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*Attorneys for Plaintiffs  
Steven and Virginia Sussex*

**COPY**

MAY 14 2015



MICHAEL K. JEANES, CLERK  
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DEPUTY CLERK

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

**STEVEN SUSSEX and VIRGINIA  
SUSSEX, husband and wife,**

**Plaintiffs.**

**v.**

**CITY OF TEMPE, a municipal  
corporation,**

**Defendant.**

**CASE NO.**

CV 2015-005685

**VERIFIED COMPLAINT**

**(Quiet Title – Adverse Possession)**

**(Jury Trial Requested)**

Plaintiffs Steven Sussex and Virginia Sussex (“Plaintiffs”), for their Verified Complaint against the City of Tempe (“Defendant”), hereby allege as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiffs are a married couple residing in Maricopa County, Arizona at all times relevant hereto.



1           6.     The Home belonged to Plaintiff Steven Sussex’s great-grandfather, Jesús  
2 Martínez. It is listed on the National Register of Historic Places as the “Ramón Gonzáles/Jesús  
3 Martínez House.” (See Exhibit “A” hereto, incorporated herein.)

4           7.     Jesús Martínez purchased the Property from Ramón Gonzáles in 1892. He lived  
5 in the Home with his wife Rosario and three children until his death in 1907.

6           8.     Jesús Martínez’s daughter and Steven Sussex’s grandmother, Belén Martínez-  
7 Sussex, grew up in the Home on the Property, and lived there until her passing in 1967.

8           9.     Upon her death, Belén Sussex transferred the Property to Steven Sussex.

9           10.    Since then, Mr. Sussex and his family have openly, continuously, exclusively  
10 and adversely used and claimed ownership of the Property.

11          11.    During the 1980’s, Mr. Sussex ran a painting business called “S & S Painting”  
12 out of the Home on the Property.

13          12.    Since at least the 1980’s, Mr. Sussex has continued to openly store items and  
14 vehicles on the property, and to do work on the property; and he has permitted various  
15 members of his family to live in the Home, or to reside in a mobile home on the Property.

16          13.    His family continues to reside in the Home, and has done so continuously since  
17 at least December 23<sup>rd</sup>, 2002.

18          14.    As of December 17<sup>th</sup>, 2002, the State of Arizona claimed to hold title to the  
19 property.

20          15.    The State of Arizona quitclaimed the Property to the Union Pacific Railroad  
21 Company (“UPRC”) on December 18<sup>th</sup>, 2002, as part of a broader conveyance of land. This  
22 quit claim deed was recorded on December 27<sup>th</sup>, 2002. (Exhibit “B” hereto.)

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1           25. In fact, Defendant has never even made concrete plans to use the Property as a  
2 “multi-use pedestrian/bike pathway,” and the Property has never been used as a multi-use  
3 pedestrian/bike pathway.

4           26. In fact, Defendant has never made a “clear, satisfactory and unequivocal”  
5 dedication of the Property of any kind.

6           27. Defendant views the Property as valuable.

7           28. Defendant’s claim to have dedicated the property as a “multi-use pedestrian/bike  
8 pathway” is a thin conceit for it to allege that it holds the Property in a sovereign capacity, that  
9 it is immune from adverse possession, and to deny Plaintiffs their rightful title after 123 years.

10          29. Defendant, a municipal corporation, does not and has never held the Property in  
11 a sovereign capacity.

12          30. Further, a purported dedication of the Property to a sovereign use in 2013 or  
13 2014 would not affect Plaintiffs’ title, because Plaintiffs had already acquired perfect title to  
14 the Property no later than December 24<sup>th</sup>, 2012.

15          31. Defendant alleges that Plaintiffs’ attorney sent a Letter to the City on June 3,  
16 2011 asking for the City’s “sufferance” in not filing suit against the Sussexes while the  
17 Sussexes were fending off other litigation with the State, attached as Exhibit “E” hereto.

18          32. Defendant claims that the attorney’s use of the word “sufferance,” and/or the  
19 Letter itself, amounted to a recognition by the Sussexes that the City had superior title, and/or  
20 that their use was permissive.

21          33. In fact, the letter clearly conveys that the Sussexes claimed superior title.

22          34. Mr. Robinson’s use of the word “sufferance” indicated only that the Sussexes’  
23 use was without permission of the title owner of record, which is accurate. A mere recognition  
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1 that the City was title holder of record, or even that the Sussexes' use was wrongful or without  
2 legal right, does not defeat a claim to adverse possession, as a matter of law.

