

Town of Fountain Hills  
16705 E. Avenue of the Fountains  
Fountain Hills, AZ 85268

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Development Services Department

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## RESOLUTION NO. 2014-10

# THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ACCEPTING AN UTILITY EASEMENT FROM BUCKEYE WEST LLC, D/B/A SUNRIDGE CANYON GOLF CLUB

FEBRUARY 6, 2014



**DO NOT REMOVE**  
**This is part of the official document.**

**RESOLUTION NO. 2014-10**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ACCEPTING AN UTILITY EASEMENT FROM BUCKEYE WEST LLC D/B/A SUNRIDGE CANYON GOLF CLUB.

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

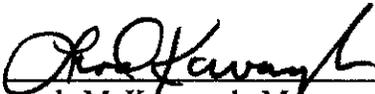
SECTION 1. An utility easement in substantially the form attached hereto as Exhibit 1 and incorporated herein by reference, across certain real property, generally located near the western edge of the right-of-way for Golden Eagle Boulevard, south of Desert Canyon Drive, is hereby accepted by the Town of Fountain Hills (the "Town") from Buckeye West LLC d/b/a SunRidge Canyon Golf Club.

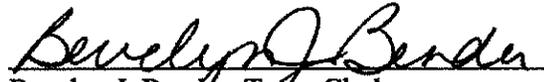
SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, February 6, 2014.

**FOR THE TOWN OF FOUNTAIN HILLS:**

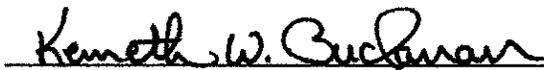
**ATTESTED TO:**

  
\_\_\_\_\_  
Linda M. Kavanagh, Mayor

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kenneth W. Buchanan, Town Manager

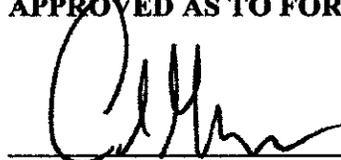
  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

EXHIBIT 1  
TO  
RESOLUTION NO. 2014-10

[Utility Easement Agreement]

See following pages.

When Recorded Mail To:

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

**UTILITY EASEMENT AGREEMENT**

**GRANTOR:** BUCKEYE WEST LLC, an Arizona limited liability company, d/b/a SunRidge Canyon Golf Club

**GRANTEE:** TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation

THIS UTILITY EASEMENT AGREEMENT (this "Agreement") is entered into as of the 1st day of January, 2014 (the "Effective Date"), between BUCKEYE WEST LLC, an Arizona limited liability company, d/b/a SunRidge Canyon Golf Club ("Grantor"), and the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation ("Grantee"):

RECITALS

A. Grantor owns certain real property (the "Grantor Property") in more particularly described on Exhibit A attached hereto and incorporated herein by reference, through which Grantee wishes to acquire easements for access, maintenance, operation, and repair and replacement of certain utility improvements.

B. Grantee owns a certain pump and motor commonly known as Pump #1 that is within, among other pumps and motors, an existing structure commonly known as the "Pump House." The Pump House and all existing appurtenances thereto, including, but not limited to, that certain Electrical Service Panel and Flowtronics Control Panel, are owned by Grantor and are collectively referred to as the "Existing Improvements." Pump #1 is referred to as "Grantee Pump." The Grantor Property and the Existing Improvements along with appurtenances thereto are collectively referred to as the "Property."

C. Grantee desires access in and over a portion of the Property, as described and depicted on Exhibit B attached hereto and incorporated herein by reference (the "Easement Area"), to maintain, operate and repair and replace the Pump System (defined in Section 2(A) below).

D. Grantor desires to grant to Grantee, its contractors, employees and designees, a non-exclusive, access and maintenance easement (the "Easement") in, to, over, under, through and across the Easement Area in accordance with the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and the mutual covenants set forth below, Grantor does hereby grant to the Grantee this Easement over the Easement Area on the following terms and conditions:

1. Grant of Utility Easement. Grantor hereby grants to Grantee a non-exclusive utility easement (the "Utility Easement") in, to, through, on, over, under and across the Easement Area and appurtenances therein. In consideration of the rights granted to Grantee hereunder, Grantee shall pay to Grantor the sum of \$5,000 per annum, payable within five (5) days after the Effective Date (the "Easement Fee"), and thereafter annually upon the anniversary of the Effective Date. Easement Fees shall be payable to the Grantor at the Grantor's address listed in Section 14 below. The foregoing easement is granted for the sole purposes set forth in this Agreement.

