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WILENCHIK & BARTNESS

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February 23, 2015

VIA CERTIFIED MAIL

Clerk of the City of Tempe
31 E. Fifth Street, 2nd Floor
Tempe, AZ 85281

VIA REGULAR MAIL

Judith R. Baumann
City Attorney of Tempe
P. O. Box 5002
Tempe, AZ 85280

Re: A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

To the Clerk of the City of Tempe, and Judith Baumann, Tempe City Attorney:

This firm represents Steven and Virginia Sussex (the “Sussexes”). I am writing this letter with regard to the “Ramón Gonzáles/Jesús Martínez House,”¹ as well as its surrounding property/curtilage located at 320 W. 1st St., Tempe (the “Property,” which is more fully described by Exhibit “A” to the attached quitclaim deed). The Sussexes and their ancestors have adversely possessed the Property for one hundred twenty-three (123) years. This letter serves as a formal request pursuant to Ariz. Rev. Stats. (“A.R.S.”) § 12-1103 that the City of Tempe execute a quitclaim deed conveying the Property to the Sussexes.²

The Sussex family has been in actual, open, notorious, hostile, exclusive, continuous and uninterrupted possession of the Property under claim of right since 1892.³ In fact, the Sussex family has occupied the Property for longer than any family has occupied any home in the entire Valley. This period of 123 years far exceeds the statutory requirement of ten years that is set by A.R.S. § 12-526.

¹ The house, built in 1882, is listed in the National Register of Historic Places, Reference Number 84000708. Please see Exhibit “A,” hereto.

² Pursuant to statute, a quitclaim deed and check for five dollars “for execution and delivery of the deed” are attached hereto.

³ See page 5 of Exhibit “B,” report by Tempe Historical Museum historian Scott Solliday.



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A brief history of the Property

Steven Sussex's great-grandfather, Jesús Martínez, purchased the Property from Ramón Gonzáles in 1892, and lived there with his wife Rosario and their three children until his death in 1907.⁴ As was common practice at that time, the deed of purchase was not recorded with the (territorial) county recorder.⁵ Steven Sussex's grandmother (and Rosario's daughter), Belén (Martínez) Sussex, grew up in the home on the Property, and lived there until her passing in 1967.⁶ Upon her death, Belén Sussex transferred the Property to her grandson, Steven Sussex. Since 1967, Mr. Sussex (who is now 73 years old) and his family have openly, continuously, exclusively and adversely used and claimed ownership of the Property. During the 1980's, Mr. Sussex ran a painting business called "S & S Painting" out of the house on the Property.⁷ He has continued to openly store items on the property, and various members of his family have continued to live in the home. (A series of aerial photographs since 1949, reflecting open and continuous use of the property for at least sixty-six years, is attached as Exhibit "G" hereto.)

The Property was originally claimed by the State of Arizona, but as part of a broader conveyance of land alongside the railroad to the Union Pacific Railroad Company ("UPRC"), the State executed a quitclaim deed including the Property to the UPRC on December 18th, 2002 (which was recorded on December 27th, 2002)⁸. On December 23rd, 2002, the Union Pacific Railroad executed and recorded a deed quitclaiming the Property (again, as part of a broader conveyance of land alongside the railroad) to the City of Tempe.⁹ It has been 12 years just since the City acquired title, which is beyond the 10-year period for adverse possession that is set forth in A.R.S. § 12-526.

Because the City of Tempe has never used the Property for any public purpose—in fact, it has never used the Property at all—it holds title in a proprietary capacity, and is subject to adverse possession. The period of time required for adverse possession is in fact treated as a "statute of limitations" under the law, which runs against any person who wishes to "recover" property from the adverse possessor. *See* A.R.S. § 12-526 (stating that a person "shall commence" a cause of action for "recovery" of lands within ten years after the cause of action accrues). The State of Arizona is generally exempt from this "statute of limitations," per A.R.S. § 12-510; and therefore adverse possession does not apply against

⁴ See page 5 of Exhibit "B," first full paragraph.

⁵ See page 4 of Exhibit "B," second paragraph, third and fourth sentences.

⁶ See Exhibit "B," page 5, footnote 16.

⁷ See Exhibits "A" and "C."

⁸ Exhibit "D" hereto, Maricopa County recording number 20021402981.

⁹ Exhibit "E" hereto, Maricopa County recording number 20021402983.



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the State of Arizona. However, while A.R.S. § 12-510 protects the State of Arizona from adverse possession, it does not protect a municipal corporation that holds title in a proprietary, as opposed to a “sovereign” capacity. *Reeves v. City of Phoenix*, 1 Ariz. App. 157, 159, 400 P.2d 364, 366 (1965). “The overwhelming, if not the almost uncontradicted weight of authority, holds that Statutes of Limitation run against municipalities when they are engaged in proprietary activities.” *Reeves*, 1 Ariz. App. at 159, 400 P.2d at 366. Because the City has never used this piece of property, it holds the property in a proprietary capacity. *Id.*

The *Reeves* case is directly applicable to this one. In *Reeves*, the City of Phoenix brought a forcible detainer action against the defendants (Reeves) twelve years after the defendants had occupied city-owned land, which was well beyond the two-year statute of limitations for forcible detainer. The Court found that while “municipalities are immune from the bar of limitations when acting in a governmental capacity as agents of the State in matters of state-wide concern”—like taxation—statutes of limitation apply when they are “acting in [a] proprietary capacity.” *Id.*, 1 Ariz. App. at 159, 400 P.2d at 366; *see also Pima Cnty. v. State*, 174 Ariz. 402, 404, 850 P.2d 115, 117 (Ct. App. 1992). The Court found that because the land was “vacant” and “never dedicated to any public use,” the municipality held the land in a proprietary capacity and was therefore subject to the statute of limitations. *Id.*

The City of Tempe has never dedicated the Property at issue to any public use, and it has never used the Property at all. It therefore holds title in a proprietary capacity, and is subject to the statute of limitations set forth in A.R.S. § 12-526—in other words, a claim for adverse possession.

As you may be aware, in 2002 the State of Arizona made a demand on the Sussexes to forfeit the Sussexes’ rights to a strip of State land to the immediate west of the Property, which has been platted as “Lot 1E”; and in 2005, the State filed a lawsuit against them for quiet title and trespass, in which the State sought over \$494,379 in damages (accusing them of trespassing for over 120 years).¹⁰ In response, the Sussexes defended themselves by arguing laches – since they could not argue adverse possession or the statute of limitations, per A.R.S. § 12-510, which grants the State of Arizona immunity from adverse possession and certain statutes of limitation. The State ultimately prevailed on its claim to quiet title to Lot 1E (on the grounds that because the Lot is constitutionally-protected State “school trust”¹¹ land, the State has absolute immunity from both laches and adverse possession. *See*

¹⁰ Maricopa County Superior Court case no. CV2005-006521.

¹¹ For an explanation of the unique status and history of “school trust” lands, see *Lassen v. Arizona ex rel. Arizona Highway Dept.*, 385 U.S. 458, 462 (1967).



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State, ex rel. Baier v. Sussex, No. 1 CA-CV 13-0009, 2014 WL 1056925, at *5 (Ariz. Ct. App. Mar. 18, 2014), *review denied* (Dec. 2, 2014)). Finally, the State took its claim for over \$494,379 in damages for trespass through a three-day jury trial, at the end of which the jury refused to award any more than nominal damages of \$1,500. Further, the Court denied the State's request for substantial attorney's fees and costs in its entirety,¹² on the basis that the case "presented a novel legal issue," and that the State "obtain[ed] a verdict that was less than three tenths of one percent of the relief requested."¹³

The Property at issue here is of course not Arizona State land, much less constitutionally-protected "school trust" land—and so legally, the difference between the State's claim to title in that case, and the City's claim here, is like the difference between night and day. But the broader lesson to be learned from the State's lawsuit is that the State chose to waste hundreds of thousands of dollars of taxpayer money on attorney's fees over the course of nine years, only to get a narrow strip of vacant land (that is worthless without this one),¹⁴ and a whole lot of bad press. The City can head off a decade of bad headlines, and hundreds of thousands of dollars in legal expenses, by making the right decision, right now—and by quitclaiming title to the Sussexes. The City should wisely choose to avoid entering into its own kind of "land war in Asia" – which it will lose.

With that said, the Sussexes have deep roots in the City of Tempe, and they love the City dearly. The home on this Property, along with the Carl Hayden home (formerly Monti's La Casa Vieja) a block east of it, are two of the oldest three homes left standing in Tempe,¹⁵ in what is thought to be the oldest neighborhood in the entire Valley (making the Sussex home likely one of the three oldest homes in the Valley).¹⁶ The Sussexes fervently hope that the City of Tempe – unlike the State of Arizona – will show compassion and respect for the history of the City, and that the City will work cooperatively with the Sussexes to help set right a "123-year-old" wrong.

¹² The State's total fees and costs over 9 years far exceeded the \$70,552.00 in attorney's fees and costs that it claimed to have incurred just with respect to its trespass claims—no doubt by at least three or four times.

¹³ See Minute Entry denying attorneys' fees, attached as Exhibit "F" hereto.

¹⁴ A highly-qualified commercial appraiser, Dennis I. Lopez, MAI, SRA, of Dennis L. Lopez & Associates, LLC, testified that the State's lot is essentially useless without this one.

¹⁵ Exhibit "A," page 2.

¹⁶ Exhibit "B," page 1.



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If the City should decline to quitclaim this property, or to respond to this letter, then this letter serves to protect my client's right to seek all attorney's fees and costs in this matter, per A.R.S. § 12-1103, and to file suit within 20 days hereof. Please feel free to contact me at (602) 606-2810, or jackw@wb-law.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jack D. Wilenchik', with a long horizontal flourish extending to the right.

Jack D. Wilenchik

cc: Risk Management
20 E. Sixth Street
Tempe, AZ 85281
(Via regular mail)

Mayor Mark Mitchell
P.O. Box 5002
Tempe, AZ 85280
(Via regular mail)

Encl: \$5 Check, Quitclaim Deed
CD of Exhibits A-G

WHEN RECORDED MAIL TO:

John Douglas Wilenchik, Esq.
2810 N. Third Street
Phoenix, Arizona 85004

QUIT CLAIM DEED

Exempt pursuant to A.R.S. § 11-1134(A)(4)

For the consideration of five dollars and other valuable consideration, the undersigned CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Grantor"), hereby quit claims to Steven and Virginia Sussex, as joint tenants with right survivorship ("Grantees"), all right, title, and interest, if any, in and to the following described real property situated in Maricopa County, Arizona:

See the legal description set forth in Exhibit "A" attached and incorporated by this reference (the "Property")

The undersigned disclaims any further right, title or interest in and to the Property, and forever releases and conveys the same, without covenant or warranty, express or implied, to Grantees.

Dated this ____ day of _____, 2015.

By_____

STATE OF ARIZONA)
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____day of _____, 2015, by _____.

My Commission Expires:

Notary Public

Exhibit A

A PORTION OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 1 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 16, FROM WHICH THE CENTER OF SAID SECTION 16, BEARS S89°28'27"W, A DISTANCE OF 2674.61 FEET;

THENCE N00°16'40"W ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 16, A DISTANCE OF 168.94 FEET TO THE NORTH LINE OF FIRST STREET;

THENCE S89°45'15"W ALONG SAID NORTH LINE, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTHERLY, PARALLEL WITH AND 35.00 FEET WEST OF THE CENTERLINE OF THE UNION PACIFIC RAILROAD TRACKS, TO THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 1E, STATE PLAT NO. 12 AMENDED, ACCORDING TO BOOK 69 OF MAPS, PAGE 38, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE S78°24'22"W ALONG SAID EASTERLY EXTENSION, A DISTANCE OF 63 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID LOT 1E;

THENCE S04°44'50"E ALONG THE EAST LINE OF SAID LOT 1E, A DISTANCE OF 90.17 FEET;

THENCE S02°13'50"E ALONG SAID EAST LINE, A DISTANCE OF 158.90 FEET;

THENCE S00°16'40"E ALONG SAID EAST LINE, A DISTANCE OF 213.05 FEET TO THE NORTH LINE OF FIRST STREET;

THENCE N89°45'15"E ALONG SAID NORTH LINE, A DISTANCE OF 65.00 FEET TO THE POINT OF BEGINNING.