3 35. Plaintiffs are therefore entitled to a judgment quieting title to the Property in their  
4 favor and against Defendant, in fee simple, pursuant to A.R.S. §§ 12-1101 *et seq.*

5 Attorney's Fees and Costs

6 36. On February 23<sup>rd</sup>, 2014, and more than twenty days before bringing this action,  
7 Plaintiffs sent Defendant a letter pursuant to A.R.S. § 12-1103, requesting that Defendant  
8 execute a quit claim deed to the Property, and also tendering to Defendant five dollars for the  
9 execution and delivery of such quit claim deed.

10 37. Plaintiffs made a good faith effort to avoid litigation of this matter with  
11 Defendant, as reflected by the communications attached hereto as Exhibit "F."

12 38. Despite the foregoing, Defendant has refused and neglected to comply with  
13 Defendant's request to execute a quit claim deed, pursuant to A.R.S. § 12-1103.

14 39. Plaintiffs therefore request their attorneys' fees and costs in this matter, pursuant  
15 to A.R.S. § 12-1103.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs prays for judgment against Defendant as follows:

- 18 A. For establishment of Plaintiffs' estate and title to the Property, and that  
19 Defendant be barred and forever estopped from having or claiming any right or  
20 title to the Property adverse to Plaintiffs;
- 21 B. For Plaintiffs' attorneys' fees and costs, pursuant to A.R.S. § 12-1103;
- 22 C. For any other relief the Court deems proper.
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1  
2 **RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of May, 2015.

3 **WILENCHIK & BARTNESS, P.C.**

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16 *Attorneys for Plaintiffs*  
17 *Steven and Virginia Sussex*

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118 **ORIGINAL** of the foregoing filed  
119 this 14<sup>th</sup> day of May, 2015., with:

120 Clerk of the Superior Court  
121 Maricopa County Superior Court  
122 101 West Jefferson Street  
123 Phoenix, Arizona 85003

124 By 

1 **VERIFICATION**

2 (Rule 80(i), Ariz.R.Civ.P.)

3  
4 I, Steven Sussex, declare as follows:

5 I have read the foregoing Verified Complaint, and the statements made therein are true  
6 and correct to the best of my knowledge, information, and belief.

7  
8 I declare under penalty of perjury that the foregoing is true and correct.

9 DATED this 6 of May, 2015.

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12 By: Steven Sussex

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WILCHIK & BARTNESS  
A PROFESSIONAL CORPORATION



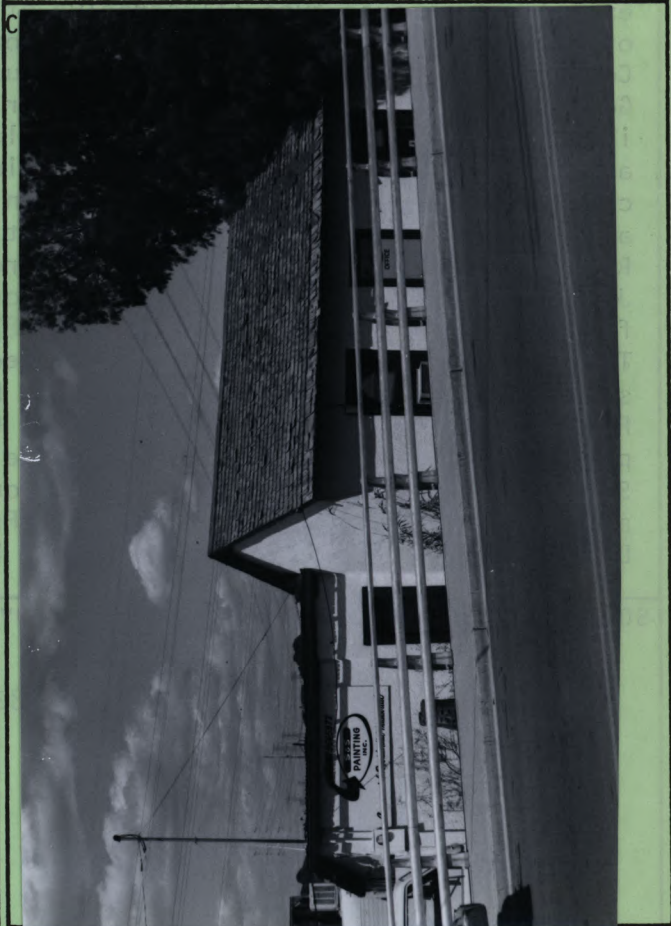
# EXHIBIT A

**WILENCHIK & BARTNESS**  
— A PROFESSIONAL CORPORATION —



# 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

VIEW	looking north
HISTORIC USE	residence
PRESENT USE	commercial, shop
ARCHITECT/BUILDER	Ramon-Gonzales
CONSTRUCTION/MODIFICATION DATES	Built 1880

