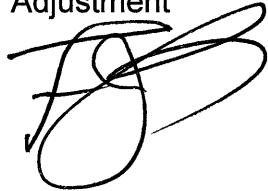


LEGAL MEMORANDUM

TO: City of Mesa Board of Adjustment
FROM: Francis J. Slavin
DATE: October 6, 2021
RE: Power Road Park – BOA 21-00628



EQUITABLE ESTOPPEL

The doctrine of equitable estoppel applies to state agencies and municipalities where a person relies to his/her/its detriment on an official act of the state or municipality. The doctrine applies so long as the public interest is not unduly damaged and there is no substantial and adverse effect on the exercise of governmental powers. See *Valencia Energy v. Arizona Department of Revenue*, 191 Ariz. 565, 959 P.2d 1256 (1998).

In *Valencia Energy*, the taxpayer challenged that it was liable for the payment of delinquent transaction privilege taxes for transportation charges relating to coal supply to an electric power plant. Valencia had contracted with the operator of a power plant owned by Tucson Electric Power Company to deliver coal to the power plant which had been mined in New Mexico. Before contracting with TEP's power plant operator, Valencia met with the Arizona Department of Revenue to ascertain whether Valencia would be required to pay transaction privilege taxes on transportation charges. The Arizona Department of Revenue issued an official letter from one of its tax analysts that transaction privilege taxes would not be imposed on the transportation charges. Valencia entered into a contract to deliver coal to the power plant without requiring the plant operator to pay transaction privilege taxes. Later, ADOR audited Valencia's transaction privilege tax returns and determined that Valencia had failed to report transaction privilege taxes on the transportation charges for coal deliveries to the TEP plant and issued a notice of deficiency assessment to Valencia for underpayment of approximately \$5.0 million.

The Arizona Supreme Court applied the legal doctrine of equitable estoppel and ruled in favor of Valencia. It established the three elements of equitable estoppel:

1. The party to be estopped commits acts inconsistent with position it later adopts;
2. Reliance by the other party; and
3. Injury to the latter resulting from the former's repudiation of its prior conduct.

It further determined that, despite the \$5.0 million loss to the state, "estopping the Department does not threaten undue damage to the public interest, nor will the application of estoppel substantially and adversely affect the exercise of governmental powers."

In the case of *Pingitore v. Town of Cave Creek*, 194 Ariz. 261, 981 P.2d 129 (App. 1998), the Arizona Court of Appeals applied the doctrine of equitable estoppel against the Town of Cave Creek to estop the Town from precluding a landowner from building a residence on Black Mountain. The owner had received preliminary permits which allowed the owner to grade a private driveway and install a sewer line and grade a building pad. The Town also required the Pingitores to make a lot line adjustment which required them to purchase an adjacent 5-acre parcel. The owners also expended funds on a complete set of architectural plans which were submitted to the Town together with their building permit application. Bowing to political pressure, the Town council enacted a Mountain Preservation zone amendment to the Town's zoning ordinance which had the legal effect of prohibiting construction of the residence. The Town rejected the Pingitores' application for a building permit for their residence. The Pingitores filed an appeal with the Town's Board of Adjustment which concurred with the Town's action.

The Pingitores sought relief from the Board's order in the Superior Court. The Court granted the Pingitores' summary judgment, concluding that (1) the MP zoning ordinance was unconstitutionally vague, (2) the Pingitores had a vested right to build their home at the original site, and (3) the Town was estopped from prohibiting them from building at the site. The Town appealed raising the 3 issues.

The Court of Appeals determined that the trial court correctly applied the doctrine of equitable estoppel and therefore did not address the other 2 issues. The Town asserted that it could not be estopped from preventing the Pingitores in building at the planned site, relying on its status as a sovereign acting to protect the public interest. The Court cited the holding in *Valencia Energy* and stated those circumstances under which estoppel would apply against a governmental entity. The Court then analyzed the 3 traditional elements of equitable estoppel:

1. The party to be estopped commits acts inconsistent with the position it later adopts;
2. Reliance by the other party; and
3. Injury to the latter resulting from the former's repudiation of its prior conduct.

