

**ORDINANCE NO. 09-04**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE OFFICIAL ZONING DISTRICTS MAPS OF THE TOWN OF FOUNTAIN HILLS BY AMENDING THE ZONING DESIGNATION OF APPROXIMATELY 2.72 ACRES OF LAND LOCATED ON THE EAST SIDE OF CERRO ALTO DRIVE, SOUTH OF GOLDEN EAGLE BOULEVARD FROM "R1-35" SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT TO "R1-35H" SINGLE-FAMILY RESIDENTIAL HILLSIDE ZONING DISTRICT.**

**WHEREAS**, the Mayor and Council of the Town of Fountain Hills (the "Town Council") adopted Ordinance No. 93-22, on November 18, 1993, adopting the Zoning Ordinance for the Town of Fountain Hills (the "Zoning Ordinance"); and

**WHEREAS**, Chapter 2, Procedures, Section 2.01, Amendments or Zone Changes, of the Zoning Ordinance establishes the authority and procedures for amending the zoning district boundaries; and

**WHEREAS**, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings were advertised in the January 7, 2009 and February 11, 2009 editions of the *Fountain Hills Times*; and

**WHEREAS**, public hearings were held by the Fountain Hills Planning & Zoning Commission on January 22, 2009, and by the Town Council on March 5, 2009.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS** as follows:

**SECTION 1.** That the "Official Zoning District Maps," codified in Chapter 3 of the Zoning Ordinance, are hereby amended to change the Zoning District designation of approximately 2.72 acres of land located on the east side of Cerro Alto Drive, south of Golden Eagle Boulevard, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by reference, from "R1-35" Single-Family Residential Zoning District to the "R1-35H" Single-Family Residential Hillside Zoning District.

**SECTION 2.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 3.** That the Mayor, the Town Manager or designee, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills,  
Arizona, March 5, 2009.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**


  
\_\_\_\_\_  
Jay T. Schlum, Mayor

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

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Richard L. Davis, Town Manager

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

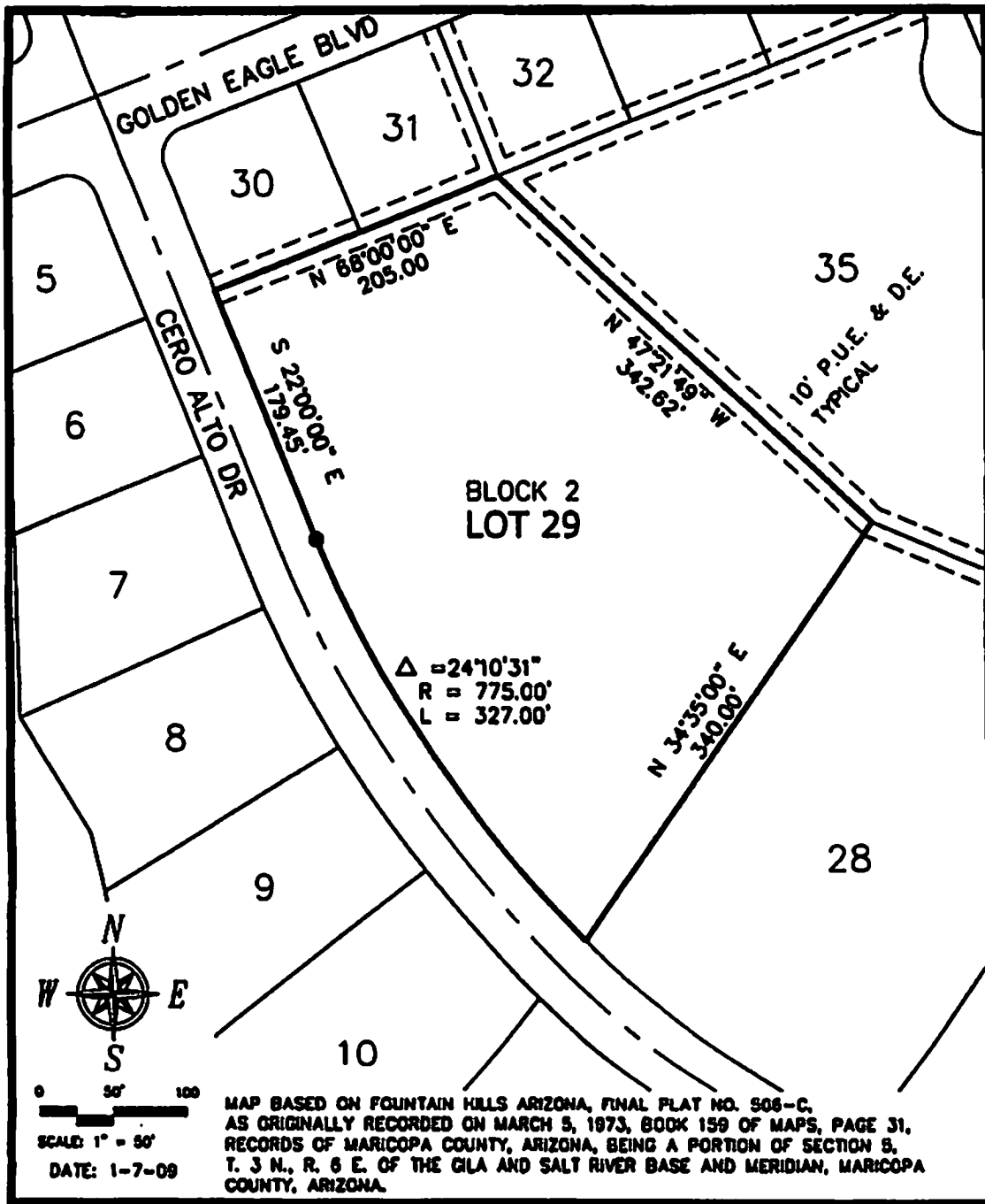
**EXHIBIT A  
TO  
ORDINANCE NO. 09-04**