PROPERTY DIAGRAMS

- **2012 Survey, with Property outlined in red**
- **Aerial Photograph, with Property outlined in orange (and adjacent property outlined in red)**

RESULTS OF SURVEY
OF A PORTION OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 1 NORTH, RANGE
4 EAST, OF THE GILA & SALT RIVER BASE & MERIDIAN,
MARICOPA COUNTY, ARIZONA FOR
THE ARIZONA STATE LAND DEPARTMENT

LEGAL DESCRIPTION:

LOT 1E OF THE AMENDED STATE PLAT NO.12, AS RECORDED IN BOOK 69 OF MAPS,
PAGE 38 OF THE OFFICE OF THE RECORDER, MARICOPA COUNTY, ARIZONA.

TITLE SEARCH:

THE INFORMATION SHOWN HEREON WAS COMPILED WITHOUT BENEFIT OF A TITLE SEARCH AND THEREFORE DOES NOT NECESSARILY REFLECT THE TRUE CONDITION OF THE PREMISES WITH RESPECT TO EASEMENTS, RIGHTS-OF-WAY, AGREEMENTS, ETC. OF PUBLIC RECORDS.

BASIS OF BEARING:

THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 4 EAST AS MONUMENTED.

SAID BEARING=NORTH 00°16'40" WEST

REFERENCED DOCUMENTS:

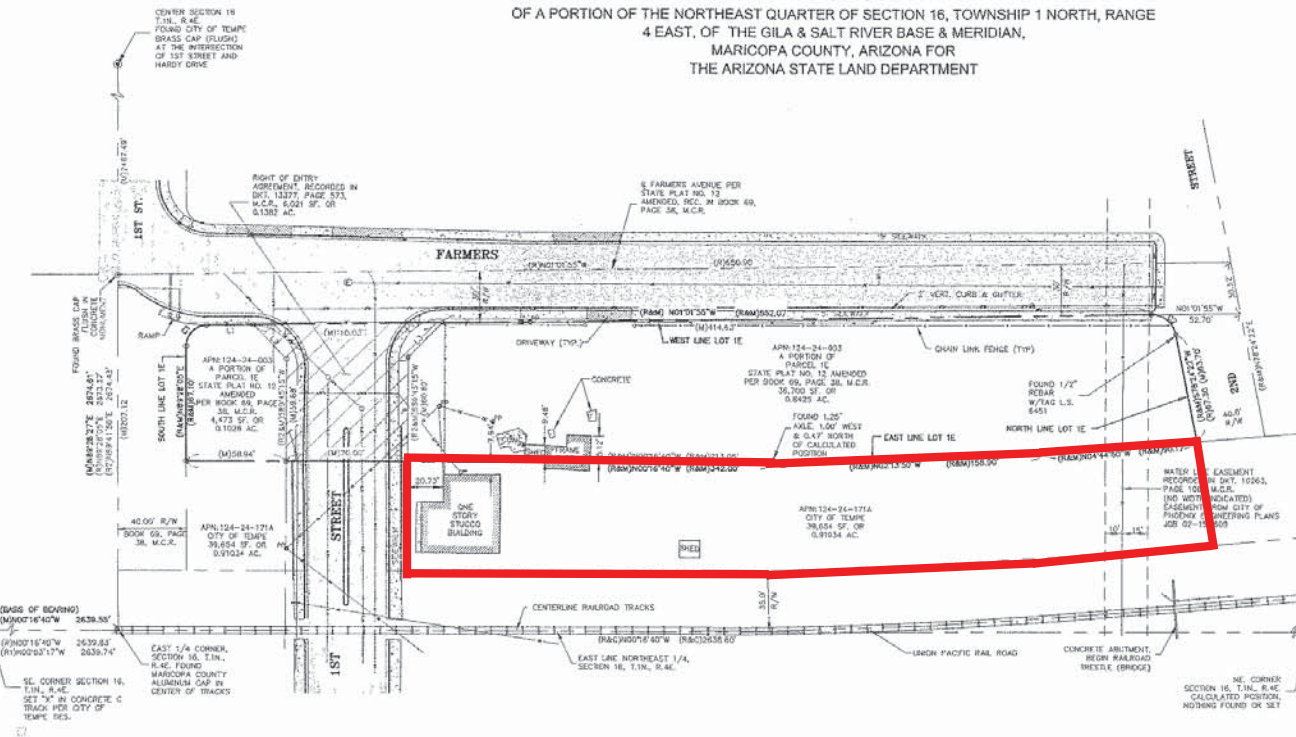
- (R1) STATE PLAT NO. 12 AMENDED, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 69 OF MAPS, PAGE 38.
- (R1) (TEMPE, ARIZONA SURVEY CONTROL DATUM UPDATED 05/23/2011)
- (R2) RIGHT OF ENTRY AGREEMENT, RECORDED IN DOCKET 13377, PAGE 573, MARICOPA COUNTY RECORDS

NOTES:

1. THIS IS AN ABOVE-GROUND SURVEY AND PHYSICAL LOCATIONS ARE LIMITED TO VISIBLE IMPROVEMENTS OR AT UNDERGROUND UTILITIES. IF SHOWN, ARE BASED ON INFORMATION PROVIDED BY THE VARIOUS UTILITY COMPANIES AND THESE LOCATIONS MAY VARY AND THEREFORE BE CONSIDERED APPROXIMATE. THE SURVEYOR DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION(S) INDICATED. ALTHOUGH HE DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE FROM THE UTILITY COMPANIES, THERE MAY BE ADDITIONAL UNDERGROUND UTILITIES NOT SHOWN ON THIS DRAWING. NO EXCAVATIONS WERE MADE TO LOCATE BURIED UTILITIES.

ANY EXCAVATION OR CONSTRUCTION ACTIVITY WITHIN THE PROPERTY SHOULD BE DONE ONLY AFTER CONTACTING BLUE STAKE FOR EXACT LOCATION OF FACILITIES ON THE SITE. PHONE: 602-263-1100.

2. THIS SURVEY PLAT EXCEEDS THE REQUIRED ACCURACY OF 1 FOOT IN 15,000 FEET.
3. ALL PROPERTY CORNERS ARE A ONE-HALF INCH REBAR WITH TAC STAMPED PL# 6451 UNLESS OTHERWISE NOTED ON THE SURVEY.
4. SITE ADDRESS: 302 WEST 1ST STREET, TEEPE, AZ 85281
5. ACCESS TO PUBLIC HIGHWAY OR WAY IS AS SHOWN.
6. ASSESSOR'S PARCEL - BOOK 124, MAP 17, PARCEL 171A, MARICOPA COUNTY, ARIZONA.
7. LAND AREA:
TOTAL GROSS AREA = 47,109 SQUARE FEET OR 1.0634 ACRES MORE OR LESS.
8. IF IT APPEARS THAT THE BEARING FOR THE EAST SECTION LINE OF SAND SECTION 18 SHOULD BE NORTH 02°16'40" WEST AND NOT THE RECORDED NORTH 02°16'40" EAST AS SHOWN ON BOOK 69 OF MAPS, PAGE 38 OF THE RECORDED MARICOPA COUNTY GRI.

[illegible]

CURVE	LENGTH	DELTA	RADIUS
(R&M)C1	18.92'	89°30'00"	12.11'
(R&M)C2	20.03'	79°28'17"	14.45'

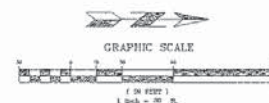
LINE	BEARING	DISTANCE
(C&M) 1	N01°31'55" E	27.60'
(C&M) 2	S44°45'13" E	27.90'
(C&M) 3	S45°38'45" E	18.45'

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECT SUPERVISION DURING THE MONTH OF JUNE, 2012 AND IS A TRUE AND CORRECT REPRESENTATION THEREOF TO THE BEST OF MY KNOWLEDGE.

CHRISTOPHER E. ALDRICH 17809 6/07/12
R.P.S. NO. 17809 DAY

SHEET 1 OF 1



Aulrich & Associates, Inc.

Surveying & Engineering

1033 E. Glendale Road • Tempe, Arizona 85283
Phone (480) 205-4000 • Fax (480) 245-4028

CHRISTOPHER E. AILERON P.L.L.
ROBERT N. HERMON P.S., R.L.S.

1ST STREET, TEMPE, A

SCALE:	DRAWN:	CHECKED:	JOB NO.
1"=50'	BOB	OS	

SUBJECT PROPERTY OUTLINED IN ORANGE

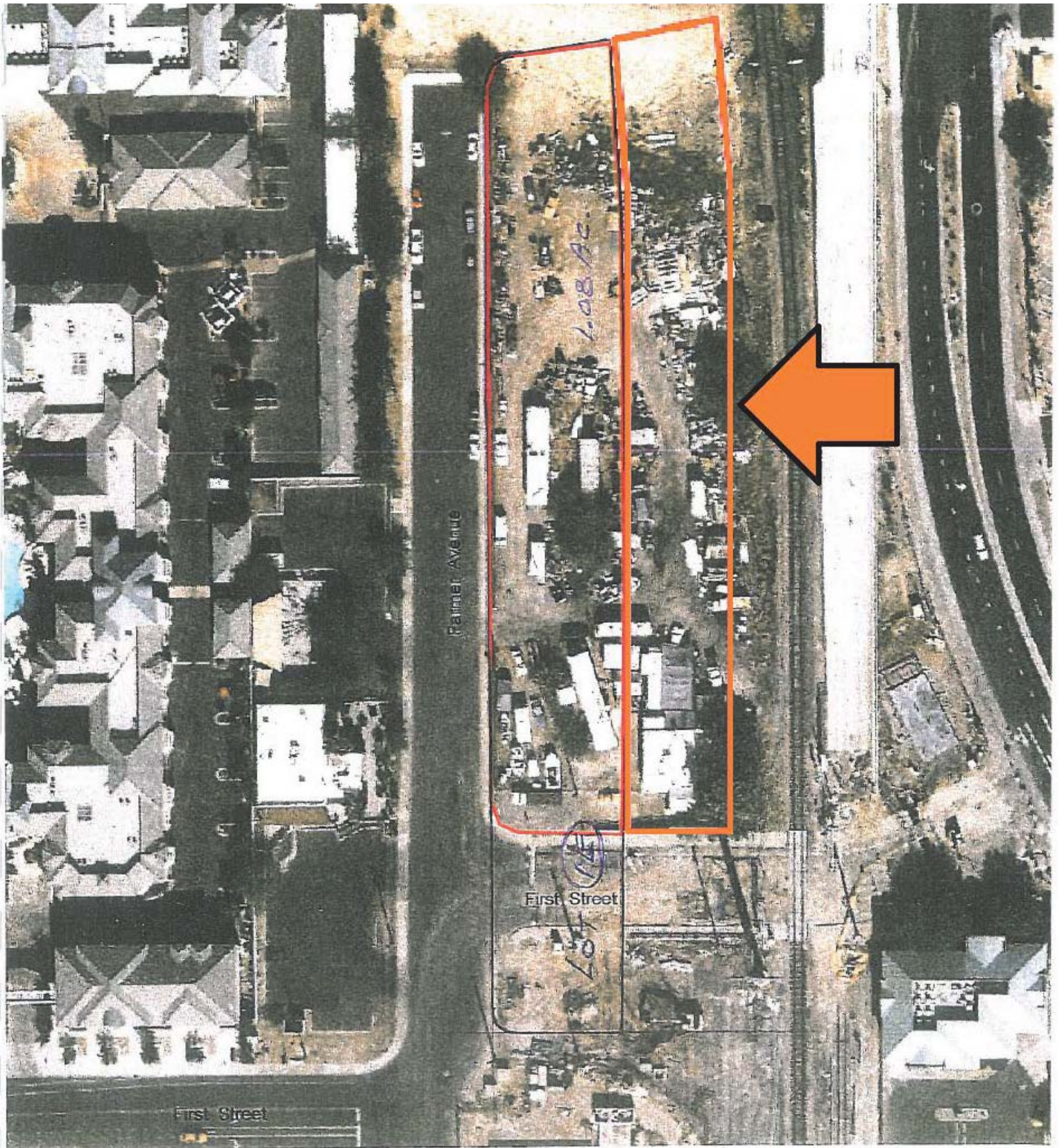
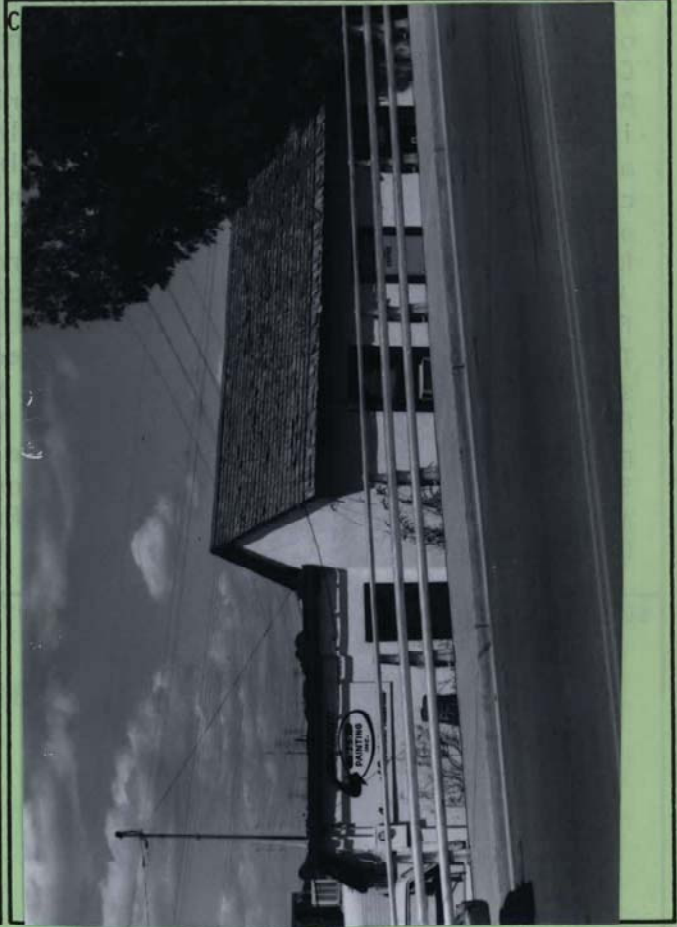


