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ARIZONA SUPREME COURT

AREK FRESSADI, Plaintiff – Appellant - Petitioner v. TOWN OF CAVE CREEK, Defendant - Appellee	CA-CV-13-0209-PR Court of Appeals 1 CA-CV-12-0238 Maricopa County Superior Court Case No. CV2009-050821 **PETITION FOR REVIEW**

Petitioner respectfully requests this Court to accept jurisdiction and reverse the Court of Appeals' Memorandum Decision ("MD," Appendix A) pursuant to ARCAP Rule 23.

Issues to Review: That Fressadi's claims were time barred because the Court could determine the date of accrual as a matter of law (MD, ¶1, ¶23, pgs. 10,11); that Fressadi was not entitled to equitable tolling (MD, ¶30, pgs. 13,14); that the Subdivision Ordinance[1] and Section 50.016 of the Town Code were not part of the Zoning Ordinance[2] (MD, ¶31, pg 14); that the ultra vires status of Fressadi's property was waived (MD ¶33, pg 15); that equitable estoppel does not apply (MD ¶33, pg 17), and that Fressadi abandoned his declaratory judgment claims (MD, ¶34, pg. 17).

[1] Appendix 1 of Appendix C.
[2] Abridged Appendix 2 of Appendix C.

Additional Issues: Did Cave Creek's attorneys violate ER 3.3(a) and 8.4 to commit fraud upon the court?[3] Is Petitioner entitled to damages pursuant to A.R.S. § 9-500.12(H) as determined by Section 1.7 of the Zoning Ordinance because Cave Creek acted in bad faith[4] by failing to follow A.R.S. §§ 9-500.13 and 9-500.12?

Material Facts

A.R.S. §§ 9-500.12 and 9-500.13 were enacted[5] for municipalities to comply with U.S. Supreme Court rulings regarding due process and property rights as protected by the Fifth and Fourteenth Amendments.

Cave Creek's duty to comply with A.R.S. § 9-500.12(B) includes a duty to explain the Notice of Claim and Statute of Limitations provisions in A.R.S. §§ 12-821, 12-821(B).[6] Cave Creek obtained summary judgment by fraudulently concealing its failure to comply with A.R.S. §§ 9-500.13, 9-500.12(B) & (E).

Per A.R.S. § 9-500.12(E), Cave Creek has the statutory burden to establish the nexus for requiring: a.) the creation of lot 211-10-010D[7] to split parcel 211-10-

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[3] *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 299, ¶ 42, 257 P.3d 1168, 1179 (App. 2011)

[4] *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.3d 12 (2002).

[5] Appendix L. "We interpret statutes in accordance with the intent of the legislature, [and] `look to the plain language of the statute . . . as the best indicator' of its intent, and if the language is clear and unambiguous, `we give effect to that language.'" *State ex rel. Goddard v. Ochoa*, 224 Ariz. 214, ¶ 9, 228 P.3d 950, 953 (App. 2010), *quoting Fragoso v. Fell*, 210 Ariz. 427, ¶ 7, 111 P.3d 1027, 1030 (App. 2005) (second alteration in *Goddard*). "When the language of a statute is clear and unambiguous, a court should not look beyond [its] language" … to determine its meaning and the legislature's intent in enacting it. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶6, 181 P.3d 219, 225 (App. 2008); *see also State v. Barnett*, 209 Ariz. 352, ¶7, 101 P.3d 646, 648 (App. 2004).

[6] The Nollan / Dolan test was addressed in Arizona by *Home Builders Association of Central Arizona* v. *City of Scottsdale,* 187 Ariz. 479,930 P.2d 993 (1997) and codified into A.R.S. §§ 9-500.12 (B) and 9-500.13.

[7] Opening Brief ("OB"), pgs. 8-10, Appendix B, Reply Brief ("RB") pgs. 8-10, Appendix C,

010; b.) easements to permit driveways (MD ¶4) and the extension of sewer to lots 211-10-010A, B, & C (MD ¶6, ¶8), (IR 4, Exh. 4-8), MCRD #2002-681164; or c.) when it required the exaction of lot 211-10-010D as a "roadway dedication," AB, pg. 12 (MCRD #2003-0488178) to approve Fressadi's sewer and transfer ownership to the Town of Cave Creek.[8]

The Court of Appeals ruled that Fressadi's complaint does not include the Zoning Ordinance, MD ¶31, pg. 14. But Section 1.1(B) of the Zoning Ordinance incorporates the Subdivision Ordinance, and town codes (i.e. § 50.016).

Cave Creek repeatedly declared[9] (IR 4, ¶ 17, 18, 20, 21, 38) and admits that it converted Petitioner's property into an unlawful subdivision (AB pg. 12), (Appendix F, IR 68 at SOF 31, Ex. 24), by requiring the creation of lot 211-10-010D (a/k/a parcel A) which is "not legally defined" (AB pg. 12). Cave Creek also converted the split of parcel 211-10-003 into an unlawful subdivision by requiring an "illegally defined" strip of land. Appendix H. As a result, lots 211-10-010 A, B, C, & D and lots 211-10-003 A, B, C & D were not platted according to A.R.S. §§ 9-463.02, 9-463.6(c)) or vetted per the Town's Subdivision Ordinance.

Exhibits A & B, Motion for Reconsideration, 06-21-13, Appendix D.

[8] Appendix E-G, J. The split was re-recorded, MCRD #2003-0481222 then modified to approve the sewer, MCRD #2003-0488178 (Exhibit B, Notice, 01-28-13, Exhibit D, Motion for Reconsideration, 06-21-13). The Town's attorneys falsely claimed that lot 211-10-010D was dedicated to the Town and "that Appellant no longer owns the parcel 211-10-010." AB, pg. 2, footnote #1. Appellant owns lots 211-10-010 B & D and quieting title to lots 211-10-010A & C and 211-10-003 A, B, C & D in CV2006-014822 because Cave Creek required the 211-10-003 lots connect to Fressadi's sewer. Exh. H, IR 91, Appendix H. Cave Creek also required an "illegally defined fourth lot" to split parcel 211-10-003, MCRD # 2003-1312578. Cave Creek falsely claimed that Petitioner never owned 211-10-003. AB pg. 2, footnote 1. Petitioner acquired 211-10-003 in 2001. See CV2000-011913.

[9] *Mabery Ranch.,* 216 Ariz. at 247, 165 P.3d at 225 (quoting *La Paz County* v. *Yuma County,* 153 Ariz. 162, 168, 735 P.2d 772, 778 (1987) (parties are bound by their judicial declarations))

Since lots 211-10-010 A, B, C, & D and lots 211-10-003 A, B, C & D do not comply with the Subdivision Ordinance, they are not entitled to building permits per Section 6.3(A) of the Subdivision Ordinance. Any permit issued to these lots is void per Section 1.4 of the Zoning Ordinance because issuing permits to these lots conflicts with Section 6.3(A) of the Subdivision Ordinance, a provision of the Zoning Ordinance per Section 1.1(B), supra.[10]

Section 1.7(A) of the Zoning Ordinance applies to ***every*** violation of ***any*** provision of the Zoning Ordinance, i.e. unlawfully subdividing lots, constructing sewer on void permits and allowing others to connect in violation of Town Code 50.016. Each day and every day is a new violation for each and every infraction.

Reasons to Grant Petition

"[A] valid statute is automatically part of any contract affected by it, even if the statute is not specifically mentioned in the contract." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 298-99, ¶ 38, 257 P.3d 1168, 1178-79 (App. 2011) (quoting *Higginbottom v. State,* 203 Ariz. 139, 142, ¶ 11, 51 P.3d 972, 975 (App. 2002)). An "entitlement" such as a lot split, subdivision, or building permit is a form of contract. See *Havasu Heights II,* 167 Ariz, at 389, 807 P.2d at 1125 (laws of the state are a part of every contract).

Cities must strictly comply with state statutes because municipalities are not

[10] Courts cannot enforce illegal transactions. *Northen v. Elledge*, 232 P. 2d 111, 72 Ariz. 166 - Ariz: Supreme Court, 1951. Issuing void permits to illegal lots does not create vested rights. See *Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, 1st Div., Dept. D 1996 and *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., Dept. B 2, 2004, relying upon "*Valencia Energy v. Ariz. Dep't of Revenue*, 191 Ariz. 565, 576, ¶ 35, 959 P.2d 1256, 1267 (1998). Government is not estopped 'from correcting a mistake of law.' Id. at 579, ¶ 41, 959 P.2d at 1270.

sovereign powers—they are an extension of state sovereignty. *City of Scottsdale v. Superior Court,* 103 Ariz. 204,439 P.2d 290 (1968). See also, *Jinks v. Richland County*, 538 U.S. 456, 3 (2003).

By fraudulently concealing their continuous failure to comply with A.R.S. 9-500.12, 9-500.13, and 9-463 *et seq*. within the limitations period, Cave Creek prevented Fressadi from discovering[11] the true nature and extent of his damages,[12] and suing in time. MD, ¶33, pg 15. This is textbook equitable estoppel. *Johnson v. Henderson*, 314 F.3d 409 (9th Cir. 2002). (Equitable estoppel, on the other hand, focuses primarily on actions taken by the *defendant* to prevent a plaintiff from filing suit, sometimes referred to as "fraudulent concealment." *Id.* (citing *Cada v. Baxter Healthcare Corp.* 920 F.2d 446, 450-51 (7th Cir. 1990))). See also *Guerrero v. Gates*, 442 F.3d 697, 706 (9th Cir. 2006) (quoting *Santa Maria*, 202 F.3d at 1176-77). In addition, these violations of statutes are negligence *per se*. *Caldwell v. Tremper*, 367 P.2d 266 Ariz.,1962 (Violation of statute or ordinance requiring particular thing to be done or not done is "negligence per se."), *Griffith v. Valley of Sun Recovery and Adjustment Bureau*, Inc., 613 P.2d 1283 Ariz.App.Div.1,1980 (Negligence *per se* applies when there has been violation of specific requirement of

[11] Opening Brief, Appendix B, pgs 30-34.

[12] See, *Gust, Rosenfeld,* 182 Ariz. at 589, 898 P.2d at 966 (The rationale behind the discovery rule is that it is unjust to deprive a plaintiff of a cause of action before he has a reasonable basis for believing that a claim exists). The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." [Emphasis supplied in original]. Judicial discretion is also dependant upon jurisdiction. See *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872).

a law or an ordinance), *Deering v. Carter*, 376 P.2d 857 Ariz.,1962 (In establishing existence of negligence *per se*, jury need only find that party committed specific act prohibited, or omitted to do specific act required by statute or ordinance).

Cave Creek is not only estopped due to its negligence *per se*, Cave Creek violated due process to circumvent the constitution by failing to follow A.R.S. §§ 9-500.13, 9-500.12(B) & (E), then fraudulently concealed their unlawful conduct to obtain judgment. A fraud upon the court is perpetrated "by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases." *In re Intermagnetics Am., Inc.,* 926 F.2d 912, 916 (9th Cir.1991) (quoting J. Moore and J. Lucas, Moore's Federal Practice ¶ 60.33, at 515 (2nd Ed. 1978)). Cave Creek's attorneys knowingly[13] violated Arizona rules of professional conduct and disclosure rules sufficient to "shock-the-conscience,"[14] by concealing[15] material facts to suppress the truth, such that the court can set aside the judgment at any time. *Ivancovich v. Meier,* 122 Ariz. 346, 349, 595 P.2d 24, 27 (1979).

As a consequence, it is a mistake of law and an abuse of discretion[16] for the

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[13] ER 1.0(f). It can be inferred from circumstances (Appendix L) that Cave Creek's attorneys are familiar with the statutory provisions of A.R.S. §§ 9-500.13 and 9-500.12 given that Mariscal Weeks and Sims Murray specialize in municipal representation and litigation.

[14] *ROCHIN V. CALIFORNIA*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952).

[15] The Arizona Supreme Court ruled that, when the plaintiff presents evidence that the defendant concealed a cause of action (thus preventing the plaintiff's claim), and when the defendant admits the actions underlying the claim, the question of whether there is wrongful concealment capable of tolling the statute of limitations cannot be resolved by summary judgment. *Orme School v. Reeves,* 166 Ariz. 301, 802 P.2d 1000 (1990). "credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge..." *Id. at* 309-10. See also, *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 299, ¶ 42, 257 P.3d 1168, 1179 (App. 2011)

[16] We review issues of constitutional law de novo and related factual determinations for abuse of discretion. *State v. Smith*, 215 Ariz. 221, 233 ¶ 57, 159 P.3d 531, 543 (2007). To find an abuse of discretion, we must determine there is no evidence that supports the superior court's conclusion, or

Court of Appeals to only review evidence presented at the time the motion was considered, MD ¶22, pg. 9. By concealing Cave Creek's failure to explain the statute of limitations as part of their duty to comply A.R.S. § 9-500.12(B), and their failure to establish a nexus for lot 211-10-010D and easements for sewer per A.R.S. § 9-500.12(E), Cave Creek created continuous violations of statutory law that are jurisdictional, necessitating a quiet title action which is not subject to statute of limitations.[17] *City of Tucson v. Morgan*, 475 P. 2d 285 - Ariz: Court of Appeals, 2nd Div. 1970 ([A] cause of action to quiet title for the removal of the cloud on title is continuous one and never barred by limitations while the cloud exists.) See also *Cook v. Town of Pinetop-Lakeside,* 1 CA-CV 12-0258. Petitioner reserved <u>*ALL*</u> rights and claims in his Opening Brief, pg. 43, including declaratory relief.

No state court has discretion to determine the date of accrual as a matter of law to time bar Petitioner's claims because Cave Creek violated and continues to violate state statutes to circumvent the constitution and due process. See Footnote 7, *City of Tucson v. Clear Channel Outdoor, Inc*., 181 P. 3d 219 - Ariz: Court of Appeals,

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the reasons given by the superior court must be "clearly untenable, legally incorrect, or amount to a denial of justice." *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350, ¶ 17, 141 P.3d 824, 830 (App.2006) (citations omitted). We review *de novo* whether the superior court applied the correct legal standard in making its determination. *See Pullen v. Pullen*, 223 Ariz. 293, 295-96, ¶¶ 9-10, 222 P.3d 909, 911-12 (App.2009).

[17] All easements were revoked, MCRD #2012-0377104. Appendix K. In addition to amending CV2006-014822 pursuant to Ariz. R. Civ. P. Rule 15(a) and 15(b), A.R.S. §§ 12-1101, *et seq*., 39-161, 33-420, Cave Creek's failure to follow A.R.S. §§ 9-500.13, 9-500.12(B) & (E) is negligence per se. See *Caldwell v. Tremper,* 367 P.2d 266 Ariz.,1962 (Violation of statute or ordinance requiring particular thing to be done or not done is "negligence per se."), *Griffith v. Valley of Sun Recovery and Adjustment Bureau, Inc*., 613 P.2d 1283 Ariz. App. Div. 1, 1980 (Negligence per se applies when there has been violation of specific requirement of a law or an ordinance), *Deering v. Carter,* 376 P.2d 857 Ariz.,1962 (In establishing existence of negligence per se, jury need only find that party committed specific act prohibited, or omitted to do specific act required by statute or ordinance.)

2nd Div., Dept. A 2008, ("When a court in equity is confronted on the merits with a continuing violation of statutory law, it has no discretion or authority to balance the equities so as to permit that violation to continue.") quoting Zygmunt J.B. Plater, *Statutory Violations & Equitable Discretion,* 70 Cal. L.Rev. 524, 527 (1982). See *Flying Diamond Airpark, LLC v.Meienberg,* 215 Ariz. 44, ¶ 27, 156 P.3d 1149, 1155 (App.2007). (A court abuses its discretion if its decision is based on an incorrect interpretation of the law.) Due process favors litigation being tried on its merits. *Cosper v. Rea ex rel. County of Maricopa*, 250 P. 3d 215 (App. 2011) quoting *Allstate Ins. Co. v. O'Toole,* 182 Ariz. 284, 287, 896 P.2d 254, 257 (1995), "[w]henever possible, procedural rules should be interpreted to maximize the likelihood of a decision on the merits."

Cave Creek violated Petitioner's property rights and rights to due process. When rights in question are fundamental, Arizona's constitution requires that a strict scrutiny analysis be applied, *Kenyon v. Hammer*, 142 Ariz. 69, 78, 688 P.2d 961, 970, 971 (1984). Property rights and rights to due process are fundamental.

Equitable tolling[18] of A.R.S. §§ 12-821, 12-821(B) applies until Cave Creek complies with A.R.S. §§ 9-500.13, 9-500.12(B) & (E), and 9-463 et seq.

"…[T]o withstand summary judgment the non-moving party need only "present sufficient evidence demonstrating the existence of a genuine factual dispute as to a material fact."' *National Bank of Arizona v. Thruston*, 218 Ariz. 112, ¶ 26,

[18] *Johnson v. Henderson*,314 F.3d 409 (9th Cir. 2002). "Equitable tolling" focuses on "whether there was excusable delay by the plaintiff: If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs." *Id.* at 414 (quotation omitted).

180 P.3d at 984 - Ariz: Court of Appeals, 1st Div., Dept. E 2008. “We view the facts in the light most favorable to the party opposing summary judgment.” *Link v. Pima County*, 193 Ariz. 336, ¶12, 972 P.2d 669, ¶12 (App. 1998). Arizona does not look with favor on the statute of limitations defense. *Insurance Co. of North America v. Superior Court,* 166 Ariz. 82, 800 P.2d 585 (1990). The Town’s attorneys concealed legal authority directly adverse to Cave Creek’s position that Fressadi’s claims were time barred in violation of Rule 37(d). They violated ER 3.3(a) and 8.4[19] to commit a fraud on the court[20] by concealing Cave Creek’s failure to follow A.R.S. §§ 9-500.13 and 9-500.12.

Cave Creek created inequitable circumstances by failing to comply with A.R.S. §§ 9-500.13 and 9-500.12. *McCloud v. Ariz. Dep’t of Public Safety*, 217 Ariz. 82, 87, ¶ 11, 170 P.3d 691, 696 (App. 2007). Cave Creek’s failure to comply with the requirements of A.R.S. §§ 9-500.13, 9-500.12(B) and 9-500.12(E) are “extraordinary circumstances” *Id*. at 89, ¶ 20, 170 P.3d at 696, 698.

Per A.R.S. § 12-821.01(B), accrual[21] begins when the damaged party ***realizes*** he has been damaged. *Long v. City of Glendale*, Ariz: Court of Appeals 1st Div.,

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[19] ER 8.4(d) provides "[i]t is professional misconduct for a lawyer to... engage in conduct that is prejudicial to the administration of justice."

[20] See also Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1130, 1133 (9th Cir.1995) ("One species of fraud upon the court occurs when an `officer of the court' perpetrates fraud affecting the ability of the court . . . to impartially judge a case," and a judgment obtained by such fraud can be set aside even if the opposing party was not diligent in uncovering it).

[21] See *Pima County v. Maya Constr. Co*., 158 Ariz. 151, 155, 761 P.2d 1055, 1059 (1988); *State v. Sweet*, 143 Ariz. 266, 270-71, 693 P.2d 921, 925-26 (1985) (whenever possible we adopt a construction of a statute that reconciles it with other statutes and gives force to all statutes involved), see *Tracy v. Superior Court*, 168 Ariz. 23, 31, 810 P.2d 1030, 1038 (1991) (We also construe a statute in a manner that "will best serve the legislature's purposes, policies, and goals" apparent from the whole body of relevant law).

Dept. A 2004.(One does not "realize" something because there is a legal presumption that he knows it.)

Statutes of limitation and notices of claim are subject to equitable tolling, waiver, and estoppel. *Pritchard v. State*, 163 Ariz. 427, 432, 433, 788 P.2d 1178, 1183 (1990). (when the facts controlling the date of accrual of a cause of action are in dispute, the jury must determine whether the action is barred). See *Lee v. State,* 242 P.3d 175, 178 (Ariz. Ct. App. 2010). Notice of claim and statute of limitation issues as to accrual are procedural, factual and subject to review by a jury. See *Hayes v. Continental Ins. Co*., 872 P. 2d 668 - Ariz: Supreme Court 1994. *Vega v. Morris,* 184 Ariz. 461, 464, 910 P.2d 6, 9 (1996); *Lasley v. Helms,* 179 Ariz. 589, 592, 880 P.2d 1135, 1138 (App. 1994); *Ulibarri v. Gerstenberger,* 178 Ariz. 151, 871 P.2d 698 (App. 1993).

Cave Creek must first comply with A.R.S. §§ 9-500.13 and 9-500.12 prior to invoking the statute of limitations per A.R.S. §§ 12-821 and 12-821.01(B). The unlawful status of Fressadi's property and sewer are core to the complaint. It was argued in Fressadi's Response to Summary Judgment (IR 89, 91), his motion to amend (IR138-143), and motions for reconsideration (IR 160, IR 170). In spite of the above and the genuine issue of material fact that Cave Creek admits that lot 211-10-010D is "not legally defined," AB, pg. 12 and classified Fressadi's lots as a subdivision, Appendix D, the Appellate Court mistakenly[22] ruled that "unlawful subdivision" was a newly raised, and waived claim. But the unlawful division of the

[22] An abuse of discretion occurs where the court's reasons for its actions are "clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n. 18, 660 P.2d 1208, 1224 n. 18 (1983).

lots to which the Town admits, is a continuing violation of statutory law which the Court ***has no discretion or authority*** to allow to continue. *City of Tucson, supra,* Equitable estoppel applies, *Freightways, Inc. v. Arizona Corp. Comm'n,* 129 Ariz. 245, 247, 630 P.2d 541, 543 (1981) (citing *Hampton v. Paramount Pictures Corp.,* 279 F.2d 100, 104, 84 A.L.R.2d 454, 461 (9th Cir.), *cert. denied,* 364 U.S. 882, 81 S.Ct. 170, 5 L.Ed.2d 103 (1960)). [emphasis added].

The requirements for entitlements must be reviewed by a hearing officer pursuant to A.R.S. § 9-500.12(A) thru (G) who can apply damages[23] pursuant to A.R.S. § 9-500.12(H) in accordance with Section 1.7 of the Zoning Ordinance. If the municipality fails to meet its burden per A.R.S. § 9-500.12(E), the requirement shall be modified or deleted by the Hearing Officer per A.R.S. § 9-500.12(F).

Not only are the rulings void because Cave Creek failed to follow A.R.S. §§ 9-500.13 and 9-500.12, but the trial court does not obtain jurisdiction until ***after*** there has been a ruling pursuant to A.R.S. § 9-500.12(G) at which time the matter may be heard *de novo* by Superior Court. *Advanced Property Tax Liens, Inc. v. Sherman*, 227 Ariz. 528, 530 n.2, ¶ 9, 532, ¶ 21, 260 P.3d 1093, 1095 n.2, 1097 (App. 2011) (finding no jurisdiction for lack of notice where statute provided, "A court shall not enter any action to foreclose . . . until the purchaser sends the notice required by this section."). Courts have an independent obligation to determine whether jurisdiction exists, even when no party challenges it. *Arbaugh* v. *Y & H*

[23] Per *Kenyon v. Hammer*, supra, Art. 18, § 6, provides as follows: The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation. (IR 138-143). Petitioner sought to amend his complaint to include a §1983 grievance for damages pursuant to the 14th Amendment which was denied as "time barred."

Corp., 546 U. S. 500, 514 (2006)(citing *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 583 (1999)). See also *Piper v. Pearson*, 2 Gray 120, cited in *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1872). (Judicial discretion is dependant upon jurisdiction.) Jurisdiction can be attacked at any time, because a judgment is void due to lack of jurisdiction. *Springfield Credit Union v. Johnson*, 123 Ariz. 319, 323 n. 5, 599 P.2d 772, 776 n. 5 (1979) (the court has no discretion, but must vacate the judgment). Subject matter jurisdiction can be tainted by fraud upon the court, *In re Village of Willowbrook*, 37 Ill. App.3d 393 (1962), or violation of due process, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v. Goldblatt Bros.*, 363 Ill.25 (1936).

Current rulings amount to a judicial takings.[24] For reasons stated, Petitioner respectfully requests that the court accept jurisdiction and grant relief accordingly.

Respectfully submitted this 18th day of September, 2013.

By: /s/ Arek Fressadi
Arek Fressadi, *Pro Se*

[24] "In sum, the Takings Clause bars *the State* from taking private property without paying for it, no matter which branch is the instrument of the taking." *STOP THE BEACH RENOURISHMENT v. FL. DEPT. OF E. P., 08-1151* (U.S. 6-17-2010), 130 S.Ct. 2592, pg 10.

APPENDIX A

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

AREK FRESSADI, an unmarried man, Plaintiff/Appellant, v. TOWN OF CAVE CREEK, an Arizona municipality, Defendant/Appellee.	No. 1 CA-CV 12-0238 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause Nos. CV2009-050821 and CV2010-004383 (Consolidated)

The Honorable Alfred M. Fenzel, Judge

AFFIRMED

Arek Fressadi — Tucson
In Propria Persona

Sims Murray Ltd. — Phoenix
By Jeffrey T. Murray
Kristin M. Mackin
Attorneys for Defendant/Appellee

G O U L D, Judge

¶1 Plaintiff/appellant Arek Fressadi appeals from the superior court's decision granting summary judgment to defendant/appellee Town of Cave Creek ("the Town") because his

claims against the Town were time barred. We agree with the superior court and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

¶2 Fressadi owned Lots 211-10-010(A), (B), and (C), in Cave Creek, Arizona. Cybernetics Group, of which Fressadi was president, owned parcel 211-10-003, the northern border of which was contiguous to the southern borders of Lots 211-10-010(A) to the east, and (B) to the west.

