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#0401

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Capital Title Agency Inc.

Please return this instrument to the above.

39030232 3/1

Declaration and Grant of:

WELL EASEMENT AGREEMENT

1. **EFFECTIVE DATE.** Effective as of the 9 day of April, 2003, the following parties enter into this *Declaration and Grant of Well Easement Agreement*, (this "Agreement").

2. **PARTIES.**

a. **Grantor(s).**

141 RV 10 LLC
an Arizona limited liability company
c/o Andrew B. Greess
7320 North Brookview Way
Paradise Valley, Arizona 85253

b. **Grantee(s).**

SAME AS GRANTOR

3. **REAL PROPERTY.** The real property involved in this Declaration (the "Property"):

a. **Address or Location.**

Two of five Lots located on 10 acres at 141st Street, and south of Dynamite Road, (just north of McDowell Mountain Park) in Maricopa County, Arizona, and described as Lots 1, 2, 3, 4 & 5 in part 3b next.

b. **Legal Description.**

Generally, a portion of the following described 10+/-acres of Property (the "10 Acres"):

SE¼ SW¼ SE¼ §31, T5N, R6E, G&SR, B&M; Maricopa County, Arizona;

As those 10 Acres are also described in that certain *Warranty Deed* recorded on 08/23/2002 at Instrument No. 2002-0863984 of the Official Records of Maricopa County, Arizona.

Which 10 Acres are also known as Assessor's Parcel No. 219-39-121, and illustrated and described as "Lots 1, 2, 3, 4 & 5" on EXHIBITS A & B hereto.

Specifically, the two lots illustrated and described as "Lots 1 & 4" on EXHIBITS A & B hereto.

c. **Servient Parcels.** The parcels containing the Easements: Lots 1 & 4.

d. **Dominant Parcels.** The parcels benefited by the Easements: Parcels 1 & 4.

4. **EASEMENTS.** For good and valuable consideration, the Owner of each Servient Parcel(s) hereby grant to the other Owners, as Owners of the Dominant Parcel, the following easements:

a. **Wellsite Easement.** An easement in and across the following portions of the Servient Parcel (the "Wellsite Easement"):

See illustration of "8' Priv. Esmt." illustrated on **EXHIBIT A** hereto, and legal description for *Private Utility Easement* described on **EXHIBIT C** hereto, (the "Wellsite")

for use of a water well located thereon, and registered with the Arizona Department of Water Resources under Well Registration No. _____ and related the pump, well head, well house and other equipment and facilities located thereon (the "Well").

b. **Access Easement.** An easement for reasonable access to the Wellsite, (an "Access Easement"), in and across the Wellsite Easement.

c. **Utilities Easement.** An easement for underground utilities for the operation of the Well and Individual Delivery Lines, (a "Utilities Easement"), in and across the Wellsite and Access Easements.

5. CONSTRUCTION, OPERATION AND EXPENSE.

a. Well.

i. **Capital Improvements.** The construction of the shared portions of the Well, (meaning the improvements and equipment involved in the shared water system and equipment at the Wellsite, including but not limited to the drilling of well, and installation of well casings, submersible pump and motor, valves, control system, electrical equipment, power supply, storage tank, pressure tank, booster pump, etc., and other appurtenances necessary to the production and delivery of water from the Well and storage of water produced by the Well), the well house, (meaning both the structure and any required Unofficial Document screening or landscaping), and the water lines which run in the Utilities Easement shall be deemed "**Capital Improvements.**"

ii. **Initial Construction.** Declarant has constructed or shall construct the Well and most of the Capital Improvements, and the Well Manager, as said party is identified in Section 5c(ii), or other Lot Owner who first connects to or begins using the Well, may thereafter add such Capital Improvements as are necessary to connect the Well to the power system, and otherwise make it operational, and reimburse himself and/or pay for the same from the Operating Account described in Section 5c(iii). Additional Capital Improvements may be added later on the agreement of all parties or as otherwise provided in this Agreement.

