers
31 E. 5th Street
Tempe, Arizona

Please keep in mind that council meeting dates are subject to change. This is the most current information I have to date.

If you have further questions, feel free to give me a call.

Constance Sheller
City of Tempe Engineering /Land Services
480 350-8860
constance__sheller@tempe.gov

From: David Mitchelson [mailto:parkavedcleaner@aol.com]
Sent: Thursday, April 22, 2010 9:17 AM
To: Sheller, Constance
Subject: Bergdale Easement

EXHIBIT E1

Thank you very much for your time. This letter does not replace our April 14th letter. It is in addition to it.

This is from my work email. Any future email please continue using the ddmitchels@cox.net address and or call me on my mobile number of 602-740-8121.

However in this instance please confirm by phone or email at both addresses that you recieved this specific email from me.

Thank you again,
David,



04/29/2010

EXHIBIT E2

Calle De Caballos HOA Board

1703 E. Warner Rd
Box 10-388
Tempe, AZ 85284

Garlyn Bergdale
1315 E. Calle De Caballos
Tempe, AZ 85284

April 14, 2010

Dear Garlyn or
To whom it may concern:

Re: Easement Clarification

This letter is in response to your request, dated March 26, 2010, asking the CDC Board to support eliminating the need to retain an 8' public utility easement (PUE) on your Lot number 16. This letter also clarifies the requirements of approval by the HOA, as requested by the City of Tempe, to abandon the 20 ft. Westside easement on Lot 16.

The Board of Calle De Caballos Homeowners Association has no objection to the request to either abandon the easement entirely or partially. Since there is no lighting facility along the easement per Article III, Section 3.19 of the CC&R's for Calle De Caballos, coupled with the information provided by you to the Board, the CDC Board does not see the need nor does it feel it has the authority to require an 8 ft. public utility easement (PUE) on Lot 16.

As per the Annual Meeting of the HOA on December 5, 2010, it was stated that you would submit your plan to the city and other governing bodies and they would submit a plan to the CDC HOA for approval. To reiterate, the Board does not require an 8 ft. PUE be included with your plan. The Board does require keeping the existing 4 ft. irrigation easement along the Northern perimeter of the property as shown on the proposed Map by Hook Engineering, Inc. dated 3/26/2010.

It is the Boards understanding that it will be up to the CDC Association to decide whether to accept the abandonment request and amend the plat.

"LOTS 1-24 inclusive, and Tracts A and B, Calle De Caballos, according to the plat of record in the office of the County Record of Maricopa County, Arizona, in Book 97, Page 33," is included in the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CALLE DE CABALLOS. Therefore per Article IX, Section 9.4 of the above Declaration in part states, "This Declaration may be amended at any time prior to December 31, 2020 by an instrument signed by not less than 2/3rds of the Lot owners, and thereafter by an instrument signed by not less than 2/3rds of the Lot owners. Any amendment must be recorded."

Please review the "Amended and Restated Declaration of Covenants, Conditions and Restrictions for Calle De Caballos" with attention to, but not limited to, page 2-Witnesseth, Article I, Sect. 1.8 and Article IX, Sect. 9.4.

Please feel free to contact the Board if you have any questions or concerns.

Sincerely,



David Mitchelson
President CDC HOA BOARD

Cc: Bill Weaver – CDC HOA BOARD
Sherry Barnard – CDC HOA BOARD
Lawrence Hudson – CDC HOA BOARD
Jon Cline – CDC HOA BOARD

EXHIBIT E3

Calle de Caballos Home owners Association (CDCHOA)

Item: CDC Annual HOA meeting

Date: 12-05-2009

Agenda: 2009 Year end Homeowners meeting

Members present: **Homewoners** - Cline, Bergdale, Hammon, Gee, Hudson, Walters, Schaefer, Kaufman, Jacobson.

Board members – Mitchelson, Weaver, Nicpon, Bernard, Kirk

Meeting notes:

	Notes
10:15 am	<p>David Mitchelson, President, called the meeting to order at 10:15 am In attendance were: (a quorum was present) For the board David and Tammie Michelson, Sherry and Paul Bernard, Stan Nicpon, Bill and Rhonda Weaver, Ellen Kirk</p> <p>Non board homeowners Jon and Liz Cline, Garlyn Bergdale, Forest Hamon, Grace Gee, Lawrence Hudson, Karen Shafer, Pat Kaufman, Marilyn Jacobson, David Walters. This constituting a quorum the meeting proceeded.</p> <p>David welcomed the homeowners and discussed the effect the economic conditions had had on neighborhood projects and all of the homeowners. He thanked Mike Moore for his care of the trails and the park, Ellen and Shelly for the Christmas lights this year at the gate and generally each homeowner for their contribution to our neighborhood.</p> <p>David went over the agenda for the meeting and then introduced Ellen Kirk the treasurer.</p>
Treasurer	<p>Treasurers report – Ellen presented the treasures report and the budget. Although the accounts carry a positive balance into the next year we did run over budget in irrigation repairs. As the system is old and continues to break down we can expect to see ongoing repair costs. In addition the required amount for pool maintenance and repair may not be sufficient.</p> <p>Budget recommendation – Ellen recommended that the current level of dues be maintained at \$1,000 per year per household.</p> <p>David Walters rose to question if there might be a need to raise the dues to \$150 per month. This would help to increase the budget buffer the neighborhood. After discussion he elected not to make that a motion and it was agreed to accept the recommendation Ellen had made to keep the dues at the \$1,000 per year figure. President Mitchelson called for a motion regarding raising the dues. The vote on the motion was to maintain the current structure with one vote opposed.</p>