With regard to the first element, the Court stated that it required a considerable degree of formalism, usually a written document. Further, the action planned to be relied upon by the party asserting estoppel must have been taken by or had the approval of one authorized to act in that circumstance. The Court noted that the Town had issued a variety of permits and variances to the Pingitores, the zoning clearance had been issued, and the Pingitores had submitted an application for a building permit with a complete set of building plans.

To establish the second element, the Pingitores had to show they actually relied on the Town's actions and their confidence was "reasonable under the circumstance." The Court found that the Pingitores justifiably believed that the Town intended that they could continue to act on the Town's assurances in the form of its issuance of the requisite

documents and that would allow them to construct their residence on the site. Their reliance was reasonable under the circumstances.

Finally, the Pingitores had to demonstrate they suffered substantial detriment resulting from the repudiation of prior representations. The Court found that the Pingitores incurred substantial expense in preparing the site and they would suffer further financial losses if forbidden from further proceeding with the construction.

Finally, the Court analyzed whether application of estoppel against the Town would unduly damage public interest or substantially adversely affect the exercise of governmental powers. The Court stated as follows:

In this case, while the legislative policy of the Town has changed since the Pingitores began the construction of their home, no governmental authority will be unduly circumscribed by an application of estoppel, and equity favors its application.

The doctrine of equitable estoppel applies to the interpretation issued by the Mesa Zoning Administrator that the current use of the property constitutes a food truck park which does not conform to the definition of Public Parks and Recreation Facilities found in the Mesa Zoning Ordinance ("MZO").

On May 24, 2019, Attorney Sean Lake on behalf of the owners of the Power Road Park emailed the City's Zoning Administrator regarding his client's plan to develop a public park at the northeast corner of Power Road and Halifax Drive. Mr. Lake states a park is an allowed use within the Office Commercial ("OC") zoning district applicable to the property and that the proposed use fits the definition of "Public Parks and Recreational Facilities" of the MZO. Furthermore, he states that Public Parks and Recreational Facilities are deemed "non-commercial" under the MZO and, therefore, not subject to the Site Plan Review Process.

On May 29, 2019, the Zoning Administrator emailed Mr. Lake the Zoning Administrator's interpretation that Public Parks and Recreational Facilities are allowed in the Office Commercial zoning district per Section 11-6-2 MZO. The Zoning Administrator also interpreted Section 11-86-3 MZO which defines "Public Parks and Recreational Facilities" to include picnic facilities as well as related food concessions. The Zoning Administrator further opines that there is no specific provision in the MZO which requires a "Public Park" to be operated by a governmental entity.

Due to the COVID pandemic, Power Road Park delayed building a Public Park on its property. Commencing in August 2020, Power Road Park obtained dust control permits from Maricopa County and cleared/scraped its parcel, applied rock, applied dust control products and erected temporary fencing. In November 2020, Power Road Park added tables and chairs and lighting. Power Road Park made arrangements with mobile food vendors to provide food concessions for the Public Park.

On December 2, 2020, Power Road Park opened the park to the public with mobile food vendors serving as food concessionaires. On December 3, 2020 the City of Mesa (Frank Hogland) issued a notice of violation ("NOV") which stated:

1. The food truck event is not permitted on an OC zoned property. Per the zoning codes, all activities shall be conducted entirely within an enclosed building with no outside storage or display.
2. In addition, per A.R.S. § 9-485.01, a city can prohibit or restrict a mobile food vendor from operating within 250 feet of an area zoned as residential.

See NOV attached as **Exhibit A**.

In response to the NOV, David Darling and Ray Johnson, owners of Power Road Park, met at the property with Christine Zielonka, Director of Development Services, Natalie Lewis, Deputy City Manager, Ryan Russell, City Code Compliance Director, and Nana Appiah, Planning Director and Zoning Administrator. The main issue raised by the City officials was whether Power Road Park was operating a public or private park. Mr. Darling proclaimed that it was a public park. Mr. Appiah, upon questioning from his superior, Ms. Zielonka, stated that he could allow the use as being a public park. Ms. Zielonka verbally accepted Mr. Appiah's interpretation. Thereafter, Ms. Zielonka requested that Power Road Park obtain a permit to build a wall along the east property line adjoining the residential development, to add more dust control and to relocate a trailer. The City of Mesa has never pursued enforcement of this NOV.