iii. **Maintenance, Repair and Reconstruction.** After the effective date of this Agreement, each Lot Owner who is hooked up to the Well shall share equally in any and all costs of adequate and reasonable maintenance, repair, renewal, replacement and upgrading of the Capital Improvements at the Well, as necessary or appropriate to keep same in a good, safe, neat and clean condition, and all other costs associated with redrilling or replacing the Well, together with any and all real estate taxes imposed on the Wellsite and its Capital Improvements, and the costs of any insurance deemed necessary by a majority of the Lot Owners, (collectively, the "**Maintenance Expenses**"). Along with the monthly payments for Operating Expenses described below, each Lot Owner who is hooked up to the Well shall include a reasonable sum, as prescribed by the Well Manager, described below, to build up a reserve of capital for the larger expenditures involved in the maintenance, repair and replacement of the Capital Improvements (the "**Reserve for Replacement**"). Any Maintenance Expenses or similar capital expenditures, which cannot be covered from such reserves shall be allocated to each Lot Owner who is hooked up to the Well as they are incurred and invoiced as they become due, for payment not more than 30 days thereafter.

b. Individual Delivery and Utility Lines. Each Lot owner agrees to construct and maintain at its own expense its own individual delivery lines from the Lot boundary to the point of use within the boundaries of the Lot, entirely underground, and including metering devices of the same manufacturer as are in use at the Well. The responsibility for maintenance and repair of the Individual Delivery Lines, and underground utilities in association therewith, shall rest with the Owners of the Parcels they serve.

c. Operation.

i. Operating Costs for Water Use. The "Operating Costs" of the Well shall include, but not be limited to, electrical service to the well pump, and water quality testing, and the responsibility for their payment shall be separate from the Maintenance Expenses described above, and shall fall only on those Lot Owners who are active water users.

ii. Well Manager. The Maintenance Expenses and Operating Costs shall be collected and accounted for by the "Well Manager", who shall be an active user of water from the Well, and, from time to time, be elected by a majority of the Parcel Owners at the request of any Parcel Owner, and, in the event of any default or uncertainty, shall be the party in whose name the account for the electrical meter on the wellhead is maintained. The initial Well Manager shall be the owner of Lot 4, who shall automatically be replaced by the first Lot Owner to connect to the Well.

iii. Operating Account. Each Lot Owner, before use of the Well or Wellsite, shall initially pay the sum of \$300 to the Well Manager to fund a separate checking account (the "Operating Account") to cover the Maintenance Expenses and Operating Costs and hold the Reserve for Replacement. Each Lot Owner shall be entitled at all times to receive a copy of a current statement of that Operating Account upon request.

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iv. Allocation & Payment. Both the electrical meter on the wellhead and the individual water meters on the outgoing lines shall be read on or about the first day of each month by the Well Manager, or someone at his/her discretion who shall then prepare and send invoices for payment not more than 30 days later by each Lot Owner of his pro-rata share of the Operating Costs as determined by the reading on the wellhead meter divided into the monthly meter reading on the individual water meter for each Lot Owner, along with any additional amounts necessary to fund the Reserve for Replacement. For those Lot Owners not initially hooked into the system, individual water meters shall be installed when and as a part of connecting to the system. Each Lot Owner herewith grants the other Lot Owners, their heirs or assigns, a perpetual right and license to access all meters for purposes of collecting consumption data.

d. Termination of Financial Obligations. Any Lot Owner who wishes to permanently relinquish its rights to use and share in the Well and Easements under this Agreement, may do so upon recordation of a notice thereof, and, upon delivery of a copy of the notice as recorded to all other Lot Owners, such withdrawing Lot Owner shall be relieved of all financial obligations under this Agreement which arise thereafter.