See next page for Bergdale request

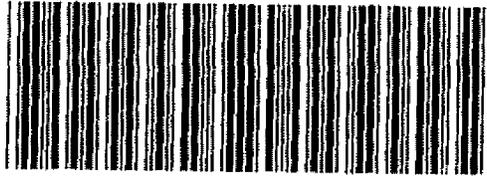
EXHIBIT E3 continued

<p>Elections</p>	<p>Board Elections -- Two members of the board were leaving, Nicpon and Kirk, which required election of two members to replace them. President Michelson opened the nominations and placed the names of Hudson and Cline in consideration. With no other nominations from the floor President Michelson requested acceptance of Cline and Hudson by acclamation. There being no dissent Cline and Hudson were elected and the board elections were closed.</p>
<p>Member agenda</p>	<p>Member agenda items: Property Taxes -- Rhonda Weaver asked if anybody else had received large property tax increases. There was general agreement. Mrs. Weaver asked if anybody wanted to organize a discussion with the appropriate taxing authority to try to reduce or at least stabilize the taxes. Lawrence Hudson said he had gone to court and had been successful in getting his property tax reduced. It was agreed that when the time came up for protest in 2010 Lawrence would assist whoever wanted to be part of the organized approach. In addition he is available to share information on his situation.</p>
	<p>Neighborhood speed controls. -- Ellen Kirk brought up the possibility of speed humps similar to the ones in the neighborhood just North of CDC. The problem exists mainly on the straight portion of the CDC roadway as the Circle portion does not lend itself to speeding. Ellen reported that the humps cost approximately \$1,800 each. The general discussion went toward using speed signs and other warning devices first. In addition the board may go the city and ask them to put the lines back on the road. There had been lines across the road prior the repaving.</p>
	<p>Neighborhood Garage sale -- The neighborhood garage sale has been successful each time it has been held and Sherry Bernard said she would take over getting it done again. The date is to be in March and all CDC members are encouraged to start saving items for the sale. Proceeds go to CD to help offset maintenance costs. Sherry will appreciate any help you might wish to provide.</p>
<p style="text-align: right;">→</p>	<p>Non scheduled items from the floor:</p> <p>Ellen Kirk -- can we organize a quarterly event at the park? People wanted to do this but it will take participation by everybody so call Ellen and volunteer. She cannot do it alone. Ellen said she would do a social committee -- Rhonda Weaver and Sherry Bernard volunteered to help Ellen.</p> <p>Garlyn Bergdale -- Garlyn asked if anybody had any opposition to him reducing his easement from the current 20 feet to 8 feet. This would place his easement in keeping with the easement allowance in each of the other properties in CDC. A question was raised about the process and requirements for this. Garlyn said he would have to submit his plan to the city and other governing bodies and they would submit a plan to the CDC HOA for approval.</p> <p>Garlyn presented a history of the easement for the homeowners that were not aware of it. The easement is Mr. Bergdale's property and he pays taxes on it just as all other Home Owners do. In the initial planning that easement had also been considered a potential drainage and access area but now that homes had been built all around CDC the initial purpose was no longer viable or possible. In addition access was easier now via the road that CDD has opened up North of the small arena.</p>

EXHIBIT E3 continued

	A motion was made and seconded from the floor to support, and authorize Mr. Bergdale to begin the process as outlined in his presentation. The vote was unanimous.
adjournment	President Mitchelson adjourned the meeting at 11:30 am

EXHIBIT E4



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

98-1075918 11/30/98 01:05

PAULA 1 OF 1

When recorded mail to:

Steve Legatich
1441 E. Calle de Caballos
Tempe, AZ 85284

CAPTION HEADING: _____

DO NOT REMOVE

This is part of the official document.

EXHIBIT E4

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CALLE DE CABALLOS

THIS DECLARATION of Covenants, Conditions and Restrictions is made this 14th day of November, 1998, by the undersigned, who represent all the owners of the Property as hereinbelow described.

WITNESSETH:

WHEREAS, the Owners own the following described real property (the "Property"), situated within Maricopa County, Arizona:

LOTS 1-24 inclusive, and Tracts A and B, Calle de Caballos, according to the plat of record in the office of the County Record of Maricopa County, Arizona, in Book 97, Page 33;

WHEREAS, the Property is presently restricted by that certain Declaration of Restrictions recorded in the Official Records of Maricopa County at Docket 3996, Page 547 (the "Prior Declaration"), which established Calle de Caballos as a uniquely planned residential subdivision having recreational areas, equestrian areas and riding paths;

WHEREAS, the Owners desire to perpetuate and protect the unique atmosphere created at Calle de Caballos by virtue of the Prior Declaration, while at the same time clarifying the rights, responsibilities, obligations, duties and benefits belonging to the Owners, their guests, licensees, assignees or any other persons entering onto or using the Property, as well as more adequately providing for the maintenance and care of the Common Area;

WHEREAS, the Owners intend that this Declaration shall supersede and replace the Prior Declaration in its entirety and that the rights, responsibilities, obligations, duties and benefits of the Owners hereafter be ascertained according to and governed solely by this Declaration;

WHEREAS, the Owners desire to form a non-profit corporation for the purpose of benefiting the Property and the Owners thereof, which non-profit corporation (herein referred to as the "Association") shall be intended, without obligation, to (1) acquire, construct, operate, manage and maintain the Common Area and facilities; (2) establish, levy, collect and disburse the assessments and other charges as may be imposed hereunder; and (3) as the agent and representative of the Owners or the Property, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of the Property; and

WHEREAS, in order to enable the Owners and the Association to accomplish the purposes outlined above, all of the Property is hereby subjected to and shall be held, sold and conveyed subject

EXHIBIT E4

to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all persons having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each owner thereof.

NOW THEREFORE, the Owners hereby declare, covenant and agree as follows:

ARTICLE I Definitions

The following words, phrase or terms used in this Declaration shall have the following meanings:

1.1 "Association" shall mean and refer to the Calle de Caballos Homeowners Association, Inc., an Arizona non-profit corporation to be organized by the Owners to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

1.2 "Board" shall mean the Board of Directors of the Association established under the articles of incorporation and bylaws.

1.3 "Common Area" shall mean all real property owned or acquired by the Association for the common use and enjoyment of all or a part of the owners, including all improvements, fixtures and other buildings, gates, stalls or fences as may be found thereon. The Common Area shall include, but shall not necessarily be limited to Tracts A and B as shown on the Plat, together with all improvements thereon. Tracts A and B may be referred to herein individually as the "Tract" or collectively as the "Tracts."

1.4 "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Calle de Caballos, as it may from time to time be amended or supplemented.

1.5 "Lot" shall mean and refer to the Lots delineated on the Plat, except for the Common Areas and Tracts.

1.6 "Member(s)" refers to a member of the Association. Each Owner shall be a Member.

1.7 "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. Owner shall include the purchaser of a Lot under an executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot merely as a security for the performance of an obligation nor shall the term "Owner" include a Developer or Contractor.

EXHIBIT E4

1.8 "Plat" shall refer to the above-referenced recorded plat, or any plat which is recorded in its stead.

1.9 "Prior Declaration" shall mean the Declaration of Restrictions hereinbefore described.

1.10 "Property" shall mean and refer to that certain real property hereinbefore described.

ARTICLE II Property Rights

2.1 Owner Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of sold Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area as approved by a majority vote of the Owners;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate, transfer or sell all or any part of the Common Area to any public agency, authority, individual or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of the Members has been recorded.

2.2 Delegation of Use. Any Owner may delegate, in accordance with the bylaws governing the Association, his right of enjoyment to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property.

ARTICLE III Permitted Uses and Restrictions

3.1 Residential Use. The Lots shall be single-family residential Lots, and there may be erected on any one Lot not more than one single-family residence plus such accessory and auxiliary garages, barns and tack-rooms as are incidental to single-family residential use in a subdivision where horses are allowed. There shall also be permitted one guest house on each Lot. No other buildings shall be erected on any of said Lots, nor shall any of said Lots or any part thereof be used for any business purposes which would violate Tempe city codes or ordinances.

EXHIBIT E4

3.2 Subdividing. No Lot shall be re-subdivided into smaller Lots nor conveyed or encumbered in less than the full original dimensions of such Lot as shown on the Plat. Nothing herein contained shall prevent the dedication or conveyance of portions of Lots for public utilities purposes in which event the remaining portion of such Lots shall, for the purpose of this provision, be treated as a whole Lot.