2. Use of Utility Easements by Grantee. The right to use the Utility Easement shall belong to Grantee and its agents, employees, designees, contractors and all those acting by or on behalf of Grantee for the purposes set forth below:

A. Pump System. To install, construct, reconstruct, locate, survey, maintain, enlarge, alter, repair, replace, use, operate, control, inspect, and remove the Grantee Pump (collectively, the "Pump System") in, to, through, on, over, under and across the Easement Area.

B. Access. To have the right of entry and access including ingress and egress in, to, through, on, over, under and across the Easement Area, including the Pump House, at any and all times deemed necessary by Grantee for all purposes consistent with the terms of this Easement necessary and at all times convenient or necessary to exercise the rights acquired in the Utility Easement as set forth above.

C. Removal of Obstructions. Except for the Existing Improvements, Grantor shall reasonably cooperate with Grantee in relocating, trimming, cutting, felling and removing any material, vegetation, underbrush, trees, structures, obstructions or obstacles located on or within the Easement Area that cause a material interference to Grantee's use of the Easement Area.

3. No Interference. Grantor shall not build, construct, erect, install or permit the building, construction, erection or installation of any structure or obstruction, nor change the grade on or over the Easement Area, including without limitation, the Pump House, which interferes with the use of or obstructs the operation of the Utility Easement or access to the Easement Area based on Grantee's reasonable determination. Grantor shall not plant trees on the Easement Area without the prior written permission of Grantee, which such permission shall not be unreasonably withheld, conditioned or delayed. Except for the Existing Improvements, any structure or obstruction such as a building, fence or mailbox or tree located on the Easement Area which reasonably interferes with the use of or obstructs the operation of the Utility Easement or access to the Easement Area may be removed by Grantee without liability for damages arising therefrom. In the event the terms of this paragraph are violated, such violation

shall immediately be eliminated upon receipt by the violating party of written notice from the other party, as applicable or such other party shall have the immediate right to correct or eliminate such violation at the sole expense of the violating party, its heirs, successors or assigns, which shall promptly reimburse such other party for any expense related thereto. Grantor shall not in any manner interfere with the purposes for which this Utility Easement is conveyed.

4. Maintenance; Utilities.

A. Grantee hereby agrees to maintain the Pump System, in or under the Easement Area, including those located within the Pump House, at its sole expense. Other portions of the Easement Area owned by Grantor shall be maintained at its sole expense by Grantor, its successors or assigns.

B. Whenever a party shall perform any maintenance, repairs and/or replacements permitted herein, such work shall be done expeditiously and in a good and workmanlike manner and in accordance with all applicable laws, codes, rules, statutes and regulations of governmental authorities having jurisdiction thereof. Such work shall be carried out in such manner so as to cause the least amount of disruption to any operations being conducted on the surrounding land and the Pump House as is reasonably practicable. Such work by Grantee or its agents, employees or contractors shall not cause any mechanic's lien or other lien, charge or order for the payment of money to be filed against any portion of the Grantor Property, and Grantee, at its own cost and expense, shall cause the same to be discharged of record or bonded against within thirty (30) days following Grantee's receipt of written notice as to the filing thereof.

C. Grantee shall be directly responsible for, and shall pay when due, all charges for utilities utilized by Grantee as described in this Section 4(C). Grantee charges shall be based on Grantee's usage of utilities. After each billing period, Grantee's usage of utilities shall be determined and Grantee will pay for the amount that results after multiplying Grantee's usage of utilities against the then billing period total amount. Grantor shall provide a copy of the applicable billing period invoice/statement to Grantee before Grantee shall be obligated to pay for its usage of utilities.

5. Insurance and Indemnity. Grantee shall maintain or cause to be maintained in full force and effect, a policy of general public liability insurance covering the Easement Area, with a combined single limit of liability of not less than One Million Dollars (\$1,000,000) for bodily injury or death or property damage arising out of any one occurrence. Grantor shall be listed as an "additional insured" thereunder. To the extent permitted by law, each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on the Easement Area, except if caused by the act or negligence of the other party hereto.

6. Assignability. Grantor shall have the right to assign all or any portion of the rights herein granted. Nothing contained in this Agreement shall be construed as preventing any sale or other transfer of all or any portion of the Grantor Property by Grantor or any of its successors and assigns.

7. Benefits and Burdens. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee and their respective heirs, successors or assigns.

8. Runs with the Land. This Agreement shall run with the Easement Area and shall be recorded in the Office of the Clerk and Recorder of Maricopa County.

9. Integration. The undersigned agree that neither has made or authorized any agreement with respect to the subject matter of this Agreement other than as expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either party hereto, or its agents or employees.

