

RESOLUTION NO. 2012-23

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ACCEPTING A SIDEWALK EASEMENT FROM EAGLERIDGE AT FOUNTAIN HILLS PROPERTY OWNERS' ASSOCIATION, INC.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. A sidewalk easement in substantially the form attached hereto as Exhibit 1 and incorporated herein by reference, across certain real property, generally located along Palisades Boulevard, at Sunset Vista Boulevard, is hereby accepted by the Town of Fountain Hills (the "Town") from EagleRidge at Fountain Hills Property Owners' Association, Inc.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, October 18, 2012.

FOR THE TOWN OF FOUNTAIN HILLS:

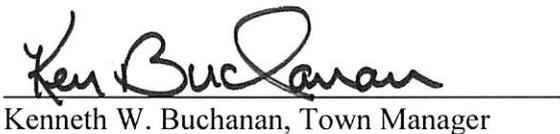
ATTESTED TO:


Linda M. Kavanagh, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Kenneth W. Buchanan, Town Manager

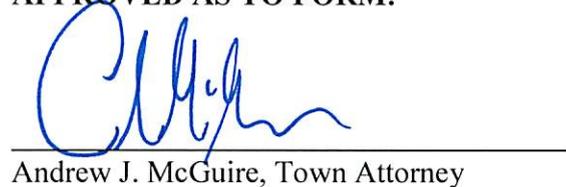

Andrew J. McGuire, Town Attorney

EXHIBIT 1
TO
RESOLUTION NO. 2012-23

[Sidewalk Easement Agreement]

See following pages.

When Recorded Mail To:

Town Clerk
Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

SIDEWALK EASEMENT AGREEMENT

GRANTOR: EagleRidge at Fountain Hills Property Owners' Association, Inc., an Arizona nonprofit corporation

GRANTEE: Town of Fountain Hills, an Arizona municipal corporation (the "Town")

THIS SIDEWALK EASEMENT AGREEMENT (this "Agreement") is entered into October 18, 2012, by and between the Town and Grantor for the purposes set forth below.

RECITALS

A. Grantor is the record owner of certain real property at the location identified on Exhibit A, attached hereto and incorporated herein by this reference (the "Easement Area").

B. The Town and Grantor desire to enter into this Agreement for Grantor to grant to the Town a non-exclusive, continuous and perpetual easement together with the necessary right of access, ingress and egress through, over, under, upon, in, across and along the Easement Area (the "Easement"), for purposes of constructing, installing, operating, inspecting, maintaining, repairing, replacing or removing a public sidewalk(s) and all appurtenances thereto (the "Public Improvements").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. The Grantor hereby grants and conveys to the Town the Easement for the construction, installation, operation, inspection, maintenance, repair, replacement or removal of the Public Improvements within the Easement Area together with rights of ingress and egress whenever, in the Town's judgment, in its sole and absolute discretion, the same shall be necessary for the convenient and safe exercise of the rights herein granted.

2. Maintenance of the Easement. Grantor shall not install or construct, or authorize to be installed or constructed, any building, structure, or other improvement or obstruction that interferes with or impedes the Town's access to the Easement Area or the Town's right to

maintain the Public Improvements in the Easement, nor shall Grantor drill any well, plant any trees, store materials of any kind, or alter ground level by cut or fill, within the limits of the Easement Area, without the prior, written consent of the Town.

3. Indemnification. The Town shall, to the extent permitted by law, indemnify and hold Grantor harmless from any and all damages, costs, expenses, attorney fees, claims or liabilities arising from or relating to the Town’s negligence with respect to the use of the Easement Area by the Town, its successors in interest, assigns, agents, employees, visitors or invitees.

4. Liens and Encumbrances. The Town represents and warrants that it will maintain the Easement Area free and clear from any liens or encumbrances of any nature whatsoever in connection with Town’s construction of the Public Improvements on the Easement Area or the use by Town of the Easement Area.

5. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the assigns, successors and tenants of the parties hereto.

6. Attorneys’ Fees. Either party may enforce this instrument by appropriate legal action and the prevailing party in such litigation may recover as part of its costs in such action reasonable attorneys’ fees and court costs.

7. Additional Easements. Nothing contained in this Agreement shall prohibit Grantor from conveying additional easements for access, utility or other purposes through, over, under, upon, in, across and along the Easement Area to the owners of properties that abut the Easement Area or to government or quasi-governmental agencies; provided, however, that no such additional rights or easement shall impair the Town’s use of the Easement herein granted.

8. Entire Agreement. This instrument contains the entire agreement between the parties relating to Town’s use of the Easement Area for Public Improvements’ installation, operation and maintenance. Any oral representations or modifications concerning the subject matter of this instrument shall be of no force or effect, except a subsequent modification in writing, signed by the parties.

9. Cancellation by Town. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511 at which time, the Easement shall be extinguished.