**GEOGRAPHICAL DATA/LEGAL DESCRIPTION/VERBAL BOUNDARY DESCRIPTION**

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

**WILENCHIK & BARTNESS**  
— A PROFESSIONAL CORPORATION —





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 8<sup>TH</sup> STREET AS SHOWN ON SAID STATE PLAT 12 AMENDED,

THENCE S90°00'00"W, ALONG SAID NORTH LINE OF 8<sup>TH</sup> 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 <sup>Unofficial Document</sup> 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 1<sup>ST</sup> STREET AS SHOWN ON SAID STATE PLAT 12 AMENDED,

THENCE S89°28'05"W, ALONG THE SOUTH LINE OF 1<sup>ST</sup> 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 C

**WILENCHIK & BARTNESS**  
— A PROFESSIONAL CORPORATION —



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.



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 ½, E ½) 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 8<sup>th</sup> Street as shown on said State Plat 12 Amended;

Thence South 90° 00' 00" West along said North line of 8<sup>th</sup> 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 <sup>Unofficial Document</sup> line of Patent No. 6898 a distance of 373.00 feet, to a point on the South line of 1<sup>st</sup> Street as shown on said State Plat 12 Amended,

Thence South 89° 28' 05" West, along the South line of 1<sup>st</sup> 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.



# EXHIBIT D

**WILENCHIK & BARTNESS**  
— A PROFESSIONAL CORPORATION —



# **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



Aerial Image - November 19, 2009



Aerial Image - March 3, 2011



Aerial Image - June 8, 2012

3/13/2013



Aerial Image - March 13, 2013



Aerial Image - March 7, 2014


**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)**

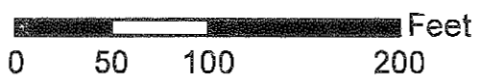


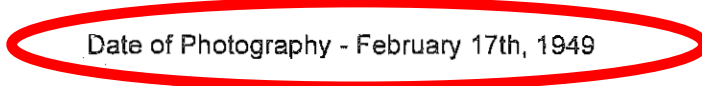


**Legend**

 Parcel 124-24-003

 Streets

 Feet  
0 50 100 200



 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.

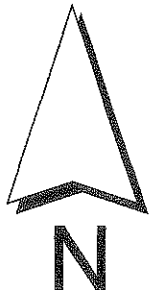


### Legend

-  Parcel 124-24-003
-  Streets





Date of Photography - January 2nd, 1969

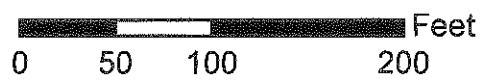


The Flood Control District does not guarantee the positional accuracy of the parcel lines. The parcel lines are for illustration purposes only and are not intended to be used as a survey product.

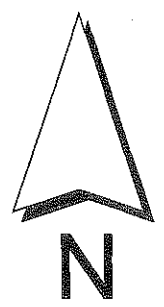


### Legend

-  Parcel 124-24-003
-  Streets




Date of Photography - December 15th, 1979




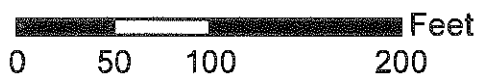
The Flood Control District does not guarantee the positional accuracy of the parcel lines.  
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.

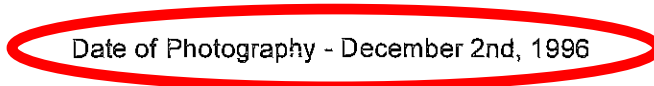


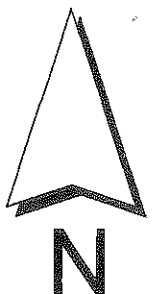
## Legend

 Parcel 124-24-003

 Streets

 Feet  
0 50 100 200


 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.



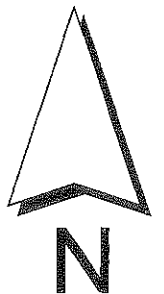
### Legend

 Parcel 124-24-003

 Streets

 Feet  
0 50 100 200


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.

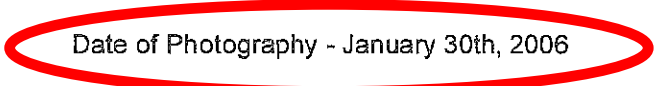


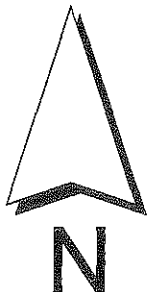
**Legend**

 Parcel 124-24-003

 Streets

 Feet  
0 50 100 200




 Date of Photography - January 30th, 2006

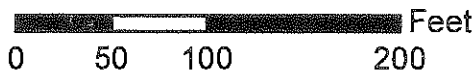


The Flood Control District does not guarantee the positional accuracy of the parcel lines.  
The parcel lines are for illustration purposes only and are not intended to be used as a survey product.

