

When recorded mail to:

Town of Paradise Valley
Town Attorney
6401 E. Lincoln
Paradise Valley, AZ 85253

DRAINAGE EASEMENT and DRAINAGE EASEMENT AGREEMENT

This Drainage Easement and Drainage Easement Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 2020, by and between DK REAL ESTATE HOLDINGS, LLC, an Arizona limited liability company (“Grantor”), and the TOWN OF PARADISE VALLEY, an Arizona municipal corporation (“Grantee” or “Town”).

1. Grantor is the fee simple owner of that certain real property located in the Town of Paradise Valley, County of Maricopa, State of Arizona, as shown on Exhibit A and located at the northeast corner of East Caballo Drive and North Morning Glory Road (the “Property”).
2. Grantor grants to Grantee drainage easement rights in, over and across the parcels shown on Exhibit B (the “Drainage Easement”) and Grantee has accepted same by its approval of Exhibit B and the acceptance of the Drainage Easement and this Agreement (as evidenced by the execution of this Agreement by the Mayor of the Town).
3. Grantor, for Grantor, its successors, and assigns (hereinafter “Owners”) covenants with the Grantee and its successors and assigns, that Grantor and Owners, at all times after the effective date of this instrument, at its own cost and expense, will clean and maintain the Drainage Easement, and will keep the Drainage Easement area cleaned and maintained in a proper and workmanlike manner, and in compliance with all applicable ordinances, codes, rules and regulations. Grantor, and all future Owners, lessees, and residents of all or any part of the Property are bound by the provisions of this Agreement. This Agreement cannot be terminated, released, amended or modified without the express prior written consent of Grantee.
4. If for any reason the Grantor (or Owners) does not fulfill its duty to clean and maintain the Drainage Easement, and such failure continues for sixty (60) days after written notice thereof from Grantee to Grantor (or Owners) (except in the case of imminent danger where only reasonable prior notice is required), the Grantee shall have the right of self-help, in addition to powers and enforcement authorized by the Town of Paradise Valley Town Code and Arizona state law, and in connection with such rights, shall have the right to enter the Drainage Easement area and, as needed

to access the Drainage Easement area, the Property, to clean or to maintain, and to be compensated by Grantors (or Owners) for the full and actual amount of the cleaning and maintenance as required by this Agreement and applicable ordinances, codes and regulations. Notwithstanding the foregoing, so long as Grantor (or Owners) has commenced to cure the failure within sixty (60) days after written notice thereof from Grantee and thereafter diligently prosecutes such cure to completion, Grantee shall not exercise any of its rights or remedies in this Paragraph 4 (except in the case of imminent danger).

5. The Grantors (or Owners) of the Property shall be liable to the Town for reasonable maintenance costs incurred by the Town pursuant to Paragraph 4 above, together with interest at the legal rate and reasonable attorneys' fees. If those amounts are not paid within thirty (30) days after written demand to the Grantors (or Owners) for payment of maintenance costs incurred by the Town pursuant to Paragraph 4, then ten (10) business days after a second written demand in the same form and to the same parties, the Town may record a Notice of Claim of Lien against the Property to secure the payment of such amounts, a copy of which will be forwarded to Grantor, or, as appropriate, the Owners.

6. After delivery of notice as required by Paragraphs 4 and 5 and passage of applicable cure periods, the Town shall have the right, at its option, to enforce collection of any amounts owed to the Town under Paragraph 4 above in any manner allowed by law, including, without limitation, bringing an action against Grantor, or, as appropriate, the Owners of the Property to pay such amounts or bringing an action to foreclose its lien against the Property in the manner provided by law for the foreclosure of a realty mortgage. The Town shall have the power to bid at any foreclosure sale and to purchase the Property so sold.

7. This Agreement shall be in addition to any other agreements, law, ordinances or regulations relating to drainageways, easements and the subject matter herein.

8. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, assigns, affiliates, agents and tenants. This Agreement, the Drainage Easement and other rights and obligations created, granted and conveyed shall run with the land as a burden upon the Property.

9. Grantor warrants that (i) it is the fee simple owner of the Property, (ii) it has full right, power and authority to grant the Drainage Easement set forth herein and to execute this Agreement, and (iii) the execution hereof by Grantor does not conflict with or constitute a default under any agreement to which Grantor is a party or by which Grantor of the Drainage Easement is bound.

10. This Agreement shall terminate only upon mutual written agreement between the parties.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written:

GRANTOR:

DK REAL ESTATE HOLDINGS, LLC,
an Arizona limited liability company

By: _____
Name: David Kaye, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020,
by David Kaye, the manager of DK Real Estate Holdings, LLC, an Arizona limited liability
company, on behalf thereof.

Notary Public

My Commission Expires: _____

GRANTEE:

TOWN OF PARADISE VALLEY

By: _____
Jerry Bien-Willner, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew Miller, Town Attorney

Exhibit A – The Property

That part of the Northwest Quarter of Section 33, Township 3 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northwest Corner of Lot 10 of the Lot Combination Plan for “Morning Glory Estates I” recorded in Book 891 of maps, page 24, Maricopa County Records;

Thence South 01°00'54" East, along the Easterly line of said Lot 10, a distance of 172.50 feet to the True Point of Beginning;

Thence continuing along said Easterly line, South 01°00'54" East, a distance of 172.69 feet to a point on the Northerly Right of Way line of Caballo Drive;

Thence North 87°57'11" West, along said Northerly Right of Way line, a distance of 297.06 feet to the beginning of a tangent curve of 20.00 foot radius, concave Northeasterly;

Thence Northwesterly, along said Northerly Right of Way line and said curve, through a central angle of 86°56'32", a distance of 30.35 feet to a point on the Easterly Right of Way line of Morning Glory Road;

Thence North 01°00'39" West, along said Easterly Right of Way line, a distance of 153.73 feet;

Thence South 87°57'11" East, departing said Easterly Right of Way line, a distance of 316.01 feet to the True Point of Beginning.

Containing 54,419.9170 Square Feet or 1.2493 Acres, more or less.

Exhibit B – The Drainage Easement

See attached.

December 18, 2019

LEGAL DESCRIPTION FOR
MORNING GLORY ESTATES II
LOT 13 DRAINAGE EASEMENT

That part of Lot 10 of Morning Glory Estates I as recorded in Book 891 of Maps, Page 24 Maricopa County Records, being a portion of land located in the Northwest Quarter of Section 33, Township 3 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the 5/8' Rebar marking the Northwest Corner of Lot 10, from which the Rebar with Cap marked LS#17403 marking the Southwest Corner of Lot 10 bears South 01°00'54" East, a distance of 305.13 feet;

Thence South 01°00'54" East, along the West line of said Lot 10, a distance of 189.88 feet to the True Point of Beginning;

Thence North 59°21'09" East, departing said West line, a distance of 47.62 feet;

Thence North 76°56'31" East, a distance of 40.20 feet;

Thence North 77°10'09" East, a distance of 8.68 feet to a point on the proposed Northerly lot line for Lot 13;

Thence South 87°57'11" East, along said Northerly lot line, a distance of 185.00 feet;

Thence South 72°39'26" West, departing said Northerly lot line, a distance of 41.81 feet;

Thence South 83°28'24" West, a distance of 98.59 feet;

Thence South 77°08'19" West, a distance of 46.83 feet;

Thence South 75°45'21" West, a distance of 30.66 feet;