10. Applicable Law. The terms of this Agreement shall be interpreted and enforced in accordance with the laws of the State of Arizona.

11. Multiple Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall collectively constitute one Agreement.

12. Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The parties hereto, and their respective successors or assigns, shall not modify the terms of this Agreement or otherwise alter its terms and conditions without the prior written approval of the other party.

13. Cancellation by Grantee. Notwithstanding anything to contrary contained herein, this Agreement may be cancelled by Grantee pursuant to Ariz. Rev. Stat. § 38-511 at which time, the Easement shall revert back to the Grantor.

14. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) hand delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Grantor:	Buckeye West LLC d/b/a SunRidge Canyon Golf Club 13100 N. Sunridge Drive Fountain Hills, Arizona 85268 Telephone: (480) 837-5100 Attn: Donald T. Misheff
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With copy to: Stark & Knoll Co. LPA  
3475 Ridgewood Road  
Akron, Ohio 44333  
Telephone: (330) 376-3300  
Attn: Thomas G. Knoll, Esq.

If to Grantee: Town of Fountain Hills  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268  
Attn: Town Manager  
Telephone: (480) 816-5115

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire, Esq.  
Telephone: (602) 257-7664

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

15. No Public Dedication. It is mutually agreed that the grant contained in this Agreement is not intended and shall not be construed as a dedication of the real property within the Easement Area or any portion thereof for public use and that the parties shall take whatever steps may be necessary to avoid any such dedication.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Agreement as of the date first written above.

**Grantor:**

**BUCKEYE WEST LLC**, an Arizona limited liability company, d/b/a SunRidge Canyon Golf Club

By: *Donald T. Misheff*

Name: Donald T. Misheff

Title: Managing Partner

STATE OF Arizona )  
 ) ss.  
COUNTY OF Maricopa )

This instrument was acknowledged before me on January 29, 2014, by Donald T. Misheff, as Managing Partner of Buckeye West LLC, an Arizona limited liability company, d/b/a SunRidge Canyon Golf Club, on behalf of such company.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_



*Catherine E. Whynot*  
Notary Public

**Grantee:**

**TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation**

Kenneth W. Buchanan  
Kenneth W. Buchanan, Town Manager

**ATTEST:**

Bevelyn J. Bender  
Bevelyn J. Bender, Town Clerk

**(ACKNOWLEDGEMENT)**

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on February 11, 2014, by  
Kenneth W. Buchanan, the Town Manager of the Town of Fountain Hills, an Arizona municipal  
corporation, on behalf of the corporation.

Witness my hand and official seal.

My Commission Expires: December 5, 2016

Janice E. Baxter  
Notary Public



EXHIBIT A  
TO  
UTILITY EASEMENT AGREEMENT  
BETWEEN  
BUCKEYE WEST LLC  
AND  
THE TOWN OF FOUNTAIN HILLS

[Legal Description and Map of Grantor Property]

See following pages.

**Exhibit A-1**

**SUNRIDGE CANYON FINAL PLAT, PARCEL 7 – GRANTOR PROPERTY**

A parcel of land being a portion of Fountain Hills Arizona, Final Plat of Sunridge Canyon, Parcel 7, as recorded on November 8, 1995 in Book 406, Page 23 of the Records of Maricopa County, Arizona and situated in Section 9, Township 3 North Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

TOWN OF FOUNTAIN HILLS  
 EASEMENT ACQUISITION  
 EXHIBIT "A-2"  
 SUNRIDGE CANYON - PARCEL 7, MCR 95-0688976, BK 406, PG 23