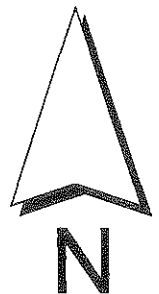


**Legend**

-  Aerials\_2010\_2011\_Index
-  Parcel 124-24-003
-  Streets



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.

# EXHIBIT E

**WILENCHIK & BARTNESS**  
— A PROFESSIONAL CORPORATION —



Law Offices

FARLEY, ROBINSON & LARSEN

Suite 300

GREGORY A. ROBINSON, P.C.  
Gregory A. Robinson

6040 North Seventh Street  
Phoenix, Arizona 85014-1803  
602/265-6666  
602/264-5116 Fax  
e-mail: [us@lawfri.com](mailto:us@lawfri.com)  
June 28, 2011

James J. Farley - Retired  
R. Chip Larsen - Retired

Andrew B. Ching  
City of Tempe Attorney  
P.O. Box 5002  
21 East Sixth Street, Ste. 201  
Tempe, Arizona 85280

Re: *State v. Sussex, et al.*  
*Your Letter Dated June 23, 2011*

Dear Mr. Ching:

I did review your letter last March. I did not want to create a two-front war at the time with the State of Arizona and the City of Tempe. The State of Arizona matter has been remanded by the Court of Appeals back to the Superior Court. We have more than one live and vibrant issue of defense against the claims of the State. We have an additional claim against the City of Tempe because the City of Tempe property was held in private hands (Union Pacific). Consequently, the defenses of laches and statute of limitations come into play. Also, the sovereign immunity accorded to governments is erased when the historicity of the property is such that it was not always government owned.

I suspect that this matter with the State in the Superior Court will go on for some time. On behalf of the Sussex family, we respectfully ask for your sufferance until this matter is worked out with the State. Do understand that the Sussex family has occupied this property since 1892 when it was acquired from the Gonzalez family. The property holds an adobe house that is listed on the Tempe Historic Registry. We have a good historical record of the Martínez/Sussex ownership. The Sussex's rights to the property should be respected.

Sincerely,



Gregory A. Robinson

GAR/pbt  
cc: Steven Sussex

City Attorney's Office

June 23, 2011

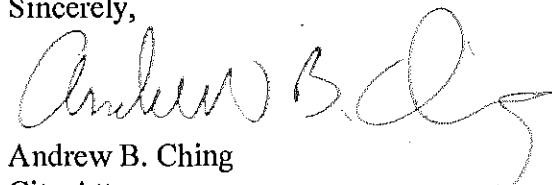
Mr. Gregory A. Robinson  
FARLEY ROBINSON & LARSEN  
6040 N. 7th Street, Suite 300  
Phoenix, AZ 85014

Re: State v. Sussex, et al.

Dear Mr. Robinson:

On March 10, I sent you a letter stating, among other things, that my client the City of Tempe was providing notice to your client that we will not permit any further trespassing on city property, specifically the property adjacent to the state property that is the subject of the litigation named above, at or near First Street and Farmer Avenue in Tempe. I did not receive a reply to that letter. Since then, it appears that additional items of your client's property have been moved onto the City's parcel, most likely items previously stored on the State parcel. The additional accumulation of property on the City parcel is further evidence that your clients intend to continue to trespass on the City's property notwithstanding the admonition in my previous letter. As a result, Tempe is providing your client thirty (30) days from the date of this letter to cease trespassing and remove all of their items of personal property, including vehicles, structures, debris or similar items, or the City will secure the property and dispose of all remaining items at your client's expense.

Sincerely,



Andrew B. Ching  
City Attorney

Cc: Monique Coady

City Attorney's Office

March 10, 2011

Mr. Gregory A. Robinson  
FARLEY ROBINSON & LARSEN  
6040 N. 7th Street, Suite 300  
Phoenix, AZ 85014

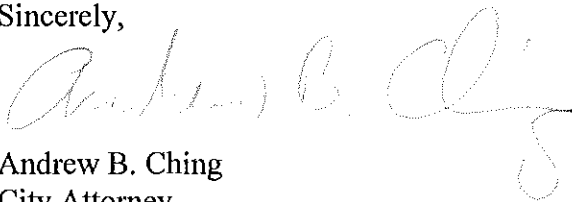
Re: State v. Sussex, et al.

