

# Unofficial Document

## SECURITY TITLE AGENCY

When Recorded Mail To:  
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Suite 2100  
Phoenix, Arizona 85004

660365387  
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### DECLARATION OF TEMPORARY CONSTRUCTION, INGRESS AND EGRESS AND PERMANENT RETENTION BASIN EASEMENT

THIS DECLARATION OF TEMPORARY CONSTRUCTION, INGRESS AND EGRESS AND PERMANENT RETENTION BASIN EASEMENT AGREEMENT is made this 13<sup>th</sup> day of August, 2003, by LAVEEN ROGERS RANCH-PHOENIX, LLC, an Arizona limited liability company ("Declarant").

#### WITNESSETH:

WHEREAS, Declarant is the fee title owner of a tract of land in Maricopa County, Arizona more particularly described on attached Exhibit "A" (the "Benefitted Parcel").

WHEREAS, Declarant is also the fee title owner of certain property adjacent to the Benefitted Parcel and intends hereby to provide an easement over that certain portion of its property as legally described on the attached Exhibit "B" (the "Easement Property"), for purposes of allowing non-exclusive use of a retention basin for run-off of surface water from the Benefitted Parcel. The Easement Property is the same easement referenced in the Master Drainage Plan for Rogers Ranch (the "Master Drainage Plan") and identified as the "Drainage Easement" set forth on Tract J on the Final Plat for Rogers Ranch Unit 2 (evidenced by Document No. 2003-0180045 recorded on the Property in the office of the Maricopa County Recorder, which is hereinafter referred to as the "Unit 2 Final Plat").

THEREFORE, for valuable consideration, the following grants, agreements, covenants and restrictions are made.

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.

2. Grant.

a. Drainage. Declarant hereby declares that the owner of the Benefitted Parcel is granted a non-exclusive perpetual easement for purposes of allowing shared use of a retention basin for run-off of surface water from the Benefitted Parcel to the Easement Property.

b. Construction. Declarant hereby declares that the owner of the Benefitted Parcel is granted a temporary non-exclusive right of ingress and egress in, upon, over, along, under, through and across the Easement Property and twenty (20) feet surrounding the perimeter of the Easement Property for the purpose of constructing a retention basin in the Easement Property consistent with the Master Drainage Plan.

The rights and easements herein granted are for the use and benefit of the owner of the Benefitted Parcel together with its contractors, subcontractors, employees, agents, representatives, successors and assigns, and such rights, easements and privileges include, but are not limited to, the following: (i) the right and privilege of placing and constructing the improvements; (ii) the right of ingress and egress as may be reasonably necessary to permit the economical installation, construction, operation and maintenance of improvements; and (iii) the right to remove plant growth, dirt and other materials from the Easement Property as may be necessary in connection with the construction, use and enjoyment of the easement.

3. Maintenance, Barriers and Obstruction.

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Upon execution hereof, no permanent barriers or obstructions (other than the retention basin), which interfere with the permitted use by the owner of the Benefitted Parcel, shall be allowed or permitted in the Easement Property. Once constructed, the owner of the Easement Property shall be responsible for maintaining and repairing the improvements in the Easement Property and shall bear any and all costs and expenses associated with such maintenance and repair except as set forth in Section 4 below. To the extent the owner of the Benefitted Parcel reasonably determines that the owner of the Easement Property is not adequately maintaining the improvements, the owner of the Benefitted Parcel shall have the right to access the Easement Property for the purpose of such maintenance.

4. Liability and Indemnification.

The owner of the Benefitted Parcel shall be responsible for those expenses associated with the Easement Property caused or occasioned by its willful or negligent acts or omissions and the willful and negligent acts or omissions of its agents, licensees, invitees, successors and assigns. The owner of the Benefitted Parcel hereby agrees to indemnify, defend, protect and save the owner of the Easement Property, its successors and assigns harmless for, from and against any and all injuries, losses, costs, expenses, liabilities, claims, actions, damages, suits, demands, costs and other expenses, including reasonable attorneys' fees (including but not limited to those arising from mechanics' or materialmen's liens or claims of liens), incurred in connection with or arising out of the wrongful or negligent use of the Easement Property by the owner of the Benefitted Parcel or its employees, tenants, contractors, agents, invitees, licensees, successors and assigns.