EXHIBIT A



ARIZONA STATE HISTORIC PROPERTY INVENTORY

HISTORIC PROPERTY NAME Ramon Gonzales/Jesus Martinez House		COUNTY Maricopa	INVENTORY NO. 142
COMMON PROPERTY NAME S & S Painting		QUAD/COUNTY MAP	
PROPERTY LOCATION-STREET & NO. 320 W. First Street			
CITY, TOWN/VICINITY OF Tempe		ASSESSOR'S PARCEL NO. 124-32-03	
OWNER OF PROPERTY Steve F. Sussex		PHONE	
STREET & NO./P.O. BOX 320 W. 1st Street			
CITY, TOWN Tempe		STATE Arizona	ZIP 85281
FORM PREPARED BY Janus Associates		DATE 12/82	
STREET & NO./P.O. BOX 2121 S. Priest Suite 127		PHONE 967-7117	
CITY, TOWN Tempe		STATE Arizona	ZIP 85282
PHOTO BY Tempe Historical Society		DATE 1982	
VIEW looking north			
HISTORIC USE residence			
PRESENT USE commercial, shop		ACREAGE 1.99A	
ARCHITECT/BUILDER Ramon Gonzales			
CONSTRUCTION/MODIFICATION DATES Built 1880			



PHYSICAL DESCRIPTION

The Gonzales/Martinez House is a single-story adobe structure measuring approximately 20' wide by 12' deep. A 10-foot deep frame and stucco extension of the house, which originally functioned as a sleeping porch and kitchen, is located along the rear of the house. The original adobe structure is composed of two rooms with a central entry facing south, and supports a double-pitched shingled roof. The rear extension is covered by a gently-pitched roof, also finished with wood shingles. The original wood floor has been replaced by a concrete slab. Door and window openings, and exterior finishes date from the historic period. A twelve by ten-foot pitched roof addition extends to the west of the original house.

Despite this modest addition, and the property's current function as a paint shop, the house retains a substantial amount of its original architectural integrity.

STATEMENT OF SIGNIFICANCE/HISTORY

The Ramon Gonzales/Jesus Martinez House is

significant for its historic association with the initial settlement of the Hayden's Ferry townsite along the south bank of the Salt River. Built in 1880 by Ramon Gonzales, the house is one of only three remaining structures associated with the first ten years of Tempe's history. Architecturally, the building is a rare local example of a house type illustrative of the early life style and settlement pattern of the predominantly Mexican population at Tempe prior to the arrival of the Mormon Colonists in 1881-1882, and the subsequent influx of Anglo settlers into the area. Gonzales was a freighter in Southern Arizona who was associated with C. T. Hayden in Tucson during the early 1870s. He located in the Tempe Settlement about 1877 and was employed by the Hayden freighting and shipping operations. The house he constructed in 1880, intended as a town residence, was located on two or three acres along the section line immediately west of the 80-acre Hayden's Ferry Townsite. Ramon Gonzales' arrival in Tempe was preceded by other family members including Jesus, Mariano, and Manuel Gonzales (possibly brothers), who had followed Hayden from Tucson to the Tempe district in 1873. They were employed by Hayden and the Tempe Canal Company and also homesteaded lands along the Kirkland-McKinney Ditch in sections 13, 14, 23, and 24 (later the Hayden Homestead) and under the San Francisco Canal west of Tempe. Manuel Gonzales represented the local Mexican population in acquiring the 40-acre site from W. H. Kirkland which would become the San Pablo Settlement in 1873. Ramon Gonzales and his brothers also operated 240 acre farm under the throat of the San Francisco Canal in section 17 (University Drive between Priest and 44th Street). Ramon Gonzales continued to work for the C. T.

(continued below)

SOURCES OF ABOVE INFORMATION/BIBLIOGRAPHY

Maricopa County Assessor's Records

Sussex, Steve M., oral interview, 1982, conducted by Diane Matach

Tempe City Directories, 1892-1917

GEOGRAPHICAL DATA/LEGAL DESCRIPTION/VERBAL BOUNDARY DESCRIPTION

State Plat, 12, Lot 1E, Pt of NE4 of Sec 16, T1N R4E

Tempe Quad

Z-12, E-412360, N-3699100

(continued from above)

Hayden Company until about 1892 when he sold his house and lot at Tempe to Jesus Martinez. Martinez, a Mexican immigrant, farmed at this location during the 1890s and the first decade of the twentieth century. The property has remained in family ownership for the last 90 years.

EXHIBIT B



MEMORANDUM

To: Gregory A. Robinson
From: Scott Solliday
Date: February 15, 2010
Re: *State of Arizona vs. Sussex*

Based on research at the Arizona State Archives and the Arizona State Land Department, the archival record supports the following facts that are relevant to the history of Lot 1E of State Plat 12, also known as 302 West First Street, Tempe.

1. The subject property is part of one of the earliest settlements in the Salt River Valley.

An area just west of the subject property, in the southwest quarter of Section 16, T. 1 N., R. 4 E., G&SRB&M, was the home of Juan Lopez, arguably the first modern settler in the Valley. Lopez, also known as Juan Jose Vajeca, was a Tohono O'odham Indian who was born in Tubac. There was no reservation established for his tribe at the time, and Tohono O'odham families tended to establish individual farms in river valleys throughout the Arizona Territory. Lopez built a house and planted crops at this location in 1866 or 1867, and it is likely that he did so before Jack Swilling arrived on the north side of the river with a party of men to construct an irrigation canal that became the impetus for founding the Phoenix townsite. There is no mention of Lopez in any of the published histories of Arizona or the Valley, but considerable documentation of his occupation of this site has been found in the historic records of the Arizona State Land Department (SLD).¹

By 1869 two groups of farmers were excavating irrigation canals on the south side of the Salt River. They were predominantly single Hispanic men, and a few with families, who came from southern Arizona and northern Sonora. One group settled in Section 16, T. 1 N., R. 4 E., G&SRB&M (hereafter referred to as the Tempe School Section) and built the San Francisco Canal, which began west of what is now Mill Avenue and extended several miles to the west. The second group settled near the present Tempe-Mesa border and constructed the Kirkland-McKinney Ditch, predecessor of the Tempe Canal, which soon irrigated areas east and south of modern downtown Tempe. In 1870 Charles T. Hayden established a homestead in Section 15, between the two irrigation systems, and built a store and flour mill to serve the two communities. Hayden's Ferry was located in what is now downtown Tempe.²

Manuel Gonzales arrived in the Tempe area about 1870. He was the first of several brothers from a prominent ranching family in central Sonora who moved to the Salt River Valley in the 1870s. He worked on the construction of the Kirkland-McKinney Ditch, which earned him a share of ownership in the canal, and established a successful homestead claim east of Tempe Butte. His brothers soon followed, and were among the first settlers on the south side of the river. Mariano, Jose, and Jacobo Gonzales settled on the San Francisco Canal and raised

¹ Arizona State Land Department (SLD) Records, File 136, Arizona State Archives (ASA)

² Blaine Lamb, "Historic Overview of Tempe" (unpub. ms., 1981, Tempe Historical Museum); Earl Zarbin, *Two Sides of the River: Salt River Valley Canals, 1867-1902* (Salt River Project, 1997), pp. 13, 50; Mildred Christine Lewis, "A History of Irrigation in the Tempe Area" (Master's thesis, Arizona State University, 1963); Tempe Irrigating Canal Company, Minute Book, 1870-1879 (Secretary's Office, Salt River Project).

cattle, sugar cane, and peaches. They often worked for Charles Hayden, who operated a freighting business with contracts in many parts of the Arizona Territory.³

Ramon Gonzales, a freighter and farmer, was born in Sonora about 1851, and was apparently the son of one of the Gonzales brothers who settled in Tempe. He worked as a freighter for Charles Hayden when the business was headquartered in Tucson, and he moved to Tempe about 1877 when Hayden relocated his freighting business there. By 1880, Ramon had built an adobe house on a two-acre parcel in the quarter section claimed by his uncle, Mariano Gonzales. This is the house that is still standing on the subject property now, which the 1981 Tempe Historic Property Survey identified as the Gonzales-Martinez House (HPS-142). Maricopa County Assessor's records show that in 1877, Mariano Gonzales had a claim on 40 acres in the northeast quarter of section 16, T. 1 N., R. 4 E., with improvements valued at \$275, and by 1880, Mariano and Ramon each had a house and lot in section 16.⁴

2. Initial patterns of settlement in the Salt River Valley commonly prevented issuance of a patent for lands in informal townsites, requiring legislative and judicial remedies to provide clear title.

While homesteaders extended the pattern of 160-acre square land claims to the south and west, residents of the original settlements in the area that were established as informal townsites often could not acquire title to the land that they claimed or purchased. This occurred in at least three places in the Tempe area.

San Pablo, also known as Old Tempe, East Tempe, or Barrio del Centro, was the first urban residential settlement in the Tempe area. It was located in the southwest corner of the southeast quarter of Section 15, an area that is now the part of Arizona State University that lies north of University Drive. This land was originally claimed by William H. Kirkland, one of the organizers of the Kirkland-McKinney Ditch, in about 1870. Kirkland left the Tempe area in 1872 and offered to donate his homestead claim to the San Pablo Town Association, which was to sell homesite lots to raise money for construction of a town church. Kirkland had never made any official homestead entry on the land at the General Land Office (GLO), and no written document transferring whatever interest he had is known to have existed, but despite the lack of a patent to the land, Mexican American families started moving into the town of San Pablo by 1873.⁵

Similarly, there was no patented land in the settlement known as West Tempe. Settlers in the Tempe area began acquiring patents to their lands in the late 1870s by the process of either homestead entry or cash entry purchase. Both of these means of acquiring land in the public domain began with a pre-emption, or the actual settlement and improvement of lands, which

³ "Photographs and History of the Old Settlers of Tempe Association" (bound typescript. c. 1956, Tempe Historical Museum); WPA Writers Project, "Pioneer Women - Juanita Gonzalez Fellows" (typescript, c. 1938, Arizona State Library); Maricopa County Superior Court, Probate Case No. 446 (Manuel Gonzales); Federal Census manuscripts (Tempe), 1870-1910; Marriage Records, Church of the Assumption, Florence, 1870-1878 (University of Arizona Library).

⁴ "Tempe Historic Property Survey and Multiple Resource Area Nomination to the National Register of Historic Places" (Tempe Historical Society and Janus Associates Inc., 1983), property files, HPS-142, Gonzales-Martinez House, and HPS-160, Mariano Gonzales House (Tempe Historical Museum); *Arizona Citizen*, February 6, 1875; Maricopa County Great Register, 1882 (ASA); Federal Census manuscripts (Tempe), 1880; Maricopa County Assessor, 1873-1885.