3.3 Parking. Automobiles of the private passenger class and pickup trucks may be parked on the side of any Lot; provided that any such parking area shall comply with the same set back requirements as the residential dwellings and be subject to the required approval by the Board. No motor vehicle which is under repair or not in operating condition shall be placed or permitted to remain on any street or streets, or any portion of any Lot or Lots unless it is within an enclosed garage or structure and not visible from the street or adjoining lot.

3.4 General Upkeep. No rubbish, garbage or trash shall be placed or kept on the Property except in containers or along roads during city approved trash pick-ups. Owners shall take responsible measures to control dust.

3.5 Tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lots except for gravity feed tanks. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal it from neighboring Lots, roads or streets, and then only with the prior approval of the Board and consistent with City of Tempe codes.

3.6 Horse Privileges. Subject to the laws, ordinances, health codes and rules and regulations of the State of Arizona, Maricopa County, City of Tempe, or any other municipality, district, or other governmental entity having regulatory control over the Property, Calle de Caballos is and shall remain a multi-purpose subdivision intended for the use and enjoyment of horsemen including the raising of horses. The care of horses shall be performed by the Lot Owner in a clean, neat, orderly fashion in accordance with the prevailing customs and methods; the physical facilities for the same shall also be maintained by the Lot Owner in a clean, neat, orderly fashion in accordance with the prevailing custom and usage so that such facilities shall not become a nuisance to the remaining Lot Owners and shall comply with all requirements which may be established from time to time by the above mentioned authorities or the Board.

3.7 Restriction on Other Animals. All animals, including dogs, must be kept within a fenced area, encaged or otherwise controlled and not allowed to wander off or fly about. A reasonable number of equine domestic stock may be raised and maintained on a Lot. However, at no time will swine be allowed on the Property. The Board shall be empowered to make such other rules and regulations as are required to control, restrict and regulate the presence, care and maintenance of all animals. At no time should animal feces be stored, shoveled onto, or dumped onto the common area or adjoining horse paths unless said animal matter is immediately tilled into the ground.

EXHIBIT E4

3.8 Construction Permitted. All structures erected on the Property must be of new construction, and no buildings or structures may be moved from any other location, other than the point of distribution or manufacture, onto any of the Lots or Tracts. No mobile homes may be used or placed on any Lot without prior Board approval.

3.9 Minimum Livable Area. All single-family residences constructed on the Lots shall contain a minimum livable area of 2,500 square feet on grade level if one story, with or without basement, and 2,000 square feet on the grade level if two story. A split level home containing a grade level, sub-grade level and above grade level shall contain a minimum livable area of 2,500 square feet on the grade level and sub-grade level combined. All square footage requirements shall be exclusive of open porches, pergolas or attached garages.

3.10 Plan Approvals. Except as provided herein, no single-family residence, garage, barn, stable or shed, fence or other structure shall be constructed on the Property without having first obtained the prior approval of design, location and materials by the Board as described herein. All such approvals shall be obtained pursuant to the provisions and requirements of Article V herein.

3.11 Commencement of Construction. No garage, barn, stable or similar structure shall be erected on any Lot until construction of the primary single-family residence (complying with these restrictions) shall have been commenced on said Lot, and no garage or barn shall be maintained or occupied until construction on said single-family residence is finished and ready for occupancy. Any garage, barn, stable or similar structure created on any Lot shall be of the same design and constructed of the same materials as the permanent residence on said Lot.

3.12 Permanent Structure. No garage, barn, stable, tack room, trailer, mobile home, motor home, motor vehicle, or any temporary structures of any nature may be used temporarily or permanently as a residence on any Lot or Tract. All permanent structures on all Lots shall comply with all minimum yard set back requirements established by the zoning ordinance of the City of Tempe, as it may be amended from time to time. In no event shall any structure on a Lot be closer than twenty (20) feet to the front or side Lot lines. Barns shall be built as to permit their walls to be at least fifty (50) feet from the single-family residence on the Lot.

3.13 Fenced Areas. When an Owner has one or more areas to be used for grazing, a fence shall be installed and maintained which extends to the front line of said grazing lot(s) and which encloses the entire grazing lot(s).

3.14 Fence Materials. All fences and corrals used for the shelter or containment of animals shall be in harmony with existing structures and fences as determined by the Board. No barbed or strand wire may be used. Block walls are permissible subject to approval of the Board.

3.15 Commercial Activities. No hotel, store, multi-family dwelling, boarding house, guest ranch, or any other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of the physically or mentally sick or for the treatment of disabled animals shall be

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erected or permitted upon the premises of any Lot, or any part thereof, and no business shall be conducted in or from any residence or building on any Lot which would violate city codes or ordinances.

3.16 Signs. No advertising signs, billboards or unsightly objects shall be erected, placed or permitted to remain on any of said Lots or Tracts, provided, however, that a sign or signs as may be required by legal proceedings and a single "For Sale" or "For Rent" sign, not containing more than eight square feet of surface area may be placed on any Lot, and such sign or signs shall not be deemed in violation of this restriction.

3.17 Upkeep Assessment. The Owners shall keep their Lots reasonably clean and clear of weeds and trash, so as not to cause an unsightly or dangerous condition, and if such Owner should fail after ten (10) days written notice from the Board to do so, the Board shall have the right to enter upon such Lot and may cause the same to be cleaned four times yearly, if necessary, and charge the actual cost thereof to the Owner of such Lot and said charges shall be a lien against the property.

3.18 Drainage. Final grades shall not be disturbed in any manner which may adversely affect any Lot or property whether within the subdivision or elsewhere; nor shall any Owner divert or cause diversion of the surface water from the street adjacent to his Lot onto any other Lot. All surface waters shall be left free to their natural flow unless lawfully diverted to a drainage ditch. The provisions of this paragraph shall be subordinate to the Maricopa County subdivision regulations governing such drainage.

3.19 Equestrian and Utility Easements. All Lots and Tracts in the subdivision are subject to a public utilities easement for the purpose of permitting installation and maintenance of lighting facilities for the equestrian easement and bridle path and no excavation, planting, fence, building, structure or other barrier or impediment may be placed or permitted to remain at any point on the equestrian easement and bridle path or public utility easement within the Property which would restrict the free use and enjoyment of said easements by the Owners. No trail bikes, motorcycle or motor driven vehicles of any kind shall make use of the equestrian easements and bridle paths or horse arena areas except for the limited necessary use of horse trailers and vehicles for supply, material delivery, or maintenance.

3.20 Diseases and Insects. No Owner shall permit any thing or condition to exist on a such Owner's Lot which shall induce, breed or harbor infectious diseases or noxious insects; provided, however, this provision shall not restrict the horse and animal privilege, contained herein.