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5. Termination of Covenant Liability.

The covenants, easement and restriction herein relating to the Easement Property shall be appurtenant to and for the benefit of the owner of the Benefitted Parcel, its successors and assigns and the drainage rights shall run with and benefit the Benefitted Parcel. The burden of this Declaration shall run with and shall burden successive owners of the Easement Property and each portion thereof.

The provisions of this Declaration are intended notwithstanding the fact that, at the time of execution hereof, the Declarant is the owner of both the Easement Property and the Benefitted Parcel. This Agreement is entered into in contemplation of the sale of the Easement Property and the Benefitted Parcel to different parties. Moreover, Declarant may further assign or otherwise transfer the construction, ingress and egress rights and benefits in this Declaration granted to the Developer separate and apart from the ownership of the Benefitted Parcel and separate and apart from the drainage rights and benefits granted to the owner of the Benefitted Parcel herein. Such transfer or assignment by Grantee shall be automatically effective, without further action by any party (including any owner of the Easement Property), upon Declarant providing written notice of the same to the owner of the Easement Property and recording evidence of such transfer on the Easement Property, at which time the liability of the transferor for a breach under this Agreement with respect to such transferred rights shall automatically terminate.

The rights and obligations created hereunder are intended to benefit such future owners of the Easement Property and the Benefitted Parcel and such rights and obligations are not intended to merge hereunder due to the owner of each the Easement Property and the Benefitted Parcel being the same party at this time. Whenever a transfer of ownership of all or any portion of the Benefitted Parcel or the Easement Property, as the case may be, takes place, the liability of the transferor for breach of covenant occurring thereafter with respect to the transferred parcel shall automatically terminate as to such transferor, although the terms and conditions hereof shall continue to burden, benefit and run with such parcel and the covenants applicable to the new owner of such parcel shall automatically be assumed by the new owner thereof; provided, however, that this provision shall not release the transferor of any claims or liabilities that take place prior to the date of transfer. Notwithstanding the foregoing, transferee shall not be liable for breach of covenant occurring prior to the date of transfer.

6. Binding Effect.

(a) The terms, provisions and easements provided herein shall be perpetual and shall burden and benefit the owner of the Benefitted Parcel and the Easement Property commencing on the date of this Agreement.

(b) The terms, provisions and easements provided herein shall inure to the benefit of and be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

7. Amendment.

This Agreement may not be modified, rescinded, limited, amended or enlarged except by a written agreement signed by the owner of the Benefitted Parcel and the owner of the Easement Property at such time.

8. Construction of Agreement.

The descriptive headings of the paragraphs are inserted for convenience only and shall not define, limit, extend, control or affect the meaning or construction of any provision hereof. The rule of strict construction shall not apply to the easements granted in this Agreement or to the covenants set forth herein. This Agreement shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision hereof. This Agreement shall be given a reasonable construction so that the intention of the parties to confer reasonably usable benefits and reasonably enforceable obligations are carried out. The Exhibits referred to herein and attached hereto are incorporated herein by reference.

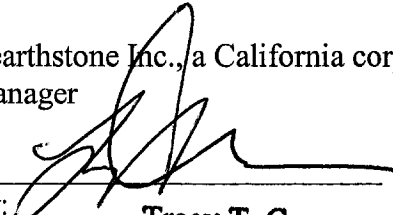
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SIGNATURE PAGE ATTACHED

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IN WITNESS TO THIS AGREEMENT, the Declarant has caused this instrument to be executed as of the day and year first above written, subject to all of the terms and conditions herein set forth.