¶3 On February 13, 2002, Fressadi, on behalf of both himself and Cybernetics Group, Ltd., requested annexation into the Town's sewer district. He further requested that they enter into a development agreement with the Town whereby Fressadi and Cybernetics would replace a nonstandard sewer line with an eight-inch line in exchange for a waiver of impact fees associated with their parcels.

¶4 In March 2002, Fressadi recorded documents that included easements for ingress, egress and public utilities over Lot 211-10-010.

¶5 By letter dated June 28, 2002, the Town Manager for Cave Creek advised Fressadi that a development agreement would not be "viable." Specifically, the Town Manager informed Fressadi "the developer/subdivider is responsible for building the infrastructure to convey wastewater from the development to the nearest connection point to the Town's sewer system,"

"there are no designated charges or assessments that would be available from subsequent customers hooking to your line extension to provide for payback of some of your costs," therefore "it does not appear that any form of development agreement is viable."

¶6 On July 3, 2002, Fressadi recorded a document granting use of Lot 211-10-010D, the east twenty-five feet of Lot 211-10-010, "in its entirety, as an easement for the purposes of ingress, egress and public utilities." About the same time, Fressadi applied for permits to install the sewer line extension and the Town granted Fressadi a permit for the "off-site" sewer line installation, which authorized him to connect to the Town's public sewer.

¶7 In August 2002, the Town's Council denied the request of the Cybernetics Group, represented by Fressadi, to split parcel 211-10-003, because of concerns that Fressadi's ownership and lot split of parcel 211-10-010 and his ownership interest in Cybernetics would make the splitting of the 003 parcel a subdivision, for which Fressadi had not met the qualifications.

¶8 In October 2002, the Town issued permits for the extension of the public sewer line for Lots 010A, 010B, and 010C, after Fressadi submitted the legal descriptions with the recorded easements for ingress, egress, and public utilities for those lots.

¶9 At the end of March and the beginning of April 2003, Fressadi exchanged e-mails with a Town employee regarding extending the sewer to parcel 211-10-003, noting that the public sewer that would serve that parcel runs in the easement and that Keith Vertes, who would shortly purchase parcel 211-10-003, was seeking an extension of the public sewer to serve the three lots on that parcel. On April 12, Fressadi offered to reduce the price of the 211-10-003 parcel to Keith Vertes in consideration of Vertes completing the sewer lines and other work to that parcel.

¶10 About April 24, 2003, Fressadi completed construction of the sewer lines on Lots 010A, 010B, and 010C. Fressadi was told in June that the Town Manager, with whom he had been negotiating a reimbursement agreement, did not have the authority to enter into such an agreement without an authorizing Town ordinance.

¶11 Cybernetics sold parcel 211-10-003 to Keith Vertes on approximately July 1, 2003, and, soon after, the Town Council approved Vertes's request to split that parcel into three lots. Fressadi was aware of the work extending the sewer line to the 003 lots and the location of those lines.

¶12 On October 15, 2003, Building Group, of which Vertes was President, and Michael Golec, his business partner, sold lot 211-10-003A to Jocelyn Kremer. The following day, Fressadi and

GV Group, LLC, entered into a reciprocal easement agreement for the 003 and 010 lots for ingress, egress, maintenance and related utilities.[1] Fressadi sold lot 010C to Salvatore and Susan DeVincenzo.

¶13 In December 2003, the Town amended its Town Code with respect to sewers to add Section 50.016, which provided for the Town to enter into repayment agreements where a property owner constructs a main sewer line.[2] Cave Creek, Ariz., Town Code § 50.016 (2003). After the Town did not execute an agreement with him under the new ordinance, on February 21, 2004, Fressadi submitted an invoice to the Town Mayor, Town Manager, and Town Council for $79,533.75 for construction of the sewer extension. In the accompanying letter, Fressadi explained that he had contacted the Town Manager in February 2002 about entering into a development agreement and the Town Manager had suggested that Fressadi draft such an agreement, but after the fifth or sixth draft, "it became obvious that the Town Manager was bargaining in bad faith" and "cut off negotiations." Fressadi contended that installing the line was expensive and time consuming and that he had tried unsuccessfully to discuss compensation with the Town Manager and the Town Attorney several times.

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[1] How the property was transferred from Vertes to Building Group and Golec and then to GV Group is not clear. Vertes and Golec were both managers and members of GV Group. Vertes was also president and principal shareholder of Building Group.

[2] The Town repealed the ordinance in 2009.

¶14 In March, June, and October 2005, the Town approved the permits for the owners on the 003 lots to connect to the sewer.

¶15 On October 2, 2006, Fressadi sued GV Group, Vertes and his company Building Group, and Golec and his company MG Dwellings, as the owners of Lots 003B and 003C for disputes arising over the reciprocal easement agreement.

¶16 On June 21, 2007, Fressadi sent a document titled "Memorandum" to the Town Engineer and others, in which he stated that he had been attempting to obtain a development agreement with the Town since 2002, that the sewer extension he constructed was serving various Town residents, and that the Town was collecting fees from those users. Fressadi asserted that the Town "needed to pay" him for the cost of the sewer extension and threatened to remove the line if the Town did not resolve the matter by September 1, 2007.

¶17 On June 26, 2007, the Town Engineer responded, reminding Fressadi that it was Fressadi who had approached the Town about installing a sewer line and also pointing out that the Town's ordinance "is quite clear . . . in that the developer is responsible for all costs of installation and the facilities in Town Right-Of Way or easement become the property of the Town."

¶18 Fressadi delivered his statutory notice of claim to the Town on October 27, 2008, and filed this action against the Town and the owners of the 003 lots on February 10, 2009.[3]

¶19 Fressadi's complaint asserted that the Town had violated Town Code Section 50.016 by refusing to enter into a repayment agreement with him to reimburse him for the cost of the sewer construction. Against the Town, he sought declaratory judgment that the sewer line was his exclusive property until the Town entered into a repayment agreement. He also sought a declaratory judgment that the Town had incorrectly interpreted the subdivision ordinance and so improperly classified his property as a subdivision; Fressadi sought a declaration that the split of his property by himself or a subsequent purchaser into fewer than four parcels could not be classified as a subdivision. Fressadi also alleged that the Town was aiding and abetting the owners of the 003 lots in trespassing because the owners were using the sewer line without his permission or legal authority and that the Town was unjustly enriched.

¶20 The Town moved for summary judgment,[4] and argued Fressadi's claims against the Town were barred by Arizona

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[3] The owners at the time of filing were Kremer, the owner of Lot 003A, Golec, the owner of Lot 003B, and Real Estate Equity Lending, Inc. ("REEL"), which had become owner of Lot 003C through foreclosure.

[4] REEL also filed a motion for summary judgment, arguing equitable estoppel, laches, statute of limitations, and judgment

Revised Statutes ("A.R.S.") section 12-821.01, which requires a claimant to give notice to a public entity within 180 days after the cause of action accrues, and by A.R.S. § 12-821, which requires all actions against a governmental entity be filed within one year of when the cause of action accrues. The Town argued that Fressadi's February 21, 2004, letter containing the $79,533.75 invoice, and his June 21, 2007, Memorandum to the Town Engineer demanding to be paid, demonstrated that he was aware at those times that he had a claim against the Town. The Town argued that his cause of action therefore accrued at the latest in June 2007, requiring Fressadi to present his notice of claim six months from that time, and file his complaint within one year of that time, which he failed to do.

¶21 After oral argument, the court granted summary judgment to the Town for the reasons stated in the Town's motion. Fressadi timely appealed.

DISCUSSION

¶22 Summary judgment may be granted when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). In reviewing a motion for summary judgment, we determine de novo whether any genuine issues of material fact exist and

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as a matter of law on the merits. Kremer filed a motion for partial summary judgment and joined in the summary judgment motions of the Town and REEL. The court granted both of the motions. Only the Town is involved in this appeal.

whether the trial court properly applied the law. *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, ¶ 4, 7 P.3d 136, 139 (App. 2000). We view the facts and the inferences to be drawn from those facts in the light most favorable to the party against whom judgment was entered. *Alosi v. Hewitt*, 229 Ariz. 449, 452, ¶ 14, 276 P.3d 518, 521 (App. 2012). We review the decision on the record made in the trial court, considering only that evidence presented to the court at the time the motion was considered. *Phoenix Baptist Hosp. & Med. Ctr., Inc. v. Aiken*, 179 Ariz. 289, 292, 877 P.2d 1345, 1348 (App. 1994); *GM Dev. Corp. v. Community Am. Mortg. Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990).

¶23 The court granted the Town's motion for summary judgment at least in part because Fressadi had failed to timely file both his statutory notice of claim pursuant to A.R.S. § 12-821.01(A) and his complaint pursuant to A.R.S. § 12-821. Section 12-821.01(A) requires those with a claim against a public entity to file notice of that claim within 180 days after the cause of action accrues. This statutory notice of claim requirement does not apply to declaratory judgment actions not involving a claim for damages. *Martineau v. Maricopa County*, 207 Ariz. 332, 337, ¶ 24, 86 P.3d 912, 917 (App. 2004). Section 12-821, however, requires that "all actions" against a public entity be brought within one year after the cause of action

accrues. *See Flood Control Dist. of Maricopa County v. Gaines*, 202 Ariz. 248, 252, ¶ 9, 43 P.3d 196, 200 (App. 2002) ("the word means all and nothing less than all") (quoting *Estate of Tovrea v. Nolan*, 173 Ariz. 568, 572, 845 P.2d 494, 498 (App. 1992)). Under both statutes, the cause of action accrues when the injured party "realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition which caused or contributed to the damage." A.R.S. § 821.01(B); *Dube v. Likens*, 216 Ariz. 406, 421, ¶ 2, 167 P.3d 93, 108 (2007) (Supplemental Opinion)(applying statutory standard in A.R.S. § 12-821.01(B) to A.R.S. § 12-821). Accrual is based on the claimant's knowledge of the facts underlying the cause of action. *Doe v. Roe*, 191 Ariz. 313, 322, ¶ 29, 955 P.2d 951, 960 (1998). To trigger accrual, the claimant need not know all the facts, but must have "a minimum requisite of knowledge sufficient to identify that a wrong occurred and caused injury." *Id.* at 323, ¶ 32, 955 P.2d at 961. It is the knowledge of the facts and not the legal significance of those facts that determines accrual. *Insurance Co. of N. America v. Superior Court*, 162 Ariz. 499, 502, 784 P.2d 705, 708 (App. 1989) *vacated on other grounds by* 166 Ariz. 82, 800 P.2d 585 (1990). Although whether a cause of action has accrued is usually a question of fact for the jury, it may properly be determined as a matter of law when no disputed issue

of fact exists as to the plaintiff's knowledge regarding who caused the injury and when. *See Thompson v. Pima County*, 226 Ariz. 42, 46-47, ¶ 14, 243 P.3d 1024, 1028-29 (App. 2010).

¶24 Most of Fressadi's claims against the Town are based on his position that the Town wrongly refused to enter into a development agreement with him for reimbursement, wrongly refused to otherwise compensate him for constructing the sewer line extension, and wrongly allowed others to connect to the line he installed.

¶25 For Fressadi's notice of claim, filed on October 27, 2008, to be timely, his claims seeking damages must have accrued on or after, but not before, April 30, 2008. *See* A.R.S. § 12-821.01(A). Because he filed his complaint on February 10, 2009, all his claims must have accrued on or after February 10, 2008.

¶26 The record shows several instances before the relevant accrual dates where Fressadi knew or reasonably should have known that the Town would not enter into a development agreement, would not compensate him, and would connect his neighbors to the sewer extension. As early as June 2002, he was reminded that the developer is responsible for the cost of infrastructure to connect to the Town's sewer, that in his case no charges would be available from subsequent customers to compensate him, and that therefore no development agreement in "any form" was viable. In June the following year, after the

sewer had been completed, Fressadi was told that the Town Manager had no authority to execute a development agreement. On February 21, 2004, when the Town failed to enter into a development agreement after passing an ordinance allowing for such agreements, Fressadi sent an invoice to the Town, which the Town did not pay. Finally, on June 26, 2007, more than two years after the first of his neighbors was connected to the sewer line, Fressadi sent a "Memorandum" to the Town Engineer, demanding payment by September 1; the Town did not pay.

¶27 We need not decide which specific event caused the action to accrue. Obviously, all of these events occurred before April 30, 2008, and February 10, 2008 -- the earliest points at which the cause of action could accrue in order for Fressadi's notice of claim and complaint, respectively, to be timely. Certainly, at the latest, Fressadi knew that the Town would not compensate him for the extension when the Town, under threat, failed to pay by September 1, 2007, and again told him that the developer was responsible for the cost. Fressadi's notice of claim was not filed until nearly fourteen months later and his complaint was not filed until nearly eighteen months later.

¶28 Fressadi does not dispute this factual record. He appears to argue, however, that equitable tolling, waiver, and equitable estoppel should apply to permit the late filing.

Statutes of limitation and notices of claim are subject to equitable tolling, waiver, and estoppel. *Pritchard v. State*, 163 Ariz. 427, 432, 788 P.2d 1178, 1183 (1990).

¶29 Under the doctrine of equitable tolling, a plaintiff may file a complaint after the limitations period has expired if the plaintiff was prevented from timely filing the complaint because of sufficiently inequitable circumstances. *McCloud v. Ariz. Dep't of Public Safety*, 217 Ariz. 82, 87, ¶ 11, 170 P.3d 691, 696 (App. 2007). The circumstances must be extraordinary. *Id.* at 89, ¶ 20, 170 P.3d at 698. In addition, the extraordinary circumstances must be established with evidence, not personal conclusions. *Id.* at 87, ¶ 13, 170 P.3d at 696. We review for an abuse of discretion a trial court's decision not to apply equitable tolling. *Id.* at 87, ¶ 10, 170 P.3d at 696.

¶30 Fressadi contends he is entitled to equitable tolling because he is a pro se plaintiff against legal professionals experienced in representing municipalities, has been "inundated with litigation," and was not notified of the applicable limitations period. These do not constitute extraordinary circumstances warranting the tolling of the notice of claim and statute of limitations. Fressadi himself recognizes that the Town was not obligated to notify him of the limitations period. Moreover, civil litigants representing themselves are held to the same standards as those represented by counsel and are

expected to be as familiar with court procedures, statutes, rules, and legal principles as a lawyer. *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999). Fressadi's status as a pro se litigant does not justify applying equitable tolling.

¶31 Fressadi further argues that the Town has effectively waived the notice of claim and the statute of limitations because the Town's Zoning Ordinance provides that each day of a continued violation of that ordinance constitutes a separate offense. Cave Creek, Ariz., Zoning Ordinance § 1.7(A) (Jan. 6, 2003). He appears to argue that, since each day is a separate offense, the cause of action continues to accrue. Section 1.7(A) refers to violations of "this Ordinance," meaning the Zoning Ordinance. Even assuming this section could be construed as waiving a limitations period for a zoning ordinance violation, Fressadi's complaint is based on the Town's alleged failure to enter into a repayment agreement under former section 50.016 of the Cave Creek Town Code, the Town's alleged misinterpretation of its Subdivision Ordinance, and the Town's authorization of Fressadi's neighbors to connect to the sewer line; the complaint includes no claim based on a zoning violation. The provision does not waive the notice of claim and statute of limitations requirements for Fressadi's complaint.

¶32 Fressadi also appears to contend that the Town should be estopped from asserting the defense of the notice of claim and the statute of limitations based on concealment and misrepresentation. "Wrongful concealment sufficient to toll a statute of limitations requires a positive act by the defendant taken for the purpose of preventing detection of the cause of action." *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 162, 871 P.2d 698, 709 (App. 1993). Silence by the defendant is not sufficient; the defendant must engage in some trick or contrivance "intended to exclude suspicion and prevent inquiry." *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 130, 412 P.2d 47, 63 (1966).

¶33 Fressadi argues that Cave Creek "intentionally concealed the unlawful status of the 010 lots, the void status of the permits, [and] the Town's waiver of the statute of limitations to mislead the court and obtain judgment." The relevant question with respect to whether estoppel applies to toll the limitations period is not whether the Town engaged in conduct after the matter was filed in court, but rather whether the Town engaged in conduct prior to the filing that prevented Fressadi from filing the action within the limitations period. Fressadi's allegations appear to relate to a newly raised, and

therefore waived, "unlawful subdivision" claim.[5] Even if the allegations are true, these claims do not explain or excuse any delay by Fressadi in bringing his cause of action for the Town's failure to compensate him for the sewer line or for the Town's allowing his neighbors to connect to the sewer. Fressadi fails to assert any affirmative act by the Town that could be construed as concealing the existence of a cause of action related to the sewer. The record contains letters from the Town to Fressadi clearly stating that the developer was responsible for the costs of the sewer infrastructure and that the Town would not or could not enter into an agreement; it contains no evidence that the Town affirmatively represented otherwise to Fressadi. For estoppel to apply, the "estopped" party must have engaged in some conduct that a person could reasonably interpret

[5] Fressadi spends considerable time in his opening brief asserting that the Town exacted a fourth lot from both the 010 and 003 parcels, 211-10-010D and 211-10-003D, blocking legal and physical access to Lots 010A, B, and C and Lots 003A, B, and C, resulting in the creation of illegal subdivisions. Consequently, he argues, the lots were not entitled to building permits under the Town's subdivision ordinance, and therefore the sewer permits for the 003 and 010 lots were null and void. Precisely how this relates to the trial court's ruling or more generally to this action, in which he seeks a declaration that the sewer extension is his property or compensation for its construction, is unclear. In any event, although this appears to bear some similarity to Fressadi's "ultra vires" argument in his response to the Town's motion for summary judgment, it is a new argument not presented to the superior court. We therefore do not address it. *See CDT Inc. v. Addison, Roberts & Ludwig, CPA, P.C.*, 198 Ariz. 173, 178, ¶ 19, 7 P.3d 979, 984 (App. 2000) (this court considers only those arguments, theories, and facts properly presented in the trial court).

to mean that his claim was being accepted. *Kelley v. Robison*, 121 Ariz. 229, 230, 589 P.2d 472, 473 (App. 1978). Fressadi has not asserted any such conduct on the part of the Town. Equitable estoppel does not apply.[6]

¶34 Fressadi does not appear to challenge the superior court's summary judgment on his declaratory judgment action regarding the classification of his property as a subdivision. He has therefore abandoned that issue. *See Torrez v. Knowlton*, 205 Ariz. 550, 552 n.1, 73 P.3d 1285, 1287 n.1 (App. 2003).

[6] Fressadi's briefing on appeal includes a discussion of governmental immunity and rescission, but neither topic concerns the issues encompassed by the superior court's ruling. We therefore have not addressed these issues.

CONCLUSION

¶35 Fressadi's cause of action accrued at the latest on September 1, 2007, his self-imposed deadline for the Town to agree to compensate him for the costs of the sewer extension construction. Fressadi failed to file his notice of claim within 180 days after that date and failed to file his complaint within one year after that date. The superior court correctly held his complaint was time barred. Accordingly, we affirm its judgment.[7]

/S/_____
ANDREW W. GOULD, Judge

CONCURRING:

/S/_____
PATRICIA K. NORRIS, Presiding Judge

/S/_____
RANDALL M. HOWE, Judge

[7] We deny as moot Fressadi's motion to suspend rules and supplement the record (filed January 28, 2013), as well as his motion to stay (filed April 30, 2013).

APPENDIX B

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

Arek Fressadi, **Plaintiff / Appellant**, v. **Town of Cave Creek** **Defendant / Appellee**.	No. 1 CA-CV 12-0238 Maricopa County Superior Court No. CV2009-050821

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

On February 17, 2009, CV2009-050821 was filed for: 1) declaratory judgment: sewer 2) trespass, 3) aiding and abetting trespass, 4) unjust enrichment, and, 5) declaratory judgment: subdivision, to be consolidated into CV2006-014822. The claims involved lot splits and attendant entitlements. The Court consolidated CV2010-004383 into CV2009-050821 on April 20, 2010. On May 7, 2010, Fressadi moved to consolidate this case with inter-related cases into CV2006-014822. On June 1, 2010 the Court refused to add M&I Bank as party in this case even though it owned property affected by the litigation. In CV2006-014822 the court denied consolidation despite common issues of fact and law on June 7, 2010.

Cave Creek permitted an unlicensed contractor to install a sewer extension to serve lots 211-10-003 A, B & C then blocked discovery and depositions requiring Fressadi to locate the extension. When found, the line was damaged and leaking so Fressadi capped it. As no good deed goes unpunished, the Court classified his conduct as "abhorrent to the rule of law," on October 14, 2010. On November 15, 2010, REEL, Kremer and Cave Creek filed for summary judgment. Plaintiff filed a Motion to dismiss without prejudice on January 11, 2011, as Plaintiff was beginning to consider Cave Creek's conduct as criminal but still not clear as to how to civilly prosecute for criminal conduct. On September 28, 2011, Plaintiff filed a Motion to Amend his Complaint based upon the numerous irregularities in Cave Creek's answer, disclosure and Motion for Summary Judgment. Contrary to Rule 2.5[1] of

[1] Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Article 6, Section 21 provides that "Every matter

Judicial Conduct, the Court did not rule upon Plaintiff's motion to dismiss without prejudice until December 16, 2011 when it denied Plaintiff's Motion to file a Second Amended Complaint and granted summary judgment to defendants.

After the Court granted summary judgment, Kremer disclosed the unlawful subdivision status. Plaintiff filed for a New Trial on January 5, 2012. On January 6, 2012 Plaintiff filed for reconsideration. Judgment was signed on February 6, 2012 to which Plaintiff filed a Motion to Vacate on February 13, 2012. Notice of Appeal was filed on February 27, 2012 and March 8, 2012. Motions to vacate judgment were denied on March 30, 2012. Plaintiff filed to vacate judgment again on May 10, 2012 which was denied on June 11, 2012. Appellant filed a Motion to Transfer this appeal to the Supreme Court on July 10, 2012.

This appeal arises from the final decisions of the Maricopa County Superior Court. Plaintiff filed a timely notice of appeal, and this Court has jurisdiction under A.R.S. § 12-2101(B).

NB: IR footnotes are from CV2006-014822 which Plaintiff incorporated by reference herein. Plaintiff reserves the right to supplement and correct Index of Record referrals upon receipt of the final updated index of record.

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submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period." See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01.

STATEMENT OF THE FACTS

After returning from Guam where Plaintiff consulted government on infrastructure and management efficiency, Plaintiff inquired with Cave Creek regarding the artistic development of an adobe enclave at the base of Black Mountain. Around this time, Plaintiff spoke in favor of a "Town Center" at a council meeting which offended the local newspaper publisher and the junta who controlled local politics. Shortly thereafter, the Zoning Administrator under color of law suggested down-zoning the density of development on parcels 211-10-010 and 211-10-003 through a series of lot splits in lieu of subdivision.

> "In or about 2001, Arek Fressadi ("Plaintiff') purchased parcel 211-10-010, having approximately 4.02 acres in size. (SOF 1) In addition, in or about 2003, Plaintiff served as the president of Cybernetics Group, which owned parcel 211-10-003, having about 1.46 acres in size and adjacent to the south boundary of parcel 211-10-010. (SOF 2, Ex. 1: Tr14:16-25; 15: 1-13) Both parcels are zoned Residential (R-18). (SOF 3)"[2]

Parcel 211-10-010 is ~4.2 acres. Parcel 211-10-003 is ~1.5 acres = 5.7 acres. R1-18 zoning = 18,000 square foot lots which require sewer. They are too small for septic. Cave Creek claims that the Town approved a lot split to divide parcel 211-10-010 into three lots on December 31, 2001 but the Town exacted a fourth lot as part of their approval creating lots 211-10-010 A, B, C, & D. MCRD # 2003-0481222. Cave Creek repeatedly claimed in their answer to CV2009-050821 that: "any one property that is subdivided into four or more lots is defined as a subdivision under the Town's Subdivision Ordinance.[3]" In other words, lots 211-10-010 A, B, C & D

[2] Cave Creek, Motion for Summary Judgment, 11-15-2010.
[3] Separate Verified Answer of Town of Cave Creek, 3/13/09, paragraphs 17, 18, 20, 21, 38.

are a subdivision. A.R.S. §9-463.01 grants the legislative body of municipalities the police power to regulate subdivision of lands within its corporate limits. A.R.S. §9-463.02(A) defines subdivision: four or more lots the boundaries of which are fixed by a recorded plat. Municipalities are not sovereign powers and must strictly comply with the state's enabling statutes for their property regulation to be constitutional. Cave Creek failed to comply with state enabling statutes: Parcel 211-10-010 was subdivided into four lots—not split into three because Cave Creek exacted a fourth lot as a requirement of their "approval."

A.R.S. §9-463(6) defines "plat" as a map of a subdivision, (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance. (b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute. (c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute.

MCRD # 2003-0481222 is a survey—it's not "recorded plat" of a "final plat" per A.R.S. §9-463(6) that was vetted through the Town's subdivision ordinance, nor did the Town have the nexus to exact a fourth lot per A.R.S. §9-500.12(E). It does not comply with state subdivision statutes or the Town's Subdivision Ordinance.