6. OTHER CONDITIONS AND LIMITATIONS. The Easements described herein, and the continued enjoyment thereof, are further subject to the following conditions and limitations:

a. Wellsite Easement.

i. Use Within Lot. The Owners of each Lot shall have the right to take water from the Well for their reasonable domestic use on each respective Lot only, and only so long as all obligations created herein are performed in a timely manner. No Owner shall provide water to any

other owner on or off the subject property, nor cause to be divided in any manner or assign the rights of this Agreement without the express written consent of all other Owners of the Lots.

ii. **Domestic Use.** The Owners agree, that no water shall be used for commercial purposes, but only for their private domestic use including vegetable gardens and livestock maintenance. Domestic use may include maintenance of ponds or swimming pools, which are constructed with an impervious liner to prevent leakage. However, initial filling of lined ponds or swimming pools with a capacity larger than 500 gallons shall be with water delivered by water truck from a separate source.

b. **Access Easement.** Use of the Access Easement is limited to the owners of the Dominant Parcel, and their occupants, guests and invitees.

c. **Utilities Easement.** Use of the Utilities Easement is limited to the owners of the Servient and Dominant Parcel for underground delivery of any electrical power, water, or other similar underground utilities to and from the Dominant Parcel and the Wellsite, (the "**Underground Utilities**"). Underground Utilities shall be located along routes approved by the owner of the Servient Parcel, and shall be placed as practical alongside or within any existing paths or roadways, deviating therefrom as appropriate to avoid existing vegetation, outcroppings and other obstacles. Declarant shall initially install at its own expense the underground electrical and water lines needed to provide such Underground Utilities to and from the Wellsite and each Lot line or boundary only. Each Lot Owner may expand or improve these initial Underground Utilities at its own expense, but any expansion or improvement of the Underground Utilities by the owners of the other Lots shall likewise be at their sole expense. The responsibility for the maintenance and repair of the Underground Utilities shall rest with the owners of the Lots they serve.

d. **All Easements.** So long as this Agreement ^{Unofficial Document} remains applicable thereto, owners of the Servient Parcel may further restrict the use of any portions of these Easements for purposes not inconsistent with this Agreement.

7. **REPRESENTATIONS & WARRANTIES.** The Lot Owners hereto mutually acknowledge and understand that: (i.) the present Well characteristics, i.e., well depth and construction, static water level, draw down, yield, and operating capabilities are either known or acceptable to each Lot Owner; (ii.) no warranty is being given by any Owner that there will be at any time water of a quantity or quality produced by the Well for the needs or demands of any Lot Owner; and (iii.) the chemical quality of water from the well has not been measured, but is expected to meet all mandatory Federal, State and local standards for potable water; but (iv.) there is no express or implied warranty made by any Owner hereto that water from the Well shall be of a quality fit for human consumption and/or domestic use.

8. **MONETARY DEFAULT AND REMEDIES**

a. **Uncured Default.** An "Uncured Default" shall exist when any Lot Owner fails to pay, when due and within 30 days of written invoice or notice thereof, his prorata share of the Maintenance Expenses, and Operating Expenses, (cumulatively, the "**Well Expenses**"), attributable to his Lot. Such an Uncured Default continues until all current and back payments and arrearages of such prorata Well Expenses, together with interest thereon at 18% per annum from the date first due, and any legal costs incurred in connection with the collection thereof, including any court or arbitration costs or attorneys fees incurred whether or not included in any judgment or award rendered in connection therewith, (collectively, the "**Costs to Cure**"), have been paid in full by or on behalf of that Lot Owner.

b. Remedies. In the event of an Uncured Default:

i. Cutoff Power. Each Lot Owner expressly grants the right to the Well Manager or other Lot Owners to terminate and discontinue access to and water use from the Well by the defaulting Lot until the Costs to Cure have been paid in full.

ii. Assessment Lien. The Costs to Cure shall be and become a lien against the Lot so assessed, but only if such lien is evidenced by an "Assessment Lien" recorded against such Lot by and on behalf of the Well Manager or other Lot Owner who originally paid such expenses, and such Assessment Lien shall be treated and may be foreclosed in the same fashion as liens permitted by A.R.S. §§ 33-1256 and 1257, and may also include reasonable costs and attorneys fees for the preparation or foreclosure thereof.

iii. Other Remedies. The Lot Owners shall have all other rights and remedies available at law or equity.