⁵ *Arizona Citizen*, May 31, 1873; Scott W. Solliday, "The Journey to Rio Salado: Hispanic Migrations to Tempe, Arizona" (Master's thesis, Arizona State University, 1993), pp. 57-59.

established one's right to eventually claim title. Those who did not stay to complete the process, which took several years, generally sold their claim and improvements. This transfer from one claimant to another apparently happened several times with the south half of the southwest quarter of Section 15, an 80-acre parcel bound by what is now Fifth Street, College Avenue, University Drive, and the Union Pacific Railroad tracks, currently the southern portion of downtown Tempe. There are several differing accounts of who the original settlers of this land were. According to Carl Hayden's biography of his father, Charles T. Hayden had bought the 80 acres from J. M. Cotton, L. Bailey, and Milton B. Grove on January 13, 1876.⁶ However, in a 1901 article in the *Arizona Republican* on the early history of Tempe, it is stated that a man named Freeman sold the land to James T. Priest, who in turn sold it to Hayden.⁷ Regardless of which version might be more accurate, these transactions were apparently only the transfer of pre-emption rights, for no patent to the land had been issued by the GLO, and therefore, there was no legal title to the land to be conveyed. In 1882 Hayden sold the land (or his interest therein) to a party of Mormon settlers led by Benjamin Franklin Johnson and Joseph E. Johnson.⁸ The Johnson clan was joined by the Openshaw, Wilson, LeBaron, and Babbitt families, bringing about 300 new residents into the town. They established homes, orchards, and a cooperative store, quickly developing the entire 80 acres into a community that became known as West Tempe. However, this Mormon colony was short lived; in 1887 the Johnsons sold their interest in the land to the Tempe Land and Improvement Company and moved to a new settlement west of Mesa.

The spontaneous development of densely populated communities before the granting of a patent had become a common problem in the West. Federal land laws were designed to grant large tracts, typically 160 acres, to individual settlers. Settlement by many people on small parcels made it impossible to pursue the normal pre-emption and land entry process. Congress sought to rectify this problem in 1867 with An Act of Congress for the Relief of Inhabitants of Towns Upon the Public Lands, and the Arizona Territorial Legislature passed an Act Relating to Townsites in 1871.⁹ These legislative remedies provided a procedure by which such lands could be patented and distributed to various individuals. Maricopa County Probate Judge Joseph Campbell adjudicated these two townsite ownership matters in Tempe, acquiring a patent for the benefit of the occupants, for San Pablo townsite in 1886, and for West Tempe in 1888.¹⁰ This allowed Campbell to begin distributing deeded parcels to the town's inhabitants. The name San Pablo was short-lived. The land was platted as the Town of Tempe, which at Campbell's request was recorded on June 22, 1888.¹¹ West Tempe was platted in 1890, and the map was recorded in 1900.¹²

⁶ Carl Hayden, *Charles Trumbull Hayden, Pioneer* (Tucson: University of Arizona Press, 1972, pp. 48–49.

⁷ Frederick C. Wright, "A History of Tempe, Profusely Illustrated" *Arizona Republican*, December 25, 1901.

⁸ Sherwood and Carolyn Idso, *A History of the Church of Jesus Christ of Latter-Day Saints in Tempe* (Arizona Church of Jesus Christ of Latter-Day Saints, Tempe, 1980); James H. McClintock, *Mormon Settlement in Arizona* (University of Arizona Press, 1985), Larry Dean Simkins, "The Rise of the Southeastern Salt River Valley: Tempe, Mesa, Chandler, Gilbert, 1871-1920" (Ph.D. dissertation, Arizona State University, 1989).

⁹ Maricopa County Recorder, Deeds, Book 16, Page 396.

¹⁰ National Archives Land Entry Files, Cash Entry No. 291, Tucson Land Office; Maricopa County Recorder, Deeds, Book 15, Page 634; Wright, "A History of Tempe," Bureau of Land Management, Federal Land Patent records (<http://www.glorecords.blm.gov/PatentSearch>).

¹¹ Maricopa County Recorder, Maps, Book 1, Page 58; Maricopa County Superior Court, Probate Case No. 446.

¹² Maricopa County Recorder, Maps, Book 2, Page 79.

However, there was a more serious problem for the settlers west of Tempe in the Tempe School Section. The Organic Act of Feb. 24, 1863, which established the Territory of Arizona, reserved sections 16 and 36 of each township to the territory for the purpose of financing public schools. The Enabling Act of June 20, 1910, which authorized Arizonans to draw up a state constitution and prepare for statehood, expanded the amount of school lands, setting aside sections 2, 16, 32, and 36 of each section, and this was ultimately incorporated into the Arizona Constitution as Article X. Since this land was withdrawn from the federal public lands, it could not be homesteaded unless a pre-emption claim preceded the Organic Act, or the first federal survey of the land. The first formal survey plat was approved on Oct. 21, 1868, and was filed on Dec. 2, 1870. Juan Lopez clearly had settled on his land before the government survey, and other settlers had undoubtedly located on the Tempe School Section by this time as well, as the San Francisco Canal system was essentially completed by 1870. However, no townsite patent was ever filed for the benefit of the residents of this original settlement.

In 1890, Ramon Gonzales, along with Juan Miguel Gonzales, bought 80 acres in section 17, more than a mile to the east, from Jose Gonzales. There were several other real estate transactions between Ramon and Juan Miguel and other family members in the early 1890s. Around this time, Ramon sold the house on the 2-acre lot to Jesus S. Martinez. There appears to be no recorded evidence that Ramon Gonzales ever acquired title to the land or that he sold it to Jesus Martinez. However, the sale of land that was not patented was not unusual. The earliest land sales were typically by quit claim deed, which conveyed the improvements, i.e., the house, the field, irrigation works, etc., and indirectly, the pre-emption claim, which would presumably allow the grantee to eventually acquire a patent in his own name.¹³

Ramon Gonzales died in 1894. At that time he owned land in section 17, some farm equipment, and equity in the Tempe Canal system, which he had earned by his labor and/or cash investment in building and maintaining the canals. This equity was represented as 1/6 of a share (Certificate No. 28) in the Kirkland McKinney Ditch and 1/3 of a half share (Certificate No. 48B) in the Tempe Irrigating Canal Company. Such ownership in a canal had been customarily referred to as a "water right," but that changed in 1892 with *M. Wormser vs. Salt River Valley Canal Co., et. al.*, resulting in the landmark Kibbey Decision, which reaffirmed the old Spanish Colonial/Mexican concept of water rights based on prior appropriation and beneficial use, and determined that the appropriation of water becomes appurtenant to the land, and was not owned by the canal companies. Thus, Gonzales' water right was really tied to his original farm in section 16 and could not be transferred to his property in section 17. Despite the Kibbey Decision, water rights issues in the Valley were still not resolved at the time that Roosevelt Dam was being built. *Hurley vs. Abbott* was filed in federal district court in 1905 to bring a final settlement of water right claims. The resulting Kent Decree of 1910 assigned specific levels of priority water rights for every quarter section in the Valley, based upon when the land was first irrigated. The subject property had Class A water rights, based on the fact that 20 acres in the quarter section had been irrigated continuously since the late 1870s. It was stated that Class A lands "form a distinct class preferred in their rights to the use of . . . water over and above the other parcels of land in the suit."¹⁴ This added greatly to the value of the property; in fact, it was presumed that land without water rights was worthless. It should be noted that at some point, with the development of the Salt River Project, the water right would have become less

¹³ Tempe Historic Property Survey; Federal Census manuscripts (Tempe), 1880; Maricopa County Recorder, Book 17 of Deeds, Page 643, Book 22, Page 218, Book 35, Page 557.

¹⁴ Kent Decree, p. 13, Records of the Water Commissioner, Maricopa County Superior Court, microfilm roll 137.1.1 (Arizona State Archives).

important, because membership in the Salt River Valley Water Users Association required agreeing to a shift from appropriative water rights to administrative water rights.¹⁵ However, the Class A water rights ensured that the land would be eligible for inclusion in the Salt River Project.

Jesus S. Martinez bought the subject property from Ramon Gonzales around 1892, which was documented by an unrecorded quit claim deed which was passed down through the Martinez family in the 20th century. Martinez was first listed in the Tempe city directory as living on 1st Street in 1892. He was born in Mexico on December 25, 1835; he came to Arizona about 1874. Around 1888 he married Rosario Mendoza de Mazon, a widow with six children, who was born October 4, 1851, in Mexico. This may have been a common law marriage, for marriage records at St Mary's Catholic Church in Phoenix indicate that they were married in the church on April 6, 1896. They had three children prior to 1896—Belen, Mariano, and Carmen. While no recorded document indicates that Jesus Martinez had bought the property, there is a record of him having sold part of it. On February 27, 1905, Jesus and Rosario Martinez sold a 25-foot-wide right of way to the Bartlett-Heard Land & Cattle Company for \$25. The right of way was conveyed by quit claim deed. Bartlett and Heard had acquired most of the lands west of Tempe and south of Phoenix, between the Salt River and South Mountain, and they needed access to the San Francisco Canal, which ran through the north end of the property. Bartlett-Heard seemed to recognize Jesus Martinez' claim to the land, but it was also a matter of being a convenient arrangement to allow them to maintain their ditch. Jesus Martinez died in 1907. There is no probate record, and his wife, Rosario, apparently inherited his estate with no protest from others.¹⁶ Stephen Sussex, current claimant of the land, is the great-grandson of Rosario Martinez, and the Martinez family descendants have continuously occupied the subject property since 1892.

The circumstances of the Martinez family and their neighbors were not uncommon. Many individuals had settled on school trust lands, made improvements, earned water rights, etc. Delegates to the Arizona Constitutional Convention of 1910 debated the problem of settlers on school lands. There is no surviving record of the deliberations of the subcommittee on Public Lands, but on November 28, 1910, floor debate addressed the adoption of Memorial Number 1, addressed to the Congress of the United States, requesting that the Enabling Act of 1910 be amended to permit more flexibility in the sale of school lands to these settlers. At issue was very specific language in the enabling act limiting how the state could dispose of public lands, which had been incorporated into Proposition Number 78. As originally drafted, the enabling act did not have the restrictive language, and many delegates felt that this provision would not permit fair treatment of individuals who had, for whatever reasons, settled on these reserved lands.¹⁷ In

¹⁵ Lewis, "A History of Irrigation in the Tempe Area," Tempe Irrigating Canal Company, Minute Book; Zarkin, *Two Sides of the River*, pp. 113-116, 154, 190; Karen L. Smith, *The Magnificent Experiment: Building the Salt River Reclamation Project, 1890-1917* (University of Arizona Press, 1986), pp. 38-41; Maricopa County Superior Court, Probate Case No. 521 (Ramon Gonzales); Records of the Water Commissioner, Maricopa County Superior Court (ASA).

¹⁶ "Tempe Historic Property Survey," HPS-142; Federal Census manuscripts (Tempe), 1900, 1910; Tempe city directories, 1892-1920; Tempe; Marriage records, St. Mary's Catholic Church, Phoenix, 1896; Belen Sussex obituary, *Tempe Daily News*, Feb. 28, 1967; Martinez family monument, Double Butte Cemetery, Tempe; Maricopa County Recorder, Book 67 of Deeds, Page 435; Lewis, "A History of Irrigation in the Tempe Area," pp. 34-35; Jay C. Ziemann, "San Francisco Canal" (HAER No. Az-8, Historic American Building Survey, National Park Service, San Francisco, c.1985).

¹⁷ John S. Goff, *The Records of the Constitutional Convention of 1910* (Phoenix: Supreme Court of Arizona, n.d.), pp. 716-718; *Arizona Republican*, November 29, 1910.

support of adopting the memorial and sending it to Congress, W. T. Webb from Graham County said:

[It] is a provision that will protect the interest of the poor. Many good citizens have taken up school lands and have cultivated, improved and built homes thereon and are good honest industrious people, and they should be protected in these homes and in this land. . . .¹⁸

A. C. Baker of Phoenix said:

For the benefit of many people, who are of the best class of citizens and who have established themselves upon this land and spent much labor and means to cultivate and improve it, they should have protection. . . . In the Enabling Act there are provisions for these school lands, but they are not acceptable to all and do not protect [sic] the people who have spent their time, means and best efforts upon them. It is but right that that they should have this protection.¹⁹

Memorial No. 1 was adopted by a vote of 41 for and 7 against.²⁰ Congress did not amend the enabling act, but the delegates certainly wanted to include a provision in the constitution that would allow these settlers to gain title to the land.