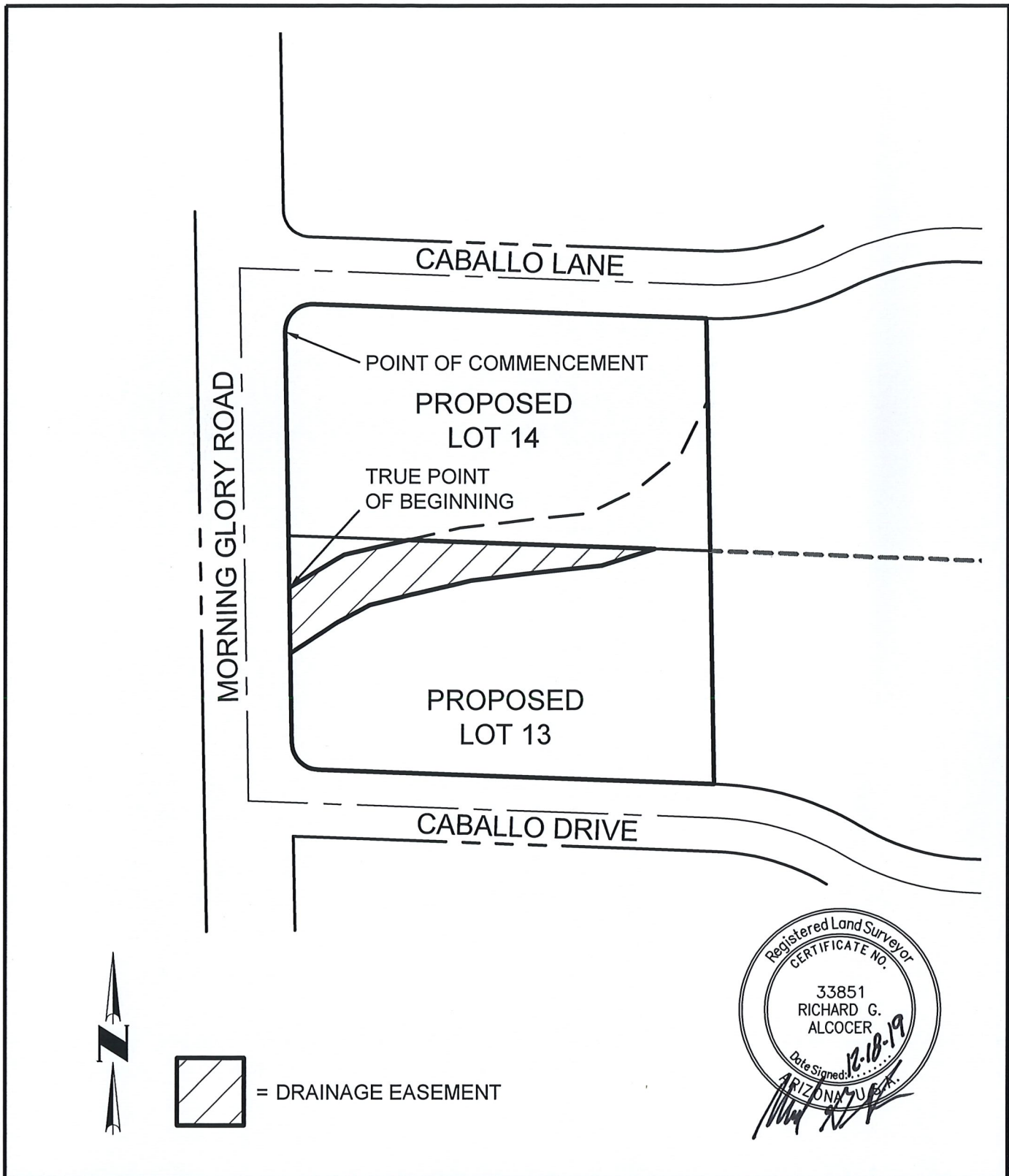
Thence South 62°02'31" West, a distance of 26.64 feet;

Thence South 56°57'37" West, a distance of 42.77 feet to a point on said West line of Lot 10;

Thence North 01°00'54" West, along said West lot line, a distance of 48.77 feet to the True Point of Beginning.