9. SUBORDINATION OF LIEN. Any lien for Well Expenses or Assessment Lien shall be subordinate to the lien of any first mortgage or deed of trust against the Lot, but the sale or transfer of any Lot shall not affect the continuing lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure of a first mortgage, or a trustee's sale pursuant to power of sale or a foreclosure of a first deed of trust, or any proceeding in lieu thereof, shall extinguish the continuing lien as to payment which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any amounts thereafter becoming due or from the lien thereof.

10. GENERAL PROVISIONS.

a. Multiple Owners. As used in this Declaration: (i.) "Owners" shall include all parties who are owners of all or a portion of the Property at a time implied by the language of this Declaration; (ii.) "Lot Owner" shall mean an Owner of a Lot; and (iii.) a "Lot", which is entitled to tap into the well, shall mean a separate tax parcel, which is 1 acre or more in size, and is entitled under the applicable zoning to construct a separate residence thereon; such that, a 2½ acre parcel, if split, would become two Lots. Such Lot Owners may agree in a recorded document to delegate rights under this Agreement to a HomeOwners Association or similar organization formed to represent them.

b. Duration and Binding Effect. The Easements, covenants, conditions, restrictions and other provisions of this Agreement (the "Restrictions") are for the exclusive benefit and protection of the Owners of the Property, and shall exist in perpetuity and run with the land and be binding upon all persons who own, lease, sublease, or occupy any Lot or portion thereof on the date of recordation of this Declaration or thereafter and inure to the benefit of, the present and future owners of all Lots, whether or not such Lot is subdivided, and their heirs, devisees, personal representatives, shareholders, directors, officers, employees, receivers, assigns or the like.

c. Notices. Any notices hereunder shall be given to the Parties at the addresses first provided above, until and unless the address for receipt of notices is properly changed by written notice thereof, and to other owners of any portions of each Lot at the address reflected on the rolls of the County Assessor for receipt of the tax assessments, or at a more recent address provided in writing by such owner to the remaining owners of the Lots, and shall be deemed delivered when delivered in hand or, if sent by mail, 24 hours after the same has been deposited, postage prepaid and certified, in the United States Mail, or, if sent by electronic facsimile, telex, or similar telecommunications device to a number held out by the recipient party for receipt of telecommunications, 48 hours after being so sent with confirmation thereof.

d. Waiver or Abandonment: The failure to enforce any breach or violation of any of the Restrictions shall not constitute an abandonment or a waiver of any right to enforce such Restrictions or any subsequent breach or violation of such Restrictions or of any other Restrictions of this Declaration.

e. Injunctive Relief. In addition to the remedies for a monetary default provided above, every act or omission whereby any one or more of the Restrictions herein set forth is violated in whole or in part, where such violation continues for a period of 60 or more days from the date of written notice thereof from the Lot Owner, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, and in the event of any violation or threatened violation of any one or more of the Restrictions herein set forth, the Owner of a Lot or any portion of the Property may enforce these Restrictions by seeking injunctive relief, or monetary damages, but nothing contained herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought.

f. Disputes. Any dispute arising hereunder shall be construed under Arizona law, with Maricopa County as the choice of venue, and the prevailing party shall also be entitled, as and for a liquidated value of its incidental and consequential damages, to an amount equal to twice its reasonable attorneys fees and court costs.

g. Severability: Any determination by any court of competent jurisdiction that any provision in this Agreement is invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions of this Agreement and the same shall remain in full force and effect.

h. Entire Agreement. This Agreement, including any related documents referred to herein and attached hereto, constitute the complete understanding and agreement between the Parties. All prior conversations, negotiations and representations of the Parties concerning this Agreement are superseded and merged herein.

i. Amendment: This Agreement may be amended from time to time by recording in the Office of the County Recorder of Maricopa County, Arizona, an instrument in writing reciting said amendment and signed (with signatures properly acknowledged) by the all Owners of the Property. No such amendment shall be valid with respect to a mortgagee of any Lot or portion of the Property unless the mortgagee has consented in writing to such amendment.