Citizens, who came to use and enjoy the picnic park, parked their vehicles on a nearby lot owned by the City. In January 2021, the City erected a fence that blocked access to the lot, which caused park patrons to begin parking on neighborhood streets and walking to the public park. This brought complaints from the residential neighborhood. Ms. Zielonka told Power Road Park that it needed to provide a parking area for the patrons, urging Power Road Park to lease adjoining property to the north owned by Austin Gardner.

Mr. Gardner refused to lease but agreed to sell his property to Power Road Park. So, on June 17, 2021, Power Road Park purchased Mr. Gardner's property for \$900,000. Attached as **Exhibit B** are copies of the warranty deed and affidavit of property value. Power Road Park cleared and dust proofed the Gardner property and directed park patrons to park there.

Unbeknownst to Power Road Park, Ms. Zielonka, who is the Zoning Administrator's supervisor, after urging Power Road Park to lease Mr. Gardner's property for parking, requested the Zoning Administrator on May 11, 2021 to issue a formal written interpretation regarding the uses being conducted on Power Road Property public park property. Acting on Ms. Zielonka's advice, Power Road Park agreed to purchase Mr. Gardner's property. The close of escrow occurred on June 17, 2021; the Zoning Administrator's interpretation is dated June 16, 2021. A copy of the zoning interpretation

was emailed to Power Road Park's attorney by the Zoning Administrator after business hours on June 16, 2021. There was no provision in the purchase agreement which would have allowed Power Road Park to void the agreement.

In justifiable reliance on zoning interpretations and directions received from City officials acting within the scope of their authority, Power Road Park has expended the following sums:

1. Permit application with the City of Mesa - \$1,000±
2. Permit application with Maricopa County - \$5000±
3. Engineering, architectural costs since 2019 - \$80,000±
4. Construction - \$250,000±
5. New land acquisition from Austin Gardner \$900,000
6. Attorneys' fees \$120,000±

The City of Mesa is estopped from taking any action to shut down the current use of Power Road Park as a public park picnic facility being served by mobile food vendor concessionaires.

MOBILE FOOD VENDORS/MOBILE FOOD UNITS

Arizona Revised Statute § 9-485 which became effective August 3, 2018, regulates the general powers of Arizona municipalities pertaining to mobile food vendors and mobile food units. Mobile food vendor means "[A]ny person who owns, controls, manages or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive or operate a mobile food unit." Mobile food unit means "[A] food establishment that is licensed by this State, that is readily movable and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any vehicle as defined in § 28-101." The MZO does not set forth in which zoning districts mobile food vendors are allowed to operate or not allowed to operate. The MZO does not regulate the number of mobile food units which are allowed to operate at any given location during any given time nor does it contain a definition or term "food truck park." It also does not contain a definition of "food concession." So, the Zoning Administrator purports to legislate these terms that are not found in the MZO which is beyond his authority. Section 11-66-7(C) MZO provides that "The Zoning Administrator shall not make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the Zoning Ordinance; provided that this restriction in this paragraph shall not affect the authority to grant variances."

The Zoning Interpretation states that the term "Public Parks and Recreational Facilities" includes "picnic facilities." There is no language which requires picnic facilities to be combined with any other named facilities. Therefore, picnic facilities, standing alone, are permitted as "Public Parks and Recreation Facilities." It stands to reason that the size/capacity of a "related food concession" at any given time would depend upon the size and capacity of the facility and the number of persons who are using the picnic facility. Logically, there cannot be a food concession tail wagging the picnic facility dog.

Effective April 19, 2021, the Mesa Mayor and Council Members adopted Ordinance 5617 which rewrote the City's Public Park Regulations in Chapter 10 of the City Code. There is no limit found in these regulations as to the number of mobile food vendors (as defined in A.R.S. § 9-485, as amended) which are allowed to be located at a public park. It may be logically inferred that the Zoning Administrator does not have the legal authority to limit the number of mobile food units which may locate on Power Road Park's public park.