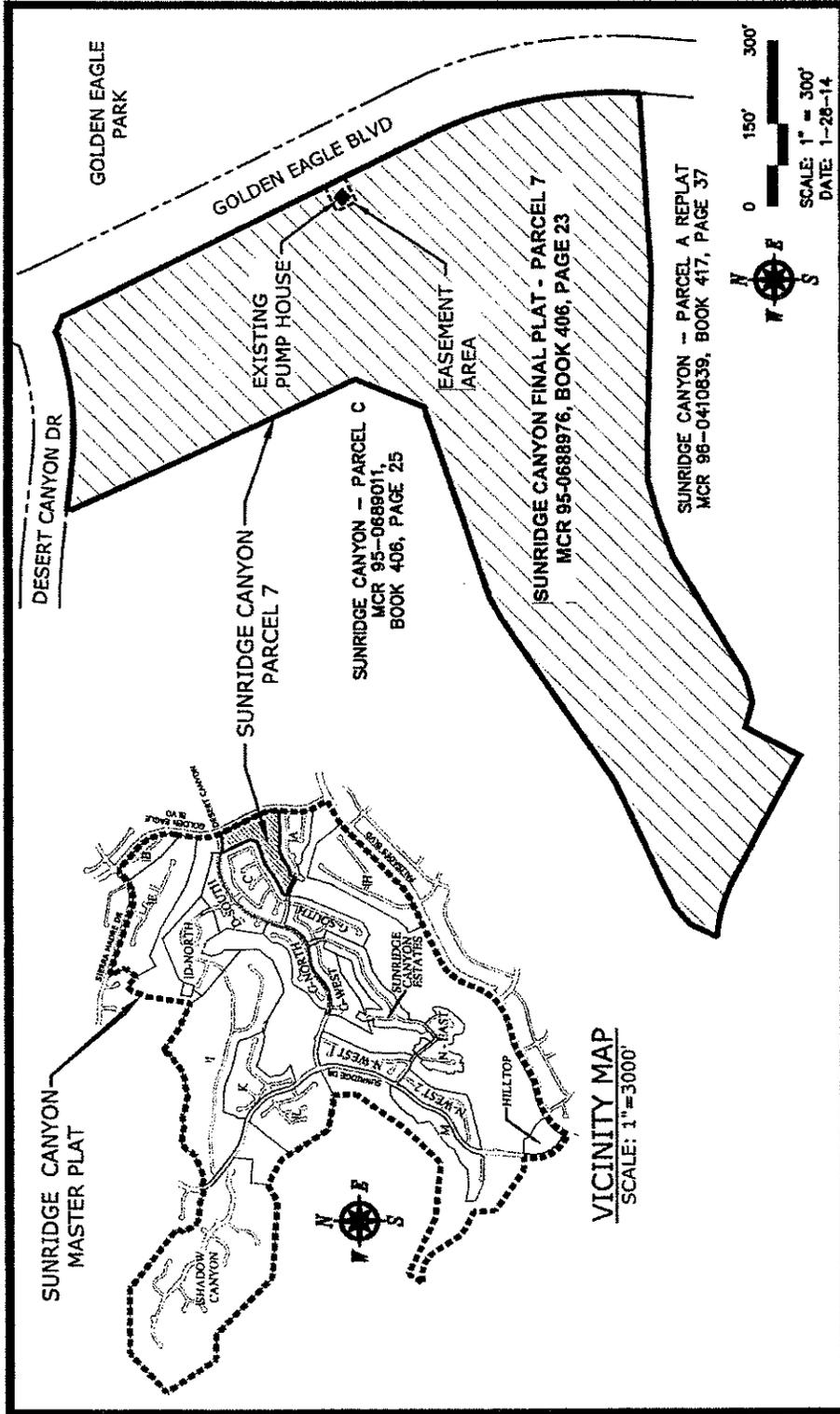


EXHIBIT B  
TO  
UTILITY EASEMENT AGREEMENT  
BETWEEN  
BUCKEYE WEST LLC  
AND  
THE TOWN OF FOUNTAIN HILLS

[Legal Description and Map of Easement Area]

See following pages.

## Exhibit B-1

**SUNRIDGE CANYON FINAL PLAT, PARCEL 7 - EASEMENT AREA**

A parcel of land being a portion of Fountain Hills Arizona, Final Plat of Sunridge Canyon, Parcel 7, as recorded on November 8, 1995 in Book 406, Page 23 of the Records of Maricopa County, Arizona and situated in Section 9, Township 3 North Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; said parcel being more particularly described as follows:

Commencing at the center line intersection of Golden Eagle Boulevard and Desert Canyon Drive as recorded in Fountain Hills, Arizona Legal Description for the Dedication of Golden Eagle Boulevard from Palisades Boulevard to the existing Golden Eagle Boulevard, MCR 1990-322388, said point also being on a curve being concave northeasterly and having a radius of 800.00 feet;

Thence southerly along the arc of said curve through a central angle of 04 degrees 43 minutes 51 seconds an arc length of 66.06 feet;

Thence south 63 degrees 25 minutes 29 seconds west and departing from said centerline, a distance of 51.00 feet, said point also being on the westerly right-of-way of Golden Eagle Boulevard, as shown on said Final Plat of Sunridge Canyon;

Thence south 26 degrees 34 minutes 31 seconds east, along said right-of-way, a distance of 513.00 feet, to the **TRUE POINT OF BEGINNING**;

Thence south 26 degrees 34 minutes 31 seconds east, a distance of 40.00 feet;

Thence south 63 degrees 25 minutes 29 seconds west and departing from said right-of-way, a distance of 50.00 feet;