Containing 7,979 Square Feet or 0.183 Acres, more or less.





SCALE 1" = 100'	MORNING GLORY ESTATES II	
EXHIBIT		
4550 North 12th Street Phoenix, Arizona 85014 Phone 602-264-6831 http://www.cvlci.com	LOT 13 - DRAINAGE EASEMENT	CELEBRATING 60 YEARS 1 OF 1

When recorded mail to:

Town of Paradise Valley
Town Attorney
6401 E. Lincoln
Paradise Valley, AZ 85253

DRAINAGE EASEMENT and DRAINAGE EASEMENT AGREEMENT

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2. Grantor grants to Grantee drainage easement rights in, over and across the parcels shown on Exhibit B (the “Drainage Easement”) and Grantee has accepted same by its approval of Exhibit B and the acceptance of the Drainage Easement and this Agreement (as evidenced by the execution of this Agreement by the Mayor of the Town).
3. Grantor, for Grantor, its successors, and assigns (hereinafter “Owners”) covenants with the Grantee and its successors and assigns, that Grantor and Owners, at all times after the effective date of this instrument, at its own cost and expense, will clean and maintain the Drainage Easement, and will keep the Drainage Easement area cleaned and maintained in a proper and workmanlike manner, and in compliance with all applicable ordinances, codes, rules and regulations. Grantor, and all future Owners, lessees, and residents of all or any part of the Property are bound by the provisions of this Agreement. This Agreement cannot be terminated, released, amended or modified without the express prior written consent of Grantee.
4. If for any reason the Grantor (or Owners) does not fulfill its duty to clean and maintain the Drainage Easement, and such failure continues for sixty (60) days after written notice thereof from Grantee to Grantor (or Owners) (except in the case of imminent danger where only reasonable prior notice is required), the Grantee shall have the right of self-help, in addition to powers and enforcement authorized by the Town of Paradise Valley Town Code and Arizona state law, and in connection with such rights, shall have the right to enter the Drainage Easement area and, as needed

to access the Drainage Easement area, the Property, to clean or to maintain, and to be compensated by Grantors (or Owners) for the full and actual amount of the cleaning and maintenance as required by this Agreement and applicable ordinances, codes and regulations. Notwithstanding the foregoing, so long as Grantor (or Owners) has commenced to cure the failure within sixty (60) days after written notice thereof from Grantee and thereafter diligently prosecutes such cure to completion, Grantee shall not exercise any of its rights or remedies in this Paragraph 4 (except in the case of imminent danger).

5. The Grantors (or Owners) of the Property shall be liable to the Town for reasonable maintenance costs incurred by the Town pursuant to Paragraph 4 above, together with interest at the legal rate and reasonable attorneys' fees. If those amounts are not paid within thirty (30) days after written demand to the Grantors (or Owners) for payment of maintenance costs incurred by the Town pursuant to Paragraph 4, then ten (10) business days after a second written demand in the same form and to the same parties, the Town may record a Notice of Claim of Lien against the Property to secure the payment of such amounts, a copy of which will be forwarded to Grantor, or, as appropriate, the Owners.

6. After delivery of notice as required by Paragraphs 4 and 5 and passage of applicable cure periods, the Town shall have the right, at its option, to enforce collection of any amounts owed to the Town under Paragraph 4 above in any manner allowed by law, including, without limitation, bringing an action against Grantor, or, as appropriate, the Owners of the Property to pay such amounts or bringing an action to foreclose its lien against the Property in the manner provided by law for the foreclosure of a realty mortgage. The Town shall have the power to bid at any foreclosure sale and to purchase the Property so sold.

7. This Agreement shall be in addition to any other agreements, law, ordinances or regulations relating to drainageways, easements and the subject matter herein.

8. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, assigns, affiliates, agents and tenants. This Agreement, the Drainage Easement and other rights and obligations created, granted and conveyed shall run with the land as a burden upon the Property.