LAVEEN ROGERS RANCH-PHOENIX, LLC,  
an Arizona limited liability company

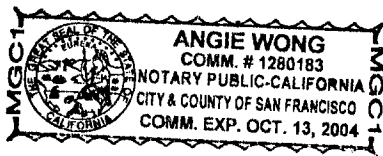
By:     Hearthstone Inc., a California corporation  
Its:     Manager

  
By:     \_\_\_\_\_  
Its:     **Tracy T. Carver**  
          **Senior Vice President**  
          **General Counsel**

STATE OF California )  
  ) SS.  
COUNTY OF San Francisco)

This instrument was acknowledged before me on this the 13<sup>th</sup> day of August, 2003, by TRACY T. CARVER, as the Senior VP-General Counsel of Hearhstone, Inc., a California corporation, in its capacity as the manager <sup>Unofficial Document</sup> of Laveen Rogers Ranch-Phoenix, LLC, an Arizona limited liability company, know to me to be the person whose name is subscribed to be the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and as the act and deed of said corporation and company, and in the capacity therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



  
\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**BENEFITTED PARCEL - LEGAL DESCRIPTION**

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July 15, 2003

LEGAL DESCRIPTION FOR  
ROGERS RANCH UNIT 2  
FINAL PLAT

Rogers Ranch Unit 2, as recorded in Book 623 of Maps, Page 28, Maricopa County Records, being a portion of the North Half of Section 33, Township 1 North, Range 2 East, of the Gila and Salt River Meridian, Maricopa County, Arizona.

Except Tracts I and J thereof.



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**EXHIBIT B**

EASEMENT PROPERTY- LEGAL DESCRIPTION

PHXDOCS 229630v5

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January 16, 2003

LEGAL DESCRIPTION FOR  
ROGERS RANCH UNIT 2  
RETENTION BASIN

That part of the Northeast Quarter of Section 33, Township 1 North, Range 2 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Maricopa County Department of Transportation Brass Cap marking the Northeast Corner of said Section 33;

Thence South  $00^{\circ}47'30''$  West, along the East line of the Northeast Quarter of said Section 33, a distance of 1,158.10 feet to a point which bears South  $00^{\circ}47'30''$  West, a distance of 1465.42 feet from the Maricopa County Department of Transportation Brass Cap in handhole marking the East Quarter Corner of said Section 33;

Thence North  $89^{\circ}56'49''$  West, departing said East line, a distance of 925.77 feet to the beginning of a tangent curve of 850.00 foot radius, concave Southeasterly;

Thence Southwesterly, along said curve, through a central angle of  $26^{\circ}44'03''$ , a distance of 396.61 feet to the True Point of Beginning;

Thence Southwesterly, continuing along said <sup>Unofficial Document</sup> curve, through a central angle of  $04^{\circ}52'04''$ , a distance of 72.21 feet;

Thence South  $58^{\circ}27'04''$  West, a distance of 500.00 feet;

Thence North  $31^{\circ}32'56''$  West, a distance of 271.28 feet;

Thence South  $89^{\circ}56'49''$  East, a distance of 248.59 feet to the beginning of a tangent curve of 175.00 foot radius, concave Northwesterly;