3.21 Burning and Incinerators. No open fires or burning shall be permitted on any Lot at any time and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues, grills, fire pits or outdoor fireplaces.

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ARTICLE IV

Calle de Caballos Homeowners Association

4.1 The Association. The Calle de Caballos Homeowners Association shall be a non-profit Arizona corporation charged with the duties and invented with the powers prescribed by law and set forth in its articles of incorporation, bylaws and this Declaration. Neither the articles nor bylaws shall, for any reason, be amended or otherwise changed or interpreted so or to be inconsistent with this Declaration.

4.2 Board of Directors. The affairs of the Association shall be conducted by a board of no less than three (3), no more than six (6) directors who shall each be Owners. Beginning with the first annual meeting of the Members, at each annual meeting, the Members shall elect the directors, each for a term of two (2) years.

4.3 Powers and Duties. The Association shall have such rights, duties and powers as set forth in the articles and bylaws, as they may be amended from time to time. Such rights duties and powers shall include, but not be limited to, the following:

- (a) Hold title to the Common Area;
- (b) Maintain and manage the Common Area and the equestrian, utility and irrigation easements, if any;
- (c) To fix, levy, collect and enforce payment by any lawful means of, all charges or assessments provided for herein and to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including any licenses, taxes or governmental charges which may be levied or imposed against the Common Area or any other property owned by the Association.

4.4 Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, may recommend to the homeowners to adopt, amend and repeal rules and regulations to be known as the Calle de Caballos Rules ("Rules"). The Rules may restrict and govern the use of any area by any Owner, or by any invitees, licensees or lessees of such Owner; provided, that the Rules may not discriminate among owners and shall not be inconsistent with this Declaration, the bylaws or articles. The Rules may also set out the standards to be used by the Board in making determinations under Article V. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, the Rules shall have the same force and effect as if they were set forth in and were a part of the Declaration.

4.5 Personal Liability. No member of the Board or any committee of the Association, or any officer of the Association, or the manager, shall be personally liable to any Owner, or to any other

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party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any acts, omissions, error or negligence of the Association, the Board, the manager, or any other representative or employee of the Association, or any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

ARTICLE V Architectural Review

5.1 Architectural Review Duties of the Board. The Board shall have the authority and responsibility to review the plans and specifications of all new single-family residences, garages, barns, stables, sheds, fences and other structures to be constructed, remodeled, or added in the subdivision pursuant to the terms hereof, and perform such other duties as may be delegated, assigned or imposed upon it by the Members.

5.2 Discretion of the Board. The Board shall have the right to reasonably refuse to approve any plans or specifications or grading plans, which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitations of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure including exterior color scheme, shall be subject to the prior approval of the Board. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Board. All decisions of the Board shall be final and no Owner or other party shall have recourse against the Board for its refusal to approve any such plans and specifications or plot plans, including lawn area and landscaping, except as is applicable by the City of Tempe building code.

5.3 Time For Approval. Two copies of the complete plans and specifications of any proposed structure must be submitted to the Board. At least one copy of said plans and specifications shall be retained by the Board. In the event that a written request for such approval is not acted upon within thirty (30) days of the receipt by the Board of said request, then such approval will not be required provided, however, that no structure may be constructed pursuant to this paragraph which conflicts with any specifically delineated restriction contained herein, and that said plans comply to codes enacted by the City of Tempe.

5.4 Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Board, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

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5.5 Meetings and Compensations. The Board shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of any simple majority of the members at a meeting, or otherwise, shall constitute the act of the Board. Members of the Board shall not be entitled to compensation for their services hereunder.

5.6 Board Rules. The Board may, from time to time, and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations setting forth the standards and procedures for Board review and guidelines for architectural design, placement of buildings, landscaping, color scheme, exterior finishes and materials and similar features which are recommended for use on the Property. These rules may be included in the Rules as discussed in Article IV, or they may be promulgated separately.

5.7 Liability. Neither the Board nor any member thereof, shall be liable to the Association, any Owner, or to any other party for any damage, loss or prejudice suffered or claimed on account of:

- (a) Approval or disapproval of any plans, drawings, or specifications, whether or not defective;
- (b) Construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) The development of any property within Calle de Caballos; or
- (d) The execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him.

Without any way limiting the generality of any of the foregoing provisions of this section, the Board, or any member thereof, may, but is not required to, consult with, or hear the views of the Association or any Member with respect to any plans, drawings, specifications, or any other proposal submitted to the Board for review.

ARTICLE VI Membership and Voting Rights

6.1 Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

6.2 One Class of Membership. The Association shall have one class of voting membership.

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6.3 One Vote Per Lot. Regardless of the number of Owners of a particular Lot, each Lot shall only be entitled to one vote in the Association. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner, or Owners, cast a vote representing a certain Lot it will thereafter be conclusively presumed for all purposes that he or they, are acting with the authority and consent of all other Owners of the same lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted, and said votes shall be deemed void.

6.4 Cumulative Voting. In any election of the members of the Board, cumulative voting shall not be permitted.

6.5 Member Rights. Each Member shall have such other rights, duties and obligations as set forth in the articles and bylaws, as they may be amended from time to time.

6.6 Membership Runs with the Land. The Association membership of each Lot shall be appurtenant to said Lot and shall run with the title to the Lot. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to the Owner's Lot, and then only to the transferee of ownership to such Lot, or by intestate succession, testamentary disposition, or foreclosure of a mortgage or record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws in the state of Arizona. Any attempt to make a prohibited transfer shall be null and void. Any transfer of ownership of said Lot shall operate to transfer said membership to the new Owner thereof.

ARTICLE VII

Permitted Uses and Restrictions

Common Area

7.1 Maintenance by Association. The Association may, at any time, as to any Common Area, conveyed, leased or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any prior approval of the Owners being required:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area in accordance with original design, finish or standard of construction of such improvement or in accordance with the last plans thereof approved by the Board;

(b) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs, and ground cover to the extent deemed necessary by the Board for the conservation of water and soil and for aesthetic purposes;

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(c) Place and maintain upon any such area such signs as the Board may deem appropriate for the property identification, use and regulation thereof;

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified herein; and

(e) The Board shall be the sole judge as to the appropriate maintenance of all grounds and improvements within the Common Area.

7.2 Damage or Destruction of Common Area By Owners. In the event any Common Area is damaged or destroyed by an Owner or Owner's family, agents, licensees or invitees, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

7.3 Use of Common Area. The Common Area shall be operated for the use and enjoyment of the Owners and the Association shall have the right to make, promulgate, supplement, amend, change or revoke rules pertaining to the use and operation of the Common Area as deemed necessary by the Board.

ARTICLE VIII

Covenant for Maintenance Assessments

8.1 Creation of Lien and Personal Obligation of Assessments. The Owners hereby covenant, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to and covenant and agree to pay the Association:

(a) Annual assessments or charges consisting of a pro rata share of the actual cost to the Association relating to or incurred as a result of the upkeep, repair, maintenance or improvement of the Common Area, and a pro rata share of any and all taxes paid by the Association relating to or incurred as a result of the Common Area. These assessments and charges will be voted upon and passed by at least 50% of the homeowners.