Dear Mr. Robinson:

I am in receipt of a letter to you from Assistant Attorney General Monique Coady regarding State v. Sussex, et al., wherein Ms. Coady states that you and Stephen Sussex were working with the City of Tempe to gain access across the State Trust land to the Tempe parcel via First Street. I have spoken to my client, who has informed me that they are unaware of any discussions with us by either you or Mr. Sussex for such access. If you or your client have been in communication with someone from the City of Tempe regarding this matter, please let me know immediately.

Additionally, to the extent that your client is occupying or using in any way property owned by the City of Tempe, this letter is notice to them through you that we will not permit any further trespassing on City property, and that any vehicles, structures, debris or similar items currently on City property must be promptly removed. Thank you in advance for your cooperation, and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Andrew B. Ching', written in black ink.

Andrew B. Ching  
City Attorney

Cc: Monique Coady

# EXHIBIT F

**WILENCHIK & BARTNESS**  
— A PROFESSIONAL CORPORATION —





John “Jack” D. Wilenchik

jackw@wb-law.com

**WILENCHIK & BARTNESS**

— A PROFESSIONAL CORPORATION —  
**ATTORNEYS AT LAW**  
The Wilenchik & Bartness Building  
2810 North Third Street Phoenix Arizona 85004

Telephone: 602-606-2810 Facsimile: 602-606-2811

February 23, 2015

**VIA CERTIFIED MAIL**

Clerk of the City of Tempe  
31 E. Fifth Street, 2<sup>nd</sup> 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. 1<sup>st</sup> 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,”<sup>1</sup> as well as its surrounding property/curtilage located at 320 W. 1<sup>st</sup> 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.<sup>2</sup>

The Sussex family has been in actual, open, notorious, hostile, exclusive, continuous and uninterrupted possession of the Property under claim of right since 1892.<sup>3</sup> 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.

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

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

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



WILENCHIK & BARTNESS  
— A PROFESSIONAL CORPORATION —

Clerk of the City of Tempe  
Judith R. Baumann  
February 23, 2015  
Page 2 of 5

**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.<sup>4</sup> As was common practice at that time, the deed of purchase was not recorded with the (territorial) county recorder.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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 18<sup>th</sup>, 2002 (which was recorded on December 27<sup>th</sup>, 2002)<sup>8</sup>. On December 23<sup>rd</sup>, 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.<sup>9</sup> 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

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<sup>4</sup> See page 5 of Exhibit "B," first full paragraph.

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

<sup>6</sup> See Exhibit "B," page 5, footnote 16.

<sup>7</sup> See Exhibits "A" and "C."

<sup>8</sup> Exhibit "D" hereto, Maricopa County recording number 20021402981.

<sup>9</sup> Exhibit "E" hereto, Maricopa County recording number 20021402983.



WILENCHIK & BARTNESS  
— A PROFESSIONAL CORPORATION —

Clerk of the City of Tempe  
Judith R. Baumann  
February 23, 2015  
Page 3 of 5

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).<sup>10</sup> 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”<sup>11</sup> land, the State has absolute immunity from both laches and adverse possession. *See*

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<sup>10</sup> Maricopa County Superior Court case no. CV2005-006521.

<sup>11</sup> 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).



WILENCHIK & BARTNESS  
— A PROFESSIONAL CORPORATION —

Clerk of the City of Tempe  
Judith R. Baumann  
February 23, 2015  
Page 4 of 5

*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,<sup>12</sup> 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.”<sup>13</sup>

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),<sup>14</sup> 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,<sup>15</sup> 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).<sup>16</sup> 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.

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<sup>12</sup> 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.

<sup>13</sup> See Minute Entry denying attorneys’ fees, attached as Exhibit “F” hereto.

<sup>14</sup> 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.

<sup>15</sup> Exhibit “A,” page 2.

<sup>16</sup> Exhibit “B,” page 1.





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Clerk of the City of Tempe  
Judith R. Baumann  
February 23, 2015  
Page 5 of 5

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](mailto: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;

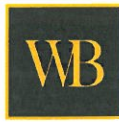
THENCE S04°44'50"E ALONG THE EAST LINE OF SAID LOT 1E, A DISTANCE OF 90.17 FEET;

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.

John "Jack" D. Wilenchik



**WILENCHIK & BARTNESS**

— A PROFESSIONAL CORPORATION —  
ATTORNEYS AT LAW  
The Wilenchik & Bartness Building  
2810 North Third Street Phoenix Arizona 85004

jackw@wb-law.com

Telephone: 602-606-2810 Facsimile: 602-606-2811

April 10, 2015

**VIA REGULAR MAIL**  
**AND EMAIL**

Judith R. Baumann  
City Attorney of Tempe  
P. O. Box 5002  
Tempe, AZ 85280  
[judi\\_baumann@tempe.gov](mailto:judi_baumann@tempe.gov)

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

To Judi Baumann:

Thank you for your telephone call of Wednesday, March 25<sup>th</sup>, 2015, and our subsequent exchange of emails over that and the following week.