Petitioner incorporates Cave Creek's Subdivision Ordinance, circa 2003 by

reference herein. Section 1.1 (A) and (B) define the illegality of splitting a parcel of land into four lots, and the consequences thereof. Section 6.3 (A) indicates that non-conforming lots are not entitled to building permits.[4] Per Section 6.3(A) of the Town's Subdivision Ordinance: "All lot splits ***shall*** …comply with the Town's Subdivision Ordinance. Failure to comply with this Ordinance ***shall*** render the property unsuitable for building and not entitled to a building permit."

> In violation of ARS §13-1802(A): "A person commits theft if, without lawful authority, the person knowingly: 1. Controls property of another with the intent to deprive the other person of such property; or 2. Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or 3. Obtains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services…"

Cave Creek ***knowingly***[5] deprived Plaintiff of his property by dividing parcel 211-10-010 into four lots; violating the Town's subdivision ordinance and state subdivision statutes, thus rendering the lots unsuitable for building and unlawful to sell.

> In violation of ARS §13-2310(A): "Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony. B. Reliance on the part of any person shall not be a necessary element of the offense described in subsection A of this section. C. A person who is convicted of a violation of this section that involved a benefit with a value of one hundred thousand dollars or more is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release

[4] Cave Creek's Building permit process is public record and can be found on Cave Creek's website, http://www.cavecreek.org/index.aspx, then Departments/ Building Safety/ Town Code Chapter 151- Building Regulations.

[5] See Footnote #3 supra, Separate Verified Answer of Town of Cave Creek, 3/13/09, paragraphs 17, 18, 20, 21, 38.

> pursuant to section 41-1604.07 or the sentence is commuted. D. The state shall apply the aggregation prescribed by section 13-1801, subsection B to violations of this section in determining the applicable punishment. E. As used in this section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a person of the intangible right of honest services.

Cave Creek indicated in its Motion for Summary Judgment that:

> "In or about 2002, Plaintiff approached the Town about extending the public sewer onto his property. In or about March 2002. through a series of transactions and pursuant to Town Code §§50.025 and 50.031, Plaintiff dedicated an ingress, egress, and public utility easement to the Town. (SOF 5, Ex. 2) In or about July 2002, the Town approved Plaintiffs application to connect to the Town's public sewer, and issued Right of Way Permit No. 2002-031. (SOF 8, Ex. 6). The sewer extension connected to the Town's existing public sewer within Town's Schoolhouse Road right of way. It then crossed the north side of Fressadi's property to a point near the middle, where it then turned south, essentially bifurcating lot 21 1-10-010A from lots 211-10-010B and 2 11-10-010C. (Ex. 7, SOF 36, Ex. 26: Tr. 1 1 : 12-25)"[6]

Appellant declares under penalty of perjury that in keeping with the down-zoning lot split solution, Cave Creek verbally agreed to a development agreement to fix and extend a sub-standard sewer line, and exacted easements for sewer access (MCRD #2003-0488178) as a condition of permit and repayment. Their inducement was in bad faith[7] and part of their fraudulent scheme. The cost of drafting and reviewing ~12 development agreements, sewer engineering and installation including land for easements, exceeded $100,000. Cave Creek knew that by requiring a fourth lot for approval of lot split, it created an illegal subdivision; that the lots were not suitable for building; that any permit issued was void, that any improvements installed on a void permit could be made worthless by correcting a mistake of law via *Thomas and*

[6] Cave Creek, Motion for Summary Judgment, 11-15-2010.
[7] The County controls sanitation and prohibits lots less than an acre using septic tanks, thus the "series of lot splits" solution proposed by the Town required Plaintiff to provide sewer.

King[8] and that the Town could avoid liability through ARS §12-821 *et seq*. Stated criminally, Cave Creek converted Plaintiff property via a fraudulent scheme. Plaintiff was deprived of the honest services of public officials in approving unlawful lots and granting void permits upon which hundreds of thousands of dollars of infrastructure become worthless by correcting a mistake of law via *Thomas and King* where the Town uses the statute of limitations and immunity to shield itself from liability. Once on a roll, Cave Creek continued:

> "On August 5, 2002, the Town Council denied a request by The Cybernetics Group to split the southern parcel, 211-10-003, into two parcels, having (1) .69 acres and (2) .77 acres, respectively. (SOF 11)… Because Mr. Fressadi had not met the requirements of the Town's Subdivision Ordinance, his request was denied. *Id".*[9]

Although Cybernetics was following the Town's lot split strategy, and although 211-10-003 was never part of lot 211-10-010 the Town denied Cybernetics request because Fressadi's ownership of adjacent land would create a subdivision[10]—but Cave Creek already created an illegal subdivision of lots 211-10-010 A, B, C & D that did not comply with the Town's Ordinance and thus unsuitable for building permits per section 6.3(A). In keeping with their fraudulent scheme to control or convert Plaintiff's property:

> "On or about October 30, 2002, the Town **approved** Mr. Fressadi's application for the construction of an on-site sewer line across the 010 property - for Parcel Nos. 21 1-10-010 A, B, and C. (SOF 13, Ex. 4, *5)* This

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[8] *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., Dept. B 2, 2004, relying upon "*Valencia Energy v. Ariz. Dep't of Revenue,* 191 Ariz. 565, 576, ¶ 35, 959 P.2d 1256, 1267 (1998)

[9] Cave Creek, Motion for Summary Judgment, 11-15-2010.

[10] Parcel 211-10-010 was divided into four lots. The split of parcel 211-10-003 was three lots for a total of seven lots.

> on-site sewer plan indicated that the sewer line would be constructed within the dedicated easement for ingress, egress and public utilities."[11]

Pursuant to Section 1.1(B), the Town's Zoning Ordinance incorporates all Town adopted codes and ordinances including subdivision, and pursuant to Section 1.4(A) at the time: "any permit issued in conflict with the terms or provisions of this Ordinance shall be void." Pursuant to the Town's current Zoning Ordinance, Section 1.4(D): "Any permit issued in conflict with the terms or provisions of this Ordinance shall be recognized by the Town as being null and void."[12]

> "This on-site sewer plan also identified lateral hookups extending to the property line boundary with parcel 211-10-003. (SOF 9, Ex. 7)."[13]

Exhibit 7 is the as-built drawing of the sewer extension AFTER it was completed. The two (2) laterals drawn on the plans (not three (3) as claimed by Cave Creek in the MSJ) were to provide sewer to the Cybernetics lot split in keeping with the Town's plan under color of law. The two laterals were omitted at the behest of the Town's Building Official after the lot split was denied. Not lot split = no permits.

> "In order to permit construction of the sewer line as identified in the Plaintiffs submitted plans, the Town issued Building Permit Nos. 02-256, 02-260, and 02-263. (SOF 13, Ex. 5) Construction of the sewer line was completed on or about April 24,2003. (SOF 21, Ex. 7)"[14]

To be clear, the permits for sewer supra are void per Section 1.4 of the Zoning Ordinance as the lots do not conform to the Town's Subdivision Ordinance.

> "On or about April 12, 2003, Plaintiff, as president of Cybernetics, negotiated a discounted purchase price for the 003 Lots with Keith Vertes ("Vertes") in exchange for Vertes completing the extension of the sewer and other utilities

[11] Cave Creek, Motion for Summary Judgment, 11-15-2010
[12] http://www.cavecreek.org/DocumentCenter/View/994
[13] Cave Creek, Motion for Summary Judgment, 11-15-2010
[14] Cave Creek, Motion for Summary Judgment, 11-15-2010

> to the 003 Lots. (SOF 19, Ex. 15) Plaintiff was present during the extension of the sewer lines to the 003 lots. Plaintiff directed Vertes on the work. (SOF 20, Ex. 16)"[15]

Exhibit 15 (SOF 19, Ex. 15) was an offer by Scenic Vistas. Cave Creek provides no evidence that the offer was accepted; that Scenic Vistas had the authority to lower the purchase price of the property by $12,000; that Vertes was licensed to install utilities, or that Vertes performed. Under penalty of perjury, Plaintiff declares that he did not direct Vertes because the Work was performed in 2005 /06 and Plaintiff was building in Queen Creek and Tucson.

When Cave Creek denied Cybernetics a split of 211-10-003 contrary to its recommendation, *supra*, 211-10-003 was sold as bare land (MCRD #2003-0317665) to Vertes, who applied for a lot split on April 21, 2003.[16]

> "On or about July 1, 2003, the Cybernetics Group sold the 211-10-003 parcel to Vertes. (SOF 22, Ex. 17) On or about July 21, 2003, the Town Council approved a request by Vertes to split 211-10-003 into three separate parcels. (the "003 Lots") Because the 003 Lots were within 300 feet of the public sewer, those parcels were required to tie into the public sewer line located on Plaintiffs parcel within the public utility easement. (SOF 23)"[17]

Once again, Cave Creek converted a request of lot split into an illegal subdivision by exacting a fourth lot. Parcel 211-10-003 was divided into four lots, MCRD #2003-1312578 on or about September 16, 2003. Public records at the County Assessor's office evidences lots 211-10-003 A, B, C & D in violation of Section 5.1(C) of the Town's Zoning Ordinance as lot 211-10-003D ***blocked access*** to utilities and the Schoolhouse Rd. right of way. Even the easement upon which the town used to grant

[15] Cave Creek, Motion for Summary Judgment, 11-15-2010
[16] IR 168,169, SSOF, Exh. C
[17] Cave Creek, Motion for Summary Judgment, 11-15-2010

the "lot split" had no access to the street. The only access to these lots was via a covenant that runs with the lots, MCRD #2003-1472588 which was rescinded. See CV 11-0728 to which Cave Creek is an indispensible party. Cave Creek continues:

> "On April 24, 2003, Mr. Fressadi completed the on-site sewer line construction for Parcel Nos. 21 1-10-010 A, B, and C (northern parcel). (SOF 21, Ex. 7) However, rather than install the lateral hookups for Parcel Nos. 211-10-003 A, B, C as referenced in his approved plans, Plaintiff instead stopped the sewer extension short of the 003 property line. (SOF 21, Ex. 7)"[18]

Counsel for Cave Creek made a false statement to the Court. As stated previously, Exhibit 7 shows TWO (2) laterals for the Cybernetics lot splits which were denied. To install THREE (3) laterals to lots 211-10-003 A, B & C the town would have to issue three permits—one for each lot. Cave Creek issued Plaintiff permits to install sewer to lots 211-10-010 A, B, & C. (SOF 13, Ex. 5)[19] – not the 003 lots. Plaintiff (a California contractor since 1974) knows: It is unlawful to construct improvements without the required permits, and the work to be performed must be installed by a contractor licensed to perform the work. Arizona ROC requires an "A-12" license to install sewer. In violation of ARS § 32-1151 Cave Creek issued permits #03-475 for lot 211-10-003A, #04-655 for lot 211-10-003C), and #05-095 for lot 211-10-003B to Keith Vertes to install sewer laterals **outside the easement** trespassing on Plaintiff's property as Vertes is not licensed to install sewer. Cave Creek refused discovery and locate the sewer in violation of Blue Stake law, requiring Plaintiff to dug it up. The sewer was found defective (leaking) and trespassing upon discovery, and capped. Cave Creek requested a TRO to reconnect the sewer to lots 211-10-003

[18] Cave Creek, Motion for Summary Judgment, 11-15-2010
[19] Cave Creek, Motion for Summary Judgment, 11-15-2010

A, B, & C but failed to disclose the lots were unsuitable for building per Section 6.3(A) of the Town's Subdivision Ordinance and that the permits were null and void per Sections 1.4 and 1.7 of the Town's Zoning Ordinance.

Cave Creek's claim for summary judgment is silent as to the reciprocal "*Declaration of Easement and Maintenance Agreement*" executed[20] on October 16, 2003[21] included utilities and ran with the lots[22] with lien rights for non-payment of covenant costs.[23] All of the 003 lots entitlements[24] are dependant upon the covenant. As a condition to obtain building permits as part of a reimbursement agreement for repairing and extending the sewer, the Town required Plaintiff to grant easements for sewer maintenance, *supra*. These easements were incorporated into MCRD #2003-1472588 which Cave Creek included in Exhibit 2 for summary judgment.

Thinking the lot splits lawful, Fressadi entered escrow with DeVincenzo to buy lot

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[20] IR 168,169, SSOF Exhibit B. Keith Vertes, ("Vertes") signed the agreement as Manager of GV Group LLC which did not exist at the time of execution. The true owners of the 003 lots were Building Group Inc., Michael Golec and MG Residential via Warranty Deed on September 19, 2003, MCRD # 20031320770, after the Town of Cave Creek approved the 003 lot splits. Exhibit C, MCRD 2003-1312578. Vertes was fined for misrepresentation by the Arizona Department of Real Estate in 2006. IR 168, 169 SSOF Exhibit L.

[21] IR 168,169, SSOF Exhibit A. MCRD #2003-1472588. See IR 77-80, Exh. 3 for a map of the properties and easements which Kremer recently indicated is inaccurate as the 003 easement is land locked. See MCRD #2003-1312578.

[22] Pursuant to Article 8 of Exhibit A *supra*: "The benefits and burdens of the easements and covenants contained in this Declaration shall run with the lot so benefited or burdened."

[23] Pursuant to Article 5 of Exhibit A *supra*: "Each of the Lot Owners shall contribute such Owner's share of the maintenance costs within ten (10) days written notice from any other Owner. If any Owner shall fail to pay such Owner's share within 30 days after billing, such amount shall become a lien against said owner's property and shall bear interest from the due date at the rate of twelve percent (12%) per annum.

[24] Plaintiff contends that all the entitlements are ultra vires and void, but even if the court used its discretion to remedy their void status, there remains issues arising from the covenant which Plaintiff incorporates by reference herein, CV 11-0728, CV 12-0435, and a final leg yet to be numbered by the Court of Appeals.

211-10-010C on August 11, 2003.[25] The covenant recorded on October 22, 2003 (MCRD #20031472588),[26] and DeVincenzo acquired lot 211-10-010C "subject to" the covenant. (MCRD # 2003-1472590).[27] Kremer acquired lot 211-10-003A on October 15, 2003, MCRD # 20031438387.[28] Pursuant to ARS § 9-463.03, it is unlawful to sell any part of a subdivision that does not comply with the state statutes (or the Town's Subdivision Ordinance Section 1.1(A)(2)).

> "Plaintiff began invoicing the Town in February 2004, rather than 2003 when he completed the extension. (SOF 25, Ex. 19) Apparently, nearly seven years after Plaintiff sent that invoice, he continues to believe he is entitled to the cost of installing the sewer line. For the reasons set forth herein, Plaintiffs claims must be denied and the Town of Cave Creek is entitled to a Judgment as a matter of law."[29]

Based upon Cave Creek's fraudulent inducement and misrepresentations; that a series of lot splits was the most expedient, efficient and economical approach to developing parcels 211-10-003 and 211-10-010; that the town needed maintenance easements as a condition of entering the reimbursement agreement; that the Town Manager couldn't execute a reimbursement agreement until Town Council approved § 50.016 which finally occurred in December 2003[30]; and in keeping with his

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[25] IR 176, Motion for Reconsideration, Exh. A, pg. 4, and page 9: "CONTRACT IS CONTINGENT ON SELLER RECORDING CC&R'S PRIOR TO CLOSE OF ESCROW & RECORDING OF DRIVEWAY MAINTENANCE AGREEMENT – AS PER REVISED DRAFT DATED 8-24-03."

[26] IR 208-216, Amended Motion for New Trial, Exh. B.

[27] IR 109, pg. 13, lls. 1-3, which Appellant denied IR 112, pg.2, ll 10. In addition, see IR 176, Motion for Reconsideration, Exh. A, pg. 4, and page 9 of purchase contract which specifically states: "CONTRACT IS CONTINGENT ON SELLER RECORDING CC&R'S PRIOR TO CLOSE OF ESCROW & RECORDING OF DRIVEWAY MAINTENANCE AGREEMENT – AS PER REVISED DRAFT DATED 8-24-03."

[28] IR 208-216, Exh. D

[29] Cave Creek, Motion for Summary Judgment, 11-15-2010

[30] IR 208-216, Affidavit Exh. G

capacity as Caretaker of the covenant[31], Fressadi invoiced the Town of Cave Creek for the cost of the sewer on February 21, 2004.[32] Cave Creek responded by placing Plaintiff under criminal investigation for an illegal subdivision—a subdivision that the Town created by exacting a fourth lot as a condition of approving his lot splits!

Plaintiff had never split or subdivided land in Arizona, had no knowledge of municipal immunity and had no idea that the Town was filing criminal charges to run out the Notice of Claim / statute of limitations clock. Plaintiff thought the town was circumventing its repayment obligation by classifying his property as a subdivision since subdivisions must bear the cost of their own infrastructure. The Town Marshal verbally suggested that Plaintiff reassemble his lots. in other words, the Town ***knew*** that it had violated the Town's subdivision ordinance. GV Group LLC "gifted"[33] lot 211-10-003D to Cave Creek (MCRD #2005-0766547), but Kremer's bankruptcy (Case #2:11-BK- 25301-GBN), revealed that Kremer acquired Lot 211-10-003D in January, 2010, (MCRD #20100067254). Plaintiff now understands that the exactions of 211-10-003D and 211-10-010D violated Sections 1.1(A)(B), 6.3(A) and 6.1(A)(4),(7) of the subdivision ordinance and Section 5.1 of the zoning ordinance.

From 2004 until 2009, Plaintiff repeatedly invoiced the Town for payment with interest and the Town sporadically wrote back confusingly classifying Plaintiff's property as a subdivision. Cave Creek never formally closed the criminal investigation. In June, 2008 Cave Creek issued a certificate of occupancy to lot 211-

[31] MCRD#2003-1472588 provides for related utilities (to include sewer).
[32] IR 208-216, Exh. H
[33] But GV Group did not own lot 211-10-003D. Building Group Inc. (Vertes) and MG Residential (Golec) owned 211-10-003D and sold it to Kremer in 2010. MCRD #20100067254.

10-003A based upon the sewer installed on Plaintiff's property. On July 8, 2008 REEL requested transfer of ownership building permits on lot 211-10-003C which prompted Plaintiff to file a Notice of Claim, and file CV2009-050821.

Although CV2009-050821, CV2009-050924, and CV2006-014822 all deal with ultra vires improvements on lots unlawfully divided from parcels 211-10-010 and 211-10-003, the lawsuits were not consolidated so Appellant recorded updates of the MCRD #2003-1472588 covenant through MCRD #2011- 002034 inclusive which Plaintiff incorporates by reference herein.

M&I Bank (now BMO Harris Bank) foreclosed on lots 211-10-003 A & B and after feigning settlement, foreclosed on lot 211-10-010A. BMO bought lot 211-10-003D from Kremer's bankruptcy in 2012.

Plaintiff was unaware of ARS § 13-2314.04 and the illegality of "lot splits" of parcels 211-10-003 and 211-10-010, at the time he filed his motion to dismiss on January 11, 2010 or his Motion to Amend on September 30, 2011.

Upon understanding the totality of Cave Creek's misrepresentation (in concert with others), Appellant revoked (rescinded) all lot splits, easements and permits for infrastructure (MCRD #2012- 0377104) in keeping with *Fousel*[34] as the total damage done to Plaintiff and his property far exceeds the claims of unjust enrichment, and trespass in this underlying complaint. Plaintiff reserves all rights and claims.

Appellant filed a Motion to Transfer this Appeal to the Supreme Court on July

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[34] *Fousel v. Ted Walker Mobile Homes, Inc.,* 124 Ariz. 126, 602 P.2d 507 (App. 1979)

10, 2012, and filed another Motion to Transfer the last leg of CV2006-014822 to the Supreme Court on July 30, 2012. Appellant incorporates both Motions to Transfer by reference herein.

STATEMENT OF THE ISSUES

1. Did Cave Creek and REEL conceal the unlawful subdivision status of lots 211-10-010 A, B, C & D and 211-10-003 A, B, C & D in order to enforce rights arising out of an illegal transaction and obtain judgment?
2. Are there genuine issues of material fact, law, and questions of intent precluding summary judgment?
3. Can the court determine discovery for purpose of accrual or do issues of discovery and determination of accrual require a jury?
4. Can Cave Creek claim statute of limitation / immunity for criminal conduct?

ARGUMENT

I. Standards upon review: *de novo.*

This Court reviews *de novo* the trial court's grant of summary judgment viewing the evidence and reasonable inferences in the light most favorable to the party opposing the motion. *Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Trust Fund,* 201 Ariz. 474, ¶ 13, 38 P.3d 12, ¶ 13 (2002), based on the standards as set forth in *Orme School v. Reeves,* 166 Ariz. 301, 309-10, 802 P.2d 1000, 1008-09 (1990) "Moreover, if the state of mind or intent of one of the parties is a material issue, summary judgment is improper." *Mid-Century Ins. Co. v. Duzykowski,* 131 Ariz. 428, 429, 641 P.2d 1272, 1273 (1982).

We review de novo whether "a party's notice of claim failed to comply with [the notice requirements of] § 12-821.01." *Jones v. Cochise County*, 218 372, ¶ 7, 187 P. 3d 97 at 100- Ariz: Court of Appeals, 2nd Div., Dept. A 2008. Quoting *Pritchard v. State,* 163 Ariz. 427, 432, 788 P.2d 1178, 1183 (1990), "The notice of claim statute is 'subject to waiver, estoppel and equitable tolling.'" Id. at 104.

This Court reviews, *de novo,* any issue of interpretation of contract or entitlement as a matter of law. *See Gutmacher v. H & J Constr. Co.,* 101 Ariz. 346, 347, 419 P.2d 525, 526 (1966); *Willamette Crushing Co. v. State ex rel. Dep't of Transp.,* 188 Ariz. 79, 81, 932 P.2d 1350, 1352 (App.1997). Whether a party has standing to sue is a question of law we review *de novo. Alliance Marana v. Groseclose,* 191 Ariz. 287, 289, 955 P.2d 43, 45 (App.1997)."

"We review issues of law, including issues of statutory interpretation, *de novo, State ex rel. Dep't of Econ. Sec. v. Hayden,* 210 Ariz. 522, 523 ¶ 7, 115 P.3d 116, 117 (2005), *Dressler v. Morrison,* 212 Ariz. 279, 130 P.3d 978 (2006). We review the constitutionality of statutes de novo. *City of Tucson v. Pima Cnty.,* 199 Ariz. 509, ¶ 18, 19 P.3d 650, 656 (App. 2001).

The determination of whether equitable relief is available and appropriate is also subject to review *de novo*. *See, Pelletier v. Johnson,* 188 Ariz. 478, 480, 937 P.2d 668, 670 (App.1996). Applying A.R.S. § 12-341.01(A) is a question of statutory interpretation, which this court reviews *de novo*. *See Hampton v. Glendale Union High Sch. Dist.,* 172 Ariz. 431, 433, 837 P.2d 1166, 1168 (1992).

II. Cave Creek is not entitled to Summary Judgment

> "Other than an action by the Town in 2004 regarding Plaintiff's possible creation of an illegal subdivision, the Town is not aware of any controversy regarding the classification of Plaintiffs property. To the extent it was this 2004 action for which Plaintiff seeks a declaration, this matter is barred by the statute of limitations … There is no actual controversy and Plaintiffs request must be denied.[35]"

"…[T]o withstand summary judgment the non-moving party need only "present sufficient evidence demonstrating the existence of a genuine factual dispute as to a material fact."' *National Bank of Arizona v. Thruston*, 218 Ariz. 112, ¶ 26, 180 P.3d at 984 - Ariz: Court of Appeals, 1st Div., Dept. E 2008.

ARS § 9-463 *et seq*. controls the subdivision of land. Subdivision is defined in ARS § 9-463.02(A). Cave Creek affirmed that: "any one property that is subdivided into four or more lots is defined as a subdivision under the Town's

[35] Defendant Town of Cave Creek's Motion for Summary judgment, November 15, 2010, pg. 8, ll 7-15.

Subdivision Ordinance.[36]" Petitioner incorporates Cave Creek's Subdivision Ordinance, circa 2003[37] by reference herein. By exacting a fourth lot as a condition of approval for lot splits, Cave Creek created unlawful subdivisions. See MCRD #2003-0481222, MCRD #2003-1312578 and County Assessor records for lots 211-10-010 A, B, C & D and 211-10-003 A, B, C & D. In other words, Cave Creek admitted in its answer to that it ***knew*** it created unlawful subdivisions.

"[T]he power to zone and regulate subdivisions exists by virtue of the state enabling legislation..." *Folsom Investments, Inc. v. City of Scottsdale,* 620 F. Supp. 1372 (D.C. Ariz. 1985); *Bella Vista Ranches, Inc. v. City of Sierra Vista,* 126 Ariz. 142,613 P.2d 302 (App. 1980). The State enabling statutes governing zoning and subdivision are ARS §§ 9-462 and 9-463 *et seq*. "[A] valid statute is automatically part of any contract affected by it, even if the statute is not specifically mentioned in the contract." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 298-99, ¶ 38, 257 P.3d 1168, 1178-79 (App. 2011) (quoting *Higginbottom v. State,* 203 Ariz. 139, 142, ¶ 11, 51 P.3d 972, 975 (App. 2002)). An "entitlement" such as a lot split, subdivision, or building permit is a form of contract. A property owner files an application, pays a fee, and obtains permission from the governing authority to use his property according to the entitlement. See *Havasu Heights II,* 167 Ariz, at 389, 807 P.2d at 1125 (laws of the state are a part of every contract). The governing authority must act in good faith. See, *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.