(b) A pro rata share of such sums as the Board and homeowners shall determine to be fair and prudent for the establishment of necessary reserves for expenses, maintenance and the payment of taxes, all as herein required.

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(c) A pro rata share of any special assessment for capital improvements, such assessments to be established and collected as herein provided.

The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge against each Lot and shall be a continuing lien upon the Lot against which each such assessment is made. The lien shall be perfected as of the date of the filing of this Declaration without the need for filing of any other notice, claim or lien and shall be superior to all other judgments, interests, claims and liens except as provided herein. Each assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successor in title unless expressly assumed by said successor in title.

8.2 Purpose of Assessment. Assessments voted on and levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members and for the improvement and maintenance of the Common Area.

8.3 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures, and personal property relating thereto, provided that any such assessment shall have the votes of 50% plus one (1) of the Lots, at a meeting duly called for this purpose.

8.4 Notice for any Action Authorized Under Paragraph 8.3 and 8.4. Written notice for any meeting called for the purpose of taking any action authorized under paragraph 8.3 or paragraph 8.4 shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting.

8.5 Uniform Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

8.6 Commencement of Assessments. The annual assessments provided for herein shall commence as in all Lots on the first day of the month. The first annual assessment shall be adjusted according to the number of months remaining in that calendar year. The Board shall fix the amount of annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board.

8.7 Effective Non-payment of Assessment; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agree to the enforcement of the assessments in the manner herein specified. In the event that the majority of the Association votes to employ an attorney or attorneys for the collection of any

EXHIBIT E4

assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member also agrees to pay reasonable attorneys fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity or without any limitation of the foregoing, by any or all of the following procedures:

(a) Cancellation of Privileges. The Board may send written notice to the delinquent Owner or Owners that until the amounts due and owing the Association are paid in full, together with such other charges and interest as may have accrued, such Owner's rights and privileges to use and enjoy the Common Area shall be forfeited, cancelled and terminated. The delinquent Owner, thereafter, shall not enter upon nor use the Common Area and shall be considered a trespasser for doing so. Upon payment of all sums due, the Owner's privileges and rights shall be restored.

(b) Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the Court may adjudge against the delinquent Owner.

(c) Enforcement by Foreclosure of Lien. There is hereby created a lien on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under these restrictions, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. The lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or deed of trust set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by signing this Declaration or by becoming an Owner of a Lot hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

8.8 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage acquired in good faith and for value. Sale

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or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The assessment lien shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot.

ARTICLE IX General Provisions

9.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

9.2 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Declaration and provisions hereof.

9.3 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall be in full force and effect.

9.4 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2020, after which they shall be automatically extended for successive periods of ten years. This Declaration may be amended at any time prior to December 31, 2020 by an instrument signed by not less than 2/3rds of the Lot owners, and thereafter by an instrument signed by not less than 2/3rds of the Lot owners. Any amendment must be recorded.

9.5 Violations and Nuisances. Every act or omission whereby any provision in this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the release sought is for negative or affirmative action by the Association, or any Owner or Owners. However, any other provision to the contrary notwithstanding, only the Association, the Board, or the duly authorized agent of any of them, may enforce by self help any of the provisions of this Declaration.

9.6 Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation, or use of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

EXHIBIT E4

9.7 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

9.8 Delivery of Notices and Documents. No notice, consent, approval or other communication provided for herein or given in connection herewith shall be validly given, made, delivered or served unless it is in writing and delivered personally, sent by overnight courier, facsimile or sent by registered or certified United States mail, postage prepaid, with return receipt requested, to the addressee at his or her last known address. Notices, consents, approvals, and communications given by mail shall be deemed delivered upon the earlier of forty-eight (48) hours after deposit in the United States mail in the manner provided above or upon delivery to the respective addresses set forth above, if delivered personally or sent by facsimile or overnight courier.

9.9 References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

9.10 Declaration. By acceptance of a deed, or by acquiring any ownership interest in a Lot, each person or entity, for himself or itself, his heirs, personal representative, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereinafter imposed by this Declaration and any amendments thereof. In addition, each person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and care of the Property covered thereby and hereby evidences his interest in all of the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

9.11 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.12 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

IN WITNESS WHEREOF the undersigned Owners, being all the Owners of the Property, have caused their names to be signed on the day and year first written above.

EXHIBIT E4

LOT 1: Signature(s): _____
Name(s): _____

LOT 2: Signature(s): _____
Name(s): _____

LOT 3: Signature(s): Jon R Cline
Name(s): Jon R Cline Elizabeth Lona Cline
MANICOPA, AZ 11/14/98

LOT 4: Signature(s): _____
Name(s): _____

LOT 5: Signature(s): Virgil Lynn Harsham
Name(s): Virgil Lynn HARSHAM MURRAY HARSHAM
MANICOPA, AZ 11/14/98

LOT 6: Signature(s): Joyce D. Moore Mike Moore
Name(s): Joyce D. Moore Mike Moore
MANICOPA, AZ 11/14/98

LOT 7: Signature(s): Patricia Estrada Augusta Estrada
Name(s): Patricia Estrada Augusta Estrada
MANICOPA, AZ 11/14/98

LOT 8: Signature(s): _____
Name(s): _____

LOT 9: Signature(s): Paul Bernard Sherry Bernard
Name(s): PAUL BARNARD Sherry Barnard
MANICOPA, AZ 11/14/98

LOT 10: Signature(s): Wm H Shaffer Heleen Shaffer
Name(s): Wm H Shaffer Heleen Shaffer
MANICOPA, AZ 11/14/98

LOT 11: Signature(s): Steve Lepetich Shelley Lepetich
Name(s): Steve Lepetich Shelley Lepetich
MANICOPA, AZ 11/14/98

EXHIBIT E4

LOT 12: Signature(s): _____
Name(s): _____

LOT 13: Signature(s): _____
Name(s): _____

LOT 14: Signature(s): Bill T. Brooke Edna Mae Brooke
Name(s): BILL T. BROOKE EDNA MAE BROOKE

LOT 15: Signature(s): Stanley T. Nicpon
Name(s): STANLEY T. NICPON

LOT 16: Signature(s): _____
Name(s): _____

LOT 17: Signature(s): Rhonda Weaver William A. Weaver
Name(s): Rhonda Weaver WILLIAM A. WEAVER

LOT 18: Signature(s): _____
Name(s): _____

LOT 19: Signature(s): John F. Christensen Elaine Christensen
Name(s): John F. Christensen ELAINE CHRISTENSEN

LOT 20: Signature(s): _____
Name(s): _____

LOT 21: Signature(s): Arthur D. Moore III Karen SA Moore
Name(s): ARTHUR D. MOORE III KAREN SA MOORE