9. Grantor warrants that (i) it is the fee simple owner of the Property, (ii) it has full right, power and authority to grant the Drainage Easement set forth herein and to execute this Agreement, and (iii) the execution hereof by Grantor does not conflict with or constitute a default under any agreement to which Grantor is a party or by which Grantor of the Drainage Easement is bound.

10. This Agreement shall terminate only upon mutual written agreement between the parties.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the date first above written:

GRANTOR:

DK REAL ESTATE HOLDINGS, LLC,
an Arizona limited liability company

By: _____
Name: David Kaye, Manager

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020,
by David Kaye, the manager of DK Real Estate Holdings, LLC, an Arizona limited liability
company, on behalf thereof.

Notary Public

My Commission Expires: _____

GRANTEE:

TOWN OF PARADISE VALLEY

By: _____
Jerry Bien-Willner, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew Miller, Town Attorney

Exhibit A – The Property

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Beginning at the Northwest Corner of Lot 10 of the Lot Combination Plan for “Morning Glory Estates I” recorded in Book 891 of maps, page 24, Maricopa County Records;

Thence South 01°00'54" East, along the Easterly line of said Lot 10, a distance of 172.50 feet;

Thence North 87°57'11" West, departing said Easterly line, a distance of 316.01 feet to a point on the Easterly Right of Way line of Morning Glory Road;

Thence North 01°00'39" West, along said Easterly Right of Way line, a distance of 151.40 feet to the beginning of a tangent curve of 20.00 foot radius, concave Southeasterly;

Thence Northeasterly, along said Easterly Right of Way line and along said curve, through a central angle of 93°03'28", a distance of 32.48 feet to a point on the Southerly Right of Way line of Caballo Lane;

Thence South 87°57'11" East, along said Southerly Right of Way line, a distance of 294.90 feet to the Point of Beginning.

Containing 54,334.8542 Square Feet or 1.2474 Acres, more or less.

Exhibit B – The Drainage Easement

See attached.

December 18, 2019

LEGAL DESCRIPTION FOR
MORNING GLORY ESTATES II
LOT 14 DRAINAGE EASEMENT

That part of Lot 10 of Morning Glory Estates I as recorded in Book 891 of Maps, Page 24 Maricopa County Records, being a portion of land located in the Northwest Quarter of Section 33, Township 3 North, Range 4 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the 5/8" Rebar marking the Northwest Corner of Lot 10, from which the Rebar with Cap marked LS#17403 marking the Southwest Corner of Lot 10 bears South 01°00'54" East, a distance of 305.13 feet;

Thence South 01°00'54" East, along the West line of said Lot 10, a distance of 151.40 feet to a point on the proposed Southerly lot line for Lot 14;

Thence South 87°57'11" East, along said Southerly line, a distance of 89.33 feet to the True Point of Beginning;

Thence North 77°10'09" East, departing said Southerly line, a distance of 40.95 feet;

Thence North 83°11'55" East, a distance of 51.78 feet;

Thence North 84°01'25" East, a distance of 44.84 feet;

Thence North 63°58'12" East, a distance of 39.07 feet;

Thence North 50°40'57" East, a distance of 44.09 feet;