[36] Separate Verified Answer of Town of Cave Creek, 3/13/09, paragraphs 17, 18, 20, 21, 38.
[37] Motion to Transfer, July 10, 2012, Exhibit C, CV12-0212

3d 12 (2002). Since zoning and subdivision authority comes from the state, a city must exercise the power in good faith "within the limits and in the manner prescribed in the grant and not otherwise." *City of Scottsdale v. SCOTTSDALE, ETC*., 583 P. 2d 891 - Ariz: Supreme Court 1978, quoting *City of Scottsdale v. Superior Court*, 439 P. 2d 290 - Ariz: Supreme Court 1968. "[A] municipal corporation has no inherent police power." *City of Scottsdale, supra.,* 439 P.2d at 293; *Scottsdale Associated Merchants, Inc.,* 120 Ariz. *4,* 583 P.2d 891 at 892 (1978). Cities must strictly comply with state enabling statutes because municipalities are not sovereign powers—they are an extension of state sovereignty. *City of Scottsdale v. Superior Court,* 103 Ariz. 204,439 P.2d 290 (1968).

A.R.S. §9-463.01 grants the legislative body of municipalities the power to regulate subdivision of lands within its corporate limits. A.R.S. §9-463.02 defines (A) subdivision: four or more lots the boundaries of which are fixed by a recorded plat. Municipalities must strictly comply with the state's enabling statutes for their property regulation to be constitutional. Cave Creek failed to comply with the state's enabling statutes: Parcel 211-10-010 was split into four lots—not three. Cave Creek exacted a fourth lot as a requirement of their "approval." A.R.S. §9-463(6) defines "plat" as a map of a subdivision, (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance. (b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the

provision of this article, those of any local applicable ordinance and other state statute. (c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute. MCRD # 2003-0481222 is not a "recorded plat" of a "final plat" that was vetted through the Town's subdivision ordinance per A.R.S. §9-463(6), nor did it comply with A.R.S. §9-500.12(E).[38] Non-conforming lots are not entitled to building permits per Section 6.3(A) of the Subdivision Ordinance.[39]

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[38] The Nollan / Dolan exaction process was addressed in Arizona by *Home Builders Association of Central Arizona* v. *City of Scottsdale,* 187 Ariz. 479,930 P.2d 993 (1997) and codified into law by statute in A.R.S. § 9-500.12 (E) that states "In all proceedings under this section the city or town has the burden to establish that there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development.. ."

[39] Cave Creek's Building permit process is public record and can be found on Cave Creek's website, http://www.cavecreek.org/index.aspx, then Departments/ Building Safety/ Town Code Chapter 151- Building Regulations. Section 151.36(A) requires all lots to have access for fire safety, etc. before issuing a building permit. "If such access is not available, the Building Inspector shall not issue a building permit." Lots 211-10-003 A, B, & C do not have access because of lot 211-10-003 D blocks access to the Right of Way. Contrary to ER 3.3, Attorneys for adverse parties failed to disclose the land locked status of the 003 lots. See Subdivision Ordinance, Section 6.1(A)(7). Public record indicates that Cave Creek exacted lot 211-10-003D creating a subdivision and blocked access to the street for lots 211-10-0003 A, B, & C. It did the same to parcel 211-10-010. See MCRD #2003-0481222 and County Assessor records for lots 211-10-010 A, B, C & D. See MCRD #2003-1312578 and County Assessor records for 211-10-003 A, B, C & D.

Section 5.1(B) (1) of the Town's Zoning Ordinance (1/6/03 incorporated by reference herein) indicates that: "No Zoning Clearance or Building Permit will be issued for any building or structure on any lot or parcel unless that lot or parcel has permanent legal and physical access to a dedicated Town right-of-way." Section 5.1(B)(4) indicates that: "The route of legal and physical access shall be one and the same." There is no legal and physical access to lots 211-10-003 A, B & C and 211-10-010 A, B, & C because lot 211-10-010D and 211-10-003 D block access to their respective A, B, &C lots. See MCRD #2012-0377104 for revocation of easements.

Section 6.3(A) of the Subdivision Ordinance indicates that lots that do not conform to the Town's Subdivision Ordinance are unsuitable for building and not entitled to building permits. None of the 003 or 010 lots conform to the Town's Subdivision Ordinance; nor do they conform to the requirements of the Zoning Ordinance, or Section 151.36(A).

Lot 211-10-003 B & C were permitted off an easement to Petitioner's property based upon Covenant that runs with lots which Superior Court ruled "does not exist." See MCRD# 2003-1472588, and all of the recordings incorporated in MCRD # 2012-0377104.

According to Section 1.7 of the Town's Zoning Ordinance: (A) "***any person*** who violates any provision of this Ordinance … shall be guilty of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law; and ***each and every day of continued violation shall be a separate offense***, punishable as described; (B) It shall be unlawful for any person to erect, construct … any building or land or cause or permit the same to be done in violation of this Ordinance…" [emphasis added] Pursuant to the Town's Zoning Ordinance Section 1.4(A) in 2003: "Any permit issued in conflict with the terms or provisions of this Ordinance shall be void." Pursuant to Section 1.4(D)[40] of the current zoning ordinance: "Any permit issued in conflict with the terms or provisions of this Ordinance shall be recognized by the Town as being null and void." In other words, the sewer permits for lots 211-10-010 A, B, & C and 211-10-003 A, B, & C are null and void, and Cave Creek and REEL are attempting to use the Courts, a "public agency" pursuant to A.R.S. §13-2311 to enforce rights arising out an illegal contract or illegal transaction where each and every day is of continued violation is a separate offense (i.e. no statute of limitation).[41] In determining whether genuine

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None of the attorneys for the adverse parties disclosed legal authority adverse to their client's position, or that their clients were engaged in criminal conduct (conversion) or making false statements to the tribunal in order to obtain judgment in opposition to ER 3.3.

[40] http://www.cavecreek.org/DocumentCenter/View/994

[41] Additionally, Lots 211-10-003 A, B, & C have no permanent access to a Right of Way because lot 211-10-003D blocks legal and physical access. The Zoning Ordinance requires a lot to have permanent access; and legal and physical access must be the same. Sections 5.1(C)(1) and 5.1(C)(3) of the Zoning Ordinance, 1/6/03. Cave Creek's Zoning Ordinance of January 6, 2003 governs this litigation, http://www.cavecreek.org/index.aspx?NID=62. Cave Creek has since changed its Zoning Ordinances effective December 22, 2011, but even according to current ordinances, the properties remain in violation of the ordinance. Section 5.1(B)(1) states that: No Zoning Clearance or Building Permit will be issued for any building or structure on any lot or parcel unless that lot or parcel has permanent legal and physical access to a dedicated Town right

issues of material fact exist, a court must draw all ***reasonable inferences*** in favor of the party opposing the motion. *See Rowland v. Kellogg Brown & Root, Inc.,* 210 Ariz. 530, ¶ 2, 115 P.3d 124, 125 (App. 2005). [emphasis added].

An agreement is unenforceable if the acts to be performed would be illegal or violate public policy. *White v. Mattox,* 127 Ariz. 181, 619 P.2d 9 (1980); *Mountain States Bolt, Nut & Screw v. Best-Way Transp.,* 116 Ariz. 123, 568 P.2d 430 (App. 1977). "No principle of law is better settled than that a party to an illegal contract or an illegal transaction cannot come into a court of law and ask it to carry out the illegal contract **or to enforce rights arising out of the illegal transaction**." *Northen v. Elledge*, 232 P. 2d 111, 72 Ariz. 166 - Ariz: Supreme Court, 1951. Judgments rendered in excess of jurisdiction or not authorized by law are void. See *Caruso v. Superior Court,* footnote 2, supra." Quoting Footnote 4, *Lamb v. SUPERIOR COURT, ETC.,* 621 P. 2d 906 - Ariz: Supreme Court 1980. Cave Creek is "playing fast and loose" by concealing material facts and law to affect a fraud upon the court[42] and enforce rights arising out of an illegal transaction. Judicial estoppel is well-recognized in this jurisdiction. See *Mecham v. City of Glendale*, 489

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of way. Section 5.1(B)(4) states that: "the route of legal and physical access shall be one and the same."

In other words, not only are all the permits void for lots 211-10-003 A, B, & C due to ultra vires subdivision status, but the building permits are void because they are based the lots have no access. The town's approval of the "lot split" of parcel 211-10-003 "required" the lots to connect to Plaintiff's sewer—which is ultra vires for lack of permit. Pursuant to International Building Code ("IBC") 105.4: issuance of a permit does not grant approval of any violation of building code or any other ordinance of the jurisdiction, and 113.1 indicates that it is unlawful to construction anything in violation of the code.

[42] See *Ivancovich v. Meier,* 122 Ariz. 346, 349, 595 P.2d 24, 27 (1979), *In re Intermagnetics Am., Inc.,* 926 F.2d 912, 916 (9th Cir.1991) (quoting J. Moore and J. Lucas, Moore's Federal Practice ¶ 60.33, at 515 (2nd Ed. 1978)) as quoted in Cypress on Sunland Homeowners, Ass'n. v. Orlandini, 257 P. 3d 1168, 1179 - Ariz: Court of Appeals, 1st Div., Dept. B 2011.

P. 2d 65 - Ariz: Court of Appeals, 1st Div. 1971, In re Estate of Cohen, 105 Ariz. 337, 464 P.2d 620 (1970); Otis Elevator Company v. Valley National Bank, 8 Ariz. App. 497, 447 P.2d 879 (1968); Adams v. Bear, 87 Ariz. 288, 350 P.2d 751 (1960); Martin v. Wood, 71 Ariz. 457, 229 P.2d 710 (1951); Graybar Electric Co. v. McClave, 91 Ariz. 223, 371 P.2d 350 (1962).

To obtain summary judgment, Cave Creek claimed that parcels 211-10-003 and 211-10-010 were split into three lots, but public record indicates the parcels were subdivided into four lots each. Cave Creek argued in its answer that four lots constitutes a subdivision. Cave Creek moved for summary judgment that Plaintiffs request for declaratory judgment is void as against public policy and violates the Town's Ordinances. But Cave Creek's subdivision of parcels 211-10-003 and 211-10-010 did not comply with state enabling statutes (void as against public policy) or the Town's Subdivision Ordinance. The lots are not suitable for building, and not entitled to building permits.[43] Nonetheless, the Town issued ultra vires permits in violation of its zoning ordinance, subdivision ordinance, building codes, state statues and ROC Rules; then came into court and concealed these material facts in order to enforce rights arising out of illegal transactions.

Courts cannot enforce rights arising out of illegal transactions.[44] Cities must comply with state enabling statutes because municipalities are not sovereign and

[43] Section 6.3(A) of the Subdivision Ordinance. "Failure to comply with this Ordinance shall render the property unsuitable for building and not entitled to a building permit."

[44] "In Wise v. Radis, 74 Cal. App. 765, at page 775, 242 P. 90, appears this statement by the court: 'No principle of law is better settled than that a party to an illegal contract or an illegal transaction cannot come into a court of law and ask it to carry out the illegal contract or to enforce rights arising out of the illegal transaction.'" *Northen v. Elledge*, 232 P. 2d 111, 72 Ariz. 166 - Ariz: Supreme Court, 1951. Nonetheless, superior court issued a TRO based upon misrepresentation.

therefore, have no inherent police power. Zoning Ordinances are enforced via A.R.S. § 9-462.05. Nonconforming uses are addressed in A.R.S. § 9-462.02. In bad faith,[45] Cave Creek created the nonconforming use and is not entitled to benefit from its wrongdoing, and is not entitled to summary judgment as a matter of law.

III. ARS §12-821, Discovery, Concealment, and Criminal Conduct

"§ 12-821's one-year limitations period is reasonable because it regulates rather than abrogates the time within which an action must be filed against a public entity," according to the Court of Appeals in *Flood Control Dist. of Maricopa County. v. Gaines,* 202 Ariz. 248, 43 P.3d 196 (App.2002), "because a cause of action under § 12-821 does not accrue until it is 'discovered."' *Id*. at 202. 'Under the discovery rule, a limitations period does not begin running until the plaintiff discovers or reasonably should have discovered that the injury was caused by the defendant's conduct. *See Stulce,* 197 Ariz. at 90, ¶ 11, 3 P.3d at 1010; *Id*. at 202.

Pursuant to the discovery rule,[46] a cause of action does not "accrue" until a plaintiff discovers or by the exercise of reasonable diligence should have discovered that he or she has been injured by the defendant's negligent conduct. *See Kenyon v. Hammer,* 142 Ariz. 69, 73, 688 P.2d 961, 965 (1984). "Reasonableness" under the discovery rule is a question of fact for a jury, precluding summary judgment. "[T]he

[45] *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.3d 12 (2002). (where one party "wrongfully exercises the contractual power for a reason beyond the risks that the [other party] assumed, or for a reason inconsistent with the [other party's] justified expectations")

[46] Arizona has long recognized the "discovery rule." *See Mayer v. Good Samaritan Hosp.,* 14 Ariz. App. 248, 482 P.2d 497 (1971); s*ee also, Kenyon v. Hammer,* 142 Ariz. 69, 688 P.2d 961 (1984); *Lansford v. Harris,* 174 Ariz. 413, 850 P.2d 126 (App. 1992); *Lawhon v. L.B.J. Inst. Supply Inc.,* 159 Ariz. 179, 765 P.2d 1003 (App. 1989); *Matusik v. Dorn,* 157 Ariz. 249, 756 P.2d 346 (App. 1988); *Anson v. American Motors Corp.,* 155 Ariz. 420, 747 P.2d 581 (App. 1987).;

discovery issue itself involves questions of reasonableness and knowledge, matters which this court is ***particularly wary of deciding as a matter of law***." *Long v. Buckley,* 129 Ariz. 141, 143, 629 P.2d 557, 560 (App.1981)(emphasis added).

The discovery rule was developed as a tool to mitigate the harshness of applying the statute to a plaintiff who could not have known any of the facts underlying the cause of action. See, *Gust, Rosenfeld,* 182 Ariz. at 588, 898 P.2d at 966 (applying discovery rule to breach of contract cases). The rationale behind the rule is that it is unjust to deprive a plaintiff of a cause of action before he has a reasonable basis for believing that a claim exists. *Id.* at 589, 898 P.2d at 967.

"Use of the word 'accrues"' in the statute of limitations permits judicial construction of the events or knowledge that will trigger accrual. *Walk v. Ring*, 44 P. 3d 990 at 994 - Ariz: Supreme Court 2002, quoting *Kenyon v. Hammer,* 142 Ariz. 69, 76 n. 6, 688 P.2d 961, 968 n. 6 (1984). Arizona construes "accrual" as "equitable tolling." *Id*. at 995.

"It is hornbook law that limitations periods are `customarily subject to equitable tolling.'" *Young v. United States,* 535 U.S. 43, 49, 122 S.Ct. 1036, 1040, 152 L.Ed.2d 79 (2002), *quoting Irwin v. Dep't of Veterans Affairs,* 498 U.S. 89, 95, 111 S.Ct. 453, 457, 112 L.Ed.2d 435 (1990) (internal quotations omitted).

Under equitable tolling, plaintiffs may sue after the statutory time period for filing a complaint has expired if they have been prevented from filing in a timely manner due to sufficiently inequitable circumstances," *Seitzinger v. Reading Hosp. & Med. Ctr.,* 165 F.3d 236, 240 (3d Cir.1999). Cave Creek is part of the Arizona Risk Retention Pool which

provides professional litigators who specialize in municipal issues as part. In addition, the Town is represented by Mariscal Weeks who has specialized in providing counsel to Arizona municipalities for decades. This is Plaintiff's first encounter with municipal malfeasance involving lot splits/ subdivisions and entitlements. During the time frame which Cave Creek claims is dispositive of accrual, Plaintiff has been inundated[47] with litigation. From the acquisition of the property in 2000, there have been 30 causes of action surrounding this Cave Creek development. After expending over $200,000 on attorneys fees from 2006-2010, Plaintiff went *pro se*. A plaintiff's *pro se* status has been a factor in many cases that have applied equitable tolling. *See Goldsmith; Martinez; Page. See also Lanyon v. University of Delaware,* 544 F.Supp. 1262 (D.Del.1982); *Stutz v. Depository Trust Co.,* 497 F.Supp. 654 (S.D.N.Y.1980); *Abbott v. Moore Business Forms, Inc.,* 439 F.Supp. 643 (D.N.H.1977).

There is no requirement for cities to issue warnings regarding Notice of Claim or Statute of Limitation provisions on their contracts, applications, forms, etc.[48] Cave Creek provides no evidence that the Town gave Appellant notice of their SOL / immunity privilege per ARS §§12-821.01, 12-821 and 12-821.01(B). Cave Creek never notified

[47] Cave Creek has refused consolidation and procedurally blocked judicial efficiency at every turn… a factual determination regarding the diligence of a reasonable person to investigate the circumstance of injury cannot be determined as a matter of law and "must be left for the jury under *Mayer, Kenyon,* and other cases discussed above." *Walk v. Ring* at 996.

[48] The Court got snarky in *Flood Control Dist. of Maricopa County. v. Gaines,* 202 Ariz. 248, 43 P.3d 196 (App.2002) Arizona law requires that ***all*** actions against a governmental entity be filed within one year of when the cause of action accrued. A.R.S. *$12-821 (emphasis added); Id.,* at 25 1-52,43 P.3d at 199-200 ("all" means all and nothing less than all. A more comprehensive word cannot be found in the English language.) In keeping with a frequent recurrence to fundamental principles, if the Court of Appeals requires ALL actions to be filed in a year, it best require ALL interactions with ALL aspects of government to require a warning on ALL documents, contracts, etc. that government wrongdoing must be Noticed and litigated within 180 days and a year of discovery.

Appellant that claims were at risk of being time barred. The only notice Cave Creek provides is found in Section 1.7(A) of their Zoning Ordinance, where any person (to include the Town, its agents and employees) who violates any provision of the Zoning Ordinance is guilty of a Class One Misdemeanor and the Town classifies each day of violation as a separate offense— precluding the statute of limitations.

"Waiver is either the express, voluntary, intentional relinquishment of a known right or such conduct as warrants an inference of such an intentional relinquishment." *Am. Cont'l Life Ins. Co. v. Ranier Constr. Co.,* 125 Ariz. 53, 55, 607 P.2d 372, 374 (1980). "Waiver by conduct must be established by evidence of acts inconsistent with an intent to assert the right." *Id.* A party may assert an affirmative defense in its pleadings and still waive that defense by conduct. *See Peterson v. Highland Music, Inc.,* 140 F.3d 1313, 1318 (9th Cir.1998). By drafting and implementing Section 1.7(A), where any one (including the Town) is guilty of a Class One Misdemeanor for violating any provision of the zoning ordinance, where each and every day of violation is a separate offense, the Town waived A.R.S. 12-821 by conduct and any contention to the contrary would be a breach of the implied duty of good faith per *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.3d 12 (2002). (where one party "wrongfully exercises the contractual power for a reason beyond the risks that the [other party] assumed, or for a reason inconsistent with the [other party's] justified expectations").

Arizona Appellate Courts "have long held that when the facts controlling the date of accrual of a cause of action are in dispute, the jury must determine whether

the action is barred." *Pritchard v. State,* 163 Ariz. 427, 433, 788 P.2d 1178, 1184 (1990). The same rule applies to factual disputes over the application of a tolling statute.[49] *Vega v. Morris,* 184 Ariz. 461, 464, 910 P.2d 6, 9 (1996); *Lasley v. Helms,* 179 Ariz. 589, 592, 880 P.2d 1135, 1138 (App. 1994); *Ulibarri v. Gerstenberger,* 178 Ariz. 151, 871 P.2d 698 (App. 1993); *Walk v. Ring*, 44 P. 3d 990 at 994 - Ariz: Supreme Court 2002;

> "In *Kenyon,* this court adopted *Mayer's* formulation of the discovery rule. 142 Ariz. at 73 n. 1, 688 P.2d at 965 n. 1.
> ¶ 21 We approved that formulation again in a case involving application of the discovery rule to a breach of contract claim, holding that "the important inquiry in applying the discovery rule is whether the plaintiff's injury or the conduct causing the injury is difficult for plaintiff to detect...." *Gust, Rosenfeld,* 182 Ariz. at 590, 898 P.2d at 968 …

Id. at 996.

The Supreme Court continued that a factual determination regarding the diligence of a reasonable person to investigate the circumstance of injury cannot be determined as a matter of law and "must be left for the jury under *Mayer, Kenyon,* and other cases discussed above." *Walk v. Ring* at 996. Although *Walk v. Ring* addresses A.R.S. § 12-542, the requirements for accrual are similar to the requirements found in A.R.S. § 12-821.01.

Fraud upon the Court / Misrepresentation / Concealment and Discovery

Whether there is wrongful concealment capable of tolling the statute of

[49] Circumventing *stare decisis*, the Appellate Court in McCloud v. STATE, DEPT. OF PUBLIC SAFETY, 170 P. 3d 691 - Ariz: Court of Appeals, 2nd Div.,(2007) went all the way to Washington to find case law to support the application of equitable tolling is a question for the trial court, not the jury. *Cf. Smith-Haynie v. Dist. of Columbia,* 155 F.3d 575, 579 (D.C.Cir.1998) ("[E]quitable tolling and estoppel, which ask whether equity requires extending a limitations period, are for the judge to apply, using her discretion, regardless of the presence of a factual dispute."), prompting Appellant's Motion to Transfer to the Supreme Court, per Rule 19.

limitations cannot be resolved by summary judgment. *Orme School v. Reeves,* 166 Ariz. 301, 802 P.2d 1000 (1990).[50] Cave Creek claimed there was no justiciable controversy for the court to declare judgment on the present status of Plaintiff's property; that the undisputed facts and law entitled the Town to Summary Judgment.

Demonstrating the existence of a genuine factual dispute as to a material fact and pursuant to Ariz. R. Evid. 201(b) and Bade v. Drachman, 417 P.2d 689, 702 (Ariz. Ct. App. 1966), "courts may take judicial notice of any fact that is "so notoriously true as … to be … capable of immediate accurate demonstration:" Cave Creek violated state subdivision statutes and its own subdivision ordinance by converting Plaintiff's application for a lot split into an unlawful subdivision in 2001. Public record indicates that County Assessor created lots 211-10-010 A, B, C, & D. Pursuant to Section 6.3 of the Subdivision Ordinance, lots that violate the Town's Subdivision Ordinance are not suitable for building and not entitled to a building permit. Pursuant to the Town's Zoning Ordinance, permits issued in conflict with the Zoning Ordinance are void.

Cave Creek intentionally concealed the unlawful status of the 010 lots, the void status of the permits, the Town's waiver of the statute of limitations to mislead the court and obtain judgment. "[T]his constitutes a fraud upon the court, and the court has the power to set aside the judgment at any time." *Ivancovich v. Meier,* 122 Ariz. 346, 349, 595 P.2d 24, 27 (1979).

Turning to *Walk v. Ring*: "We long ago held that a patient and a doctor were

[50] "Orme stands for the proposition that 'credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge....'" *Orme School v. Reeves,* 166 Ariz. 301, 309-10, 802 P.2d 1000, 1008-09 (1990). This is especially true when the defense asserted — the statute of limitations — is disfavored, as it is in this state. *Ulibarri,* 178 Ariz. 151, 871 P.2d 698.

in a fiduciary relationship "calling for frank and truthful information from" doctor to patient. *Acton,* 62 Ariz. at 143, 155 P.2d at 784. *Id*. at 999. Appellant argues that the relationship between a municipality and a land owner / developer calls for "frank and truthful information" and is thus similar to the relationship between doctor and patient or other professionals. Continuing: '"Fraud practiced to conceal a cause of action will prevent the running of the statute of limitations until its discovery.' *Id.* at 144, 155 P.2d at 784. If the doctor 'fraudulently concealed from [his patient] the fact of his negligence,' the statute of limitations would be tolled. *Id.* (citing *Peteler v. Robison,* 81 Utah 535, 17 P.2d 244, 249 (1932), *disapproved on other grounds by Christiansen v. Rees,* 20 Utah 2d 199, 436 P.2d 435, 436 (1968))." *Id*. at 999.

> ¶ 35 Moreover, if fraudulent concealment is established, the patient is relieved of the duty of diligent investigation required by the discovery rule and the statute of limitations is tolled "until such concealment is discovered, or reasonably should have been discovered." *Id.* (citing *Tom Reed,* 39 Ariz. 533, 8 P.2d 449). In fraudulent concealment cases, the duty to investigate arises only when the patient "discovers or is put upon reasonable notice of the breach of trust...."[6] *Id.* (quoting *Griffith v. State,* 41 Ariz. 517, 528, 20 P.2d 289, 293 (1933)). Thus, our cases and those from other jurisdictions that recognize a fiduciary relationship agree that an actual knowledge standard applies to triggering the statute of limitations for a plaintiff who establishes a breach of the fiduciary duty of disclosure. *See, e.g., Demoulas v. Demoulas Super Mkts., Inc.,* 424 Mass. 501, 677 N.E.2d 159, 159 (1997).

Id. at 999.

> "[I]f the fiduciary nature of the relationship charges the fiduciary with a duty to disclose his wrong to the plaintiff and he fails to disclose, the statute of limitations will be tolled." *Bourassa v. LaFortune,* 711 F.Supp. 43, 46 (D.Mass.1989). No doubt Defendant had no intent to deceive, but as we said in *Morrison,* to establish concealment a patient need only show a "breach of legal or equitable duty.... Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud." 68 Ariz. at 35, 198 P.2d at 595.

