



2008-29194

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Requested By: CITY OF BENSON

Christine Rhodes - Recorder

Cochise County, AZ

11-03-2008 04:38 PM Recordings Fee \$10.00

at the request of the City of Benson

When recorded, mail to:

CITY OF BENSON
P.O. BOX 2223
BENSON, AZ 85602

CAPTION HEADING: Resolution 58-2008
Easement - La Habra

DO NOT REMOVE

THIS IS PART OF THE OFFICIAL DOCUMENT

(THIS FORM IS FOR RECORDER'S USE ONLY)

RESOLUTION NO. 58-2008

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE ACCEPTANCE OF A UTILITY EASEMENT FOR PROPERTY RIGHTS CONVEYED TO THE CITY BY LA HABRA 2004 LIMITED PARTNERSHIP, AN ARIZONA LIMITED PARTNERSHIP ("LA HABRA").

WHEREAS, pursuant to Arizona law and the Benson City Code, the City of Benson is authorized to receive real property necessary or proper to carry out the purposes of the municipal corporation, within or without its limits; and

WHEREAS, certain real property interests described on Exhibit A, attached hereto and incorporated herein by this reference, have been offered to the City of Benson by La Habra in the form of a utility easement (the "Easement"); and

WHEREAS, the Mayor and Council hereby find and determine that the execution of the Easement is necessary for public utility purposes; and

WHEREAS, the Mayor and Council have reviewed the terms and conditions of the Easement and hereby find and determine that the execution of the Easement is in the best interests of the City, its employees and its residents.

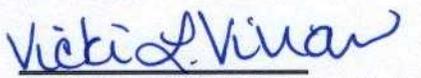
NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson that the City hereby accepts the Easement described in Exhibit A.

BE IT FURTHER RESOLVED that the City's officers and staff are hereby authorized to perform any and all other acts necessary or appropriate to accept and record the Easement.

PASSED AND ADOPTED by the Mayor and Council of the City of Benson, Arizona, this 13th day of October, 2008.


MARK M. FENN, Mayor

ATTEST:


VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:


THOMAS A. BENAVIDEZ, City Attorney

EXHIBIT A
[UTILITY EASEMENT]

When Recorded Return to

La Habra 2004 Limited Partnership
4110 Eaton Ave, Suite A
Caldwell, Idaho 83607

UTILITY EASEMENT

This Utility Easement is given effective the 13th day of October 2008, by La Habra 2004 Limited Partnership, an Arizona Limited Partnership, whose address is 4110 Eaton Avenue, Suite A, and whose mailing address is 4110 Eaton Avenue, Suite A Caldwell, ID 83607 ("Grantor") to City of Benson, an Arizona body politic, whose address is 120 W. 6th Street, Benson, Arizona, 85602 ("Grantee").

Recitals

A. Grantor owns that certain real property located in Benson, Cochise County, Arizona, and more particularly described on Exhibit A, which exhibit is attached hereto and made a part hereof.

B. Grantor desires to grant to Grantee, and Grantee desires to accept, a non-exclusive easement to that portion of the Property described on Exhibit B, which exhibit is attached hereto and made a part hereof, (the "Easement Premises") for utility purposes.

Agreement

NOW, THEREFORE, in consideration of the recitals above which are incorporated below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor, by giving this Utility Easement, and Grantee, by recording this Utility Easement and/or exercising the rights herein granted, agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a perpetual non-exclusive easement on, over, across and through the Easement Premises.

2. Purpose and Use of Easement. The Easement Premises shall be used by Grantee solely for:

- 1. Water utility: installing, maintaining, repairing and replacing a water distribution pipeline; and
- 2. Gas utility: installing, maintaining, repairing and replacing a gas distribution pipeline; and
- 3. Wastewater utility: installing, maintaining, repairing and replacing a wastewater distribution pipeline.

All lines, equipment and their related components and supports, placed within the Easement Premises by Grantee, or Grantee's agents or contractors, pursuant to this Utility Easement ("Grantee's Property") shall remain the property of Grantee. Grantee shall maintain Grantee's Property in good order and repair and in a proper operating condition. Grantee shall bear the entire cost and expense of installation, inspection, repair, maintenance and replacement of Grantee's Property, including excavation and back fill, and shall restore as near as practicable any paving, parking lot striping, curbing, landscaping or other improvements, existing within the Easement Premises which are disturbed by the construction, installation, inspection, replacement or maintenance of the Easement Premises by Grantee or Grantee's agents or contractors. Grantee agrees that all work performed within the Easement Premises or in connection with this Utility Easement shall be done in a manner so as to minimize interference with the operations of and public access to and from the Property. Any installation or replacement shall be underground.