*

*

*

*

*

*

EXHIBIT A

Notice of Ordinance Violation



**Failure to act by December
10, 2020 may result in over
\$493.00 in fines per violation.**

David T Darling Pc/Dm3 Llc
2733 N POWER RD 102
MESA, AZ 85215

Location of violation: 1439 N POWER RD, MESA, AZ
85207

Date of Notice: December 03, 2020

Your case number: COD20-08513

Dear David T Darling Pc/Dm3 Llc,

I inspected your property on December 03, 2020. I noticed that some aspects do not comply with the Mesa City code. We count on residents to do their part to keep our community clean and safe. You can help improve your neighborhood by taking the action(s) listed below.

**Action
Required by
December
10, 2020**

The food truck event is not permitted on an OC zoned property. Per the zoning code, all activities shall be conducted entirely within an enclosed building with no outside storage or display.

In addition, per ARS 9-485.01, a city can prohibit or restrict a mobile food vendor from operating within 250 feet of an area zoned for residential use.

Please note, under Mesa City Code 8-6-3.J, vehicles cannot be stored or parked on your vacant lot to the south (Parcel # 218-04-007C) as it is not dust proof.

Failure to comply shall result in a citation being issued.

If these violations are not corrected, or alternate arrangements not made with me by December 10, 2020, you may be issued a civil citation. **I hope you act before the deadline to avoid paying a \$493.00 fine per violation.**

If you have any questions, or want to make arrangements, please contact me today at 480-644-5742 or Frank.Hoglund@MesaAZ.gov.

Usted ha recibido una notificación de violación de ordenanzas municipales. No actuar le puede costar hasta \$493.00 por violación. Si tiene preguntas sobre el contenido de esta carta por favor comuníquese con Frank Hoglund, Oficial de Código, al número o correo listados arriba.

Notice of Ordinance Violation



**Failure to act by December
10, 2020 may result in over
\$493.00 in fines per violation.**

David T Darling Pc/Dm3 Llc
2733 N POWER RD 102
MESA, AZ 85215

Location of violation: 1439 N POWER RD, MESA, AZ
85207

Date of Notice: December 03, 2020

Your case number: COD20-08513

Frank Hoglund

Code Enforcement Officer

Violation Code: 11-6-2(OC)

Ordinance Summary Office Commercial Land Use Regulations.

EXHIBIT B

RECORDED ELECTRONICALLY
BY SECURITY TITLE AGENCY

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
STEPHEN RICHER

20210670375 06/17/2021 04:51
ELECTRONIC RECORDING

RECORDING REQUESTED BY:

Security Title Agency, Inc.

Escrow No.: 63210515-063-KJJ

**WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:**

Power Road Park LLC, an Arizona limited
liability company
4445 E Holmes Ave #107
Mesa, AZ 85206

63210515-3-6-1--
Garcia

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration,

Austin Gardner, a married man as his sole and separate property

("Grantor") conveys to

Power Road Park LLC, an Arizona limited liability company

the following real property situated in **Maricopa County, ARIZONA:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

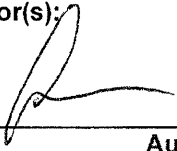
SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

Grantor warrants the title against all persons whomsoever, subject to the matters set forth above.

Dated: June 15, 2021

SIGNATURE AND NOTARY ACKNOWLEDGEMENT(S) TO WARRANTY DEED

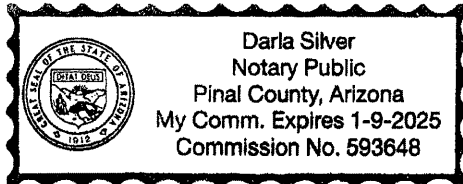
Grantor(s):

Austin GardnerState of Arizona
County of Maricopa

The foregoing document was acknowledged before me this

17th day of June, 2021by Austin Gardner

(Seal)

Darla Silver
Notary Public

Escrow No. 63210515-063-KJJ

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel No. 1:

The South half of the Northwest quarter of Lot 3, Section 7, Township 1 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 25 feet and the West 150 feet thereof.

Parcel No. 2:

The West 150 feet of the South half of the Northwest quarter of Lot 3, Section 7, Township 1 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 25 feet and the West 50 feet thereof; and

EXCEPT that portion conveyed to the City of Mesa in Warranty Deed recorded September 30, 2003 as Document No. 2003-1373938, of Official Records, Maricopa County, Arizona, described as follows:

That portion of the following described parcel of land:

The East 100 feet of the West 150 feet of the South half of the Northwest quarter of Lot 3, Section 7, Township 1 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 25 feet thereof.