Id. at 1000.

Plaintiff had the right to rely upon the advice of the Town without suspecting he was being deceived.[51] *Id*. at 1001. Plaintiff argues that Cave Creek owes Plaintiff a duty of good faith, per *Wells Fargo*, supra. Clearly Cave Creek knows that four lots construe a subdivision but issued permits as if the subdivision was a lot split with the intent for Plaintiff to act upon the entitlements causing damage. *Dillon v. Zeneca Corp.,* 202 Ariz. 167, 172, ¶ 13, 42 P.3d 598, 603 (App. 2002); *see* Restatement (Second) of Torts § 526 (1977).

Perhaps the most articulate elucidation of the discovery rule pertinent to this fact situation is Justice Miller's opinion in *Bailey v. Glover*, 88 U.S. 342 (1875): "They [statutes of limitation] were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." See *Canales v. Sullivan*, 936 F.2d 755 (2d Cir. 1991) (recognizing equitable tolling) *Kurz v. Philadelphia Elec. Co.,* 96 F.3d 1544, 1552 (3d Cir.1996)(defendants estopped from raising statute of limitations if intentionally misinformed plaintiff) *Salois v. Dime Sav. Bank, FSB,* 128 F.3d 20, 25 (1st Cir. 1997)(finding equitable tolling "where a plaintiff has been injured by fraud and

[51] See also: *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.3d 12 (2002)

remains in ignorance of it without any fault or want of diligence or care on his part.") *Geraghty and Miller, Inc. v. Conoco Inc*., 234 F. 3d 917 (5th Cir.2000) (acknowledging exception to discovery rule for cases involving fraudulent conduct) *Blakely v. US*, 276 F. 3d 853 (6th Cir.2002) (noting exception to discovery rule for fraud). Plaintiff discovered the Town's deception during the course of this litigation.

Cave Creek cloaked its fraudulent scheme to convert and control Plaintiff's property through conflicting grants of ultra vires entitlements that only became apparent after Kremer broke ranks to disclose the subdivision status of the 211-10-003 lots causing Plaintiff to investigate the foundation of all controversies—the Town's exaction of a fourth lot as a condition of approval for the split of 211-10-010 and 211-10-003. Cave Creek never wrote Plaintiff a letter or sent an email to correct their "mistake" of illegal subdivisions of parcel 211-10-010 and 211-10-003, but they did expose their knowledge of their wrong doing in the answer to this lawsuit—that four lots comprise a subdivision, yet maintained their fraudulent concealment by claiming the subject parcels were lot split into three lots.

IV. Using the Statute of Limitations for Criminal conduct is unconstitutional.

> "Our Founding Fathers were concerned about the abuse of power and limited absolute or "sovereign" powers in this country to the individual states and by agreement amongst the people of those states, to the federal government. Counties and municipalities do not have sovereignty; they are an extension of state sovereignty-with no more power than what they are granted by the state."

(City of Scottsdale v. Superior Court, 103 Ariz. 204,439 P.2d 290 (1968)).

In keeping with *Bailey v. Glover*, supra, Plaintiff cannot imagine that the legislature intended to grant municipalities immunity from criminal conduct. Article

2, Section 13 reads as follows. “No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.” To invalidate a statute requires proof beyond a reasonable doubt. *See Samaritan Health Sys. v. Superior Ct.,* 194 Ariz. 284, ¶ 21, 981 P.2d 584, 590 (App. 1998).

Plaintiff understands the privilege of immunity but believes it is beyond a reasonable doubt that the Legislature never intended municipalities to be immune for criminal conduct. Unfortunately, the law is silent in this regard causing Plaintiff to question its constitutionality.

Further, Municipalities are not sovereign. It would seem that any grant of immunity with respect to police power would require the municipality to strictly comply with state enabling statutes and its own ordinances arising from the state enabling statutes. Again, the statute is silent.

The Court of Appeal claims that the purpose of § 12-821 is to regulate, not abrogate.

> “[A] statute of limitations that effectively bars a cause of action before it may be brought is not reasonable. *See Barrio,* 143 Ariz. at 106, 692 P.2d at 285 (The legislature "may not, under the guise of `regulation,' so affect the fundamental right to sue for damages as to effectively deprive the claimant of the ability to bring the action."); *Boswell v. Phoenix Newspapers, Inc.,* 152 Ariz. 9, 18, 730 P.2d 186, 195 (1986) ("We differentiate between abrogation and regulation by determining whether a purported legislative regulation leaves those claiming injury a reasonable possibility of obtaining legal redress.").”

Flood Control Dist. v. Gaines, 43 P. 3d 196 at 202- Ariz: Court of Appeals, 1st Div., Dept. D 2002

If the intent is to regulate and not abrogate, it appears beyond a reasonable

doubt that § 12-821 is defective in that there is no notice requirement—that for a government entity to invoke the statute, would require proof of notice that a party could lose his constitutional right to redress grievances simply out of ignorance. Plaintiff is aware of numerous instances where Cave Creek has feigned settlement to run out the clock on unsuspecting citizens who think the town is negotiating in good faith. It would appear beyond a reasonable doubt that the Legislature never intended to shield municipalities from liability in such fashion.

Federal law does not provide municipalities with immunity from damages flowing from their constitutional violations, and may not assert the good faith of its agents as a defense to liability.[52] Further, state law sovereign immunity and state law limitations on damages do not protect local governments from liability under section 1983,[53] and notice of claims requirements prior to initiating an action against the state or its subdivisions do not apply.[54] Regardless of whether the opinion of Justice Thomas in *McDonald v. Chicago*, 130 S. Ct. 3020 (2010), allows Chicago citizens the right to bear arms under "privileges or immunities" or Due Process as claimed by Justice Alito, it follows that Arizona citizens have a right (be it by privileges and immunities or due process) to redress grievances (i.e. sue municipalities) in keeping with the First and Fifth Amendment as protected under Section 1983.[55]

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[52] Owen v. City of Independence, MO, 445 U.S. 621 (1980); Monell v. Dept. of Social Services of New York, 436 U.S. 658, 699-700 (1978).
[53] Howlett v. Rose, 496 U.S. 356 (1990); Hamm v. Powell, 874 F.2d 766, 770 (11th Cir. 1989).
[54] Felder v. Casey, 487 U.S. 131 (1988).
[55] Other states have disavowed municipal immunity. In Considine v. City of Waterbury,1 a decision released by the Connecticut Supreme Court on September 12, 2006, the Court held that the City of Waterbury (hereinafter "City") could be held liable under Conn. Gen. Stat. § 52-557n(a)(1)(B),2 and that the governmental immunity as set forth in Conn. Gen. Stat. § 52-557n did not shield the City from liability. The holding of the Court is that the exception to immunity

It also appears beyond a reasonable doubt that the Legislature never intended to provide incentive for municipal attorney to perpetrate fraud upon the court.

> "¶ 43 As the United States Supreme Court explained in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238, 246, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), *overruled on other grounds, Standard Oil of Cal. v. United States,* 429 U.S. 17, 97 S.Ct. 31, 50 L.Ed.2d 21 (1976), the district court is permitted to set aside a judgment obtained by a fraud upon the court pursuant to Federal Rule 60(b) (the equivalent of Rule 60(c)), without regard to time limits because such fraud harms the "integrity of the judicial process," and is a "wrong against the institutions set up to protect and safeguard the public." There, the Court granted relief even though the complainant had waited nine years to bring the action and knew at the time that fraudulent evidence may have been introduced during the first proceeding. *See also Pumphrey v. K.W. Thompson Tool Co.,* 62 F.3d 1128, 1130, 1133 (9th Cir.1995) ("One species of fraud upon the court occurs when an `officer of the court' perpetrates fraud affecting the ability of the court . . . to impartially judge a case," and a judgment obtained by such fraud can be set aside even if the opposing party was not diligent in uncovering it).

CYPRESS ON SUNLAND HOMEOWNERS, ASS'N. v. Orlandini, 257 P. 3d 1168, 1179, 1180 - Ariz: Court of Appeals, 1st Div., 2011

The current statute provides incentive to unscrupulous attorneys to push the envelope as the reward is greater than the risk.

Although "Arizona courts have moved away from rules based on the notion that "the king can do no wrong," *Tucson Electric Power Co. v. Arizona Department of Revenue,* 174 Ariz. 507, 516, 851 P.2d 132, 141 (App. 1992), Cave Creek claimed ARS §§ 12-820.01, 12-820.02 and the lower court granted judgment based upon immunity violating Plaintiff's First and Fifth Amendment rights.

> "¶ 17 Because § 12-821, on the other hand, does not bar an action for inverse condemnation until one year after it accrues, and because a cause of

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should apply when the municipality acts just as a private corporation would to secure income. For Texas, see *Tooke v. City of Mexia*—S.W.3d—, 2006 WL 1792223 (June 30, 2006)

> action under § 12-821 does not accrue until it is "discovered," … Under the discovery rule, a limitations period does not begin running until the plaintiff discovers or reasonably should have discovered that the injury was caused by the defendant's conduct. *See Stulce,* 197 Ariz. at 90, ¶ 11, 3 P.3d at 1010; *see* § 12-821.01(B) (cause of action does not accrue under notice of claim statute until 'the damaged party realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition which caused or contributed to the damage')."

Id. at 251-52, 43 P.3d at 202

It appears beyond a reasonable doubt that if a municipality violates state enabling statutes having to do with property entitlements, then the Municipality forfeits its immunity; and cannot claim immunity for criminal conduct where a Town willfully[56] and knowingly[57] violates state enabling statutes and its own subdivision and zoning ordinances but grants ultra vires entitlements to control and convert property in violation of ARS §13-1802 as in this instance.

Cave Creek relies upon immunity with impunity to conceal criminal conduct as shown in the Statement of Facts supra. Cave Creek converted Plaintiff's property in violation of ARS §13-1802 via a fraudulent scheme in violation of ARS §13-2310 which consisted of: (a) suggesting a series of lot splits, (b) converting the lot split of 211-10-010 into an unlawful subdivision and failing to correct its mistake (c) inducing Plaintiff to extend a sewer line with the promise of reimbursement which never materializes (d) requiring easements as a condition of void sewer permits (e)

[56] Cave Creek has had almost ten years to correct their mistakes but have not done so even though they repeatedly cite *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., Dept. B 2, 2004

[57] Per Rules of Professional Conduct (f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. Clearly Cave Creek knows it violated state enabling statutes based upon its answer in CV2009-050821 where the Town repeatedly affirms that splitting a parcel into four lots constitutes a subdivision, See Exhibit F, Motion for Void Order, July 19, 2012, Exhibit A.

concealing the ultra vires/ void/ illegal status of the transactions in order to obtain title to land (easements) and infrastructure via judgment (i.e. fraud upon the court[58]) in violation of ARS §13-2311 all of which can be adjudicated civilly via ARS §13-2314.04. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 US 143 - Supreme Court 1987, addresses RICO statute of limitations on the Federal level. ARS §13-2314.04(F) addresses RICO statute of limitations[59] on the state level where: "The standard of proof in actions brought pursuant to this section is the preponderance of evidence test (ARS §13-2314.04(G)), where discovery could be tolled by fraud and/or concealment per *Walk v. Ring*, supra. As stated in MCRD 2012-0377104, Plaintiff discovered Cave Creek's criminal conduct on May 3, 2012. Plaintiff reserves all rights and claims.

To obtain summary judgment, Cave Creek argued that Plaintiff's request for declaratory judgment was time barred pursuant to A.R.S §12-821 because of "the Town's refusal to pay Plaintiff's invoice in February 2004," but Cave Creek offers no written evidence or email that the Town refused to pay for the sewer, or that the sewer was lawful. The Town responded to Plaintiff invoice by placing Plaintiff UNDER CRIMINAL INVESTIGATION FOR AN ILLEGAL SUBDIVSION! For

[58] Even *Rooker- Feldman* allows a "state court loser" to proceed in Federal District court when the "winner" obtained his triumph based on fraud because the loser is not complaining of an injury caused by a state-court judgment, but of an injury caused by the winner's chicanery. *See In re Sun Valley Foods Co*., 801 F.2d 186 (6th Cir. 1986). This reasoning received a boost from *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 291 (2005), where the Court clarified that not all actions dealing with the "same or related question" resolved in state court are barred in federal court. *Id*. at 292.

[59] Three years from the date the violation was discovered, or should have been discovered with reasonable diligence, and ten years after the events giving rise to the cause of action, whichever comes first. Plaintiff recorded MCRD 2012-03771104 on May 3, 2012 to memorialize the date of discovery.

the next five years Plaintiff diligently attempted to investigate why the Town was classifying his lot split a subdivision (other than to avoid payment), but their motive was far more sinister. By approving an unlawful subdivision and then issuing void permits for extremely expensive infrastructure contrary to its zoning ordinance, Cave Creek created the perfect storm where Plaintiff could build expensive homes and or sell expensive lots digging a deeper hole until the Town considered his exposure terminal and pulled the plug via knowing that Plaintiff would have no vested interest. See *Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, 1st Div., Dept. D 1996 and *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., Dept. B 2, 2004, relying upon "*Valencia Energy v. Ariz. Dep't of Revenue,* 191 Ariz. 565, 576, ¶ 35, 959 P.2d 1256, 1267 (1998). Government is not estopped 'from correcting a mistake of law.' *Id.* at 579, ¶ 41, 959 P.2d at 1270. Of note: Cave Creek uses Plaintiff's sale of lot 211-10-010C to the DeVincenzos in their Motion for Summary Judgment to prove that the easements cannot be revoked but conveniently omits to tell the Tribunal that the sale of lot 211-10-010C to the DeVincenzos is unlawful because the Town transformed a petition for lot split into an illegal subdivision. If the Town repeatedly alleges in its answer to this lawsuit that splitting a parcel of land into four lots is a subdivisions, then the Town knows it made false material representations and although having the authority to correct a mistake of law per *Thomas and King*, never did so. If mistakes are made in bad faith, then the offending parties need be punished. Making false statements to the tribunal under RICO (ARS §13-2311) has more teeth than ER 3.3.

V. Rescission.

"A rescission at law is one which occurs outside of and without the assistance of the courts. *See generally* D. Dobbs, *Law of Remedies* §§ 4.3, 4.8 (1973). As such, Plaintiff recorded MCRD #2012-0377104.

Cave Creek carefully choreographed a series of misrepresentations: it converted the initial lot split of 211-10-010 into a subdivision; Cave Creek knew that four lots constituted a subdivision, i.e. inequitable conduct. By exacting a fourth lot, the town created an unlawful subdivision where the lots could not be sold and were unsuitable for building permits— but granted permits KNOWING that the Town could correct their mistake of law per *Thomas and King* causing harm to Plaintiff but bypass liability based upon the state's grant of immunity. These actions "demonstrates the Defendant's conduct is wanton, reckless or shows spite or ill-will, or where there is reckless indifference to the interests of others." *See*, *Sellinger v. Freeway Mobile Home Sales, Inc.,* 110 Ariz. 573, 521 P.2d 1119 (1974); *Southern Pacific Transportation Co. v. Lueck,* 111 Ariz. 560, 535 P.2d 599 (1975). In keeping with *Krupski v. Costa Crociere SpA*, 130 S. Ct. 2485 (2010), Cave Creek's vicarious liability relates back to the initial lot split.

Cave Creek fraudulently induced Plaintiff to grant easements based upon a series of lot split solutions—that Cybernetics could split 211-10-003; that the town need wider easements for maintenance (when it was really wanting to convert the land and sewer to its own property); it fraudulently induced Plaintiff to install the sewer with promises of reimbursement that never materialized.

"A party who has rescinded a contract may recover 'any incidental or consequential damages resulting from *a breach of the contract.*'" *Renner v. Kehl,* 150 Ariz. 94, 98, 722 P.2d 262 (1986). The court in *Renner* observed, "[t]here is ample authority that a *defrauded* party may not only receive back the consideration he gave, but also may recover any sums that are necessary to restore him to his position prior to the making of the contract." *Id*. (emphasis added) See *El Pollo Loco, Inc. v. Hashim*, 316 F. 3d 1032 (9th Cir. 2003)(negligent reliance should not bar equitable relief where plaintiff relied in good faith upon defendant's false representations). Petitioner has been harmed ~$6 Million dollars by Cave Creek botching his development. His building business was destroyed, exacerbated by the financial meltdown which Petitioner could not avoid due to the entanglements caused by covenants and entitlements ensnarled by illegal subdivisions.

Cave Creek is run by a small junta in concert with a local paper published by Don Sorchych. Town politicians and management are dependant upon good press. Sorchych finds favor with the tactics of Andrew Thomas and the antics of Arpaio. Petitioner declares under penalty of perjury that he has repeatedly attempted to settle all of the litigation to no avail which follows considering that Cave Creek's conduct was intended to cause Petitioner harm.

VI. Award of Damages and Attorney fees.

Fressadi is entitled to attorney fees, and compensatory and punitive damages in keeping with the fact pattern in *Fousel v. Ted Walker Mobile Homes, Inc., supra*. In *Fousel*, Walker induced Fousel into acceptance which is similar to what happened

here. *Fousel* found that Defendants "reliance on the doctrine of remedies to support the contention that the award of any damages is precluded in an action for rescission of a contract is misplaced." *Id*. at 129. In fact, *Fousel* awarded attorney fees pursuant to A.R.S. §12-341.01 to the Plaintiff, even though Plaintiff elected to rescind the contract—i.e. the lot splits, easements and permits.

In addition, Appellant can recover attorney fees in tort so long "as the cause of action in tort could not exist *but for* the breach of the contract." *See Sparks v. Republic National Life Insurance Co.,* 132 Ariz. 529, 647 P.2d 1127 (1982).

CONCLUSION

Appellant has presented more than sufficient evidence demonstrating the existence of a genuine factual dispute as to a material fact and the motivation for the Town's malfeasance including their concealment and incentive to commit fraud upon the court. In determining whether genuine issues of material fact exist, a court must draw all ***reasonable inferences*** in favor of the party opposing the motion. *See Rowland v. Kellogg Brown & Root, Inc.,* 210 Ariz. 530, ¶ 2, 115 P.3d 124, 125 (App. 2005). For the reasons set forth herein, Appellant respectfully requests that the trial court's judgments be reversed and remanded because the rulings are not in conformance with the standards of summary judgment, equitable tolling, and discovery. Appellant requests that the Court administer sanctions and award attorneys' fees and costs for trial court and appellate court proceedings in keeping with the merits of this case.

Respectfully submitted this 15th day of August, 2012.

By: /s/ Arek Fressadi
Arek Fressadi
Appellant, *Pro Se*

CERTIFICATE OF COMPLIANCE

Pursuant to ARCAP 14, the undersigned hereby certifies that this brief was prepared in proportionately spaced typeface (Times New Roman, in 14 point type) and contains a total of 12,050 words.

/s/Arek Fressadi
AREK FRESSADI

CERTIFICATE OF SERVICE

I, AREK FRESSADI, Appellant pro se, do certify that on the 15th day of August, 2012, I caused delivery of this Opening Brief as follows:

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APPENDIX C

ARIZONA COURT OF APPEALS

DIVISION ONE

Arek Fressadi, **Plaintiff / Appellant**, v. **Town of Cave Creek** **Defendant / Appellee**.	No. 1 CA-CV 12-0238 Maricopa County Superior Court No. CV2009-050821

REPLY BRIEF

OF

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STATE LAW

AUTHORITIES:

RESTATEMENT OF THE CASE

Cave Creek judicially declared that splitting a parcel of land into four lots is a subdivision.[1] By requiring a fourth lot[2] to approve a lot split,[3] Cave Creek "split" parcel 211-10-010 into a subdivision[4] (lots 211-10-010 A, B, C, & D[5]) without a recorded plat map per A.R.S. §9-463(6)(c) in violation of A.R.S. §9-463.02 and Section 1.1(A)(4) of the Town's Subdivision Ordinance. Since the lots do not comply with the subdivision ordinance, they were unsuitable for building and not entitled to permits.[6] It is unlawful to construct improvements in violation of the ordinance pursuant to Section 1.7(B) of the Town's Zoning Ordinance. Cave Creek not only issued permits,[7] but required easements[8] to issue void permits for sewer to lots 010 A, B, & C. Constructing improvements on lots unsuitable for building with void permits violates the ordinance. Cave Creek "split" parcel 211-10-003 into an unlawful subdivision in the same manner (lots 211-10-003 A, B, C & D). Although

[1] IR 4, paragraphs 17, 18, 20, 21, 38

[2] Cave Creek required an "exaction" did not comply with A.R.S. §9-500.12(E), but the "roadway dedication" (AB, pg 12) created a fourth lot.

[3] IR 81-85, pg. 2, SOF 4.

[4] IR 138-143. Part of the facts before the Trial Court

[5] Contrary to Cave Creek's statement AB, pg. 12: "A fourth lot was not legally defined," the lot was legally defined and the Assessor's office issued a lot number.

[6] Appendix 1, Subdivision Ordinance, Section 6.3.

[7] Appendix 2, Zoning Ordinance, Sec 1.1(B) incorporates all town codes and ordinances as they related to development, construction, etc. Since the lots are not entitled to a building permit per the Subdivision Ordinance, then pursuant to Sec. 1.4(A): "Any permit issued in conflict with the terms or provisions of this ordinance **shall** be void.

[8] Cave Creek claims that the exactions of easements were *unilateral*. Easements were a condition of approving permits and executing the reimbursement agreement (i.e. bilateral). The original request for lot split has no fourth lot or easement along Schoolhouse Rd. *See* Appellant's Motion to Vacate Judgment, May 10, 2012., Exh. A. Easements granted at the behest of Cave Creek were to obtain entitlements. (MCRD 2003-0488178, 2003-1312578, MCRD 2002-0681164).

Cave Creek declared that it can correct mistakes of law,[9] the Town never corrected their creation of unlawful subdivisions. Per Section 1.7(A) of the Zoning Ordinance, a person[10] who violates any provision of the Ordinance "shall be guilty of a Class One misdemeanor…and each and every day of continued violation[11] shall be a separate offense..." "Parties are bound by their judicial declarations."[12]

At the least, Cave Creek's declarations and concealment of genuine issues of material fact precludes the rulings in this case. At the worst, the Town intentionally violated state statutes and town ordinances as a fraudulent scheme to control and convert the property of another knowing that it could correct its mistakes to cause foreseeable injury to business and property in violation of A.R.S. §§13-2310, 13-2311 and 13-1802, and use the courts to facilitate their criminal conduct. Appellant recently discovered how to prosecute these crimes via A.R.S. §13-2314.04, 42 U. S. C. §1983,[13] and 18 U.S.C. §1961–1968 and reserves all rights and claims. In either event, Cave Creek used the court to enforce rights arising from illegal transactions by concealing material facts. Judgments not authorized by law are void.

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[9] IR 105, footnote 3: "As noted in *Thomas and King, Inc. v. City of Phoenix,* the essence of estoppel is conduct inconsistent with a later adopted position. 208 Ariz. 203, 210, 92 P.3d 429, 436 (App.2004), quoting *Valencia Energy v. Ariz. Dep't of Revenue*, 191 Ariz. 565, 576, 959 P.2d 1256, 1267 (1998). The government ordinarily is neither estopped by "the casual acts, advice, or instructions issued by nonsupervisory employees," *Valencia*, at 577, 959 P.2d at 1268, nor estopped "from correcting a mistake of law." *Valencia*, at 571), 959 P.2d at 1270. Thus, the government generally can enforce a law even if its employees have not always correctly applied it in the past. *Thomas and King,* 208 Ariz. *at* 210.92 P.3d at 436**.**

[10] To include corporate persons such as Cave Creek and its state actors.

[11] Cave Creek enacted the Continuing Violations Doctrine in Section 1.7.

[12] AB, footnote 4, quoting *La Paz County v. Yuma County*, 153 Ariz. 162, 168, 735 P.2d 772, 778 (1987).

[13] Appellant raised §1983 prior to summary judgment.

Restatement of Facts

Appellant sought authorization from the town on how best to develop parcels 211-10-003 and 211-10-010.[14] Under color of law, Cave Creek advised Appellant to pursue a series of lot splits down-zoning density to eight lots in lieu of a 13 unit subdivision as more efficient.[15] Appellant applied to split parcel 211-10-010 into three lots.[16]

The Parties verbally agreed to a sewer reimbursement agreement and Cave Creek sent Appellant standard development agreement to use as a template.[17] To explore all options (i.e. subdivision v. lot splits), Appellant submitted a subdivision exceptions request on or about June 14, 2002.[18] The exceptions review and Town Manager's response of June 28, 2002[19] made subdivision untenable so sewer reimbursement agreement drafts for lot splits continued.[20] The Town required easements **in consideration for** permits and a reimbursement agreement.[21]

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[14] IR 138-143, Motion to Vacate Judgment 5.10.12. Contrary to Cave Creek's first comment in Footnote #1 of its Answering Brief: Appellant's construction company acquired parcels 211-10-010 and 211-10-003 through litigation in 2001. See CV 2000-011913.
[15] IR 138-143, 176-184, 185, 186, 193, 194
[16] Exhibit A, Motion to Vacate Judgment 5.10.12, IR 138-143, 176-184, 185, 186, 193, 194
[17] IR 138-143, Exh. B
[18] IR 176-184, Exh. C
[19] IR 91, Exh C, IR 138-143, Exh D. Cave Creek hangs their hat on this letter, but it was directed towards a "what if" scenario of subdivision—not the series of lot splits.
[20] IR 91, Exh D. IR 65,66. The Town's Manager claimed he couldn't enter into a reimbursement agreement until the Town Council passed an ordinance. Cave Creek approved ordinance §50.016 in December, 2003 (IR 3, 61, 63, IR138-143, Exh G) but repealed it in 2009. Technically, the Town Council approves Development Agreements. (IR 176-184, Affidavit, Exh. 3). In 2005 Cave Creek verbally offered a use permit for condos to resolve the sewer reimbursement issue, but *see Langan v. Town of Cave Creek*, Dist. Court, D. Arizona 2007, where Cave Creek revoked an SUP.
[21] IR 138-143, Exh. F, IR 49-52, Exh. A. NB: The easements are **bilateral** and appear to be rights arising out of illegal transactions. See MCRD #2012-0377104.