j. References to Easements: Any and all instruments of conveyance of any interest in any portion of the Lots may contain a reference to this instrument and shall be subject to the Easements, Conditions and Restrictions of this Agreement, the same as if they were therein set forth in full; provided, however, that these Easements, Conditions and Restrictions shall be binding upon all persons affected by the same, whether express reference is made to this Agreement or not.

k. Execution: This Agreement may be executed in counterpart, and when fully executed by all parties hereto, and shall become effective when recorded or returned fully executed to all the parties.

.....

IN WITNESS WHEREOF, the undersigned owners of the Property hereby accept, approve and execute this Agreement.

DECLARANT/GRANTOR(S)/GRANTEE(S):

141 RV 10 LLC, an Arizona limited liability company

Andrew B. Greess, manager 4/9/03
Andrew B. Greess -- Manager

[Signature]
Jeff Coruccini -- Manager

STATE OF ARIZONA)
) s.s.
COUNTY OF MARICOPA)

Date of Acknowledgment:
April 9, 2003

SUBSCRIBED AND SWORN to by Andrew B. Greess and Jeff Coruccini, before me, the undersigned Notary Public, on the Date of Acknowledgment reflected above.

My commission expires:
May 31, 2003

[Signature]
Notary Public



STATE OF ARIZONA)
) s.s.
COUNTY OF MARICOPA)

Acknowledged before me this 9th day of April, 2003, by Jeff Coruccini.

[Signature]
Notary Public

My Commission Expires:

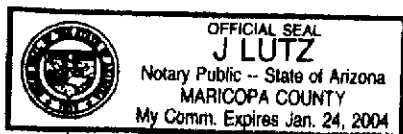
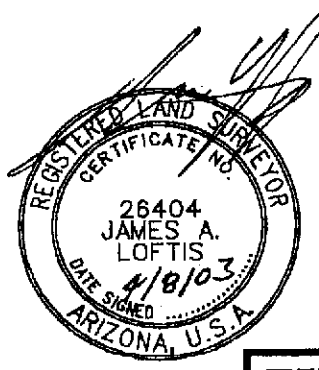
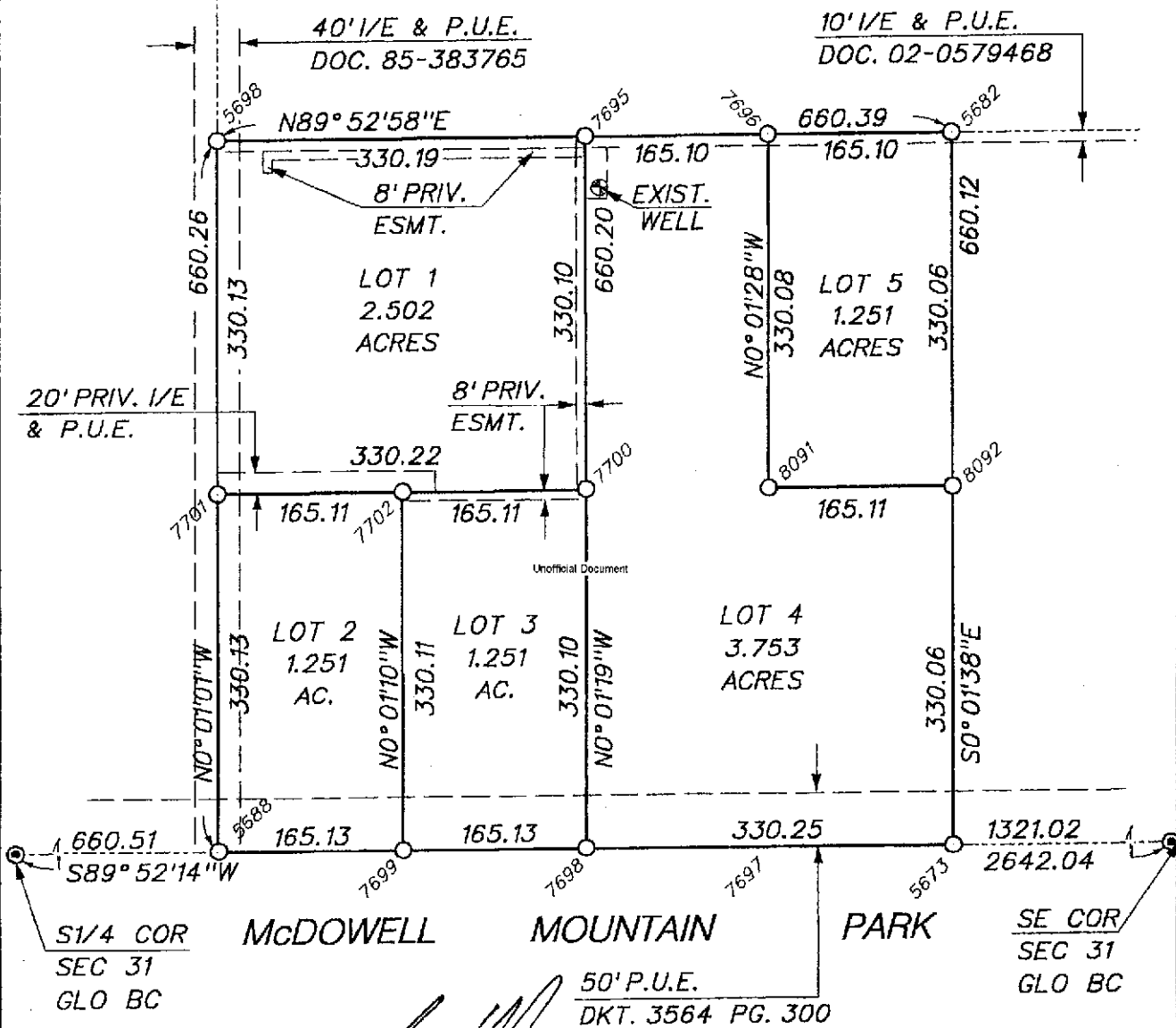