3. Grantor's Rights. Grantor and its successors and assigns retain the right to make any use of the Easement Premises, including the right, but not the obligation, to landscape or pave over the Easement Premises for parking, driveways, or roadways, which will not substantially interfere with or substantially injure the use by Grantee as defined herein. Grantor may, at its sole discretion, make necessary improvements to and/or maintain the Easement Premises, or any portion thereof, but shall have no obligation to do so.

4. Easement Non-exclusive. The Utility Easement herein granted is subject to all easements, restrictions, covenants, interests and encumbrances of record and is non-exclusive, provided later granted easements shall be subject to Grantee's rights and uses.

5. Indemnity. By the acceptance and use of this Utility Easement, Grantee agrees to indemnify, defend and hold Grantor, its successors, assigns, and agents harmless from any and all claims, liability, losses, costs, charges, or expenses arising out of any act or omission of Grantee in its use of the Easement Premises. If any action, claim or demand is made against Grantor for any act or omission of Grantee, Grantee agrees to assume the expense and shall pay all costs, charges, reasonable attorneys' fees, settlements, judgments or other expenses incurred by or obtained against Grantor. Grantee agrees to maintain adequate insurance covering its indemnity obligations, and will furnish Grantor and its successors in interest evidence of such coverage before commencing any use of the Easement Premises.

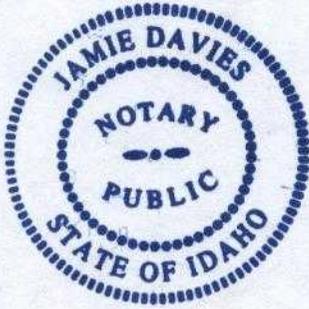
6. Relocation. Grantor reserves the right to relocate the Easement Premises at Grantor's sole option and expense, including such a relocation which may not be as direct a route as presently exists.

7. Binding Effect. All provisions of this Utility Easement, including the benefits and burdens, shall run with the land and shall benefit and bind assigns and successors of Grantor and Grantee.

8. Remedies/Attorney's Fees. In the event of any controversy, claim or action being filed or instituted between Grantor and Grantee to enforce the terms and conditions of this Utility Easement or arising from the breach of any provision hereof, the prevailing party will be entitled to receive from the other party all costs, damages, and whether or not such controversy or claim is litigated or prosecuted to judgment, including all costs and reasonable attorneys' fees incurred as a result of any appeal. The prevailing party will be that party who was awarded judgment as a result of trial or

On this 24 day of March, in the year 2008, before me, a Notary Public in and for the State of Idaho, personally appeared C. Fred Cornforth, known or identified to me to be the Manager of La Habra Associates, LLC, the general partner of La Habra 2004 Limited Partnership, who caused La Habra Associates, LLC to subscribe said limited partnership name to the foregoing instrument, and acknowledged to me that La Habra Associates, LLC executed the same as the general partner of and in said limited partnership name.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

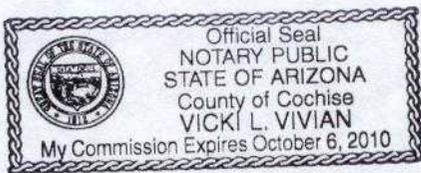


Jamie Davies
Notary Public in and for the State
of Idaho, residing at ampa, Idaho
My commission expires 7/3/2012

STATE OF ARIZONA)
) ss.
County of Cochise)

On this 17th day of October, in the year 2008, before me, a Notary Public in and for the State of Arizona, personally appeared Mark M. Fenn, known or identified to me to be the Mayor of the City of Benson that executed the instrument or the person who executed the instrument on behalf of said City, and acknowledged to me that such City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Vicki Vivian
NOTARY PUBLIC for Arizona
Residing at Benson, Arizona
My commission expires: 10-6-10

EXHIBIT A**PARCEL I:**

The surface to a depth of 500.00 feet of the following described property:

That portion of the Northeast quarter of Section 15, Township 17 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Northeast quarter;

thence South 00°01'57" West, along the West line of said Northeast quarter, a distance of 433.45 feet to the **POINT OF BEGINNING**;

thence South 89°53'37" East 397.05 feet to a point on the Westerly right-of-way line of US Highway 80;

thence South 16°55'48" East, along said right-of-way line, a distance of 63.38 feet;

thence South 15°36'31" East, along said right-of-way line, a distance of 231.71 feet;

thence North 89°41'51" West 228.03 feet;

thence South 00°00'00" West 55.78 feet;

thence South 45°00'00" West 95.97 feet;