**[Legal Description and Map of the Property]**

**See following page.**

TOWN OF FOUNTAIN HILLS  
 REZONING (R1-35 TO R1-35H)  
 EXHIBIT "A"

FOUNTAIN HILLS ARIZONA FINAL PLAT NO. 506-C, BLOCK 2, LOT 29



**WAIVER OF CLAIMS FOR DIMINUTION OF VALUE  
UNDER ARIZ. REV. STAT. §§ 12-1134 – 1136  
BETWEEN  
THE TOWN OF FOUNTAIN HILLS  
AND  
DAVID A. CARIBARDI AND MARCIA A. CARIBARDI**

THIS WAIVER OF CLAIMS FOR DIMINUTION OF VALUE UNDER ARIZ. REV. STAT. §§ 12-1134 - 1136 (this "Waiver") is made February 5, 2009, between David A. Caribardi and Marcia A. Caribardi, husband and wife (collectively, the "Owner") and the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), regarding the following real property (the "Property"):

See legal description and map set forth in Exhibit A attached hereto and incorporated as if fully set forth herein.

Owner (i) is the owner of all right, title and interest in the Property and (ii) on behalf of itself and all other parties having an interest in the Property intends to encumber the Property with the following agreements and waivers:

1. Waiver of Claims Pursuant to ARIZ. REV. STAT. § 12-1134 et seq. The Owner agrees and understands that the Town is entering into this Waiver in conjunction with that certain approval for rezoning of the Property, Case #Z2008-07 (the "Rezoning") in good faith and with the understanding that, if it approves the Rezoning it will not be subject to a claim for diminished value of the Property from the Owner or other parties having an interest in the Property. Owner agrees and consents to all the conditions imposed by the Rezoning ordinance, including all stipulations adopted by the Council, and by signing this Waiver hereby waives any and all claims, suits, damages, compensation and causes of action the Owner may have now or in the future under the provisions of ARIZ. REV. STAT. §§ 12-1134 through and including 12-1136 (but specifically excluding any provisions included therein relating to eminent domain) and resulting solely from the Rezoning. Owner acknowledges and agrees that any stipulations imposed by the Council as part of the Rezoning ordinance will not result in a reduction of the fair market value of the Property as defined in ARIZ. REV. STAT. § 12-1136. The Owner acknowledges that additional stipulations may be imposed by the Town Council, in its sole discretion, prior to approval of the Rezoning. Owner agrees and understands that its waiver of claims as set forth in this Waiver shall be deemed to extend to cover any changes to the Rezoning ordinance and all stipulations to the Rezoning ordinance approved by the Town Council unless, not later than 48 hours following such Town Council approval, Owner notifies the Town, in writing, of its disagreement with such stipulation(s). In the event that Owner timely notifies the Town of such disagreement, Owner shall not be deemed to have waived claims with respect to only the stipulations imposed or revised by the Town Council prior to approval of the Rezoning ordinance; provided, however, that if Owner does not submit a separate waiver of such claims, in a form acceptable to the Town, prior to close of business on the fifth day following approval of the Rezoning ordinance, then the Town may, after proper notice and hearing, rescind the Rezoning ordinance, and if rescinded by the Town Council acting in its sole discretion, this Waiver shall act as a bar to a claim for diminished value based upon the rescinded Rezoning