3. Title to the Tempe School Section was not conveyed to the State of Arizona at the time of statehood in 1912 because the land had been specifically set aside for federal purposes by a reclamation withdrawal.

By the authority given him in Section 3 of the National Reclamation Act of June 17, 1902 (32 Stat 388), the Secretary of the Interior issued two executive orders (July 2 and August 26, 1902) withdrawing all remaining public lands in the Salt River Valley from settlement due to the pending construction of a reclamation project, the Salt River Project. This was a second form reclamation withdrawal, which was intended to temporarily withdraw lands that might be used by the project or would be susceptible to irrigation as a result of the project. The reclamation withdrawal in the Salt River Valley covered a vast area of more than 1,600 square miles, stretching from the Verde River to Buckeye, and from the Gila River Indian Reservation to New River, and included the Tempe School Section. This reclamation withdrawal would remain in effect until it was revoked and the lands were restored to the public domain. According to the provisions of the Enabling Act of June 20, 1910, which authorized the people of the Arizona Territory to form a state constitution, when Arizona was admitted as a state in the Union, it was to be granted all lands in sections 2, 16, 32, and 36, except those already withdrawn for other purposes, such as military and Indian reservations, forest reserves, and reclamation projects. The State would be allowed to select indemnity lands in lieu of school sections in place for those tracts that had already been patented or withdrawn. As the reclamation withdrawal was in effect prior to the Enabling Act of 1910, the State of Arizona was never granted those lands, totaling more than 24,000 acres in Maricopa and Yuma counties, upon admission to the Union. This issue was not fully addressed by the SLD until 1933, by which time the State had already sold many of these lands.²¹

¹⁸ Goff, *Records of the Constitutional Convention of 1910*, pp. 716–717.

¹⁹ Goff, *Records of the Constitutional Convention of 1910*, p. 717.

²⁰ Goff, *Records of the Constitutional Convention of 1910*, p. 718; *Voice of the People*, December 2, 1910.

²¹ Records of the SLD, File 136 (ASA), Scott Solliday, *Homesteading and Ranching in the Vicinity of Lake Pleasant Regional Park, Maricopa and Yavapai Counties, Arizona*. Archaeological Consulting Services, Tempe, 2008.

The SLD never publicly acknowledged that it did not hold title to the lands covered by the reclamation withdrawals until November 2, 1933, when State Land Commissioner Howard J. Smith announced at the Arizona Education Association convention in Phoenix that the federal government was contesting title to certain school lands.²² He warned that the State could lose \$2.6 million in school funds. However, his assertions that the State was not aware of the problems of title to the lands are not plausible based on the archival record. More than a dozen documents relating to title to school sections and the reclamation withdrawals have been found in the records of SLD held at the Arizona State Archives, including the following:

- From 1912 to 1914 Governor G. W. P. Hunt submitted at least 17 different applications requesting that the GLO restore withdrawn lands on behalf of the State. Not all applications were approved, and the Commissioner of the GLO determined that if the State did not resubmit the rejected applications, the United States would still retain title to the lands. Title to this land is only conveyed by certification by the GLO.
- A letter from the Assistant Commissioner of the GLO to State Land Commissioner W. A. Moeur, dated February 13, 1917, regarding the status of the Colorado River lands, identifies seven reclamation withdrawals that were ordered from 1902 to 1905, and three withdrawal revocations which restored some of the lands in 1910 and 1915.
- Section 36, T.1 N., R.2 E., was restored from the reclamation withdrawal on October 1, 1917.
- In a letter to State Land Commissioner William A. Moeur on March 12, 1918, regarding school sections within the reclamation withdrawal, the GLO Commissioner stated that the lands remained withdrawn at that time.
- Section 16, T.1 S., R.2 E., was restored from the reclamation withdrawal on January 16, 1918.
- A letter written by D. B. Morgan of John H. Page & Co., a Phoenix real estate firm, to Don C. Babbitt, Deputy State Land Commissioner, dated February 11, 1924, provides a lengthy and detailed analysis of the issue. Morgan points out that SLD has held contradictory positions on the matter through time. In 1917, SLD acknowledged that the reclamation withdrawal excluded certain lands from the federal grant of school sections, and determined that the State could select indemnity lands in lieu of these school sections in place.

There is nothing in these documents that indicates that state officials actually believed the State held title to the school sections. It is clear that they believed the State had a right to claim such title, but every State Land Commissioner should have known that the State's title had not vested. The State acquired title to any school sections, or to any indemnity lands selected in lieu of school sections in place, by certification by the GLO. There are two methods by which the State could have resolved the question of title to certain school sections prior to 1930: SLD could have entered into negotiations with the Interior Department, certainly with the active involvement of U.S. Senator Carl Hayden, to have all remaining withdrawn lands restored, or it could have selected in lieu lands for the withdrawn lands. However, the State did not pursue either of these options.²³

In 1936, as State Land Commissioner Charles P. Mullen began negotiating with the Commissioner of the GLO and the Secretary of the Interior, the public became aware that the extent of the problem was much greater than had been stated earlier. There is very little in the newspapers about this, but it was stated that the State had sold contested lands to private purchasers on the belief that the State held title to all school sections. The sections included

²² *Arizona Republican*, November 3, 1933, Records of the SLD, File 136 (ASA).

²³ Records of the SLD (ASA).

prime agricultural lands and tracts within the townsites of Phoenix, Tempe, and Mesa, as well lands along the Colorado and Gila rivers near Yuma. There were considerable improvements, property taxes had been collected by the State, and water rights had been earned or purchased. The total liability that the State faced was more than \$8 million.

A 1935 Statement of School Sections Included Within Reclamation Withdrawals²⁴ includes an itemized list of SLD land sales in the Tempe School Section. The earliest contract was dated August 28, 1916. There were 66 lots and tracts with sales contracts before 1930.

4. Contradictory notations on the Rosario Martinez entry in the School Lands Ledger indicate both a lease and a certificate of purchase.

In the School Lands Ledger, the first entry for Rosario Martinez is for Lot 1 (now Lot 1E), dated March 13, 1930.²⁵ All of the notations on this document are not self-explanatory, and there is no legend or other explanation of the notations on the page, and there were no serial registers of leases or certificates of purchase that were available for examination in the public documents section of the SLD. However, there are other documents that do explain common administrative practices of the SLD at the time. In the early 1930s, SLD issued various types of leases and certificates of purchase to individuals. Between 1929 and 1935, leases were indicated with serial numbers greater than 10000, while certificates of purchase were given lower 4-digit numbers. In the Tempe School Section, the series of numbers assigned to certificates of purchase ranged from 5076 (April 22, 1929) to 6391 (February 5, 1935).²⁶

Based on the numbering system used, it suggests that Rosario Martinez's original entry was for a lease, numbered 010334, but it was later converted to a certificate of purchase, as indicated by the assignment of a new entry number, 6310, and the notation written in the patent ("Pat.") column: "or date of sale." Rosario Martinez made three annual payments, in 1930, 1931, and 1932 to the SLD for Lot 1. The fourth payment was due on June 1, 1933, but Rosario died on May 15, 1933. The final payment was not made, and one year later, on June 1, 1934, the sale was canceled for non-payment.

5. There are documented inaccuracies and deficiencies in the records of the SLD for the 1930s.

On October 15, 1937, State Land Commissioner William Alberts submitted a letter to the SLD Board that was highly critical of previous administrations of the SLD. He made several serious allegations of mismanagement including:

- Instances where holders of Certificates of Purchase made payments that were not credited to their accounts
- Many individual account sheets covering Certificates of Purchase (sales contracts) were missing
- Some individuals received patents for greater acreage than they paid for
- There were discrepancies in the previous annual report relating to thousands of acres of State Trust lands

²⁴ SLD Records, ASA.

²⁵ School Lands Ledger, Abstract of Entries, Section 16, T. 1 N., R. 4 E. (SLD Records, ASA).

²⁶ Statement of School Sections Included Within Reclamation Withdrawals, 1935 (SLD Records, ASA); Testimony of Arizona State Land Department employees, 1933 (Governor B. B. Moeur Papers, ASA).

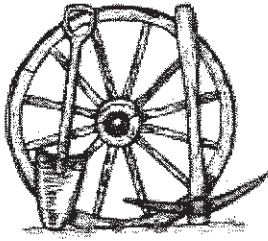
As Alberts identified these issues immediately after his appointment, it would appear that these problems were primarily attributed to his predecessor, Charles P. Mullen (1935–1937). However, in 1933, when he was chief accountant for SLD, he had testified that there had been similar issues of mismanagement and favoritism during the administration of Howard J. Smith (1933–1935). In addition, regarding actions in the mid-1930s to resolve contested land claims in the Tempe School Section, both the Commissioner of the GLO and the Secretary of the Interior admonished the SLD for failing to properly serve papers on the effected parties.²⁷

6. The State did not hold legal title to the Tempe School Section until 1945.

By 1935, most sections 16 and 36 that had been included in the reclamation withdrawal of 1902 had been restored to the State. However, ten sections, including the Tempe School Section, had unresolved problems relating to pre-emption claims, water rights, easements and rights-of-way, and the Bureau of Reclamation refused to restore those specific lands. All individuals who had already bought land from the State on the assumption that the State had the authority to sell it were required to file a water rights application, which had not been done for the majority of the lands in question. In the early 1940s, the State Land Department submitted an Application of the State of Arizona to Reopen for Consideration the Question of the State's Title to Section 16, in T. 1 N., R. 4 E., and Section 16, in T. 10 S., R. 23 W., and Other Lands Similarly Situated. On April 26, 1945, Michael W. Straus, Assistant Secretary of Interior, signed an order revoking the reclamation withdrawal of 1902, restoring three sections in the Salt River Valley, and the State's title to the Tempe School Section was effective June 6, 1945.²⁸

²⁷ Testimony of Arizona State Land Department employees, 1933 (Governor B. B. Moeur Papers, ASA).

²⁸ Records of the State Land Department, File 152 (Arizona State Archives).



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Education

- B.A. in History with minor in Native American Studies, Arizona State University, 1982.
- M.A. in American History/Public History, Arizona State University, 1993.

Professional Background

Mr. Solliday has over 24 years experience in historical research, writing, and interpretation in Arizona. He has worked as a public historian, museum curator, and history teacher. In 1999 he was awarded a fellowship with the National Endowment for the Humanities to produce a biographical database of Hispanic settlers in Arizona. For the past ten years has focused on cultural resource management, including historic property surveys, land use history, and site-based research. His areas of specialization include Arizona history, irrigation and agriculture, Mexican American communities, and architectural history.

Public Historian

Mr. Solliday has recently resumed a cultural resources management consulting business that he operated from 2000–2007 under the name Mexico Arizona Research. Some work was done as a partner in Arizona Historical Services, LLC, 2006–2007. In 2007 he joined the staff of Archaeological Consulting Services, a firm that provides cultural and environmental assessments throughout Arizona. He has extensive experience in site-based historical research, including historic property surveys and National Register nominations and eligibility assessments. His work includes archival research, field survey and documentation, oral history interviews, report writing, community relations, and preparation of budgets and proposals. Mr. Solliday's expertise in Arizona history is in the following topics:

- Irrigation and Reclamation
- Farming
- Ranching
- Mining
- Homesteads
- Military Facilities and Training Areas
- Post-World War II Urban Development
- Ethnic Communities

Archaeological Consulting Services

Senior Historian/Historian III, September 2007 to February 2010

As Senior Historian in a small cultural resources management firm, Mr. Solliday was primary author and field director for historic property surveys and National Register nominations and eligibility assessments, and contributed regional and municipal historical overviews, project area histories, and historic context statements for archaeological investigations. He also assisted with archaeological field surveys, environmental assessments (certified in lead-based paint, asbestos, and hazardous materials), and writing budgets and proposals.

Jefferson Park Historic District Historical Review and National Register Nomination, City of Tucson, 2008–2010. Senior Historian and Field Lead on this historic building survey of more than 800 properties and preparation of a survey report and National Register nomination.

Goodyear Airport Archaeological Survey, City of Phoenix, 2009. Wrote a historic context, conducted a historic building inventory survey, and assisted with the archaeological field survey and National Register eligibility assessment for Litchfield Park Naval Air Facility/Phoenix Goodyear Airport.