[SIGNATURES ON FOLLOWING PAGES]

ACCEPTED BY:

“Town”

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

By: Kenneth W. Buchanan
Kenneth W. Buchanan, Town Manager

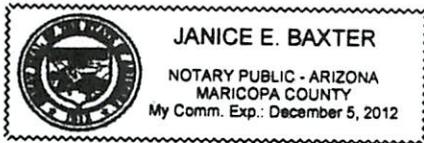
ATTEST:

Bevelyn J. Bender
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on October 22, 2012, by Kenneth W. Buchanan, Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, on behalf of the Town of Fountain Hills.



Janice E. Baxter
Notary Public in and for the State of Arizona

My Commission Expires:

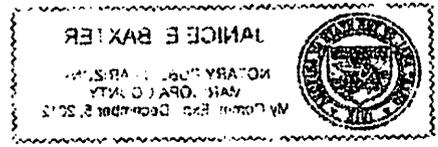
12/05/12

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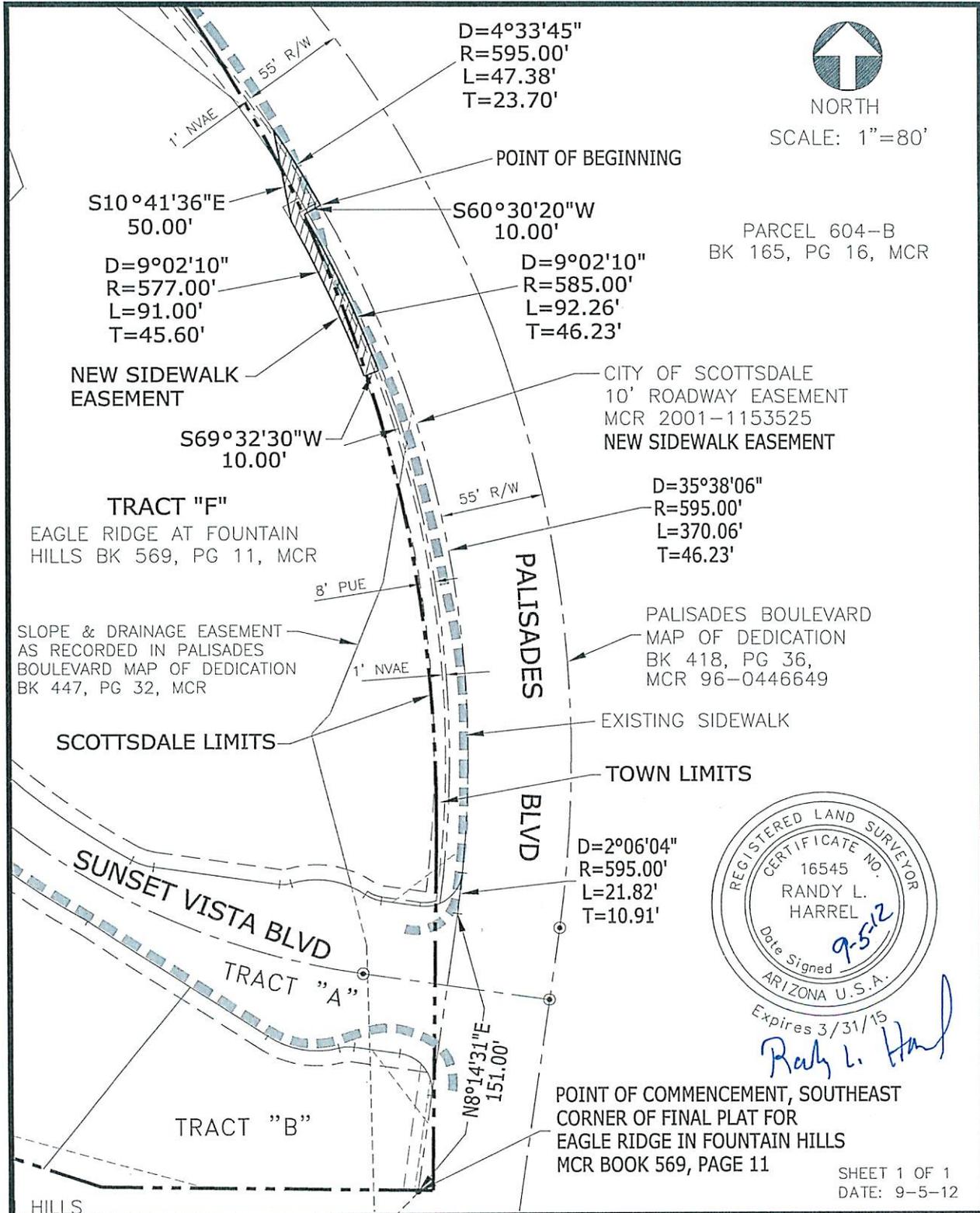
EXHIBIT A
TO
SIDEWALK EASEMENT AGREEMENT

[Easement Area]

See following page.

TOWN OF FOUNTAIN HILLS
GRANT OF EASEMENT MAP
 EXHIBIT A

EAGLE RIDGE AT FOUNTAIN HILLS SUBDIVISION TRACT F



NORTH
 SCALE: 1"=80'

PARCEL 604-B
 BK 165, PG 16, MCR