LOT 22: Signature(s): Gerald G. Kauffman Patricia R. Kauffman
Name(s): GERALD G. KAUFFMAN PATRICIA R. KAUFFMAN

EXHIBIT E4

LOT 23:

Signature(s): James D. Beaton / Marjorie A. Beaton
Name(s): JAMES D. BEATON / Marjorie A. Beaton

LOT 24:

Signature(s): Edna S. Vance
Name(s): Edna S. Vance

MARICOPA COUNTY, AZ 11/14/20
EST. 1857
MARICOPA AZ 11/14/20 247-78599

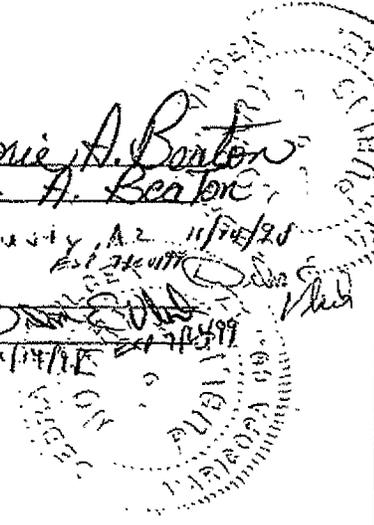


EXHIBIT E5

CONSENT TO ABANDONMENT OF 20.00 FOOT WIDE DRAINAGE, PUBLIC UTILITY, IRRIGATION AND BRIDAL PATH EASEMENT

Pursuant to that certain document Amended and Restated Declaration of Covenants, Conditions and Restrictions for Calle De Caballos recorded in the Office of the Maricopa County Recorder on the 30th day of November, 1998 at Document No. 1998-1075918 the undersigned owners, representing two-thirds (2/3rds) or more of the lot owners within the Calle De Caballos Association, hereby consent to the abandonment of 20.00 foot wide Drainage, Public Utility, Irrigation and Bridal Path Easement, identified in the plat of record for Calle De Caballos in the official records of Maricopa County, Book 97, Page 33 and as more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the undersigned have executed this Consent to Abandonment of 20.00 foot wide Drainage, Public Utility, Irrigation and Bridal Path Easement on this 8th day of May, 2010.

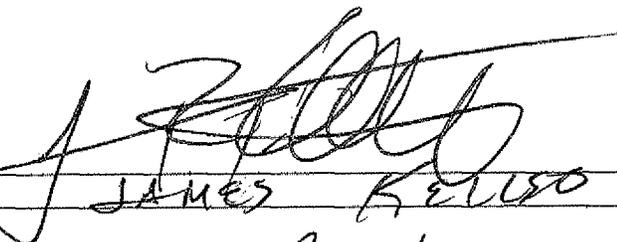
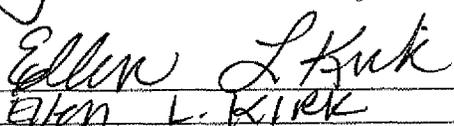
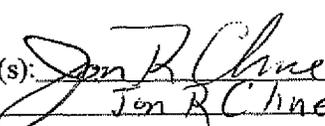
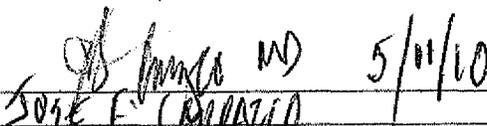
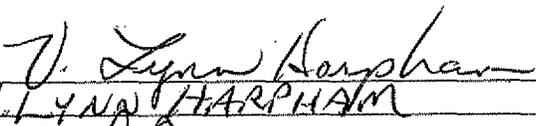
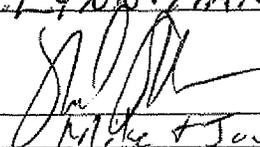
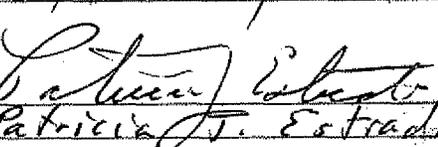
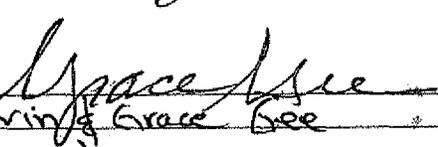
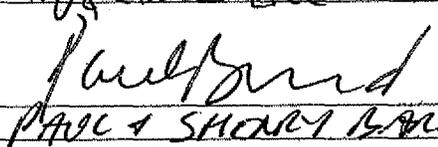
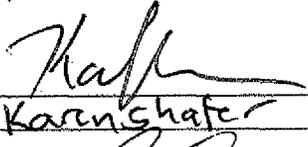
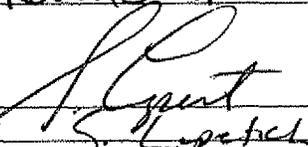
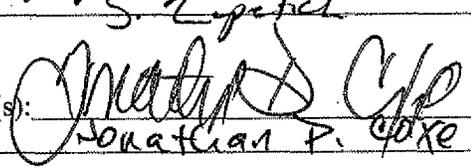
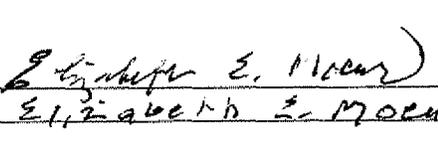
[signatures to appear on the following page]

RECEIVED

MAY 12 2010

City of Tempe
Engineering Division

EXHIBIT E5

- LOT 1: Signature(s):  MS/Allen
5/8/10
Name(s): JAMES KELSO
- LOT 2: Signature(s):  MS/Allen
Name(s): Ellen L. KIRK 5-8-10
- LOT 3: Signature(s):  MS/Allen
Name(s): Jon R. Cline 5-8-10
- LOT 4: Signature(s):  5/11/10  MS/Allen
5/11/10
Name(s): JOSE F. CERVANTES
- LOT 5: Signature(s):  MS/Allen
Name(s): V. LYNN HARPHAM 5-8-10
- LOT 6: Signature(s):  MS/Allen
Name(s): Mike & Joyce Moore 5-8-10
- LOT 7: Signature(s):  MS/Allen
Name(s): Patricia J. Estrada 5/8/10
- LOT 8: Signature(s):  MS/Allen
Name(s): Keri & Grace Bee 5-8-2010
- LOT 9: Signature(s):  MS/Allen
Name(s): PAUL & SHERRY HAYWARD 5/8/10
- LOT 10: Signature(s):  MS/Wear
Name(s): Karen Shaffer 5/8/10
- LOT 11: Signature(s):  MS/Allen
Name(s): S. Lopez 5/8/10
- LOT 12: Signature(s):  MS/Allen
Name(s): JONATHAN P. COX 5/8/10
- LOT 13: Signature(s):  MS/Allen
Name(s): Elizabeth E. Moore 5-2-10

RECEIVED

MAY 12 2010

EXHIBIT E5

LOT 14: Signature(s): [Signature]
Name(s): Diane Sabekhan 5/8/10 [Signature]