EXHIBIT 'A'

OF
SE1/4, SW1/4, SE1/4
SEC 31, T.5 N, R. 6 E



CONSULTING LAND SURVEYORS
 37617 N. CAVE CREEK RD.
 CAVE CREEK, AZ 85331
 PHONE (480) 990-0545
 FAX (480) 994-9097
 JOB NO.: 030322

EXHIBIT A



CONSULTING LAND SURVEYORS

37617 North Cave Creek Road
Cave Creek, Arizona 85331

Phone (480) 990-0545
Fax (480) 994-9097

Job No. 030322

LEGAL DESCRIPTION

LOT 1

The Northwest quarter of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 31, Township 5 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

LOT 2

The West half of the Southwest quarter of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 31, Township 5 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

LOT 3

The East half of the Southwest quarter of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 31, Township 5 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

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LOT 4

The West half of the East half of the Southeast quarter of the Southwest quarter of the Southeast quarter AND the South half of the East half of the East half of the Southeast quarter of the Southwest quarter of the Southeast quarter all in Section 31, Township 5 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

LOT 5

The North half of the East half of the East half of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 31, Township 5 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

See Exhibit "A"



EXHIBIT B



CONSULTING LAND SURVEYORS

37617 North Cave Creek Road
Cave Creek, Arizona 85331

Phone (480) 990-0545
Fax (480) 994-9097

Job No. 030322



LEGAL DESCRIPTION

PRIVATE UTILITY EASEMENT

The South 8.00 feet of the North 18.00 feet of the East 281.00 feet AND the West 8.00 feet of the South 20.00 feet of the North 30.00 feet of the East 289.00 feet of the Northwest quarter of the Southeast quarter of the Southwest quarter of the Southeast quarter of Section 31, Township 5 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

See Exhibit "A"

Unofficial Document



EXHIBIT C