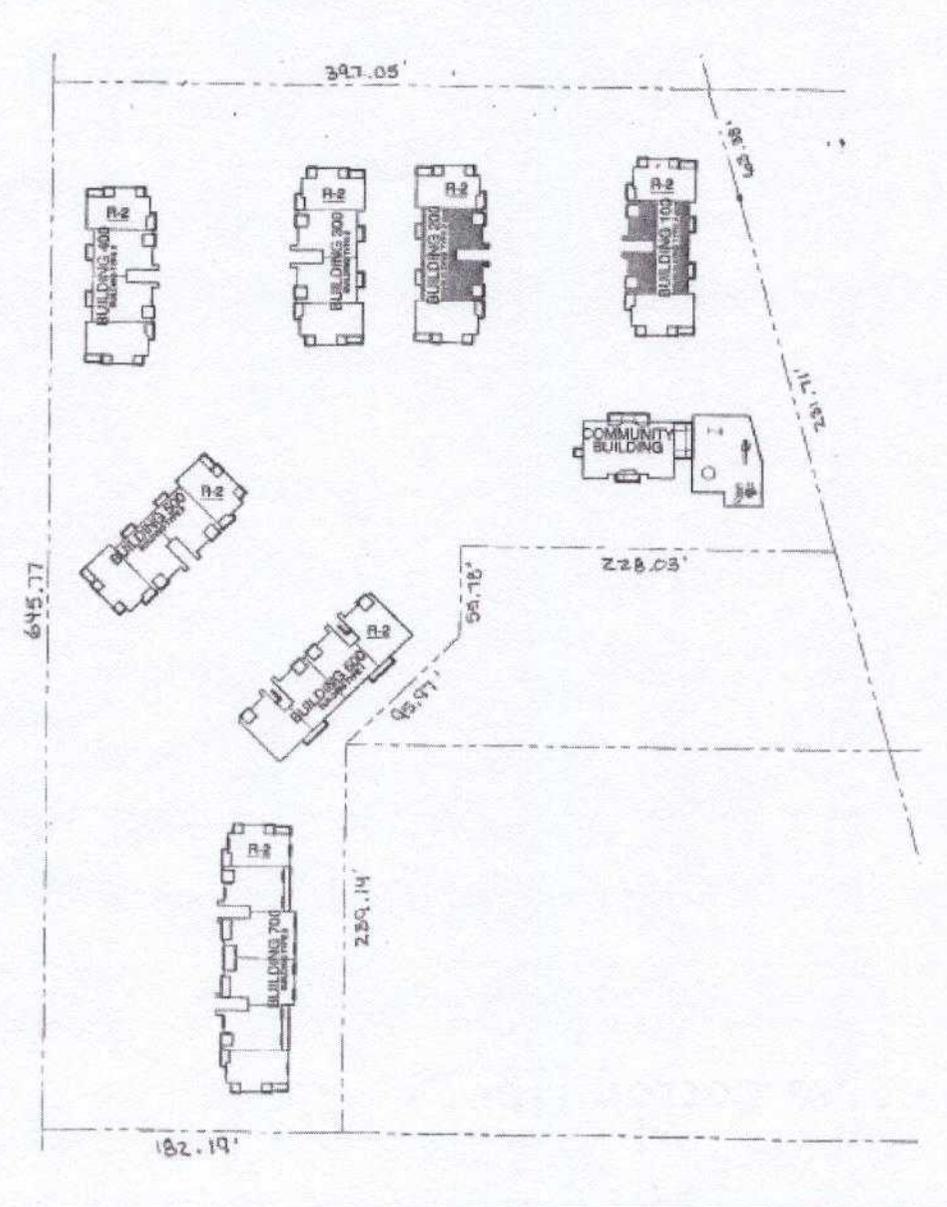
thence South 00°01'57" West 239.14 feet;

thence North 89°53'37" West 182.19 feet to a point on the West line of said Northeast quarter;

thence North 00°01'57" East, along said line, a distance of 645.77 feet to the **POINT OF BEGINNING**.

EXHIBIT B

All areas described in Exhibit A excluding building areas as shown below.



subject to any other easements, covenants, liens, mortgages, deeds of trust, encumbrances, rights of parties in possession, whether of record or not and the real property taxes and assessments for the year 2008 and each year thereafter.