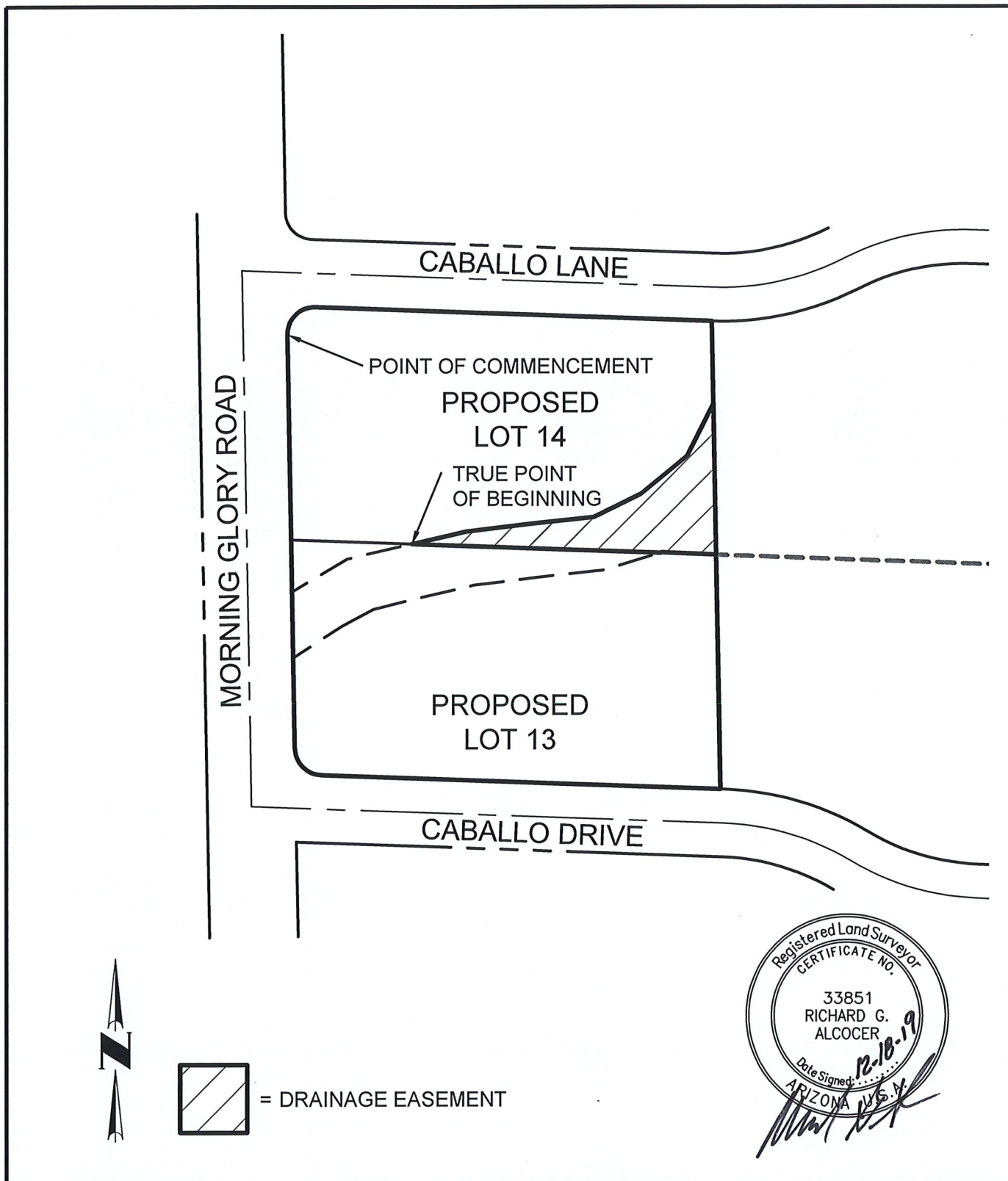
Thence North 26°30'16" East, a distance of 43.42 feet to a point on the East line of said Lot 10;

Thence South 01°00'54" East, along said East line, a distance of 111.95 feet to a point known as the proposed Southeast lot corner for Lot 14;

Thence North 87°57'11" West, along said proposed Southerly lot line, a distance of 226.66 feet to the True Point of Beginning.

Containing 6,977 Square Feet or 0.160 Acres, more or less.





SCALE 1" = 100'	MORNING GLORY ESTATES II	 CELEBRATING 60 YEARS
EXHIBIT		
4550 North 12th Street Phoenix, Arizona 85014 Phone 602-264-6831 http://www.cvlci.com	LOT 14 - DRAINAGE EASEMENT	1 OF 1