When Cave Creek denied Cybernetics a lot split,[22] the sewer plans were revised to serve only lots 211-10-010 A, B, & C,[23] and Parcel 211-10-003 was sold contingent on the buyer obtaining a lot split. The Town required the buyer's 003 lots to connect to Appellant's sewer,[24] and required a roadway dedication of "lot D" to approve the split of parcel 211-10-003 into lots 211-10-003 A, B, C, & D.[25] A Deed of Gift for lot 211-10-003D was recorded in 2005,[26] but never consummated as evidenced by the fact that lot D was sold to Kremer in 2010,[27] and still exists.

Appellant and the buyer agreed to a Covenant[28] to run with the lots to provide access and utilities to both parcels,[29] but the buyer breached the covenant prompting CV2006-014822, now on appeal as CV11-0728, CV12-0435 and CV 12-0601.[30]

Thinking that the splits of parcels 211-10-010 and 211-10-003 and the Covenant were lawful at the time, Appellant sold lot 211-10-010 C "subject to" the Covenant.[31] Cave Creek required the 003 lots to connect to Appellant's ultra vires sewer.[32] Cave Creek issued permits[33] to extend the sewer from Appellant's property to lots 211-10-**003** A, B, & C.[34] Appellant billed Cave Creek on February 21, 2004

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[22] IR 138-141.
[23] IR138-143, Exh. C
[24] IR 91, Exh. H
[25] See MCRD 2003-1312578, as part of MCRD 2003-1472588 through MCRD #2012-0377104.
[26] MCRD 2005-0766547.
[27] MCRD 2010-0067254
[28] IR 49-50, Exh. A
[29] IR 49-50, Exh A, IR 91, Exh. K. MCRD 2003-1472588
[30] See Motion to Consolidate, CV11-0728, September, 17, 2012, Reply October 1, 2012.
[31] Apparently in violation of A.R.S. §9-463.03. See CV 12-0435.
[32] IR 138-141
[33] Vertes / GV Group is not entitled to owner builder exemption as they are building spec houses, and not licensed to install sewer violating ROC rules to protect health, safety and welfare.
[34] IR 51 Exh. D, IR 91 Exh I

to repair and extend the sewer.[35] Cave Creek responded by placing Appellant under criminal investigation for *illegal subdivision*, 'red-tagged' building permits, and "a stop shall be in place on the further division of the remaining parcels created by the original lot splits."[36] The Town Marshal ***verbally told*** Appellant to reassemble lots 211-10-010 A, B, & D but did not put anything in writing. The investigation was never closed. Assembling lots did not undo Cave Creek's conversion of lot splits into an unlawful subdivision.[37] The Town continued to classify Appellant's lots a ***subdivision*** in correspondence.[38] The Town Engineer wrote on June 26, 2007:

> "In response to your letter of June 21, 2007, you are reminded that you came to the Town to pursue installing a sewer line to serve the lots in your ***subdivision***.[39] [emphasis added]. The Town's Ordinance is quite clear on sewer extensions outside the boundaries of Sewer Improvement District #2[40], in that the developer is responsible for all costs of installation and the facilities in [the] Town Right-

[35] IR 91, Exh. N. IR 68 at SOF 25, Ex. 19. MCRD 2003-1472588 included provisions for related utilities. Prior to billing property owners of the covenant for related utilities, Appellant as Caretaker of the Covenant had a fiduciary duty to exhaust efforts to collect for sewer expenses from Cave Creek.

[36] IR 91, Exh. N.

[37] Contrary to Cave Creek's second false comment in footnote #1: Unbeknownst to Appellant at the time, it is unlawful to transfer ownership of any part of an unlawful subdivision pursuant to ARS §9-463.03. Appellant sold lot 211-10-010C in October, 2003 but rescinded the sale upon discovery of the unlawful subdivision status of lots 211-10-010 A, B, C, & D. See MCRD #2012-0377104. Appellant split parcel 211-10-010E into lots F & G and transferred both lots to his construction company. See MCRD #, Lot 211-10-010 F is constructively owned by Appellant. Lot 211-10-010G consists of lots 211-10-010 A, B, & D. Appellant's construction company owns lots 211-10-010 B & D. Lot 211-10-010A is in dispute because M&I Bank judicially foreclosed on 211-10-010A and subsequently sold it in apparent violation of ARS §9-463.03. M&I Bank (a/k/a BMO Harris) accepted a deed in lieu of foreclosure on 211-10-003B, judicially foreclosed on 211-10-010A, bought lot 211-10-003D and subsequently sold all of the above by special warranty deed in apparent violation of ARS §9-463.03 as well.

[38] IR 176-184, Exh. J.

[39] Cave Creek's Answering Brief inaccurately claims that "The Town Engineer also reminded Appellant that the cost of infrastructure was the responsibility of the ***property owner***," when in fact, the Town classified Appellant as a Developer of a Subdivision.

[40] The does not specify what Ordinance or what is Sewer District #2.

Of-Way or easement become the property of the Town…"

Similarly, the Town Manager wrote on September 24, 2007:[41]

> "Regarding your letter of September 19, 2007, please provide all written agreements you have with the Town of Cave Creek regarding repayment commitments for your ***subdivision*** sewer line installation. [emphasis added] We will review any agreements you have and respond accordingly."

Confused[42] by Cave Creek calling lot splits a subdivision, Appellant filed a Notice of Claim,[43] based on the Continuing Violations Doctrine found in Section 1.7 of the Town's Zoning Ordinance; that 211-10-003 and 211-10-010 were lawfully split, and that the Town was classifying Appellant's lots as a subdivision to avoid sewer reimbursement. CV2009-050821 was filed to consolidate with CV2006-014822.

Restatement of Issues on Appeal

Cave Creek fraudulently concealed material facts to obtain judgment; that the Town violated public policy, and state law. As such, the trial court's rulings are not authorized by law. At the least, the trial court's rulings were not proper as there are numerous issues of material fact and law that precludes summary judgment.

Standard of Review

[41] This letter controverts Cave Creek's SOL estoppel argument, AB page 14.

[42] Cave Creek insinuates that Appellant failed to investigate Cave Creek's wrong doing. AB, page 11, but Cave Creek concealed the "what" of the injury to investigate.

[43] "Mr. Fressadi is not required to serve a Notice of Claim upon the Town as a prerequisite to a lawsuit for declaratory relief, injunctive relief, or for claims based upon federal law. See, e.g., Mayer Unified School District v. Winkleman, 2008 WL 2128064 (Ariz. App. Div. 2); Morgan v. City of Phoenix, 162 Ariz. 581, 785 P.2d 101 (App. 1989). However, out of an overabundance of caution, the Town should consider this his Notice of Claim as may otherwise be required by A.R.S. §12-821.01." The Claim was based on Section 1.7 of the Town's Zoning Ordinance.

Cave Creek claims that Appellant caused his own demise by filing litigation. Appellant is a reluctant litigator but state statutes require Appellant to litigate to preserve property rights.

Cave Creek, REEL, M&I Bank, and Maricopa County all filed complaints against Appellant, most were frivolous. See CR2010-0109 (JC2011-065147), CV2010-029559, CV2010-013401, CV2011-014289, and JC2012-065297. Cave Creek's claim lacks candor. (AB page 14).

> "…where there is fraudulent concealment by one occupying a position of trust, the statute of limitations is tolled until the other party discovers the concealment or is put on reasonable notice of the breach of trust, *Taylor v. Betts,* 59 Ariz. 172, 124 P.2d 764 (1942)..."

Crook v. Anderson, 405, 565 P. 2d 908 - Ariz: Court of Appeals, 1st Div., Dept. B 1977, Eubank, Judge, dissenting.

Cave Creek enacted the "Continuing Violations Doctrine" in Section 1.7 of it's Zoning Ordinance. Not finding Arizona case law on the "Continuing Violations Doctrine," Appellant cites to the 7th Circuit:

> "[A] defendant who conceals vital information about the existence of a plaintiff's claim or makes representations to the plaintiff causing it to delay bringing the claim, can be estopped from relying on the statute of limitations as a defense."

Chapple v. Nat'l Starch & Chem. Co. & Oil, 178 F.3d 501, 506 (7th Cir.1999)

> "A.R.S. §12-820.01 (1992). In enacting this statute, the legislature declared as "the public policy of this state that public entities are liable for acts and omissions of employees in accordance with the statutes and [the] common law." Laws 1984, ch. 285, §1A; *see also Fidelity,* 191 Ariz. at 224-25, 954 P.2d at 582-83. Accordingly, courts have held that "liability of public servants is the rule in Arizona and immunity is the exception." *Fidelity,* 191 Ariz. at 225, 954 P.2d at 583. We therefore narrowly construe immunity provisions applicable to government entities. *See id.*

Doe ex rel. Doe v. State, 7 P. 3d 107- Ariz: Court of Appeals, 1st Div., Dept. D 2000

> "When a party obtains a judgment by concealing material facts and suppressing the truth with the intent to mislead the court, this constitutes a fraud upon the court, and the court has the power to set aside the judgment at any time. *Ivancovich v. Meier,* 122 Ariz. 346, 349, 595 P.2d 24, 27 (1979). A fraud upon the court is perpetrated "by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases." *In re Intermagnetics Am., Inc.,* 926 F.2d 912, 916 (9th Cir.1991) (quoting J. Moore and J. Lucas, Moore's Federal Practice ¶ 60.33, at 515 (2nd Ed. 1978)).

CYPRESS ON SUNLAND HOMEOWNERS, ASS'N. v. Orlandini, 257 P. 3d 1168, 1179, 1180 - Ariz: Court of Appeals, 1st Div., 2011

An agreement is unenforceable if the acts to be performed would be illegal or violate public policy. *White v. Mattox,* 127 Ariz. 181, 619 P.2d 9 (1980); *Mountain*

States Bolt, Nut & Screw v. Best-Way Transp., 116 Ariz. 123, 568 P.2d 430 (App. 1977). "In Wise v. Radis, 74 Cal. App. 765, at page 775, 242 P. 90, appears this statement by the court: 'No principle of law is better settled than that a party to an illegal contract or an illegal transaction cannot come into a court of law and ask it to carry out the illegal contract or to enforce rights arising out of the illegal transaction.'" *Northen v. Elledge*, 232 P. 2d 111, 72 Ariz. 166 - Ariz: Supreme Court, 1951.

"[A] violation of the law does not attain legality by lapse of time." *State Bar of Arizona v. Arizona Land Title & Trust Co*., 366 P. 2d 1 - Ariz: Supreme Court 1961. "Judgments which are not authorized by law, rendered in excess of jurisdiction, are… void." See *Caruso v. Superior Court,* footnote 2, supra, quoting footnote 4, *Lamb v. SUPERIOR COURT, ETC.,* 621 P. 2d 906 - Ariz: Supreme Court 1980. First, Fifth, and Fourteenth Amendment, US Constitution, Article 2, Section 1 & 3, Arizona Constitution, A. R. S. §§13-1004, 13-1802, 13-2310, 13-2311.

Argument

I. Cave Creek Failed to Comply with State Enabling Statutes.

"[T]he power to zone and regulate subdivisions exists by virtue of the state enabling legislation..." *Folsom Investments, Inc. v. City of Scottsdale,* 620 F. Supp. 1372 (D.C. Ariz. 1985); *Bella Vista Ranches, Inc. v. City of Sierra Vista,* 126 Ariz. 142,613 P.2d 302 (App. 1980). A city must exercise it's power "within the limits and in the manner prescribed in the grant and not otherwise." *City of Scottsdale v. SCOTTSDALE, ETC*., 583 P. 2d 891 - Ariz: Supreme Court 1978, quoting *City of Scottsdale v. Superior Court*, 439 P. 2d 290 - Ariz: Supreme Court 1968. The State enabling statutes are ARS §§9-462 and 9-463 *et seq*. "[W]here the legislature has

enacted specific statutes addressing a subject of statewide concern, those statutes are binding upon municipalities." *City of Tucson v. Fleischman*, 731 P. 2d 634 at 272-Ariz: Court of Appeals, 2nd Div., Dept. A 1986. Municipalities cannot ***act*** in conflict with state statutes, because: "[A] municipal corporation has no inherent police power.[44]" *City of Scottsdale, supra.,* 439 P.2d at 293; *Scottsdale Associated Merchants, Inc.,* 120 Ariz. 4*,* 583 P.2d 891, 892 (1978).

A.R.S. §9-463.01 grants municipalities the power to regulate the subdivision of lands within its corporate limits. A.R.S. §9-463.02 defines (A) subdivision: four or more lots the boundaries of which are fixed by a recorded plat. A.R.S. §9-463(6) defines "plat" as a map of a subdivision, (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance. (b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute. (c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinances and other state statutes. Cities must comply with state enabling statutes because municipalities are not sovereign—they are an extension of state sovereignty. *City of Scottsdale v. Superior Court,* 103 Ariz. 204,439 P.2d 290 (1968).

[44] Cave Creek argued in its motion for summary judgment that the Supreme Court determined that operating a sewer utility is a government function to protect the public health and safety. IR 67-68, but Cave Creek's argument is moot because Cave Creek did not comply with statutes and its own Zoning and Subdivision Ordinances enacted to protect the public health, safety and welfare by unlawfully subdividing parcels 211-10-003, 211-10-010.

Entitlements (i.e. development agreements, lot splits, permits, and easements) are a bilateral contracts. A property owner files an application, pays a fee, and obtains "entitlement" from the governing. Although entitlements are bilateral, Cave Creek falsely claims that: "Appellant… ***unilaterally*** pursued the installation of public sewer…" (AB, pg. 4). "[A] valid statute is automatically part of any contract affected by it, even if the statute is not specifically mentioned in the contract." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 298-99, ¶ 38, 257 P.3d 1168, 1178-79 (App. 2011) (quoting *Higginbottom v. State,* 203 Ariz. 139, 142, ¶ 11, 51 P.3d 972, 975 (App. 2002)). ARS §§9-463.02, 9-463.03 are a valid statutes. See *Havasu Heights II,* 167 Ariz, at 389, 807 P.2d at 1125 (laws of the state are a part of every contract). The entitlements of lot splits and sewer in this instance, fail to comply with state statutes, and town ordinances.

In bad faith[45] and unbeknownst to Appellant, Cave Creek converted lot splits into unlawful subdivisions[46] by "exacting[47]" a fourth lot as a condition of approval.[48] Pursuant to Section 1(A)(2) of Cave Creek's Subdivision Ordinance,[49] no person shall divide a parcel of land into a subdivision as defined in ARS §9-463.02 without a recorded plat per ARS §9-463(6)(c) to comply with the Town's ordinance per Section 1(A)(4). An agreement is unenforceable if the acts to be performed would

[45] *Wells Fargo Bank v. Arizona Laborers, Teamsters and Cement Masons Local No. 395 Pension Trust*, 201 Ariz. 474, 38 P.3d 12 (2002). (where one party "wrongfully exercises the contractual power for a reason beyond the risks that the [other party] assumed, or for a reason inconsistent with the [other party's] justified expectations")
[46] Maricopa County Assessor's Office classifies lots 211-10-010 A, B, C & D as an undefined subdivision.
[47] The exaction did not occur, but the lot to be exacted was created to approval the lot split.
[48] Motion to Vacate Judgment 5.10.12, IR 138-143, 176-184, 185, 186, 193, 194
[49] Motion to Vacate Judgment 5.10.12, Exh. D

be illegal or violate public policy. *White v. Mattox,* 127 Ariz. 181, 619 P.2d 9 (1980); *Mountain States Bolt, Nut & Screw v. Best-Way Transp.,* 116 Ariz. 123, 568 P.2d 430 (App. 1977). Dividing parcels 211-10-010 and 211-10-003 into four lots each without a recorded plat map is unenforceable; it violates public policy, state enabling statues and Cave Creek's Subdivision Ordinance. Per Section 6.3(A), none of the lots are suitable for building and not entitled to permits.[50] Per the Town's Zoning Ordinance Section 1.4(A) in 2003: "Any permit issued in conflict with the terms or provisions of this Ordinance shall be void." There are no vested rights for void permits. See *Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, 1st Div., Dept. D 1996. Per to Section 1.7 of the Town's Zoning Ordinance: (A) "***any person***[51] who violates any provision of this Ordinance … shall be guilty of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law; and each and every day of continued violation[52] shall be a separate offense, punishable as described; (B) It shall be unlawful for any person to erect,

[50] Cave Creek's Building permit process is public record. Section 151.36(A) requires all lots to have access for fire safety, etc. before issuing a building permit. "If such access is not available, the Building Inspector shall not issue a building permit." Section 5.1(B) (1) of the Town's Zoning Ordinance (1/6/03 incorporated by reference herein) indicates that: "No Zoning Clearance or Building Permit will be issued for any building or structure on any lot or parcel unless that lot or parcel has permanent legal and physical access to a dedicated Town right-of-way." Section 5.1(B)(4) indicates that: "The route of legal and physical access shall be one and the same." The legal access for lots 211-10-003 A, B, & C is via an easement per MCRD #2003-1312578, but lot 211-10-003 D blocks access to the Right of Way. Access for ingress, egress and utilities for lots 211-10-003 A, B, & C was by MCRD# 2003-1472588, which Superior Court ruled "does not exist." Zoning Ordinance violations are enforced via A.R.S. §§9-462.02, 9-462.05.

[51] To include the corporate person of the Town of Cave Creek, and/or its state actors.

[52] Under the Continuing Violation Doctrine, the limitations period does not begin to run as soon as an injury occurs, or when the plaintiff becomes aware of a valid cause of action. A claim builds to absorb new wrongful acts for so long as the defendant perpetuates its misconduct. The statute of limitations begins to run upon the entirety of accumulated malfeasance only when the defendant's misbehavior terminates. *See* O'Rourke v. City of Providence, 235 F.3d 713, 730 (1st Cir. 2001).

construct … any building or land or cause or permit the same to be done in violation of this Ordinance…" "In Wise v. Radis, 74 Cal. App. 765, at page 775, 242 P. 90, appears this statement by the court: 'No principle of law is better settled than that a party to an illegal contract or an illegal transaction cannot come into a court of law and ask it to carry out the illegal contract or to enforce rights arising out of the illegal transaction.'" *Northen v. Elledge*, 232 P. 2d 111, 72 Ariz. 166 - Ariz: Supreme Court, 1951.

For these reasons and pursuant to ARS §9-463.03, and Section 1.1(A)(2) and 1.1(A)(4) of the Town's Subdivision Ordinance, it is unlawful to sell, lease or transfer the lots. In other words, by violating state enabling statutes and its own Subdivision Ordinance, Cave Creek controlled and converted property in excess of One Hundred Thousand Dollars ($100,000) in violation of ARS §13-1802.

Cave Creek's malfeasance continues but claims it did nothing. (AB, pg. 15). The unlawful subdivisions remain, permits are void and the Town claims ownership of easements and sewer. It appears that Cave Creek acted in concert with others (to include officers of the court) to facilitate their fraudulent scheme and conceal it from public agencies in violation of ARS §§ 13-1003, 13-1004, 13-2310, and 13-2311.

> "We agree with the Illinois Supreme Court that "[t]here is no public policy more basic, nothing more implicit in the concept of ordered liberty, than the enforcement of a State's criminal code." *Palmateer v. International Harvester Co.,* 85 Ill.2d at 132, 52 Ill.Dec. at 16, 421 N.E.2d at 879 (citations omitted)."

Wagenseller v. Scottsdale Memorial Hosp., 710 P. 2d 1025 - Ariz: Supreme Court 1985

In *Wagenseller*, the Supreme Court ruled that the allegation of a criminal violation was sufficient, no matter how minor, to violate public policy and reversed summary

judgment. Cave Creek's criminal violation[53] of Section 1.7 of its Zoning Ordinance is sufficient to violate public policy and reverse summary judgment.

II. Grievances Against Government.

It is appropriate to scrutinize intrusions on First Amendment rights where Government abridges the exercise of First Amendment rights because the exercise of those rights adversely affects the Government's own interests. According to the Supreme Court, "redress of grievances" is to be construed broadly in the interest and prosperity of the petitioner and their views on politically contentious matters. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961). The right to petition government includes all three branches of government. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).

Conduct that abrogates Appellant's ability to redress grievances involving due process, the deprivation or taking of property without compensation, or equal protection in violation of the Fifth and Fourteenth[54] Amendments,[55] can be broadly construed to violate Appellant's First Amendment rights. The focus of Cave Creek's Answering Brief is on rules and procedures that abridge the exercise of First Amendment Rights. Cave Creek argues that Appellant failed to follow appellate procedure AB pg.1,6; that pro se litigants must comply with what is expected of a Bar member, AB pg.6; that discretionary case law limits appellate review to the record before the court (even if the record is not honest or complete); that the

[53] Section 1.7 creates a new Class 1 misdemeanor for each and every day of violation. Currently that amounts to ~4,000 violations for unlawful subdivision, and ~3,400 violations for sewer.
[54] To potentially include privileges and immunities. See the opinion of Justice Thomas, *McDonald v. CHICAGO* (No. 08-1521) 567 F. 3d 856, (2010).
[55] See in general, *Felder v. Casey*, 487 US 131 - Supreme Court 1988

Appellant is precluded from introducing "new factual theories" AB pg. 5,6. None of these arguments oppose the merits of Appellant's grievances.

Infringing upon the ability to redress grievances is a fundamental right that invokes strict scrutiny.[56] Although requiring *pro se* litigants to adhere to attorney standards can be construed as a "compelling" government interest, it violates the First Amendment by distorting the judicial process against those who cannot afford counsel. Further, the courts[57] discriminate against *Pro se* litigants in violation of the equal protection clause of the Fourteenth Amendment. Prejudices often have a greater impact on the outcome of litigation than judges with an obligation to be impartial like to admit.[58] Whether the prejudice is deliberate and malicious or unintended, decisions colored by personal biases can be just as devastating to the victims of the resulting injustice. See *Hernandez v. Texas*, 347 US 475 – 1954.

Appellant's "new factual theories" were presented to the trial court[59] upon discovery but blocked by judicial procedure in contrast to Cave Creek's claim AB pg. 7. Judicial rules require a notice of appeal to be timely filed or lose the right to

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[56] Footnote 4, 304 U.S. 144. Footnote Four outlines a higher level of judicial scrutiny for legislation that met certain conditions: (1) On its face violates a provision of the Constitution (facial challenge), (2) Attempts to distort or rig the political process. (3) Discriminates against minorities, particularly those who lack sufficient numbers or power to seek redress through the political process.

[57] By way of example, the Appellate settlement program is only available to represented parties.

[58] "Lest the citizenry lose faith in the substance of the system and the procedures we use to administer it, we can ill afford to confront them with a government dominated by forms and mysterious rituals and then tell them they lose because they did not know how to play the game or should not have taken us at our word." *Moore v. Price*, 914 S.W.2d 318, 323 (Ark. 1996), Mayfield, J., dissenting

[59] *See* IR 51, IR 63, IR 138-143, IR 151, IR 156, IR 160, IR 168, IR 170, IR 176-184, especially IR 185, IR 186, and IR 193. Appellant also filed a "Motion to Vacate Judgment" on May 10, 2012, and a "Reply" on June 8, 2012 incorporated herein. The "amended Index of Record" does not contain the Motion of May 10th or his Reply of June 8th.

appeal. Motions to vacate were filed after the Notice of Appeal was filed due to Defendant's lack of candor/ fraud upon the court/ criminal concealment. Defendants did not deny that they concealed material facts. Instead they argued that: "A trial court loses jurisdiction of a case while an appeal is pending…" *Lightning "A" Ranch Venture v. Tankersly*, 161 Ariz. 497, 779 P.2d 812 (app. 1989). AB 189, 190, (and 05/29/12 not part of the Index). The Trial Court genuflected to the Defendants and denied the Motion to Vacate, AB 195, with no ruling on the second motion.

Cave Creek argues that "Appellant did not present this 'illegal subdivision' issue to the trial court in response to the Town's Motion for Summary Judgment. It is therefore waived." AB, pg 11. A party cannot dispute that which is concealed nor can a party waive an unknown right. To the extent Cave Creek's fraudulent scheme was discovered in October, 2011, Appellant exposed Cave Creek's false statements including illegal subdivision in the Second Amended Complaint.[60] IR-138-143.

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[60] This is an appeal of ***all*** of the trial court rulings including the denial of Appellant's motion to amend.