It has been one month and fifteen days since my clients tendered their twenty-day letter pursuant to A.R.S. § 12-1103. We have patiently discussed and addressed with the City several legal issues that the City believed were of concern, and at least two Council executive sessions have occurred during this timeframe. I am not aware of any remaining issues that the City wishes to discuss, and the time for the City to execute a quitclaim deed pursuant to A.R.S. § 12-1103 has long since lapsed.

My clients have been patient in trying to resolve this matter without the need for litigation. If the City has not executed a deed quitclaiming the property to the Sussexes by next Wednesday, April 15<sup>th</sup>, then my clients will file a lawsuit against it.

Additionally, please advise as to whether you can accept service of the suit.

Sincerely,

Jack Wilenchik

A large, stylized handwritten signature in blue ink, written over the typed name 'Jack Wilenchik'. The signature is fluid and cursive, with a long horizontal stroke extending to the left and a smaller loop above the name.

## Jack Wilenchik

---

**From:** Jack Wilenchik  
**Sent:** Friday, March 27, 2015 6:04 PM  
**To:** 'Baumann, Judi'  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street  
**Attachments:** 2002 Deed from UPRC to City of Tempe.pdf

Thanks Judi. Enjoy your weekend too. You and your staff may find the following analysis helpful:

I anticipate that the City is referring to the proposed [Tempe North South Rail Spur Multi-Use Path](#). According to its website, the City has been “advancing” this project using “design concept” funding since 2014, and a finished “design concept” is expected sometime in 2015. I cannot find any reference to the project before 2014.

The Sussex property was deeded by the Union Pacific Railroad Company to the City of Tempe on December 24, 2002 (deed attached). Under A.R.S. § 12-526, the ten-year statute of limitations for adverse possession therefore came up no later than December 24, 2012. “Title vests at the end of the adverse possession period,” and “[c]ourt action is not necessary to perfect title.” *Babo v. Bookbinder Fin. Corp.*, 27 Ariz. App. 73, 74, 551 P.2d 63, 64 (1976). At the end of the period, the adverse possessor has “perfect title,” and the rights of the paper titleholder are “extinguished.” *Bicknell v. Comstock*, 113 U.S. 149, 152, 5 S. Ct. 399, 400, 28 L. Ed. 962 (1885).

The pathway proposal came along two years after the end of the adverse possession period—and after the Sussexes had already gained perfect title. The City’s rights were “extinguished” no later than December 24, 2012, and so the alleged dedication did not affect the Sussexes’ title.

Also, the Transportation General Plan does not qualify as a legal dedication of the property to a public use. For property to be legally dedicated to a public use, there must be a “clear, satisfactory and unequivocal” expression of intent to dedicate the property. *City of Scottsdale v. Mocho*, 8 Ariz. App. 146, 149, 444 P.2d 437, 440 (1968), cited with approval by *Kadlec v. Dorsey*, 224 Ariz. 551, 552, 233 P.3d 1130, 1131 (2010). The legal dedication of land to a public use is typically accomplished by a notation on a recorded land plat (see e.g. A.R.S. §§ 9-254, 9-477), although it can be accomplished in other ways; but “[i]f the City wishes to prove that other areas on the plat were also dedicated to the public, it must prove by clear, satisfactory and unequivocal proof that there was an intent...to dedicate for a proper public purpose, either expressed or implied.” *City of Scottsdale*, 8 Ariz. App. at 151, 444 P.2d at 442. “The burden of proof to establish a dedication is on the party asserting it,” and “[t]he courts have placed a heavy burden upon one asserting or claiming a dedication.” *Id.* (internal quotations omitted). The dedication “must be so unequivocal and positive as to leave little doubt that it was the intention of the owner to dedicate the [property] to the public use,” and the “[p]roof of facts” must be “clear, satisfactory and unequivocal.” *Id.*, 8 Ariz. App. at 150, 444 P.2d at 441.

The City’s website states that the proposed path “**would** use city right-of-way, private property agreements and identify **possible use** of the Union Pacific Railroad right-of-way to develop a 7-mile multi-use pathway...[It] **would likely** include more than 12 street crossings... The design concept **would be** completed in early 2015... **It is likely** that specific areas along the 10-mile corridor **would be** constructed at one-mile portions...” and so on. The City’s intent is equivocal, undefined, and unclear—but even more so with regard to the Sussex property. The proposed pathway therefore does not qualify as a legal dedication of the property to a public use.