LOT 15: Signature(s): _____
Name(s): _____

LOT 16: Signature(s): [Signature]
Name(s): Garyn Binydale 5/8/10 [Signature]

LOT 17: Signature(s): [Signature]
Name(s): William A. Weaver 5/8/2010 [Signature]

LOT 18: Signature(s): [Signature]
Name(s): Carl Johnson 5/8/2010 [Signature]

LOT 19: Signature(s): [Signature]
Name(s): Dave Walters 5/8/10 [Signature]

LOT 20: Signature(s): [Signature]
Name(s): Lawrence Hudson 5/8/10 [Signature]

LOT 21: Signature(s): [Signature]
Name(s): David L. Mitchell 05/08/10 [Signature]

LOT 22: Signature(s): [Signature]
Name(s): GERALD G KAUFMAN 05/08/10 [Signature]

LOT 23: Signature(s): [Signature]
Name(s): Denise Hamon 5/8/10 [Signature]

LOT 24: Signature(s): [Signature]
Name(s): Christy Moll
Ann Cahill 5-8-10 [Signature]

RECEIVED

MAY 12 2010

City of Tempe
Engineering Division



EXHIBIT E5

MARCH 10, 2010

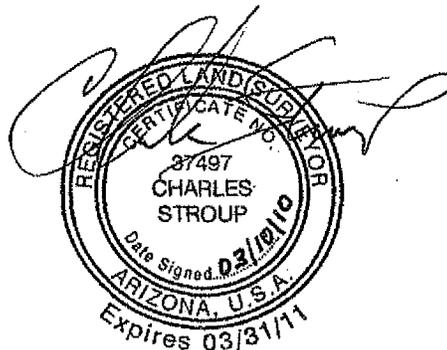
JOB #9039-10-01

LEGAL DESCRIPTION ABANDONMENT OF 20.00 FOOT WIDE DRAINAGE, PUBLIC UTILITY, IRRIGATION AND BRIDAL PATH EASEMENT.

A PORTION OF THE SOUTHEAST QUARTER IN SECTION 14, TOWNSHIP 01 NORTH, RANGE 04 EAST OF THE GILA AND SALT RIVER MERIDIAN IN THE COUNTY OF MARICOPA, STATE OF ARIZONA. ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED #1998-1127286 ON RECORD AT THE MARICOPA COUNTY RECORDERS OFFICE, STATE OF ARIZONA. ALSO BEING A PORTION OF LOT 16 IN CALLE DE CABALLOS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 97 OF MAPS, PAGE 33, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

THE WESTERLY 20.00 FEET, EXCEPT THE SOUTHERLY 20.00 FEET OF LOT 16, CALLE DE CABALLOS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 97 OF MAPS, PAGE 33.

THE ABOVE DESCRIBED ABANDONMENT CONTAINS 8,007 SQUARE FEET OR 0.1838 OF AN ACRE MORE OR LESS.



RECEIVED

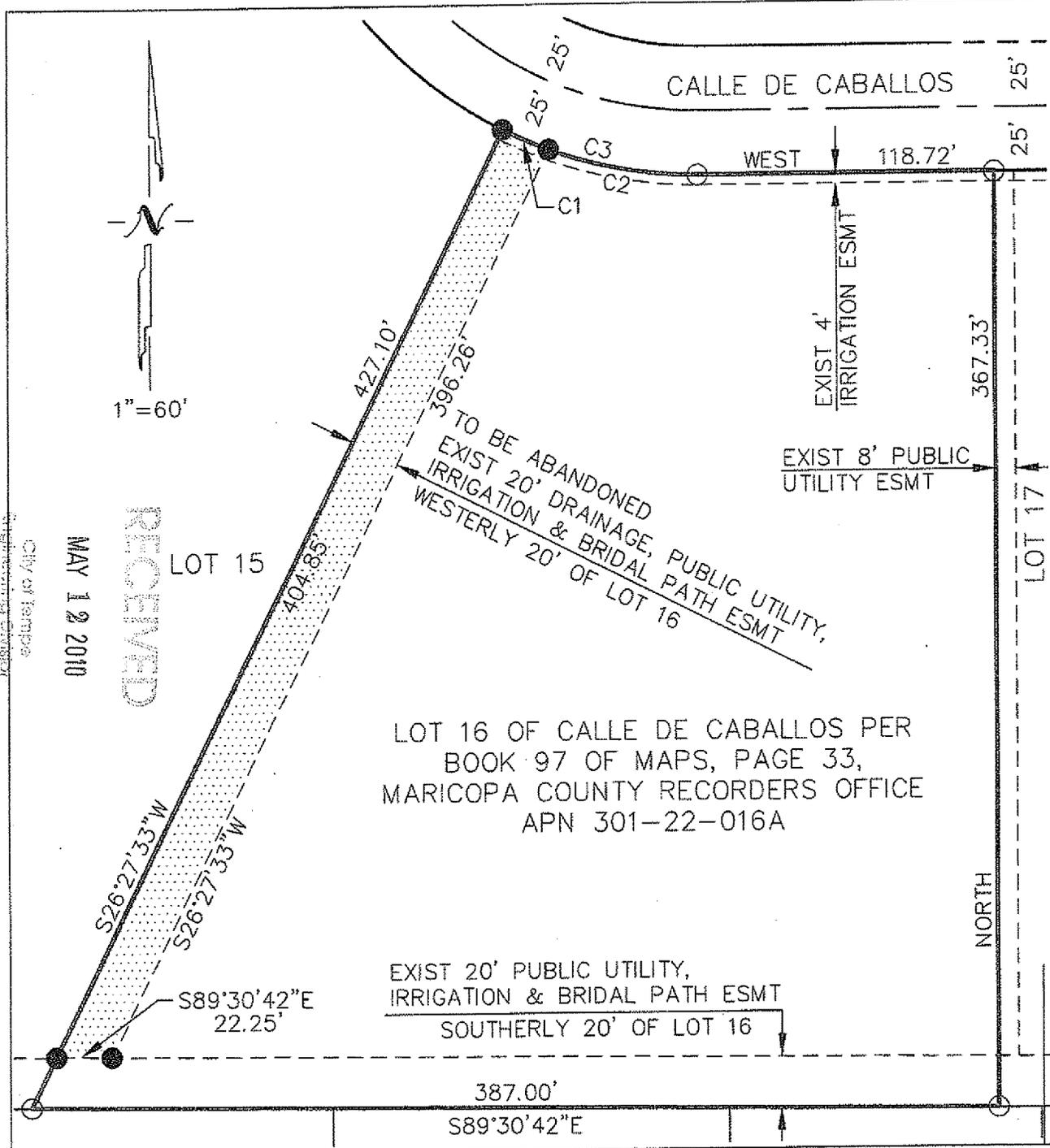
MAY 12 2010

City of Tempe
Engineering Division

MAP OF
ABANDONMENT AREA/
SKETCH TO ACCOMPANY
LEGAL DESCRIPTION

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH
C1	6°33'45"	175.00	20.04
C2	19°53'42"	175.00	60.77
C3	26°27'27"	175.00	80.81