Roosevelt Addition Historic District National Register Nomination Project, City of Tempe, 2008–2009. Senior Historian and Field Lead for the preparation of a historic district National Register nomination for this post-World War II subdivision.

Yuma Proving Ground Archaeological Survey, U.S. Army Yuma Proving Ground, 2009. Wrote a historical overview and assisted with the archaeological field survey of five project areas within the Yuma Proving Ground.

Tony Ranch Cultural and Natural Resources Inventory and Assessment Project, Moore/Swick Partnership/Superstition Area Land Trust, 2009. Assisted with the field survey and National Register eligibility assessment of a National Forest homestead in the Superstition Mountains.

Historic Building Inventory Survey for the Broadway Road Streetscape Plan, PB Americas/City of Tempe, 2009. Senior Historian and Field Lead for a historic property survey and National Register eligibility assessment of post-World War II neighborhoods and street features along a one-mile segment of Broadway Road.

Historic Context for Roosevelt Irrigation District Zanjero Houses, HDR/Arizona Department of Transportation, 2009. Wrote the first detailed historic context in Arizona for this important property type, identifying criteria for assessing their National Register eligibility.

Cultural Resource and Historic Building Survey at Iron King Mine and Humboldt Smelter, Dewey-Humboldt, Arizona, EA Engineering/Environmental Protection Agency, 2008. Completed archival research, historic building survey, National Register eligibility assessment, and historic context development on this project for an Environmental Protection Agency Superfund remediation project.

History of Homesteading and Ranching in the Vicinity of Lake Pleasant Regional Park, Bureau of Reclamation, 2008. Wrote historic context study for management of resources in and around Lake Pleasant Regional Park. Conducted archival research and oral history interviews to document the historic development of a 400-square-mile region that was at the nexus of the sheep, goat, and cattle ranching industries, and was one of the state's early tourism destinations with a major resort and several dude ranches in operation through the first half of the twentieth century.

City Hall Parking Garage Project, City of Tempe, 2008. Wrote a historic context for the West Tempe subdivision of downtown Tempe and individual property histories for all parcels in Block 2.

Hayden Flour Mill Project, City of Tempe, 2006–2008. Oral Historian and Senior Historian on this multi-component cultural resources project, contributing several chapters to the historic context development for the property.

Arizona Historical Research, LLC

Partner and Principal Investigator, May 2005 to September 2007

As a partner in a small consulting firm, Mr. Solliday conducted archival research, field survey, and oral history interviews, and co-wrote survey reports and National Register eligibility assessments.

Phoenix Asian American Historic Property Survey, City of Phoenix, 2006-2007. Principal Investigator for a city-wide survey to identify properties significant in the history of the Chinese-American, Japanese-American, Filipino-American, and Asian Indian-American communities of Phoenix. Responsible for archival research, oral history interviews, field survey, and community outreach.

Arizona Biltmore Hotel Historic and Architectural Study, Arizona Biltmore Hotel Villas Condominium Association, 2005. Conducted archival research to write an architectural history of one of Arizona's best-known resorts.

Phoenix Madison Square Garden Historic Site Documentation, National Government Properties, 2005. Principal Investigator for a Section 106 National Register Eligibility Assessment. Responsible for archival research, oral history interviews, and development of historic contexts on professional wrestling and boxing in Phoenix.

Mexico Arizona Research

Owner and Principal Investigator, April 2000 to September 2007

As an independent consultant, Mr. Solliday provided a range of history-based services to city agencies, archaeologists, attorneys, and museums, including studies and reports relating to community history, land use history, ethnic minority communities, and documentation of historic buildings, districts, and structures. He also worked in museum exhibit planning and video production, and writing proposals.

Sky Harbor Airport Community Noise Reduction Program Supplemental Surveys, City of Phoenix, 2005-2007. Conducted field survey documentation and completed Historic Property Inventory Forms for properties in South Phoenix.

Property History Documentation, Farley, Robinson and Larson, P.C., 2003-present. Serves as an on-call investigator and expert witness, providing historical research in support of litigation.

Mission Ranch Archaeological Project, Archaeological Research Services, 2005. Conducted archival research and oral history interviews to produce a history of the Antonio Tunon Homestead in Casa Grande, Arizona.

Arizona Statehood Centennial Exhibit Development Project, Arizona State Capitol Museum, 2005. Served as Chairman of an inter-departmental staff committee responsible for developing interpretive content for a major exhibit on the Arizona Constitutional Convention of 1910 planned to open in conjunction with the Arizona Statehood Centennial in 2012. Directed staff research and was lead developer of an exhibit storyline and content evaluation criteria.

Tempe (Hayden) Butte & Environs Archaeological & Cultural Resource Study, City of Tempe, 2004. Served as prime consultant responsible for producing an interdisciplinary study documenting prehistoric and historic cultural resources associated with Tempe (Hayden) Butte. Conducted field survey and wrote historic context study for historic sites and structures.

La Plaza y La Cremería Archaeological Investigation, Archaeological Research Services, 2002. Conducted archival research and wrote a history of the Sotelo Addition neighborhood in Tempe, and wrote individual property histories for each parcel in the subdivision.

Tempe Multiple Resource Area Update Supplemental Survey, City of Tempe, 2002. Conducted field survey documentation and completed Historic Property Inventory Forms for previously unsurveyed properties built in Tempe between 1935-1947.

Tempe Post World War II Neighborhood and Housing Context Development Project, City of Tempe, 2001. Principal Investigator responsible for archival research and field survey to produce a broad historic context on the development of housing in Tempe from 1945-1960. This was the first cultural resource study in Arizona to examine the post-World War II era.

Chandler History Video Project, Chandler Museum, 2001. Conducted archival research and assisted a scriptwriter in developing the storyline and content for a 60-minute video production on the history of Chandler.

Roosevelt Water Conservation District HAER-format Report, Salt River Project, 2000. Completed archival research, field documentation, and oral histories for production of a report in Historic American Engineering Record style format.

Southeast Phoenix History Project, History International, Inc./City of Phoenix, 2000. Wrote a historic overview of the Golden Gate, Cuatro Milpas, and Hollywood barrios, the Jefferson Neighborhood, and Sacred Heart Parrish. The report included interpretive themes for proposed exhibits and public programming.

Museum Curator

Tempe Historical Museum, Curator of History, August 1991 to August 1999

Mr. Solliday was responsible for directing historical research and developing interpretive content for exhibits and public programs; directed a research-oriented oral history program, developed computer databases and the museum's Website; provided lectures and classes, and research support to other city departments; assisted with exhibit design and installation, educational programming, video production, archival management, grant writing, policy development, and public relations.

Chandler Museum, Curator, March 1986 to August 1991

Mr. Solliday was responsible for all aspects of museum administration, including collections management, historical research, exhibit design and production, educational programs, grant writing, fundraising, policy development, community and government relations, and cultural resource management.

History Teacher

Mr. Solliday started his career as a History Instructor. From 1981–1989 he taught Arizona history and anthropology in college and community-based programs, including the Mesa Southwest Museum (now Arizona Museum of Natural History), Mesa Arts Center, Western International University, and Mesa Community College. He presented lectures through the Arizona Humanities Council Speakers Bureau, 1995–1997.

Chandler Gilbert Community College, Adjunct Faculty Instructor, Fall 2005 to Spring 2009, Mr. Solliday has taught classes in American History and Southwest History with emphasis on developing research and writing skills. Responsibilities include developing curriculum and multimedia presentations. He will resume teaching responsibilities in Fall 2010.

National Endowment for the Humanities Fellowship

Research Fellowship, September 1999 to March 2000

Mr. Solliday was granted a six-month fellowship grant to investigate the role of Mexican immigrants and Mexican-Americans in the settlement and economic development of the Arizona Territory between 1848-1912. The primary focus of this project was the development of the Mexico/Arizona Biographical Survey, a database of 18,000 Hispanic settlers in Arizona during the territorial period based on a survey of archival and public records and community outreach activities at various locations in central and southern Arizona. Mr. Solliday disseminated the findings of the project through a Website and public lecture series.

Selected Publications

- Solliday, Scott, Thomas E. Jones, and Victoria Vargas, 2009, *Jefferson Park Historical Review Survey Report (Draft)*. Archaeological Consulting Services (ACS).
- Jones, Thomas E., Scott Solliday and Victoria Vargas, 2009, *A Cultural Resource Survey of the Tony Ranch Homestead in Haunted Canyon, Pinal County, Arizona*. ACS.
- Fangmeier, Kristin L., Scott Solliday, and Victoria D. Vargas, 2009, *A Class I Cultural Resources Literature Review and Historic Building Inventory Survey for the Broadway Road Streetscape Plan, Tempe, Maricopa County, Arizona*. ACS.
- Solliday, Scott, 2009, *A Historic Context for Roosevelt Irrigation District Zanjero Houses, State Route 85, Buckeye, Maricopa County, Arizona*. ACS.
- Solliday, Scott, Thomas E. Jones, and Victoria Vargas, 2008, *Roosevelt Addition Historic District National Register Nomination*. ACS.
- Rayle, Christopher E., Scott Solliday, and Victoria D. Vargas, 2008, *A Cultural Resource and Historic Building Survey for a remedial investigation/feasibility study at the Iron King Mine/Humboldt Smelter Superfund Cleanup Site, Dewey-Humboldt, Yavapai County, Arizona*. ACS.
- Solliday, Scott, 2008, *Homesteading and Ranching in the Vicinity of Lake Pleasant Regional Park, Maricopa and Yavapai Counties, Arizona*. ACS.
- Aguila, Lourdes, Michael S. Droz, Scott Solliday, and Andrea Gregory, 2008, *Cultural and Environmental Synthesis of the East Range, Fort Huachuca Military Reservation, Cochise County, Arizona*. ACS.
- Vargas, Victoria D., Thomas E. Jones, Scott Solliday, and Don W. Ryden, 2007, *Hayden Flour Mill: Landscape, Economy, and Community Diversity in Tempe, Arizona*, Vol. 1: Introduction, Historical Research, and Historic Architecture. ACS Cultural Resources Report No. 143. ACS.

- Ilya Berelov, Scott Solliday, and Victoria Vargas, 2007, *A National Register Eligibility Assessment for a Roosevelt Irrigation District Zanjero House, State Route 85, Milepost 153.2, Buckeye, Maricopa County, Arizona*. ACS.
- Murray, Vince, and Scott Solliday, 2007, *Phoenix Asian American Historic Property Survey*, City of Phoenix Historic Preservation Office.
- Solliday, Scott, 2006, *Phoenix Community Noise Reduction Program Supplemental Survey*, City of Phoenix Historic Preservation Office.
- Solliday, Scott, 2006, Historical Overview of the Tunon Homestead in *The Mission Ranch Archaeological Project: Investigations at the Antonio Tunon Homestead, Site AZ AA:2:223 (ASM)*, in *Casa Grande, Pinal County, Arizona*, by Thomas E. Wright. Archaeological Research Services, Tempe.
- Solliday, Scott, 2005, *Historic and Architectural Overview of the Arizona Biltmore Hotel*, Arizona Biltmore Hotel Villas Condominium Association.
- Murray, Vince, and Scott Solliday, 2005, *Phoenix Madison Square Garden Historic Site Documentation*, National Government Properties.
- Solliday, Scott, 2005, History of the Sotelo Addition in *La Plaza y La Cremería: Archaeological Investigations in Part of AZ U:9:165 (ASM), a Multicomponent Site in Tempe, Maricopa County, Arizona*, by Thomas E. Wright. Archaeological Research Services, Tempe.
- Solliday, Scott, Scott M. Kwiatkowski and Thomas E. Wright, 2004, *Tempe (Hayden) Butte & Environs Archaeological & Cultural Resource Study*, City of Tempe Development Services Department.
- Solliday, Scott, 2001, *Post World War II Subdivisions, Tempe Arizona: 1945-1960; Neighborhood and House-type Context Development*. City of Tempe Development Services Department.
- Solliday, Scott, and Shelly C. Dudley, 2000, *History, Photographs, and Drawings of the Roosevelt Water Conservation District Canal*. Salt River Project/Arizona Department of Transportation.
- Solliday, Scott, 2000, *Southeast Phoenix Land Use History: Washington Street–7th Street–Broadway Road–24th Street*. History International, Inc./Phoenix Sky Harbor Airport.
- Solliday, Scott, 1996, *Chandler, Pioneer City of the New West*. Chandler Historical Society.
- Solliday, Scott, 1993, *The Journey to Rio Salado: Hispanic Migrations to Tempe, Arizona*. Master's thesis, Arizona State University.
- Solliday, Scott, 1991, Wright's First Desert Adventure. *Frank Lloyd Wright Quarterly* 2:8-11.
- Solliday, Scott, 1991, *Goodyear Townsite Historic Property Survey*. Chandler Historical Society.
- Solliday, Scott, 1989, *San Marcos Plaza Historic Property Survey*. Chandler Historical Society.