Best,

Jack

---

**From:** Baumann, Judi [mailto:Judi\_Baumann@tempe.gov]  
**Sent:** Friday, March 27, 2015 12:38 PM  
**To:** Jack Wilenchik  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

Hi Jack, we are meeting with staff next week on issues related to your client's demand and will get back with you at our earliest opportunity.

Thanks and have a good weekend,  
J.

Judi Baumann  
City Attorney



Tempe City Attorney's Office | 21 E. Sixth Street, Suite 201 | Tempe, Arizona 85281 | 480.350.8227 | Direct Dial 480.350.8779 | Fax 480.350.8645 | [www.tempe.gov](http://www.tempe.gov) |

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**From:** Jack Wilenchik [mailto:jackw@wb-law.com]  
**Sent:** Thursday, March 26, 2015 8:50 PM  
**To:** Baumann, Judi  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

Thanks for this. Can you identify where the City believes the Sussex property is referenced in this document? Also, when does the City believe that the purported dedication was first made?

Thanks,

Jack



[www.wb-law.com](http://www.wb-law.com)

Jack Wilenchik  
Attorney At Law  
[jackw@wb-law.com](mailto:jackw@wb-law.com)

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-----  
**From:** Baumann, Judi [[mailto:Judi\\_Baumann@tempe.gov](mailto:Judi_Baumann@tempe.gov)]  
**Sent:** Thursday, March 26, 2015 3:07 PM  
**To:** Jack Wilenchik  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

Hi Jack, nice talking with you yesterday. Please see the link for Tempe's transportation master plan for the location of the pedestrian pathway.

[www.tempe.gov/transportationplan](http://www.tempe.gov/transportationplan)

Thank you,  
Judi

Judi Baumann  
City Attorney



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**From:** Jack Wilenchik [<mailto:jackw@wb-law.com>]  
**Sent:** Wednesday, March 25, 2015 8:39 PM  
**To:** Baumann, Judi  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

Judi – thanks for the call today.

Can you direct me to where the property was dedicated as a pedestrian pathway? I don't see a reference to that in either the 2030 or the 2040 General Plan.

Otherwise, I will probably be sending/emailing you a more formal letter shortly, addressing the legal issues.  
Best,

Jack



Jack Wilenchik  
Attorney At Law  
[jackw@wb-law.com](mailto:jackw@wb-law.com)

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Phoenix, Arizona 85004  
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**From:** Baumann, Judi [[mailto:Judi\\_Baumann@tempe.gov](mailto:Judi_Baumann@tempe.gov)]  
**Sent:** Tuesday, March 24, 2015 2:19 PM  
**To:** Jack Wilenchik  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

Hi Jack, I am just catching up after being out unexpectedly yesterday. I will reach you tomorrow or Wednesday on this matter.

Thanks and have a good afternoon,  
J.

Judi Baumann  
City Attorney





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**From:** Jack Wilenchik [<mailto:jackw@wb-law.com>]  
**Sent:** Monday, March 23, 2015 12:24 PM  
**To:** Baumann, Judi  
**Subject:** FW: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street

Judi – has the City reached a decision about the Sussex property? Best regards,

Jack



Jack Wilenchik  
Attorney At Law  
[jackw@wb-law.com](mailto:jackw@wb-law.com)  
The Wilenchik & Bartness Building  
2810 North Third Street  
Phoenix, Arizona 85004  
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---

**From:** Jack Wilenchik  
**Sent:** Thursday, March 19, 2015 3:52 PM  
**To:** 'Baumann, Judi'  
**Cc:** 'Davis, Chris'; [greg@lawfri.com](mailto:greg@lawfri.com)  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street (1 of 2 Emails)

By the way—I heard the City had a concern about Mr. Sussex and the City allegedly executing a right of way agreement in May 2013.

From *George v. Gist*, 33 Ariz. 93, 98, 263 P. 10, 11 (1928): “The law is well settled that recognition of title in the former owner by one claiming adversely, after he has acquired a perfect title by adverse possession, will not divest him of title...When the statute of limitation has run in favor of a disseisor, no subsequent acknowledgment of the former owner’s title, except by deed sufficient to pass title to land, will divest the title acquired by adverse possession.” See also *Fritts v. Ericson*, 103 Ariz. 33, 36, 436 P.2d 582, 585 (1968).

Let me know if any questions/comments, and thank you.