LOT 16 OF CALLE DE CABALLOS PER
BOOK 97 OF MAPS, PAGE 33,
MARICOPA COUNTY RECORDERS OFFICE
APN 301-22-016A



Expires 03/31/11

HOOK ENGINEERING, INC.
3221 N. 24th st. #10 Phoenix, AZ 85016
602-954-0166

JOB #9031-10-01 DATE 03/26/10

EXHIBIT E5

RECEIVED
MAY 12 2010
City of Tempe



Hook Engineering, Inc.
Civil Engineers ~ Land Surveyors

EXHIBIT E5

MARCH 10, 2010

JOB #9039-10-01

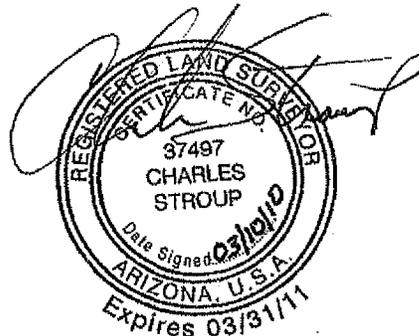
LEGAL DESCRIPTION LOT 16, CALLE DE CABALLOS

A PORTION OF THE SOUTHEAST QUARTER IN SECTION 14, TOWNSHIP 01 NORTH, RANGE 04 EAST OF THE GILA AND SALT RIVER MERIDIAN IN THE COUNTY OF MARICOPA, STATE OF ARIZONA. ALSO BEING THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUITCLAIM DEED #1998-1127286 ON RECORD AT THE MARICOPA COUNTY RECORDERS OFFICE, STATE OF ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

LOT 16, CALLE DE CABALLOS, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 97 OF MAPS, PAGE 33.

TOGETHER WITH AN UNDIVIDED 1/24th INTEREST IN AND TO TRACTS "A" AND "B" OF SAID CALLE DE CABALLOS.

EXCEPT THE SOUTH 50 FEET OF THE NORTH 70 FEET OF THE EAST 70 OF SAID TRACT B.



RECEIVED

MAY 12 2010

City of Tempe
Engineering Division

EXHIBIT E6



Erickson & Meeks Engineering, L.L.C.

13444 North 82nd Street, Suite 6, Phoenix, Arizona 85082 Ph: 602-569-6593 Fax: 602-569-6493

Site Civil Specialists in Commercial,
Industrial, Retail and Residential

Mr. Gregg Kent, PE
Principal Civil Engineer
City of Tempe
31 E. 5th Street
Tempe, Arizona 85281

Re: Bergdale Residence 20 –Foot Easement Abandonment – Lot 16 – Calle de Caballos

Mr. Kent:

Erickson & Meeks Engineering, LLC was retained by Mr. Bergdale to look at the possibility of abandoning the 20-foot drainage easement along the west side of Lot 16 in the Calle de Caballos subdivision. This subdivision was created in 1961 according to the Plat of Record, Book 97, Map 33 (see attached).. The 20-foot easement was identified for drainage, public utilities, irrigation, and bridle path. There are no existing utilities currently located within this easement based on phone calls to various utility companies.

Ms. Susanna Ortega – Salt River Project Irrigation – was contacted and verified that SRP does not have an irrigation line in this easement. She went on to say that irrigation lines in this subdivision are private and any maintenance would be the responsibility of the owners.

Mr. Bergdale reported that Tract B of this subdivision has a 12' road that is utilized to access the bridal path on the west side of this subdivision. In addition, 23 of the 24 lot owners have signed and approved the "Consent to Abandonment of the 20' Easement". This document was provided to the City of Tempe on May 13, 2010.

A site visit was performed to ascertain drainage patterns in this area. Currently this subdivision and surrounding subdivisions are set up to be flood irrigated. Based on this operation, the lots are all lowered in relation to the adjacent street with berming or depressed areas around the perimeter of the lots. The existing street, Calle de Caballos is somewhat elevated with no curb, gutter, or sidewalk. Flood Control District of Maricopa County GIS maps with contours and spot elevations indicate that the southwest corner of this subdivision is located at a grade break line that directs flow to the northwest and southwest. This would indicate that any type of upstream flow would be directed away from this 20-foot easement location. See the attached aerials with spot elevations.

The elevation at the southwest corner of the subdivision is 1183.0 and the elevation to the north at Carver Road is 1181.3. The elevation to the south at Warner Road is 1180.0. No topographic survey was reviewed for this area, but USGS maps show that the general fall of the land is from the east to west at a slope of approximately 0.10% with a ridge line located generally at the south side of this subdivision that directs flows to the northwest and southwest.

EXHIBIT E6

This area is then essentially flat and is consistent with the flood irrigation practices and patterns set up within the subdivision. No asbuilts were available from Maricopa County. They said records are typically purged once an area has been annexed by the City.

A visual inspection of the easement indicates that it is elevated above the lots on each side. Therefore, in my professional opinion, no offsite drainage is directed to this location (no curb or gutter in the street) or is conveyed in the easement at this time.

This drainage easement is not needed and can be abandoned because of the inability of the easement to collect (easement is elevated above Lots 15 and 16) and convey drainage flows (upstream flows are directed away from the easement) and the homeowners willingness to forgo the drainage easement. In summary, as a licensed civil engineer, it is my professional opinion that if the easement is abandoned there will be no adverse affects to the subdivision and the surrounding area from the loss of this no longer needed drainage easement.

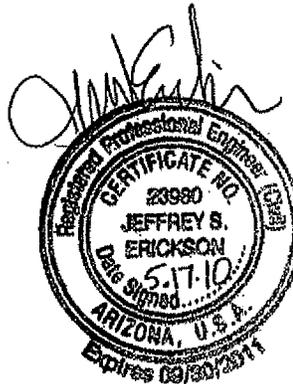
If you have any questions regarding this analysis, please do not hesitate to call me at 602-569-6593 to discuss. Thank you for your consideration on this matter.

Sincerely,

Erickson & Meeks Engineering, LLC



Jeff Erickson, P.E.
President



Attachments

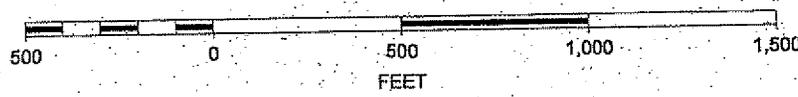
Flood Control District of Maricopa County Aerial Photos with Spot Elevations (2)
Plat Map

Flood Control District of Maricopa County (FCDMC) - Unofficial Document
Contours: 10' interval, NAVD88 vertical datum, captured 12/16/2000 through 2/21/2002, scale of capture 1"=500'.
Aerial year: FY 08/09 - 4inch

EXHIBIT E6



SCALE 1 : 5,709



Monday, May 17, 2010 9:05 AM