Conference Papers

- *Mill Workers, Mill Families*. Paper presented for the Historic Architecture and Historic Preservation Planning of the Hayden Flour Mill session. 2008 Arizona Preservation Conference, Rio Rico, Arizona.
- *Undocumented Settlers: Mexican and Native American Development of Agriculture in the Salt River Valley*. Paper presented at the 2006 Annual Meeting of the American Association for State and Local History, Phoenix, Arizona.
- *Documenting Arizona's Invisible Pioneers: the Mexico/Arizona Biographical Survey*. Paper presented at the 2004 Annual Arizona History Convention, Safford, Arizona.
- *North, South, East, and West: The Sudden Rise of Suburban Tempe in the Mid-20th Century*. Paper presented at the 2003 Annual Arizona History Convention, Tempe, Arizona.
- *An Archive of the Barrios*. Paper presented at the 2002 Annual Conference of the American Historical Association, Pacific Coast Branch, Tucson, Arizona.
- *Invisible Minority: Sonorans and the Development of Territorial Arizona*. Lecture presented at Arizona State University–Downtown Phoenix, 2002.
- *E. W. Hudson: The Man Who Leveled the Salt River Valley*. Paper presented at the 2000 Annual Arizona History Convention, Yuma, Arizona.
- *Hispanic Genealogy in Central Arizona*. Lecture presented at Researching Hispanic History Workshop, Arizona State University–Tempe, 1997.
- *Journey to Rio Salado: Hispanic Pioneers in Central Arizona*. Paper presented at the 1993 Annual Arizona Historical Convention, Tempe, Arizona.

Museum Exhibits

- *Arizona Constitutional Convention of 1910* (preliminary script). Arizona State Capitol Museum, 2005.
- *La Familia*. Tempe Historical Museum, 1999.
- *Rio Salado: Putting Water Back in the Salt*. Tempe Historical Museum (THM), 1997.
- *The Cactus League: Fifty Years of Spring Training in Arizona*. THM, 1997.
- *Doors to the Past: Preserving Tempe's Historic and Architectural Heritage*. THM, 1996.
- *Buffaloes, Bulldogs, and Bowl Games: One Hundred Years of Football in Tempe*. THM, 1995.
- *Cotton Futures: The Rise and Fall of Tempe's First Big Industry*. THM, 1994.
- *Baseball on the Desert: Spring Training and the Cactus League*. THM, 1993.
- *The Barrios*. THM, 1992.
- *River Crossings*. THM, 1992.
- *On the Homefront: Posters from World War II*. THM, 1991.
- *Frank Lloyd Wright in Chandler*. Chandler Museum (CM), 1990.
- *The City Beautiful: Early City Planning and Architecture in Chandler*. CM, 1989.
- *Main Exhibit Hall Permanent Exhibits*. CM, 1988.

Memberships

- National Council on Public History
- American Association for State and Local History
- Arizona Historical Society
- Friends of Arizona Archives
- Coordinating Committee for History in Arizona
- Tempe Historical Society
- Chandler Historical Society
- Los Descendientes del Presidio de Tucson

Service Activities

- Board of Directors, Friends of Arizona Archives, 2000-2006
- Museum Management Planning Committee, Gilbert Historical Society, 2004
- Tempe Tardeada Planning Committee, City of Tempe, 1998-2001
- Board of Directors, Tempe Hispanic Heritage International, 1998-1999
- Grant Review Panel, Institute of Museum and Library Services, 1998
- Grant Review Panel, Arizona Humanities Council, 1996
- Rittenhouse School Preservation Committee, San Tan Historical Society, 1994
- Board of Directors, Central Arizona Museum Association, 1989-1992

Additional Professional Training

- Section 106 Workshop. Arizona Preservation Conference, Tempe, 2004.
- Managing an Oral History Collection. Oral History Association, Tempe, 1992.
- Oral History Workshop. Oral History Association, Phoenix, 1991.

EXHIBIT C





EXHIBIT D



WHEN RECORDED, MAIL TO: Brian P. Morrissey
UNION PACIFIC RAILROAD
1800 Farnam Street
Omaha, NE 68102

22
ga

1/3 2227936.05

QUIT CLAIM DEED

For valuable consideration, the STATE OF ARIZONA hereby quit claims to the UNION PACIFIC RAILROAD COMPANY all right, title, and/or interest in the following real property situated in Maricopa County, Arizona:

A PARCEL OF LAND LOCATED IN THE EAST HALF OF THE EAST HALF (E½ E½) OF SECTION 16, TOWNSHIP 1 NORTH RANGE 4 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT "A."

EXEMPT ARS 11-1134 A-3

Dated this 18th day of December, 2002.

Michael E. Anable
Michael E. Anable
Commissioner, Arizona State Land Department

STATE OF Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 18 day of December, 2002,
by MICHAEL E. Anable

Mary C. Bryan
Notary Public

My commission expires: 2-10-05



ARIZONA STATE LAND DEPARTMENT
LEGAL DESCRIPTION FORM

SUBMITTED TO: TIM SIME
REFERENCE: CLAIM TO STATE LAND
IN TEMPE TO TOP OF BANK
OF TEMPE LAKE

THIS IS TO CERTIFY THAT THIS
LEGAL DESCRIPTION WAS
PREPARED UNDER MY DIRECTION.

THE ENGINEERING AND MAPPING SECTION HEREBY SUBMITS
THE LEGAL DESCRIPTION OF LANDS REQUIRED
AND LOCATED IN:

SEC. 16 TWP. 1N RGE. 4E CO. MARICOPA

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE EAST HALF OF THE EAST HALF (E1/2E1/2) OF SECTION 16, TOWNSHIP 1 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 16, SAID CORNER ALSO BEING THE SOUTHEAST CORNER OF STATE PLAT 12 AMENDED, ACCORDING TO BOOK 69 OF MAPS, PAGE 38 OF RECORDS OF MARICOPA COUNTY,

THENCE N00°16'40"W ALONG THE EAST LINE OF SAID SECTION 16 A DISTANCE OF 33.00 FEET, TO THE POINT OF BEGINNING, SAID POINT BEING ON THE NORTH LINE OF 8TH STREET AS SHOWN ON SAID STATE PLAT 12 AMENDED,

THENCE S90°00'00"W, ALONG SAID NORTH LINE OF 8TH ST. A DISTANCE OF 200.00 FEET, TO THE EAST LINE OF FARMERS AVE. AS SHOWN ON SAID STATE PLAT,

THENCE N00°16'40"W, ALONG THE EAST LINE OF SAID FARMERS AVE. A DISTANCE OF 2198.97 FEET, TO A POINT IN THE SOUTH LINE OF PATENT NO. 6898,

THENCE N89°28'05"E, ALONG THE SOUTH LINE OF PATENT NO. 6898 A DISTANCE OF 162.00 FEET,

THENCE N00°16'40"W, ALONG SAID EAST LINE OF PATENT NO. 6898 A DISTANCE OF 373.00 FEET, TO A POINT ON THE SOUTH LINE OF 1ST STREET AS SHOWN ON SAID STATE PLAT 12 AMENDED,

THENCE S89°28'05"W, ALONG THE SOUTH LINE OF 1ST ST. A DISTANCE OF 62.00 FEET, TO A POINT ON THE EAST LINE OF LOT 1E OF STATE PLAT 12 AMENDED EXTENDED SOUTHERLY,

THENCE N00°16'40"W, ALONG THE EAST LINE OF SAID LOT 1E A DISTANCE OF 415.00 FEET,

THENCE N02°13'50"W, ALONG THE EAST LINE OF SAID LOT 1E A DISTANCE OF 158.90 FEET,

THENCE N04°44'50"W, ALONG THE EAST LINE OF SAID LOT 1E AND PATENT NO. 1841, SAID LINE ALSO BEING THE WEST LINE OF SOUTHERN PACIFIC RAILROAD RIGHT OF WAY A DISTANCE OF 560 FEET, MORE OR LESS TO A POINT ON THE ORDINARY HIGH WATER MARK OF THE LOWER SALT RIVER,

John P. Melnick

SIGNATURE

12/10/02

DATE

ARIZONA STATE LAND DEPARTMENT
LEGAL DESCRIPTION FORM

LEGAL DESCRIPTION (CONTINUED):

THENCE IN A NORTHEASTERLY DIRECTION, ALONG THE ORDINARY HIGH WATER MARK OF THE LOWER SALT RIVER A DISTANCE OF 115 FEET, MORE OR LESS TO A POINT ON THE SAID ORDINARY HIGH WATER MARK,

THENCE IN A SOUTHEASTERLY DIRECTION, ALONG THE ORDINARY HIGH WATER MARK OF THE LOWER SALT RIVER A DISTANCE OF 70 FEET, MORE OR LESS TO A POINT IN THE EAST LINE OF SECTION 16,

THENCE S00°16'40"E, ALONG THE EAST LINE OF SECTION 16 A DISTANCE OF 1120 FEET, MORE OR LESS TO THE EAST QUARTER CORNER OF SECTION 16,

THENCE S00°16'40"E, ALONG THE EAST LINE OF SECTION 16, ALSO BEING THE EAST LINE OF STATE PLAT 12 AMENDED, A DISTANCE OF 2606.83 FEET TO THE POINT OF BEGINNING.

CONTAINING 13.51 ACRES, MORE OR LESS.

Unofficial Document

J, PN
INITIAL
12/10/02
DATE

EXHIBIT E



22
ga

Send Tax Statements to:

Tempe City Attorney
P.O. Box 5002
Tempe, AZ 85280

CHICAGO TITLE INSURANCE COMPANY

3/3 2227936.05

(Space above line for Recorder's use only)

This instrument is exempt from
Affidavit and Filing Fees (ARS §42-
1614A2)

QUITCLAIM DEED
(Northern Property)

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") (formerly known as Southern Pacific Transportation Company, a Delaware corporation), in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM to the CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law ("Grantee"), whose address is P.O. Box 5002, Tempe, Arizona 85280 and unto its successors and assigns forever, the following right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in the in the City of Tempe, County of Maricopa, State of Arizona, as more particularly described in **Exhibit A**, hereto attached and hereby made a part hereof:

Grantor's conveyance to Grantee hereunder is defined by, and limited to, all rights in and to the Property, conveyed to Grantor by the Arizona State Land Department pursuant to that certain Quitclaim Deed recorded in the Official Records of Maricopa County, Arizona, concurrently herewith.

The rights remised, released, and forever quitclaimed, to Grantee hereunder do not include any interest in Grantor's rights under its exclusive perpetual easement for all purposes provided in the General Railroad Right of Way Act of 1875 (Chap. 152, 18 U.S. Stat. 492), in, on, over, under and across, the Property.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Property unto the said Grantee and unto its successors and assigns.

Grantor, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Grantee. A Certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as **Exhibit B**.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the ____ day of December, 2002.

Attest:

UNION PACIFIC RAILROAD COMPANY,

C. J. Meyer
Assistant Secretary

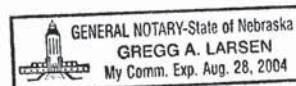
By Tony K. Love
Title: GENERAL MANAGER-REAL ESTATE

STATE OF NEBRASKA)
)
COUNTY OF DOUGLAS)

On December 23, 2002, before me, a Notary Public in and for said County and State, personally appeared Tony K. Love and C. J. Meyer, General Manager-Real Estate and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Gregg A. Larsen
Notary Public



(SEAL)

The undersigned Grantee accepts this Deed subject to the terms, reservations, conditions and covenants set forth heretofore.