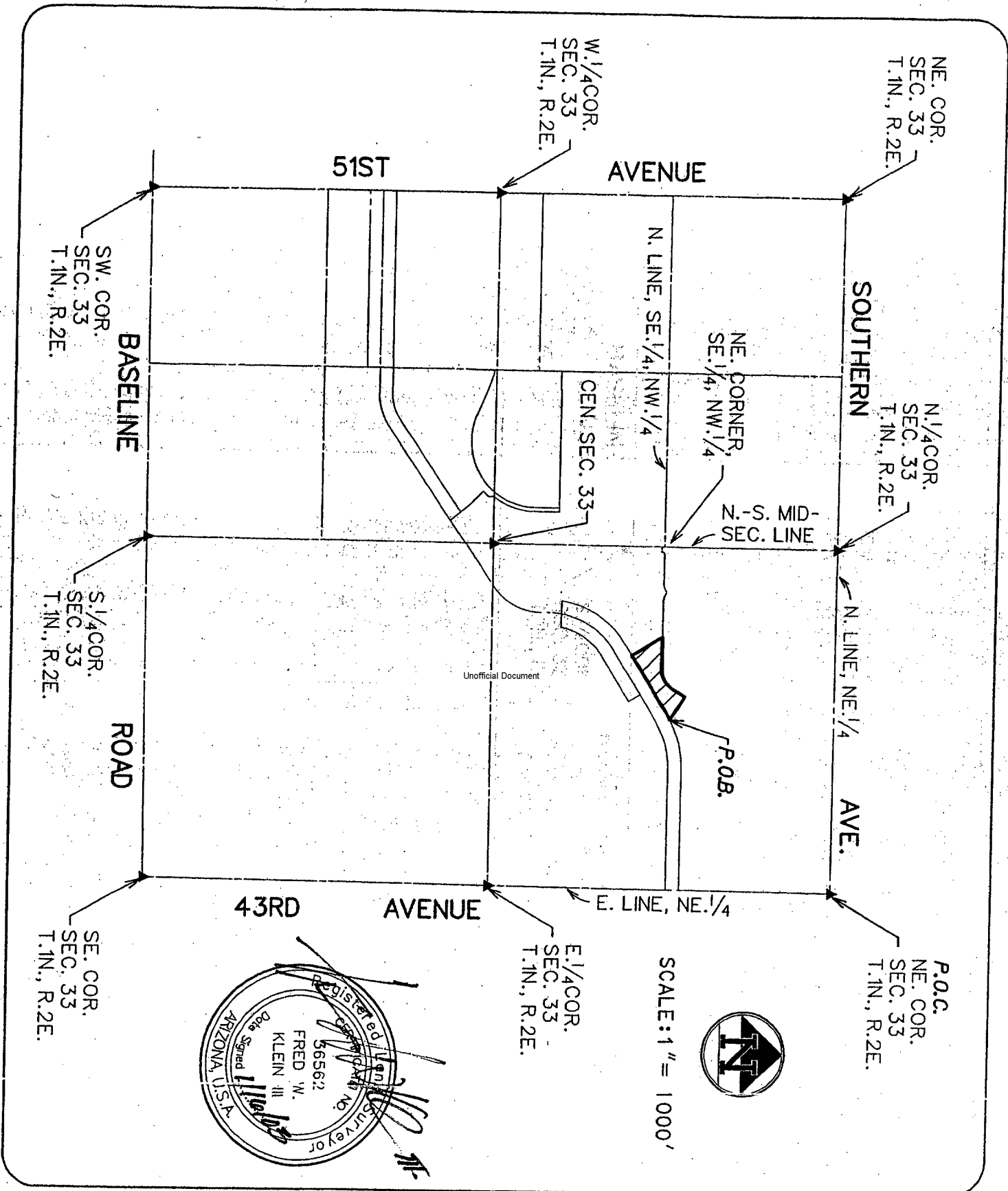
Thence Northeasterly, along said curve, through a central angle of  $58^{\circ}03'11''$ , a distance of 177.31 feet;

Thence North  $32^{\circ}00'00''$  East, a distance of 110.00 feet;

Thence South  $58^{\circ}00'00''$  East, a distance of 207.14 feet to the True Point of Beginning.

Containing 2.027 Acres, more or less.





<b>EXHIBIT</b> N:\000030\LAND\EHU2RET.DGN 4550 NORTH 12TH STREET PHOENIX, ARIZONA 85014 TELEPHONE (602) 264-6831	<b>ROGERS RANCH</b> <b>UNIT 2 - RETENTION BASIN</b>		JOB NO 000030
	<b>COE &amp; VAN LOO</b> PLANNING • ENGINEERING • LANDSCAPE ARCHITECTURE		SHEET 1 OF 1