Said portion more particularly described as follows:

BEGINNING at the Southwest corner of said parcel;

Thence North 00 degrees 35 minutes 14 seconds East (basis of bearing according to "Alta Miro Estates" recorded in Book 537 of Maps, page 41, M.C.R.) along the West line of said parcel, a distance of 304.98 feet to the North line of said parcel;

Thence South 89 degrees 58 minutes 41 seconds East along the North line of said parcel, a distance of 19.15 feet to the intersection of a non-tangent curve with a radius of 25.00 feet with a bearing to the radius point of South 23 degrees 25 minutes 34 seconds East and being concave to the Southeast;

Thence Southwesterly through a central angle of 52 degrees 59 minutes 07 seconds, an arc distance of 27.48 feet to a tangent line being 5.5 feet East of and parallel with aforesaid West line;

Thence South 00 degrees 35 minutes 14 seconds West along said parallel line, a distance of 282.84 feet to the South line of said parcel;

Thence North 89 degrees 59 minutes 06 seconds West along said South line, a distance of 5.50 feet to the POINT OF BEGINNING.

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER

STEPHEN RICHER

20210670375 06/17/2021 04:51

ELECTRONIC RECORDING

SALES AFFIDAVIT

AFFIDAVIT OF PROPERTY VALUE

1. ASSESSOR'S PARCEL IDENTIFICATION NUMBER(S)

Primary Parcel: 218-04-003C
BOOK MAP PARCEL SPLIT

Does this sale include any parcels that are being split / divided?

Check one: Yes ☐ No ☒

How many parcels, other than the Primary Parcel, are included in this sale? 2

Please list the additional parcels below (attach list if necessary):

(1) 218-04-003A (2) 218-04-003C
(3) ~~218-04-003B~~ (4) ~~218-04-003D~~

2. SELLER'S NAME AND ADDRESS:

Austin Gardner
7114 E Grandview ST
Mesa, AZ 85207

3. (a) BUYER'S NAME AND ADDRESS:

Power Road Park LLC, an Arizona limited liability company
4445 E Holmes Ave #107
Mesa, AZ 85206

(b) Are the Buyer and Seller related? Yes ☐ No ☒
If Yes, state relationship:

4. ADDRESS OF PROPERTY:

1525 N Power Road and 1635 E Hobart
Mesa, AZ 85207

5. (a) MAIL TAX BILL TO: (Taxes due even if no bill received)

Power Road Park LLC, an Arizona limited liability company
4445 E Holmes Ave. #107
Mesa, AZ 85206

(b) Next tax payment due Oct. 1, 2021

6. PROPERTY TYPE (for Primary Parcel): NOTE: Check Only One Box

a. ☒ Vacant Land f. ☐ Commercial or Industrial Use
b. ☐ Single Family Residence g. ☐ Agricultural
c. ☐ Condo or Townhouse h. ☐ Mobile or Manufactured Home
i. ☐ Other Use; Specify:
d. ☐ 2-4 Plex
e. ☐ Apartment Building

7. RESIDENTIAL BUYER'S USE: If you checked b, c, d or h in Item 6 above, please check one of the following:

a. ☐ To be used as a primary residence.
b. ☐ To be rented to someone other than a "qualified family member."
c. ☒ To be used as a non-primary or secondary residence.

See reverse side for definition of a "primary residence, secondary residence" and "family member."

8. If you checked e or f in Item 6 above, indicate the number of units:
For Apartments, Motels / Hotels, Mobile Home / RV Parks, etc.

THE UNDERSIGNED BEING DULY SWORN, ON OATH, SAYS THAT THE FOREGOING INFORMATION IS A TRUE AND CORRECT STATEMENT OF THE FACTS PERTAINING TO THE TRANSFER OF THE ABOVE DESCRIBED PROPERTY.

Signature of Seller / Agent

State of Arizona County of Maricopa

Subscribed and sworn to before me on this 17 day of June, 2021

Notary Public Daria Silver

Notary Expiration Date 1-9-2025

Daria Silver
Notary Public
Pinal County, Arizona
My Comm. Expires 1-9-2025
Commission No. 593648

63210515-2-6-2-Y-
Garcia

I do hereby certify this to be a true
and correct copy of the original.