> "In civil rights cases where the plaintiff appears pro se, the court must construe the pleadings liberally and must afford plaintiff the benefit of any doubt. *Bretz v. Kelman,* 773 F.2d 1026, 1027 n. 1 (9th Cir.1985) (en banc). "A pro se litigant must be given leave to amend his or her complaint unless it is `absolutely clear that the deficiencies of the complaint could not be cured by amendment.'" *Noll,* 809 F.2d at 1448 (quoting *Broughton v. Cutter Laboratories,* 622 F.2d 458, 460 (9th Cir.1980) (per curiam)); *accord Eldridge v. Block,* 832 F.2d 1132, 1135-36 (9th Cir.1987). Moreover, before dismissing a pro se civil rights complaint for failure to state a claim, the district court must give the plaintiff a statement of the complaint's deficiencies. 624*624 *Eldridge,* 832 F.2d at 1136; *Noll,* 809 F.2d at 1448-49. "Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors." *Noll,* 809 F.2d at 1448."

Karim-Panahi v. Los Angeles Police Dept., 839 F. 2d 621 - Court of Appeals, 9th Circuit 1988. The trial court ruling provides no such statement of Plaintiff's deficiencies to which Plaintiff is entitled via the Fourteenth Amendment. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." See *McDonald v. Chicago*, 561 U.S. 3025 (2010).

The Trial Record was supplemented with all correspondence, pleadings, discovery, minute entries, judgments and rulings found in CV2006-014822,[61] but the Index of Record was never fully updated.[62] Appellant cited to CV2006-014822 because Appellant has sought to consolidate or transfer all cases involving Cave Creek's unlawful conduct regarding Appellant's property at all levels of Arizona's judicial branch. The lack of consolidation has impeded / obstructed justice.

Appellant reserves all rights and claims be it §1983 takings, fraudulent scheme, concealment, theft, trespass, conversion, unjust enrichment, aiding and abetting, etc. Until a court declares the status of the lots and entitlements, discovery of the injury (the "what") does not accrue for purpose of the statute of limitations per A.R.S. 12-821.01(B) precluding summary judgment in opposition to Cave Creek's procedural arguments AB Pg. 8,9,11,15,16,26. Further, none of the Town's case citations involve First, Fifth, or Fourteenth Amendment rights.

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III. Cave Creek Waives Statute of Limitations and Accrual.

"Waiver is either the express, voluntary, intentional relinquishment of a known right or such conduct as warrant an inference of such an intentional relinquishment. See, *e.g., City of Tucson v. Koerber*, 82 Ariz. 347, 313 P.2d 411 (1957). Waiver by conduct must be established by evidence of acts inconsistent with an intent to assert the right. *Am. Cont'l Life Ins. Co. v. Ranier Const. Co. Inc.* 125 Ariz. 53, 55, 607 P.2d 372, 374 (1980). A clear showing of intent to waive is

[61] IR 160, pg. 3, ll 9-11

[62] If Cave Creek find quotes from CV2010-013401 (AB, footnote 4), they can locate "references to the record" from CV2006-014822.

required for waiver of rights." *Goglia v. Bodnar*, 156 Ariz. 12, 19, 749 P.2d 921, 928 (App. 1987). Cave Creek did not deny that it concealed material facts supra and therefore waived any right to argue against its willful concealment of the unlawful subdivision status of the lots, the void status of permits and the ultra vires status of sewer and easements. All of the Town's arguments are based on the validity of lot splits, permits, easements, and infrastructure which Cave Creek concealed and controverts with its own judicial declarations. The Town failed to comply with state enabling statutes and failed to comply with its own ordinances.

Cave Creek declared that "any one property that is subdivided into four or more lots is defined as a subdivision under the Town's Subdivision Ordinance."[63] Although the Assessor's office identifies lots 211-10-010 A, B, C & D, Cave Creek claims in its SOF that parcel 211-10-010 was only split into three lots.[64] Cave Creek required Appellant to "gift" lot 211-10-010D to the Town without nexus per A.R.S. §9-500.12(E). The dedication failed but lot D came into existence converting the lot split into an unlawful subdivision. Appellant disputed Cave Creek's Statement of Facts by citing Cave Creek's criminal investigation of Appellant for an illegal subdivision in 2004.[65] The Town required Appellant to reassemble lots 211-10-010 A, B & ***D***,[66] where D is a lot—not an easement. Maricopa County Assessor's office

[63] Separate Verified Answer of Town of Cave Creek, CV2009-050821, 3/13/09, ¶ 17,18,20,21,38.
[64] IR 68, pg. 2
[65] IR 91, Exh. N
[66] See IR 51, IR 63, IR 138-143, IR 156, IR 168, IR 170, IR 176-184, IR 185, IR 186, IR 193, Motion to Vacate Judgment" on May 10, 2012, and a "Reply" on June 8, 2012 for the evolution of Appellant's argument.

Cave Creek claims in Footnote 4 of its Answering Brief that Appellant reassembled lots 211-10-010 B, A, D "to correct Cave Creek creating a **legal** subdivision." This appears to be an obvious spell check typo. It should read "to correct Cave Creek creating an **illegal** subdivision."

does not issue parcel numbers for easements. Cave Creek requested an easement ***over*** Lot D to extend sewer because Lot D ***blocks*** access to lots 211-10-010 A, B, & C.[67] Cave Creek approved lot splits that violated Sections 5.1(B)(1), (B)(2), and (C)(3) of its zoning ordinance for access in violation state enabling statutes (void as against public policy).[68] Section 1.7 of the Town's Zoning Ordinance shows a clear intent to waive the statue of limitations and implement the Continuing Violations Doctrine. Per *Ulibarri v. Gersenberger*, 178 Ariz. 151, 162, 871 P.2d 698, 709 (App. 1993), Cave Creek's claim that they have done nothing to toll the statute of limitations (AB, pg 15), lacks candor to the point of criminality. AB 11-13.

The Town's reply for summary judgment;[69] their declaration that dividing a parcel of land into four lots constitutes a subdivision;[70] their criminal investigation and correspondence from 2004 forward plus the late disclosure of lot 211-10-003D caused Appellant to question whether Cave Creek intentionally created unlawful subdivisions and issued void permits such that the sewer is ultra vires; knowing it could correct these mistakes of law via *Thomas and King / Valencia* causing significant and foreseeable injury to Appellant's business and property in the

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Cave Creek claims that Appellant made this assertion in CV2010-013401 but doesn't say when or in what motion. As such, Cave Creek's claim should be stricken.

[67] Cave Creek's exaction of a fourth lot to approve MCRD #2003-0481222 and MCRD #2003-1312578 resulted in Lots 211-10-010 A, B & C and lots 211-10-003 A, B, & C being land locked in violation of state enabling statutes and the Town's zoning ordinance. Lots A, B, & C were delineated as parcels 1,2,3 and lot D was delineated as parcel A.

[68] Cave Creek required a deed of gift of Lot 211-10-003D. See MCRD 20050766547, but Golec and Vertes sold lot 211-10-003 D to Kremer, on January 7, 2010. MCRD 2010-0067254. The existence of lot 211-10-003D was not disclosed until after summary judgment.

[69] IR 105, footnote 3:*Thomas and King,* 208 Ariz. *at* 210.92 P.3d at 436 quoting *Valencia Energy v. Ariz. Dep't of Revenue*, 191 Ariz. 565, 576, 959 P.2d 1256, 1267 (1998)**.**

[70] IR 4, paragraphs 17, 18, 20, 21, 38

process.

"For sufficient notice to begin the Statute of Limitations, the plaintiff must have knowledge of both "what" and "who" caused its damage." *Mohave Elec. Co-op., Inc. v. Byers*, 189 Ariz. 292, 311, 942 P.2d 451, 470 (App. 1997). "…where there is fraudulent concealment by one occupying a position of trust, the statute of limitations is tolled until the other party discovers the concealment or is put on reasonable notice of the breach of trust, *Taylor v. Betts,* 59 Ariz. 172, 124 P.2d 764 (1942)..." See *Chapple v. Nat'l Starch & Chem. Co. & Oil,* 178 F.3d 501, 506 (7th Cir.1999), for similar ruling in the 7th Circuit, and *O'Rourke v. City of Providence*, 235 F.3d 713, 730 (1st Cir. 2001) for applying the Continuing Violations Doctrine. Appellant explained at Oral Argument that the 'what' of damage wasn't clear; there has been no declaration on unlawful subdivision, void permits, ultra vires sewer and easements. A Notice of Claim is not required for Declaratory Relief.[71]

IV. Conclusion

The Town of Cave Creek wants the court to lean upon it's inbred bias and prejudice against *pro se* litigants to construe Appellant's argument as a "red-herring." A *de novo* review of the facts and reasonable inferences therefrom in light most favorable to the non-moving party finds that the Town of Cave Creek, in a position of trust, concealed material facts, violated laws, public policy, and abridged Appellant's constitutional rights.

The concealment of unlawful subdivisions, void permits and ultra vires easements and sewer doesn't simply toll the statute of limitations and preclude summary judgment, it negates all judgments rendered in this case and other cases

[71] See footnote 43 *supra*. See AB footnote 3.

regarding the subject properties. "Judgments which are not authorized by law, rendered in excess of jurisdiction, are… void.[72]" See *Caruso, supra.*

Respectfully submitted this 24th day of October, 2012.

By: /s/ Arek Fressadi
Arek Fressadi
Appellant, *Pro Se*

[72] For all varieties of void, see *Cockerham v. Zikratch*, 619 P. 2d 739 - Ariz: Supreme Court 1980. "The void judgment creates no binding obligation upon the parties, or their privies; it is legally ineffective." 7 Moore's Federal Practice § 60.25[2] (2d ch. 1955), p. 263, footnote #29.

Subject matter can be tainted by fraud upon the court, *In re Village of Willowbrook*, 37 Ill. App.3d 393 (1962), or violation of due process, *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019 (1938); *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E.2d 289 (1956); *Hallberg v. Goldblatt Bros.*, 363 Ill.25 (1936).

"Void judgment is one that, from its inception, is complete nullity and without legal effect." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972).

"A 'void' judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wound and once more probe its depths. And it is then as though trial and adjudication had never been." *Fritts v. Krugh*, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (10/13/58).

APPENDIX

TOWN OF CAVE CREEK

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SUBDIVISION ORDINANCE

SUBDIVISION ORDINANCE
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PREFACE

Cave Creek enjoys a natural setting that is both scenic and serene. The community's character reflects appreciation for spacious living in the unique, High Sonoran Desert environment with its rough topography, wildlife habitats, distinctive vegetation and arid climate. Subdivision review requires an understanding of these local conditions to encourage development of land in a sensitive manner.

The subdivision of land is the first step in community building. The designer of a subdivision is in actuality planning an integral portion of Cave Creek -- not an isolated residential entity. Therefore, land subdivision in harmony with public objectives which respects the High Sonoran Desert is essential for the responsible development of Cave Creek.

Good subdivisions lead to the development of stable neighborhoods offering residents safe and pleasant living conditions. For the subdivider, these factors contribute to buyer appeal, increased sales, sustained profits and good reputation.

Land subdivision is also a primary implementation tool for transforming the Town's General Plan into reality. The subdivider's layout of streets becomes a permanent part of the community, and the intended community character is either realized or lost with the subdivision of land. Therefore, the control a municipality retains over land subdivision is one critical method by which the elements of a comprehensive plan are achieved.

Some people may regard subdivision review as an unwarranted interference with their right to do as they please with their private property. However, if the health, safety, comfort, convenience, general welfare and prevailing lifestyle of Cave Creek are to be preserved, subdivision review is a necessity. Land subdivision is a serious responsibility that must be shared by subdividers, citizens and the Town government.

The procedures, principles and standards contained in this document are intended to provide a common ground of understanding and a sound and equitable working relationship between the Town and private interests to the end that both independent and mutual objectives can be achieved.

CHAPTER 1. PRINCIPLES, POLICIES AND PROCEDURES

SEC. 1.1 APPLICABILITY, ENFORCEMENT, INTENT, PURPOSE AND SEVERABILITY

A. APPLICABILITY

1. Pursuant to Arizona Revised Statutes, Title 9, Chapter 4, Article 6.3 entitled "Municipal Subdivision Regulations," this Subdivision Ordinance shall apply to all land in the corporate limits of the Town of Cave Creek.

2. No person, firm, corporation or other legal entity shall sell, offer to sell, or divide any lot, piece or parcel of land which constitutes a subdivision or part thereof, as defined herein without first having recorded a plat thereof in accordance with this Ordinance.

3. Provisions of this Ordinance are supplemental to those of the Arizona Revised Statutes, Title 9, Chapter 4, Article 6.2 Section 9-463.01 and 9-463.04. Any land in the incorporated area of the Town of Cave Creek which may be classified under the definition of a subdivision shall be subject to all of the provisions of this Subdivision Ordinance.

4. No person or agent of a person shall subdivide any parcel of land into four (4) or more parcels, or, if a new street is involved, two (2) or more lots, or, complete Lot Splits, Lot Line Adjustments or other minor subdivisions, except in compliance with this Ordinance. No person subsequent to the adoption of this Ordinance shall offer for recording, in the office of the County Recorder, any deed conveying a parcel of land, or interest therein, unless such a parcel of land has been subdivided, or otherwise created, in compliance with the rules set forth in this Ordinance.

5. No lot within a subdivision created prior to the effective date of this Ordinance or approved by the Town Council under the provision of this Ordinance shall be further divided, rearranged, or reduced in area, nor shall the perimeter boundaries of any subdivision, or any lot within a subdivision, be altered in any manner without the approval of Town Council as provided for in this Ordinance.

6. If this Ordinance is in conflict with any other ordinance, or parts conflict, the more restrictive shall apply.

B. ENFORCEMENT

1. The Zoning Administrator for the Town shall enforce this Ordinance.

2. All officials and employees of the Town of Cave Creek who are vested with the authority to issue permits, shall only issue permits, record documents, conduct inspections or otherwise perform any duties or administrative actions that are in conformance with the provisions of this Ordinance.

C. INTENT

1. In their interpretation and application, these regulations are expressly tailored to the unique physical geography of Cave Creek so that its development will coincide with its natural conditions. Further, the administration of these provisions is intended to protect the reasonable use and enjoyment by landowners of their property, rights in conformance with the standards contained herein as necessary to preserve the established community character.

D. PURPOSE

1. The purpose of these regulations is to provide for the orderly growth and harmonious development of the Town of Cave Creek in keeping with its diverse lifestyles, rural character and sensitive environment; to foster preservation of the natural environment and habitat; to ensure adequate traffic circulation through coordinated street systems with relation to major thoroughfares, adjoining subdivisions, and public facilities; to secure adequate provisions for water supply, drainage, sanitary sewerage, and other health requirements; to consider reservation of adequate sites for schools, recreation areas, and/or trail systems and other public facilities; to promote the conveyance of land by accurate legal description; and to provide procedures for the achievement of these purposes.

E. SEVERABILITY

1. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance.

SEC. 1.2 AMENDMENT, APPEALS, EXCEPTIONS, RESUBSIVISION

A. AMENDMENT

1. Amendments to this Ordinance may be requested by any person or agent of any person by filing an application with the Planning Department. Amendments to this Ordinance may also be initiated by the Town Council or the Planning & Zoning Commission.

B. APPEALS

1. Zoning Administrator decisions may be appealed within ten (10) days to the Board of Adjustment for review, modification or reversal.

2. A request for an appeal shall be made in writing to the Zoning Administrator who shall schedule a public hearing for the Board of Adjustment to consider the request.

C. EXCEPTIONS

1. A request for an exception from one or more of the requirements of this Ordinance shall be made in writing to the Zoning Administrator who shall schedule a public hearing by the Planning Commission to consider the request. The Planning Commission shall make its recommendation to the Town Council. The Town Council, after holding a public hearing, shall make the final decision.

    a. Where, in the opinion of the Council after consideration by the Planning Department and the Planning Commission, there exist extraordinary conditions of topography, land ownership or adjacent development, or other circumstances not provided for in these regulations, the Council may modify these provisions in such manner and to such extent, as it deems appropriate.

b. In modifying the standards or requirements of these provisions, as outlined above, the Council may make such additional requirements as appear necessary, in its judgment, to secure substantially the objectives of the standard or requirement so modified.

2. The Preliminary or Final Plat application, which includes or is the subject of an exception request shall not be considered by the Town Council until all exception requests have been either approved or denied.

3. A separate vote shall be taken for each exception by the Commission and Council. No exception shall be allowed or vest without such a vote.

D. RESUBDIVISION

1. Amending an approved subdivision, Preliminary, or Final Plat is considered a re-subdivision and must follow the same approval procedures as the original request.

SEC. 1.3 SUBDIVISION DESIGN PRINCIPLES AND POLICIES

A. OVERVIEW

1. The Town of Cave Creek considers subdivision design to be a significant function in implementing the adopted General Plan. Terrain; natural resources such as wildlife habitats, native vegetation and water courses; community amenities including trails, pathways and scenic vistas require lot platting standards which, like the Cave Creek Zoning Ordinance, respect the community's spacious character.

2. The operating principle upon which land areas are subdivided is maintaining compatibility between the Town's natural and built environments. Just as architectural creativity is encouraged for the design of structures, so is site engineering sensitivity expected for open space preservation as well as the placement of all man-made improvements.

B. GENERAL SUBDIVISION REQUIREMENTS

1. Accommodation of Natural Conditions: Land planning and individual lot designations within each subdivided tract shall be responsive to existing natural conditions and community character themes. Platting approach shall vary according to development type, required improvements, design themes or amenities and preferred siting arrangements.

    a. Applicability to Land Development Types: Subdivisions of tracts designated by the Zoning Map for non-residential use, Planned Development (PD) overlay, or Multi-family Residential (MR) use shall have indicated on the plat the permitted development envelope for each lot as determined by the applicable zoning district requirements. The Commission requires development envelope designation on individual lots in tracts designated Single-family Residential (SR), Mountain Preservation (MP) or Desert Rural (D), where necessary to preserve natural water courses, significant stands of vegetation, wildlife habitats or to prevent scarring of terrain or detrimental impacts on established dwellings.

    b. Required Improvement Waivers: At the Planning Commission's discretion and in consideration of the subdivider's provision of trail corridors and connections, designation of preserved natural areas, dedication of scenic easements, maintenance of natural drainage or other responses to community character, sidewalks and street lighting, except where necessary for life and safety, shall generally be waived to better adapt proposed improvements to the site and its environmental context.

2. Dedication of Parks and Other Public Lands: Any portion of the tract which contains land designated in the General Plan or recommended by the Commission for school, park, trail corridor or other public purpose shall either be dedicated to the public, reserved for acquisition by the public within a specified period or set into the appropriate easement which guarantees public areas in perpetuity.

CHAPTER 2. PLANNING STANDARDS AND PROCEDURES

SEC. 2.1 PROCESS

The preparation, submittal, review and approval of all subdivision plats located in the Town of Cave Creek shall proceed through the following three-step process: Pre-Application, Preliminary Plat and Final Plat.

SEC. 2.2 PRE-APPLICATION

A. PURPOSE

1. The first step of the three-step process affords the subdivider the opportunity to discuss the proposed subdivision informally with the appropriate Town of Cave Creek's Planning Department staff in order and to obtain advice prior to incurring the expense of Preliminary Plat preparation.

B. SUBMITTAL REQUIREMENTS

1. The subdivider shall schedule an informal meeting with the appropriate Town of Cave Creek's planning staff at least seven (7) days after providing the planning staff with a general outline of the proposal in the form of the following:

   a. A legal description of the land to be developed;

   b. Sketch plans showing of land use, street layout, lot arrangement, and anticipated lot sizes and site topography by contour or "spot elevations".

   c. Proposals for water supply, sewage disposal, drainage, street improvements., and treatment of environmentally sensitive lands, such as riparian habitats, natural open space, native vegetation stands and archaeological remains.

   d. Provide A map delineating potentially environmentally sensitive areas along with a treatment plan for environmentally sensitive lands, such as riparian habitats, natural open space, native vegetation stands and archaeological remains.

C. REVIEW PROCESS

1. The planning staff shall discuss the proposal with the applicant subdivider and advise him/her on procedural steps, design and improvement standards, and general plat requirements. Prior to the pre-application meeting the planning staff shall:

   a. Determine the necessity for a zoning change and advise the applicant.

   b. Assess the adequacy of existing infrastructure.

   c. Inspect the site to determine relationship to streets, utility systems, and adjacent land uses, noting any unusual aspects thereof such as topography, utilities, flooding, stands of native or riparian vegetation, habitat and existing trails.

D. CONCLUDING CRITERIA

1. The pre-application step shall conclude with specific directions to the applicant subdivider for the further processing of the proposed subdivision. However, the staff cannot bind the Town, and the applicant subdivider should expect that additional issues will likely be raised by the Town at later stages. The Town is not precluded from raising additional issues.

E. FINDINGS

1. As a result of town staff investigations, any findings of unique or extreme site conditions shall be noted and communicated to the applicant subdivider and discussed with regard to possible mitigating techniques and cited as issues to be addressed in the Preliminary Plat submittal. Those factors may include, but are not limited to:

   a. Certain lands are not appropriate for some land use intensities, by reason of adverse topography, propensity for flooding, unstable soils, subsidence, lack of water or other hazard to life or property.

b. Special treatments pertaining to lot size, grading, preservation of natural drainage, access for emergency vehicle or general traffic, utility extension deemed necessary for public health, safety or general welfare with respect to potential site development.

c. Opportunities or requirements for protecting natural resources such as wildlife habitats, natural vegetation, trail access, archaeological sites and scenic views in the interest of preserving the public welfare in terms of community character.

SEC. 2.3 PRELIMINARY PLAT

A. PROCEDURAL PREREQUISITES

1. The Preliminary Plat shall not be processed unless it meets the specific requirements for the zoning district in which it is located. However, a Preliminary Plat may be processed simultaneously with a request for Rezoning provided the Preliminary Plat is not approved prior to the Rezoning.

2. The Preliminary Plat shall include all contiguous landholdings of the subdivider.

B. INTENT

1. The preliminary plat step includes detailed planning, submittal, review and approval of the preliminary plat. This step is intended to resolve all major issues pertinent to the land's developability according to the Town's policies and specific environmental issues. To avoid delay in processing the application, the subdivider shall provide the Planning Department with all information needed to determine the character and general acceptability of the proposed development.

C. REQUIREMENTS

1. The plat shall be prepared, certified and stamped in accordance with this Ordinance and the statutes of the State of Arizona.

2. Each preliminary plat shall provide for compatibility with existing and future adjacent land uses by using lot sizes on the periphery of the development that are compatible to the adjacent areas or significant setbacks that will buffer a more intense land use from a less intense land use.

3. Each preliminary plat shall comply with Section 2.5 of this Chapter.

4. The preliminary plat shall be checked by the Planning Department staff for completeness. Staff will not accept an incomplete application.

D. DURATION OF PRELIMINARY PLAT APPROVAL

1. Preliminary plat approval is valid for a period of twelve (12) months from the date of Council action. A six (6) month extension may be granted by the Town Council following recommendation by the Planning Commission, upon written request of the applicant prior to expiration.

E. REQUIRED MATERIALS

1. Twenty copies of the preliminary plat, or a number to be determined by the Director of Planning, an 8 ½" x 11" transparency and other required supporting data shall be filed with the Department along with the required fees. Copies of the preliminary plat shall be reproduced in the form of blue line or black line prints on a white background.

   a. Form of Presentation: The information required for preliminary plat submittal shall be shown graphically or by notes on plans, or by letter, and may consist of several sheets showing various elements of required data. All mapped data for the same plat shall be drawn at the same standard scale, not more than 40 feet to an inch. When practical, the scale shall be adjusted to produce a drawing measuring at least 24" x 36" but not exceeding 30" x 42".

   b. Identification and Descriptive Data: Materials shall include the following:

(1) Proposed name of the subdivision or master planned development and its location by section, township, range, and reference by dimension and bearing to a section or ¼ section corner.

(2) Name, address, and phone number of the engineer, surveyor, landscape architect, or land planner preparing the plat.

(3) Name, address, and phone number of the applicant, owner, prospective purchaser or, if a corporation, the principals.

(4) Scale, north arrow, and date of preparation including dates of any subsequent revisions.

(5) A location map showing the relationship of the proposed subdivision to main traffic arteries and any other landmarks, which help locate the property. This map may be on the preliminary plat, but if that is not practical, a separate map showing title, north arrow, scale and date shall be provided.

(6) The plat shall be prepared, certified and stamped in accordance with this ordinance and statutes of the State of Arizona.

c. Existing Conditions Data: Complete information regarding the physical and legal status of the site is required, including:

(1) Topography by contours or "spot elevations" related to USC&GS survey datum, or other datum approved by the Town Engineer shown on the same map as to the proposed subdivision layout. Contour intervals shall be adequate to reflect the character and drainage of the land.

(2) Location of fences, water wells, streams, canals, irrigation materials, private ditches, washes, or other water features; direction of flow; location and extent of areas subject to inundation, whether such inundation be frequent, periodic, or occasional; and all environmentally sensitive areas.

(3) Location, widths and names of all platted streets, utility rights-of-way of public record, public areas, and municipal corporation lines within, adjacent to and/or extending from the tract.

(4) Location of all existing improvements on public and grading or drainage structures.

(5) Location of historical sites, archaeological sites and trail systems.

(6) Name, book, and page numbers of any recorded adjacent subdivisions or other private property having a common boundary with the tract.

(7) By note, the existing zoning classification of the subject tract and adjacent tracts.

(8) By note, the acreage of the subject tract.

(9) Complete boundary dimensions of the tract to be subdivided.