GRANTEE
CITY OF TEMPE

By: Neil G. Giuliano

Its: Mayor

Date: 12/24/02

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

On 12/24, 2002, before me, a Notary Public in and for said County and State, personally appeared Neil G. Giuliano of the CITY OF TEMPE, a municipal corporation created under the provisions of Arizona law, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Karen M. Fillmore Unofficial Document
Notary Public



(SEAL)

EXHIBIT A**Property Description**

RAILROAD PROPERTY IN A PORTION OF THE EAST HALF
SECTION 16, TOWNSHIP 1 NORTH, RANGE 4 EAST
GILA AND SALT RIVER MERIDIAN

A parcel of land located in the East half of the East half (E $\frac{1}{2}$, E $\frac{1}{2}$) of Section 16, Township 1 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Section 16, said corner also being the Southeast corner of State Plat 12 Amended, according to Book 69 of Maps, Page 38 of Records of Maricopa County,

Thence North 00° 16' 40" West along the East line of said Section 16, a distance of 33.00 feet, said point being on the North line of 8th Street as shown on said State Plat 12 Amended;

Thence South 90° 00' 00" West along said North line of 8th Street a distance of 200.00 feet, to the East line of Farmers Ave. as shown on said State Plat;

Thence North 00° 16' 40" West, along the East line of said Farmers Ave. a distance of 2198.97 feet, to a point on the South line of Patent No. 6898;

Thence North 89° 28' 05" East, along the South line of Patent No. 6898 a distance of 162.00 feet to the Point of Beginning;

Thence North 00° 16' 40" West, along ~~Unofficial Document~~ line of Patent No. 6898 a distance of 373.00 feet, to a point on the South line of 1st Street as shown on said State Plat 12 Amended,

Thence South 89° 28' 05" West, along the South line of 1st St., a distance of 62.00 feet, to a point on the East line of Lot 1E of State Plat 12 Amended extended Southerly;

Thence North 00° 16' 40" West, along the East line of said Lot 1E a distance of 415.00 feet;

Thence North 02° 13' 50" West, along the East line of said Lot 1E a distance of 158.90 feet;

Thence North $04^{\circ} 44' 50''$ West, along the East line of said Lot 1E and Patent No. 1841, said line also being the West line of Southern Pacific Railroad right of way, a distance of 560 feet, more or less to a point on the ordinary high water mark of the Lower Salt River;

Thence in a Northeasterly direction, along the ordinary high water mark of the Lower Salt River a distance of 115 feet, more or less to a point on the said high water mark;

Thence in a Southeasterly direction, along the ordinary high water mark of the Lower Salt River a distance of 70 feet more or less to a point on the East line of said Section 16;

Thence South $00^{\circ} 16' 40''$ East, along the East line of Section 16 a distance of 1120 feet, more or less to the East Quarter corner of Section 16;

Thence South $00^{\circ} 16' 40''$ East, along the East line of Section 16, also being the East line of State Plat 12 Amended, a distance of 406.02 feet to a point on said East lines said point also being on the Easterly prolongation of the South line of Patent No. 6898;

Thence South $89^{\circ} 28' 05''$ West along said Easterly prolongation of said Patent No. 6898, 38.00 feet to the Point of Beginning.

Unofficial Document

EXHIBIT B**Certification Of Non-Foreign Status**

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, CITY OF TEMPE, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
3. UNION PACIFIC RAILROAD COMPANY'S office address is 1416 Dodge Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Unofficial Document

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation


By: 
 Title: GENERAL MANAGER-REAL ESTATE
 Date: _____

EXHIBIT F



SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-006521

11/16/2012

HON. JOHN REA

CLERK OF THE COURT
K. Gilmet
Deputy

ARIZONA STATE, et al.

MONIQUE K COADY

v.

STEPHEN SUSSEX, et al.

GREGORY A ROBINSON

RULING

The State of Arizona has moved for an award of attorneys' fees on its quiet title claim in the amount of \$70,552. Defendants oppose the request. The State complied with all statutory requirements for an award of fees under ARS 12-1103(B). It is clear, though, that an award of fees under ARS 12-1103(B) is discretionary with the Court as to both the award of fee and the amount of fees awarded. See, *McNeil v. Attaway*, 84 Ariz. 103, 118 (1960); *Scottsdale Memorial v. Clark*, 164 Ariz. 211 (App. 1990). The Court should consider all factor relevant to an award of fees under 12-341.01.

THE COURT FINDS that several of the *Associated Indemnity v. Warner* factors predominate against an award of fees in this case. The quiet title issues presented novel legal issues. An award of fees against Stephen Sussex would cause an extreme hardship. Significantly, the State did not prevail on all relief sought. The quiet title issues cannot be segregated from the trespass issues, as the Court of Appeals pointed out in dismissing the appeal on the quiet title ruling. The State insisted on prosecuting the trespass case and after a four day trial succeeded in obtaining a verdict that was less than three tenths of one percent of the relief requested.

IT IS ORDERED The State's motion for attorney's fees is denied.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-006521

11/16/2012

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

EXHIBIT G



GOOGLE EARTH AERIAL IMAGERY
2004 – 2014



12/30/2004

Aerial Image - December 30, 2004

Image U.S. Geological Survey

Google earth

1997

Imagery Date: 12/31/2003 33°25'49.29" N 111°56'39.25" W elev 1161 ft eye alt 2111 ft



Aerial Image - November 29, 2005

Google earth

Imagery Date: 10/31/2005 33°25'51.60" N 111°56'41.02" W elev 1158 ft eye alt 2111 ft



Aerial Image - November 19, 2009

Google™ earth

33°25'51.62" N 111°56'40.99" W elev 1158 ft eye at 2111 ft

1997



Aerial Image - March 3, 2011

Google earth

Imagery Date: 3/3/2011 33°25'51.62" N 111°56'41.02" W elev 1153 ft eye alt 2111 ft



6/8/2012

Click to travel forward in time.

Aerial Image - June 8, 2012

Google earth

Imagery Date: 6/8/2012 33°25'51.64" N 111°56'41.00" W elev 1157 ft eye at 2111 ft



Aerial Image - March 13, 2013

Google earth

Imagery Date: 3/13/2013 33°25'48.27" N 111°56'36.52" W elev 1164 ft eye at 2111 ft



Aerial Image - March 7, 2014

Google earth


Imagery Date: 3/7/2014 33°25'51.62" N 111°56'41.01" W elev 1153 ft eye at 2111 ft

**MARICOPA COUNTY FLOOD DISTRICT
AERIAL PHOTOGRAPHY
1949 – 2012**

(With the subject property marked as APN 124-24-171(A), and the adjacent parcel outlined and marked as APN 124-24-003)



Legend

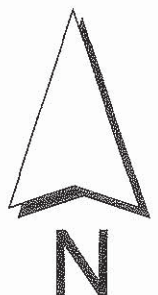
 Parcel 124-24-003

 Streets

0 50 100 200 Feet



Date of Photography - February 17th, 1949

The Flood Control District does not guarantee the positional accuracy of the parcel lines.
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.



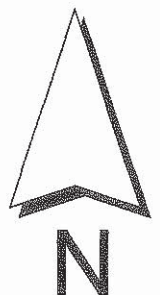


Legend

-  Parcel 124-24-003
-  Streets

0 50 100 200 Feet

Date of Photography - January 2nd, 1969



The Flood Control District does not guarantee the positional accuracy of the parcel lines.
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.



Legend

 Parcel 124-24-003

 Streets

0 50 100 200 Feet


Date of Photography - December 15th, 1979



The Flood Control District does not guarantee the positional accuracy of the parcel lines.
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.



Legend

 Parcel 124-24-003

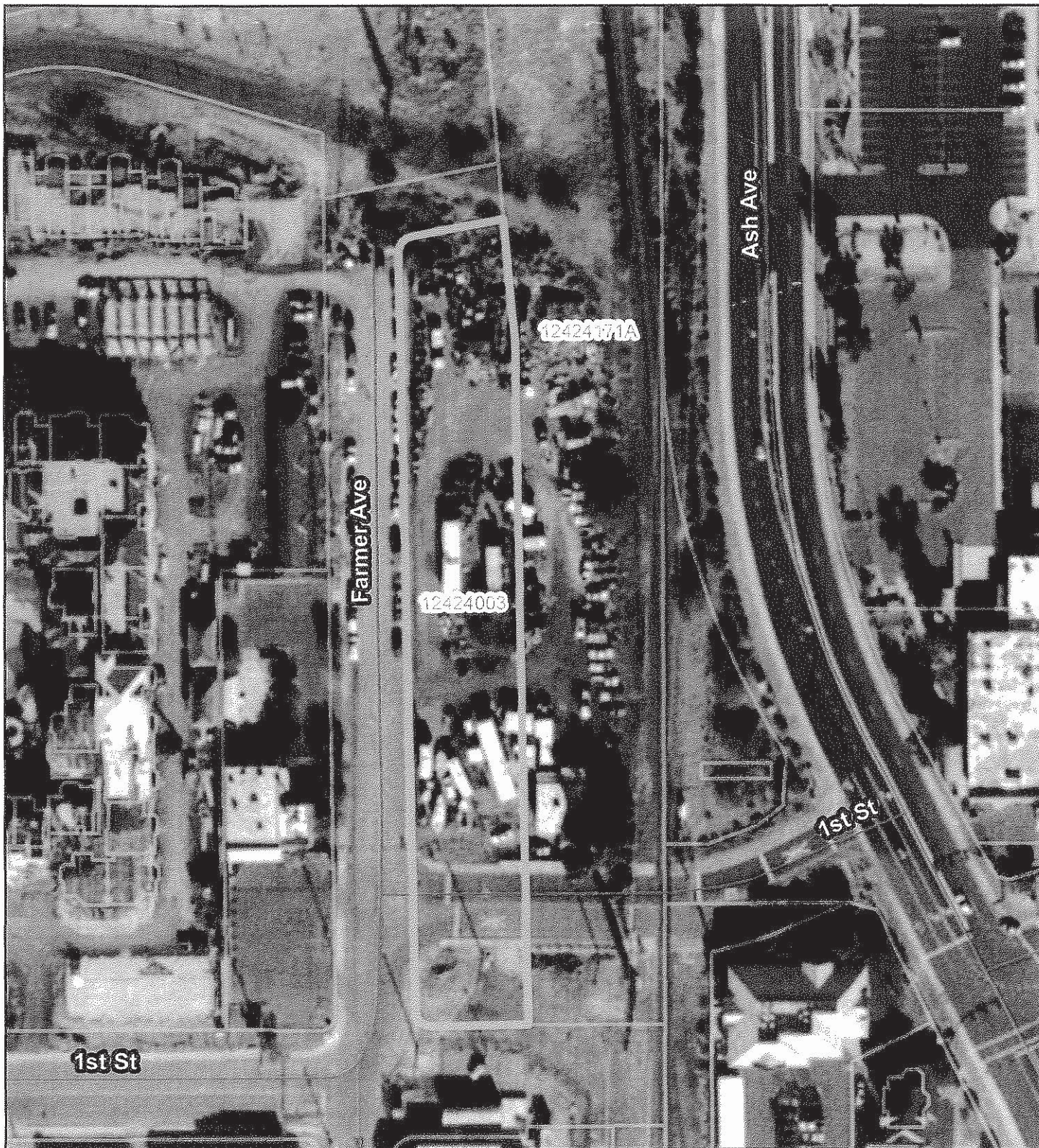
 Streets

0 50 100 200 Feet

Date of Photography - December 2nd, 1996

The Flood Control District does not guarantee the positional accuracy of the parcel lines.
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.





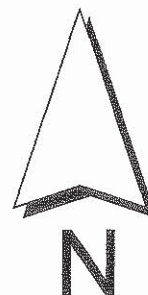
Legend

 Parcel 124-24-003

 Streets

0 50 100 200 Feet

Date of Photography - December 19th, 2001





The Flood Control District does not guarantee the positional accuracy of the parcel lines.
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.



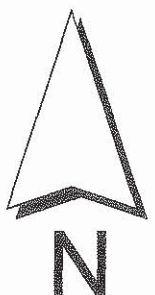
Legend

 Parcel 124-24-003

 Streets


0 50 100 200 Feet




Date of Photography - January 30th, 2006



The Flood Control District does not guarantee the positional accuracy of the parcel lines.
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.

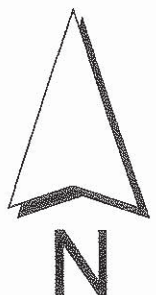


Legend

-  Aerials_2010_2011_Index
-  Parcel 124-24-003
-  Streets

0 50 100 200 Feet

Date of Photography - October 2nd, 2010



The Flood Control District does not guarantee the positional accuracy of the parcel lines.
 The parcel lines are for illustration purposes only and are not intended to be used as a survey product.