Security Title Agency

By: [Signature]

9. TYPE OF DEED OR INSTRUMENT (Check Only One Box):

a. ☒ Warranty Deed d. ☐ Contract or Agreement
b. ☐ Special Warranty Deed e. ☐ Quit Claim Deed
c. ☐ Joint Tenancy Deed f. ☐ Other:

10. SALE PRICE: \$ 900,000.00

11. DATE OF SALE (Numeric Digits): 05 / 2021
Month / Year

12. DOWN PAYMENT \$ 150,000.00

13. METHOD OF FINANCING:

a. ☐ Cash (100% of Sale Price) e. ☒ New loan(s) from financial institution:
b. ☐ Barter or trade (1) ☒ Conventional
c. ☐ Assumption of existing loan(s) (2) ☐ VA
(3) ☐ FHA
f. ☐ Other financing; Specify:
d. ☐ Seller Loan (Carryback)

14. PERSONAL PROPERTY (see reverse side for definition):

(a) Did the Sale Price in Item 10 include Personal Property that impacted the Sale Price by 5 percent or more? Yes ☐ No ☒
(b) If Yes, provide the dollar amount of the Personal Property:

\$ 00 AND

briefly describe the Personal Property:

15. PARTIAL INTEREST: If only a partial ownership interest is being sold, briefly describe the partial interest: NA

16. SOLAR / ENERGY EFFICIENT COMPONENTS:

(a) Did the Sale price in Item 10 include solar energy devices, energy efficient building components, renewable energy equipment or combined heat and power systems that impacted the Sale Price by 5 percent or more? Yes ☐ No ☒
If Yes, briefly describe the solar / energy efficient components:

17. PARTY COMPLETING AFFIDAVIT (Name, Address, Phone Number):
Seller and Buyer herein

18. LEGAL DESCRIPTION (attach copy if necessary):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Signature of Buyer / Agent

State of Arizona County of Maricopa

Subscribed and sworn to before me on this 15 day of June, 2021

Notary Public [Signature]

Notary Expiration Date 8-23-22

DE ANN RHOTON-LINDBLOM
Notary Public - State of Arizona
MARICOPA COUNTY
Commission #550727
Expires August 23, 2022

SFRM0135 (DSI Rev. 01/24/20)

Escrow No. 63210515-063-KJJ

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel No. 1:

The South half of the Northwest quarter of Lot 3, Section 7, Township 1 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 25 feet and the West 150 feet thereof.

Parcel No. 2:

The West 150 feet of the South half of the Northwest quarter of Lot 3, Section 7, Township 1 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 25 feet and the West 50 feet thereof; and

EXCEPT that portion conveyed to the City of Mesa in Warranty Deed recorded September 30, 2003 as Document No. 2003-1373938, of Official Records, Maricopa County, Arizona, described as follows:

That portion of the following described parcel of land:

The East 100 feet of the West 150 feet of the South half of the Northwest quarter of Lot 3, Section 7, Township 1 North, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 25 feet thereof.

Said portion more particularly described as follows:

BEGINNING at the Southwest corner of said parcel;

Thence North 00 degrees 35 minutes 14 seconds East (basis of bearing according to "Alta Miro Estates" recorded in Book 537 of Maps, page 41, M.C.R.) along the West line of said parcel, a distance of 304.98 feet to the North line of said parcel;

Thence South 89 degrees 58 minutes 41 seconds East along the North line of said parcel, a distance of 19.15 feet to the intersection of a non-tangent curve with a radius of 25.00 feet with a bearing to the radius point of South 23 degrees 25 minutes 34 seconds East and being concave to the Southeast;

Thence Southwesterly through a central angle of 52 degrees 59 minutes 07 seconds, an arc distance of 27.48 feet to a tangent line being 5.5 feet East of and parallel with aforesaid West line;

Thence South 00 degrees 35 minutes 14 seconds West along said parallel line, a distance of 282.84 feet to the South line of said parcel;

Thence North 89 degrees 59 minutes 06 seconds West along said South line, a distance of 5.50 feet to the POINT OF BEGINNING.