Jack

---

**From:** Jack Wilenchik  
**Sent:** Tuesday, March 17, 2015 12:54 PM  
**To:** 'Baumann, Judi'  
**Cc:** Davis, Chris; [greg@lawfri.com](mailto:greg@lawfri.com)  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street (1 of 2 Emails)

Judi – thanks so much for the reply. Let us know what the council decides. Best,

Jack

---

**From:** Baumann, Judi [[mailto:Judi\\_Baumann@tempe.gov](mailto:Judi_Baumann@tempe.gov)]  
**Sent:** Tuesday, March 17, 2015 12:50 PM  
**To:** Jack Wilenchik  
**Cc:** Davis, Chris  
**Subject:** RE: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street (1 of 2 Emails)

Hi Jack, thank you for your email. The Tempe City Council has the Sussex demand currently scheduled for consideration at Thursday’s Executive Session meeting.

Best regards,  
Judi

Judi Baumann  
City Attorney



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**Please consider the environment before printing this email.**

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**From:** Jack Wilenchik [<mailto:jackw@wb-law.com>]  
**Sent:** Tuesday, March 17, 2015 11:46 AM  
**To:** Baumann, Judi  
**Subject:** FW: Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street (1 of 2 Emails)

Judith – is the City responding to this? (I had the 20 days docketed as yesterday.)

Best regards,

Jack Wilenchik



Jack Wilenchik  
Attorney At Law  
[jackw@wb-law.com](mailto:jackw@wb-law.com)

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---

**From:** Jack Wilenchik  
**Sent:** Monday, February 23, 2015 3:49 PM  
**To:** 'judi\_baumann@tempe.gov'  
**Cc:** Christine Ferreira ([ChristineF@wb-law.com](mailto:ChristineF@wb-law.com)); [greg@lawfri.com](mailto:greg@lawfri.com)  
**Subject:** Sussex v. City of Tempe, A.R.S. § 12-1103 Request for Quit Claim Deed; 320 W. 1st Street (1 of 2 Emails)  
**Importance:** High

To Judith Baumann:

Judith, please see attached a courtesy copy of the letter that my office is sending to the City Clerk pursuant to A.R.S. § 12-1103 regarding the Sussex home on 302 W. First Street. (Exhibit "G" is too large to send in this email, so please expect to receive another email after this one.)

Best regards,

A handwritten signature in black ink, appearing to read "J. Wilenchik". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jack Wilenchik

---

No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2015.0.5736 / Virus Database: 4299/9269 - Release Date: 03/10/15

Internal Virus Database is out of date.

## Jack Wilenchik

---

**From:** Jack Wilenchik  
**Sent:** Tuesday, May 12, 2015 7:19 PM  
**To:** 'Davis, Chris'  
**Cc:** greg@lawfrrl.com; judi\_baumann@tempe.gov  
**Subject:** RE: Per our conversation regarding the Tempe property - Rule 408 Communication

Chris – thanks for sending this.

The legal description on the 2005 deed fully encompassed the 2002 deed. The only apparent purpose of the 2005 deed was to release easements that the railroad had retained under the Railroad Right of Way Act of 1875. Because the 2002 deed had already transferred title, then the clock started ticking no later than 2002, and the 2005 deed did not “reset” it.

With respect to Mr. Robinson’s letter – the law is clear that merely recognizing that someone else is the title owner of record, or that the use is wrongful and without legal right, is not sufficient to defeat adverse possession. (“[A]actual knowledge that another person is the title owner does not, in and of itself, defeat a claim of right by an adverse possessor.” *Walling v. Przybylo*, 7 N.Y.3d 228, 230, 851 N.E.2d 1167, 1168 (2006).) Mr. Robinson’s use of the word “sufferance” conveyed that the use was without permission of the title owner of record, which is accurate. The letter clearly put forth that the Sussexes claimed superior title.

In any event, based on our conversation, I am proceeding with the understanding that there is nothing that I can say or do that will result in the City deeding over this property without a lawsuit. I just need to protect my right to attorneys’ fees under ARS § 12-1103, and to demonstrate that I have made every effort that I could possibly think of to settle this short of litigation, which I believe that I have done.

Please advise if your office will accept service of the suit.

Sincerely,

Jack

---

**From:** Davis, Chris [mailto:Chris\_Davis@tempe.gov]  
**Sent:** Friday, May 1, 2015 2:22 PM  
**To:** Jack Wilenchik  
**Subject:** Per our conversation regarding the Tempe property - Rule 408 Communication

Jack,

Please find attached hereto the documents that we discussed.

Sincerely,

Christopher Bradley Davis  
Tempe Assistant City Attorney  
City Attorney’s Office  
21 East Sixth Street, #201  
Tempe, AZ 85281-3603  
480.350.8227 (O)