ordinance. The foregoing waiver of claims shall not be effective and shall be of no further force and effect with respect to the Rezoning in the event the Town Council disapproves the Rezoning ordinance.

2. Entire Agreement; Modification. This Waiver, any exhibits attached hereto, and any addenda, constitute the entire understanding and agreement of the Owner and the Town and shall supersede all prior agreements or understandings between the Owner and Town regarding waiver of claims pursuant to ARIZ. REV. STAT. § 12-1134 *et seq.* relating to the Property with respect to the Rezoning. This Waiver may not be modified or amended except by written agreement by the Owner and Town.

3. Applicable Law; Cancellation. This Waiver is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. This Waiver is subject to the cancellation provisions of ARIZ. REV. STAT. § 38-511.

4. Recording; Waiver Runs With Land. Within ten days after the execution of this Waiver, the Town Clerk shall file the Waiver in the Official Records of the County Recorder's Office, Maricopa County, Arizona. This Waiver runs with the land and is binding upon all present and future owners of the above-referenced Property.

5. Owner Authority. The Owner warrants and represents that it is the owner of all right, title and interest to the Property, and that no other person has an ownership interest in the Property. The person(s) who sign on behalf of Owner personally warrant and guarantee to the Town they have the legal power to bind the Owner to this Waiver.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

"Owner"

"Town"

By:   
David A. Caribardi

TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation

By:   
Richard L. Davis, Town Manager

By:   
Marcia A. Caribardi

ATTEST:

  
Bevelyn J. Bender, Town Clerk

ACKNOWLEDGMENTS

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

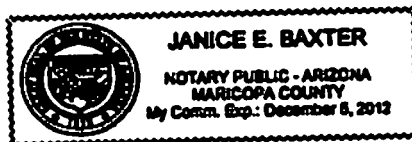
This instrument was acknowledged before me on February 5, 2009,  
by David A. Caribardi.

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

My Commission Expires:

December 5, 2012

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )



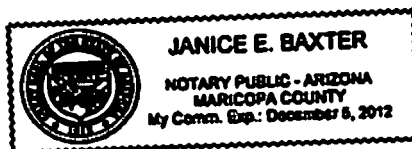
This instrument was acknowledged before me on February 5, 2009,  
by Marcia A. Caribardi.

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

My Commission Expires:

December 5, 2012

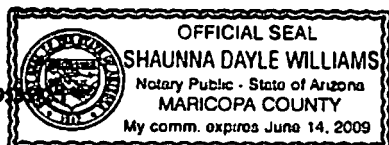
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )



This instrument was acknowledged before me on March 9, 2009,  
by Richard L. Davis, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona  
municipal corporation, on behalf of the Town of Fountain Hills.

Shaunna Dayle Williams  
Notary Public in and for the State of Arizona

My Commission Expires: 6-14-09



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