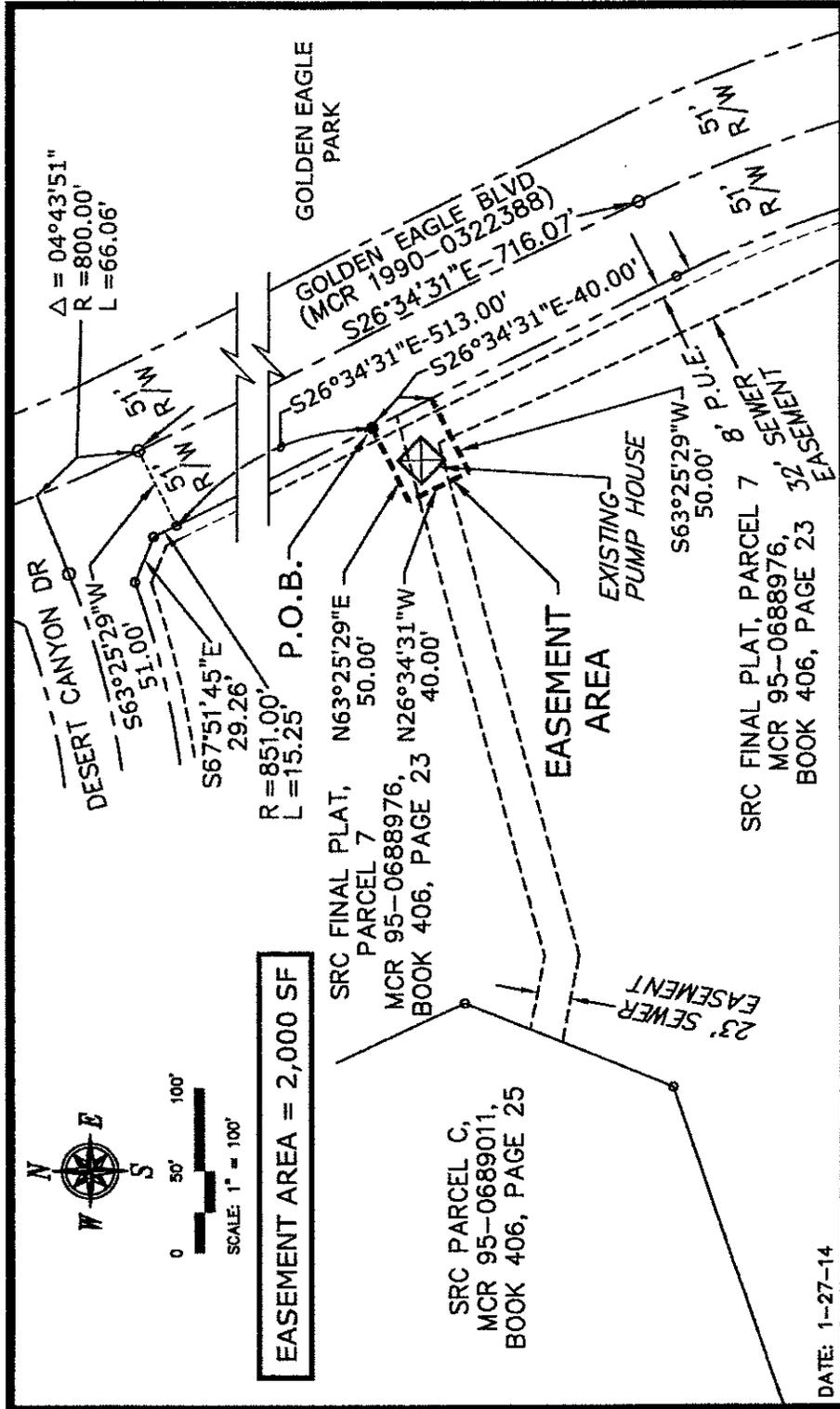
Thence north 26 degrees 34 minutes 31 seconds west, a distance of 40.00 feet;

Thence north 63 degrees 25' 29 seconds east, a distance of 50.00 feet to the **TRUE POINT OF BEGINNING**: Said easement to provide a minimum distance of 12.00 feet, from the southwest corner of the existing pump house building, for access purposes.

This easement contains an area of 0.0459 acres more or less.

TOWN OF FOUNTAIN HILLS  
EASEMENT ACQUISITION  
EXHIBIT "B-2"

SUNRIDGE CANYON FINAL PLAT, PARCEL 7, MCR 95-0688976



EASEMENT AREA = 2,000 SF



DATE: 1-27-14