(10) Engineers' calculations and estimated values for each tributary storm runoff for 10 year, 50 year and 100 year frequency storms; the values to be indicated along the boundary of the plat for all points of drainage entering and exiting the property.

(11) Preliminary native plant survey and native habitat assessment. (See Chapter 12 of the Cave Creek Zoning Ordinance.)

(12) Percolation tests supported by a certified engineering opinion that the land is suitable to support absorptive filter fields for the proposed residential density and would not negatively impact existing wells in the area.

d. Proposed Conditions Data: Proposed site improvements, parcelization, development intensity and compliance with applicable safety and health requirements shall be indicated, including:

(1) Street layout, including location, width, and curve radii; proposed street names; crosswalks; and connections to adjoining platted tracts.

(2) Typical lot dimensions (scaled); dimensions of all corner lots and lots of curvilinear sections of streets; each lot numbered individually; and total number of lots or dwelling units.

(3) Designation of all land to be dedicated or reserved for public use and/or trail system with use and total open space acreage calculation indicated.

(4) Environmentally sensitive areas shall be protected by dedication as common parcels to the Homeowner's Association or existing conservation organization approved by the Town Council in perpetuity for maintenance purposes. If dedication is not feasible, such environmentally sensitive land areas shall be protected by a conservation easement.

(5) Any land for which multi-family, commercial or industrial use is proposed shall be clearly designated together with existing zoning classification.

(6) Proposed number of development units, including individual and average lot sizes (in square feet).

(7) Proposed storm water disposal system, preliminary calculations, and layout of proposed drainage system in accordance with Maricopa County Flood Control requirements.

(8) Compliance with the rules and requirements of the Maricopa County Flood Control Ordinance relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation; the Arizona Department of Transportation (ADOT) relating to provisions for safety of, ingress and egress to abutting State primary highways; the State of Arizona Health Services Department, the Maricopa County Environmental Services Department or the Town of Cave Creek relating to the provision of domestic water supply and sanitary sewage disposal.

(9) For subdivisions containing fifty (50) or more units, the applicant must provide a traffic study including, but not limited to, information about existing traffic volumes on adjacent streets, proposed traffic volumes after the build-out of the subdivision, and proposed methods of ingress and egress to the development.

e. Proposed Utility Methods: Statements shall appear on the plat as to the type, source and adequacy of sewage disposal; electric and gas supply; and service for telephone, garbage removal and, if applicable, cable television.

F. PRELIMINARY PLAT REVIEW

1. Upon receipt of the preliminary plat, the Department shall distribute copies for review to: The Town Engineer and other appropriate staff; the public/private fire department; the Health Department for review of water, sewage disposal and radon gas mitigation proposals; the Maricopa County Flood Control District; the Cave Creek Unified School District; Arizona Department of Transportation, if applicable; interested utilities; the Cave Creek Postmaster; and other agencies as deemed necessary.

2. Reviewing agencies shall be requested to transmit their recommendations to the Department in writing. The Department shall summarize the reviewing offices' recommendations, prepare a staff report regarding the project and present it to the Planning Commission.

G. PRELIMINARY PLAT APPROVAL

1. The Department staff report shall be submitted for Commission review within forty-five (45) days of receipt of a complete preliminary plat submittal.

2. Commission Review: The Commission may recommend approval or denial of the preliminary plat, or recommend approval with stipulations to the Council; or, if the plat is generally acceptable, but requires revision, the Commission may recommend conditional approval; or, if the Commission finds that the plat requires major revisions, the plat may be continued pending re-submittal.

3. Council Consideration: Upon receipt of a Commission recommendation, the plat shall be scheduled for Council consideration, at which time, the Council may approve or deny the preliminary plat or approve it with conditions.

SEC. 2.4 FINAL PLAT

A. INTENT

1. The final plat is the last stage in the subdivision approval process. At this stage the subdivider is responsible for delineation and dedication of all public rights-of-way and easements, dedication of other public lands, and final lot and block configuration. In addition, all public improvements associated with the subdivision are identified and the subdivider is required to enter into an agreement with the Town, which guarantees that the appropriate improvement costs are borne by the subdivider.

B. PRELIMINARY PLAT REQUIRED FIRST

1. No request for final plat approval shall be considered until the preliminary plat has been approved and all conditions of approval of the preliminary plat have been satisfied.

2. The final plat approval process shall not be used to revise the approved preliminary plat or the conditions of approval of the preliminary plat. Except for minor revisions any amendments to the preliminary plat, or to the conditions, must be approved by an amendment to the preliminary plat prior to proceeding to the final plat.

C. REQUIREMENTS

1. The final plat shall conform in all respects to the approved preliminary plat.

2. The plat shall be prepared, certified, and stamped in accordance with this ordinance and the statutes of the state of Arizona.

D. PROCEDURE

1. Conformance with preliminary plat.

   a. The Zoning Administrator shall review the application and final plat to determine whether there is any material difference from the preliminary plat.

   b. If the Zoning Administrator determines that the final plat application has any material difference with the approved preliminary plat, the application shall be determined to be incomplete and shall not be accepted. A detailed list of such differences will be provided to the subdivider.

2. Procedural Prerequisites: The final plat shall conform with all Town land use regulations and improvement requirements and shall include proper acknowledgment of all real property rights necessary for protecting public interests and private title.

   a. Easements: The subdivider shall indicate on the final plat the location and widths of easements as required for utility and drainage.

(1) The following notation shall be placed upon all final plats which provide utility easements: "No structure of any kind shall be constructed or placed within or over the utility easements except: utilities; wood, wire, or removable section type fencing; asphalt paving, and/or grass. It shall be further understood that the Town of Cave Creek shall not be required to replace any obstructions, paving or planting that must be removed during the course of maintenance, construction or reconstruction."

(2) The following notation shall be placed on all final plats, which provide drainage easements: "Natural, unimpeded drainage is preferred wherever practical. No structure of any kind shall be constructed or any vegetation be planted nor be allowed to grow within, on or over the drainage easement, which would obstruct or divert the flow of storm water. The Town may construct and/or maintain drainage facilities on or under the easement."

b. Dedication and Acknowledgment: The final plat shall contain a statement dedicating all streets, crosswalks, drainage ways, trails, pedestrian ways, and other easements for public use by the person or persons holding title of record, by persons holding title as vendees under land contract and spouses of said parties.

(1) Dedication shall include a written location by section, township and range of the tract. If lands dedicated are mortgaged, the mortgagee shall sign the plat. If the plat contains private access ways, public utilities, including refuse collectors, all reserve the right to install, conduct and maintain utilities in the access ways.

(2) Execution of the dedication shall be certified by a notary public.

3. Required Materials: The applicant shall file with the Planning Department one Mylar transparency and twenty (20) copies of the final plat, or a number to be determined by the Planning Director, together with a letter of transmittal and recording fee, at least sixty (60) days prior to the Commission meeting at which consideration is desired. A fee for final plat and construction plan review shall be paid to the Town in accordance with required fees.

The final plat shall be presented as required herein and shall conform to the approved preliminary plat.

a. Form of Presentation: Maps and plats that exceed a size of 8½" x 14" shall be subject to the following restrictions. Copies of the final plat shall be reproduced in the form of blue line or black line prints on a white background in addition to the following original documents:

(1) The subdivision plat shall be drawn in India ink on a sheet or sheets of linen or Mylar measuring 24" x 36" with a left margin of two inches, drawn to an accurate scale not to exceed forty (40) feet to the inch.

(2) All other maps or graphics shall be drawn in India ink on a sheet or sheets of linen or Mylar measuring 18" x 24" with a left margin of two inches, drawn to a scale not to exceed one hundred (100) feet to the inch.

b. Identification Data: The following identification data shall be required as a part of the final plat submittal.

(1) A title, which includes the name of the subdivision and its location by number of section, township, range, and county.

(2) Name, address and registration number of the seal of the registered civil engineer or registered land surveyor preparing the plat.

(3) Scale, north arrow, and date of plat preparation.

c. Survey Data: The following survey data shall be required:

(1) The corners of the plat shall be located on the monument lines of abutting streets; boundaries of the tract to be subdivided fully balanced and closed, showing all bearings and distances, determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof.

(2) Any excepted parcel(s) within or surrounded by the plat boundaries shall be noted as "not a part of this subdivision" and show all bearings and distances of the excepted parcel as determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof.

(3) Location and description of cardinal points to which all dimensions, angles, bearings and similar data on the plat shall be referenced. Each of two separate corners of the subdivision traverse shall be tied by course and distance to separate section corners or quarter-section corners. Subdivision boundary and lot closure and area calculations shall be submitted to the Town by the certifying land surveyor.

(4) Location of all physical encroachments upon the boundaries of the tract.

d. Descriptive Data: the following descriptive data shall be required:

(1) Name, right-of-way lines, courses, length and width of all public streets, and crosswalks, radii, point of tangency, and central angles of all curvilinear streets and alleys; radii of all rounded street line intersections.

(2) All drainage easements shall be shown on the plat.

(3) All lots shall be numbered by consecutive numbers throughout the plat. All tracts and parcels shall be designated, lettered, or named and clearly dimensioned.

(4) Location, dimensions, bearings, radii, arcs, and central angles of all sites to be dedicated to the public with the use clearly indicated.

(5) Location of all adjoining subdivisions with name, book, and page number of recording noted, or if unrecorded, so marked.

(6) Any proposed private deed restrictions to be imposed upon the plat or any part or parts thereof pertaining to the intended use of the land, and to be recognized by the Town, shall be noted on the plat.

(7) All existing private easements within, on, or over the plat shall be indicated, dimensioned, and noted as to their use.

(8) Conditions, Covenants and Restrictions (CC&Rs) shall be submitted for staff review and comment for all subdivisions having common areas, homeowners' groups or other assessment entities in accordance with State law. Staff review and comment upon CC&Rs shall not under any circumstances be deemed approval of the CC&Rs by the Town.

(9) Native plant survey, together with revegetation plans, conservation easements, and habitat preservation areas.

(10) Location of any existing historical and/or archaeological sites.

(11) Provide a Certificate of Assured 100 Year Water Supply issued by the Arizona Department of Water Resources.

e. Final Plat Review: The Department, upon receipt of the final plat submittal, shall immediately record the receipt and the date of filing and check it for completeness.

(1) Reviewing Agencies: Upon finding the submittal complete, the Department shall review the plat for substantial conformity to the approved preliminary plat and refer copies to the following agencies: the Town Engineer and other appropriate staff; the Maricopa County Environmental Services Department, for approval of sewage disposal plans; the Arizona Department of Transportation or the Maricopa County Department of Transportation for approval where the plat abuts a State or County Highway.

(2) Consolidated Recommendation: The Planning Department shall assemble the recommendations of the reviewing offices, prepare a complete staff report consolidating the reviewers' recommendations and submit it to the Commission for review and recommendation to the Council.

f. Final Plat Approval: The consolidated recommendation shall be submitted for Commission review and recommendation within forty-five (45) days of final plat filing. Upon recommendation of the Commission, the Town Clerk shall place the plat on the agenda of a regular Council meeting, whereupon the Council shall approve or deny the plat.

Submission of subdivision deed restrictions, if any, shall be required prior to final plat approval.

(1) Council Approval: Upon Council approval of the plat, the Mayor may sign the plat.

(2) Certification: When the certificate of approval by the Council has been transcribed on the plat, the Planning Department shall retain the record copy until the Town Engineer certifies that the subdivision has been staked and the engineering plans, containing the seal of a registered civil engineer or registered land surveyor, have been approved.

(a) The registered civil engineer or registered land surveyor shall certify that the plat is correct and accurate and that the lot corners will be set in accordance with the recorded plat within one year of the date of Council approval and prior to any lot sales.

(b) Bonding shall also be posted within one (1) year of the date of Council approval and prior to the issuance of any grading, excavation, building or grubbing permits.

(3) Recordation: The Department shall cause the final plat, including stipulations and exhibits, to be recorded in the office of the Recorder after it has been signed by the Mayor.

(4) Duration: Final plat approval is valid for a period of three years from the date of the signing of the plat. If the project has not commenced within that period, the applicant must start the subdivision review process anew, proceeding through the Pre-Application, Preliminary Plat and Final Plat stages.

SEC. 2.5 LOT PLANNING

A. REQUIREMENTS AND STANDARDS

1. Lots shall meet the width, depth, frontage, lot size and all other requirements of the specific zoning district in which the subdivision is located.

2. No single lot shall be divided by a municipal or county boundary line, a public road or street, or a private road or street, which can legally be used by more than the owner of the lot.

3. No remnants of property shall be left in the proposed subdivision, which do not conform to the zoning ordinance. This includes lots to be used for private or public utilities.

4. Residential corner lots shall be platted wider than interior lots in order to permit conformance to required side yard requirements.

5. All lots, except for those reserved for open space, shall be capable of being built upon. Any portion of a lot, which is not capable of being built upon shall be declared non-buildable and shall be preserved as undisturbed natural open space.

6. No non-public way or driveway shall provide access to more than three (3) residential lots.

7. The lots, parcels or tracts width to depth ratio shall not exceed 1:3.

8. Flag lots, parcels or tracts shall not be allowed. All lots, parcels or tracts shall be, as much as possible, rectangular in shape.

B. SHAPE

1. Lots shall generally be a regular, rectangular shape unless otherwise recommended by the Planning Department and Planning Commission and approved by the Town Council.

2. Lots adjoining an arterial or collector road should generally be deeper to provide appropriate protection from noise, air pollution and visual impacts of traffic.

3. Single family residential lots shall not have a width to depth ratio greater than one to three.

C. ELEVATIONS

1. The features of each home in a single-family residential development shall be substantially different from any home, building or structure within six hundred (600) feet from the corner of subject lot. Such features include the following:

   a. Setbacks from streets.

   b. Front window size, type and placement.

   c. Location of front entrance, porch, chimney or garage.

   d. Roof dimensions (length, width, height, etc.)

   e. Material colors and color schemes, etc.

   f. Reversed floor plans do not constitute a change in elevation.

D. LOT LINES

1. Side lot lines shall be substantially at right angles or radial to street lines and shall be straight unless otherwise dictated by topography or other physical reasons, except where other treatment may be justified by the Planning Department.

2. Rear lot lines should avoid acute angles with side lot lines and shall normally be straight.

E. ACCESS

1. All lots, parcels or tracts shall front onto and take access from a dedicated and accepted public street classified as and developed to local, collector, arterial or private street standards and the public street or private street shall connect to the publicly dedicated and accepted street system.

2. Private streets shall be prohibited unless approved through the Planned Area Development (PAD) or Planned Unit Development (PUD) process.

3. All private streets shall meet the Town of Cave Creek street standards.

4. All streets shall be as continuous as possible in accordance with the General Plan.

F. DOUBLE FRONTAGE LOTS

1. Residential lots extending through the block and having frontage on two parallel streets neither of which is an arterial street shall not be permitted; except when there are commercial or industrial zoning districts on the opposite side of either street.

G. BUILDING ENVELOPES

1. Building envelopes shall not encroach into the required twelve (12) foot native habitat corridor.

H. LOTS FRONTING ARTERIAL ROADS

1. Fronting lots on arterial streets shall be prohibited except where alternate access roads are provided.

CHAPTER 3. CONDOMINIUM DEVELOPMENT

SEC. 3.1 APPLICATION

A. PROCESSING

1. The processing of subdivision plats for condominium developments shall follow the procedures set forth in these regulations for processing of land subdivision plats. All sections of this Ordinance shall be applicable to condominium subdivisions.

B. REQUIRED INFORMATION

1. All plats for condominium subdivisions shall show all of the information required for pre-application, preliminary plat and final plat as set forth in this Ordinance or as specified by the Planning Department.

C. PROCEDURES

1. Condominium development and condominium conversions shall follow all procedures and requirements set forth in this Ordinance for pre-application, preliminary plat and final plat.

D. ADDITION INFORMATION REQUIRED

1. Location, height, gross floor area and proposed uses of each existing and proposed structure.

2. Location, use and type of surfacing of all open storage areas.

3. Location and type of surfacing of all private access ways, driveways, pedestrian ways, vehicle parking area and curb cuts.

4. Location, height and type of materials for walls or fences.

5. Location of all landscaped areas, type of landscaping, irrigation plans and a statement specifying the method by which the landscaping areas shall be maintained.

6. Location of all recreational facilities and a statement specifying the method of their maintenance.

7. Location of parking facilities to be used in conjunction with each dwelling.

8. Location, elevation, type and color of materials to be used and methods of illumination for signs.

9. Structural elevations shall be required at the discretion of the Zoning Administrator. Elevations shall indicate type of materials used in construction, as well as the method used to provide sound insulation/attenuation in all common walls.

10. Any other required information as requested by the Zoning Administrator.

11. Designation of all commonly owned property, including that with buildings.

SEC. 3. 2 RECORDATION

Final plats for condominiums shall be recorded before the issuance of a building permit.

CHAPTER 4. ENGINEERING STANDARDS AND POCEDURES

SEC. 4.1 SEWAGE DISPOSAL SYSTEMS

A. APPROVAL AND RECOMMENDATION

1. Individual lot sewage handling systems requiring percolation will not be considered for approval by the Town Council unless percolation tests are approved and specifically recommended by a registered engineer, hired by the Town and paid for by the subdivider via the septic review fee of $5,000 or the actual fee plus $2,500 whichever is greater.

B. REQUIREMENTS

1. Individual lot sewage systems shall meet the following requirements:

   a. Individual lot sewage systems shall not be located within a wash or stream channel. In addition, if there are ground surface elevations below the level of the septic system leach field within one hundred fifty (150) feet of any lot boundary, a geotechnical report, conducted by a registered professional engineer or geologist certifying the leachate will not surface within the one hundred fifty (150) foot distance stipulated above, shall be required.

   The lot sewage system shall not be located on the lot between any wash or stream channel and a line parallel to the wash, or stream channel, drawn through that point of the structure farthest from the wash (as shown on Appendix E diagram).

   b. All individual lot sewage systems shall be located within the buildable area.

   c. Applicants proposing subdivisions utilizing individual lot sewage systems requiring percolation shall demonstrate approved percolation tests on each lot prior to the first Planning Commission hearing of the preliminary Final Plat.

d. All percolation tests shall be performed on the location identified as the leach field location for the individual lot septic system. Any relocation of the individual lot septic system shall require additional percolation testing of the new location. Any daylighting, system malfunction or failure shall result in immediate cessation of all building until remedied by the developer.

e. All excavations shall be completely fenced with chainlink fencing six (6) feet high and securely covered to mitigate a hazardous condition for children and animals.

f. Upon completion of testing, all excavations shall be completely filled in and compacted prior to removal of fencing materials.

g. All percolation tests shall be in strict compliance with Arizona Department of Environmental Quality Engineering Bulletin No. 12, "Minimum Requirements for the Design and Installation of Septic Tank Systems and Alternative On-site Disposal Systems," Arizona Department of Environmental Quality, June, 1989, as amended. the Arizona Administrative Code; Title 18. Environmental Quality: Chapter 9. Department of Environmental Quality Water Pollution Control.

SEC. 4.2 GRADING AND DRAINAGE PLANNING

A. REQUIREMENTS AND STANDARDS

1. Mass grading on any lot is prohibited. Prior to the initiation of any grading or grubbing activity, an eight (8) foot high chain link fence shall be erected to completely enclose the buildable area or development envelope, whichever is smaller in size, and shall be maintained until the completion of construction. Areas outside of the buildable area or development envelope, whichever is smaller in size, shall be identified as undisturbed open space and left in its natural state. No construction, development or disturbance shall be permitted outside the buildable area except for driveway access.

2. The approved grading and grubbing permit shall be conspicuously posted on the property a minimum of ninety-six (96) hours prior to the commencement of any grading or grubbing.

3. At the time of the application for preliminary plat, the applicant shall provide a drainage system design plan encompassing the entire proposed subdivision. The drainage system design plan shall include the runoff from the proposed subdivision parcel and the runoff from areas adjacent to and "upstream" of it. The drainage system design plan shall insure that post-development runoff from the proposed subdivision shall not exceed the pre-development volumes and velocities discharged onto adjacent "downstream" property in accordance with Arizona law. At the time of the final plat, the subdivider shall include the final drainage design for the proposed subdivision for final approval.

4. On a corner lot, no grading shall be allowed which results in the ground level being raised so as to obstruct the vision more than a height of two (2) feet above the grade of either street within an area formed by the lot lines on the street sides of such lot and a line joining points on such lot lines located a distance of thirty-three (33) feet from the point of their intersection.

5. All cut and fill slopes for the roadway shall be within the roadway right-of-way or roadway easement.

6. Slope maintenance easements for roadway cuts and fills shall be required by the Town Engineer.

7. In no case shall fill slopes be steeper than 1-1/2:1 and cut slopes no steeper than 1:1.

8. Retaining walls may be used to fill slopes if designed by a registered structural/civil engineer and approved by the Town Engineer. Retaining walls shall not exceed six (6) feet in height above grade.

9. Not more than five percent (5%) of the development envelope shall have a cross slope steeper than natural grade or steeper than twenty percent (20%), whichever is greater.

10. The total area of cuts and fills shall not exceed the disturbed area requirements provided in the Town's Zoning Ordinance.

11. All excavated material shall be removed from the premises, contained behind retaining walls, or placed so that the slopes of any fill material will not be visible from any public street.

12. Prior to the submittal of preliminary plat, a landscape conservation plan for the entire proposed subdivision shall be submitted for approval by the Planning Department. The plan shall identify for preservation throughout the subdivision design process, areas of significant plant material and natural open space, as they relate to potential development envelopes and street alignments.

13. A plat revegetation plan that includes roadway rights-of-way and utility easements shall be required at time of Final Plat submittal.

    a. The revegetation plan shall:

        (1) Provide a landscape schedule and location of all plant materials and method of irrigation;

        (2) Indicate that all revegetation areas be landscaped with native plants (from Appendix B) contained in the Zoning Ordinance of the Town of Cave Creek.

        (3) Designate at a minimum one tree per forty (40) feet of street frontage for both sides of the street. Trees shall have a minimum twenty-four (24) inch box size. The size, location, and species of tree shall be approved by the Town. The trunk center shall be no closer than eight (8) feet from the edge of the roadway. Utility lines shall be installed within the eight (8) foot area adjacent to the roadway.

The Town shall choose three (3) 20' x 20' random sample survey plots, approved by the Zoning Administrator, from the site to be inventoried. The average density, species and tree size of the plots shall become the minimum standard for the revegetation. If the existing site has been disturbed to the point of not allowing for sufficient sampling, the town staff shall determine the nearest site that would be representative of the area.

b. The revegetation plan shall be approved by the Town Council with Planning Commission review and recommendation prior to approval of the Final Plat.

c. All plant materials for revegetation shall be warranted in the form of a bond equal to one hundred twenty-five percent (125%) of the replacement cost of all plant material. The bond shall be in effect for a period of two (2) years from installation of plant materials.

d. During the two-year period, starting with the first building permit, any dead plant material shall be promptly replaced by the subdivider. The Town shall withhold building permits and certificates of occupancy if the subdivider does not promptly replace the dead plant material with healthy plants and trees.

e. All revegetation shall be completed and approved by the Zoning Administrator prior to issuing a building permit for houses within the subdivision.

SEC. 4.3 EASEMENT PLANNING

A. REQUIREMENTS AND STANDARDS

1. Easements shall be provided and dedicated where deemed necessary for specific purposes for use by the general public, utility companies, or the Town of Cave Creek.

B. UTILITIES

1. Easements for utilities shall be provided as required by the respective utility companies.

2. Where alleys are provided, four (4) feet on each side shall be provided for utility easements.

3. Where required there shall be an easement of eight (8) feet in width on each side lot line.

C. DRAINAGE

1. Where a stream, wash or surface drainage course abuts or crosses a tract, a drainage easement of a width sufficient to protect and maintain said watercourse shall be required.

SEC. 4.4 STREET PLANNING

A. STREET LAYOUT

1. Whenever a tract to be subdivided includes any part of a street designated on the Town's General Plan, such street shall be platted consistent with the Plan.

2. Street layout shall provide for the continuation of arterial, collector and local streets as the Planning Department may designate, including certain proposed streets extended to the tract boundary to provide future connection with adjoining unplatted lands, subject to Planning Commission and Town Council approval.

3. Streets shall be designed to accommodate traffic generated both on and offsite.

4. Local streets shall be arranged to discourage through traffic.

5. Alleys may be required in commercial and industrial subdivisions. The width of the right-of-way shall be a minimum of twenty (20) feet.

6. Half streets shall be prohibited except where necessary to provide right-of-way required by the Town's General Plan or to complete a street pattern already begun or to ensure reasonable development of a number of adjoining parcels.

Where a platted half street abuts the tract to be subdivided, the remaining half shall be platted within the tract.

7. Dead-end streets shall not be approved except in locations identified by the Planning Department and the Town Engineer as necessary to provide access to adjacent lands. If approved by the Planning Commission and Town Council, these streets shall terminate in a circular right-of-way forty-five (45) feet in radius until such time as extended to adjacent property.

8. Street jogs with centerline offsets less than one hundred twenty-five (125) feet shall be prohibited except when recommended by the Planning Department and Town Engineer, and subject to Planning Commission and Town Council approval.

9. Streets shall be arranged in relation to existing topography to produce desirable lots of maximum utility and streets of reasonable gradient, and to facilitate adequate drainage.

10. Provision of T-type intersections for local streets is encouraged.

11. Blocks shall be as long as reasonably possible under the circumstances in order to achieve street economy and to reduce safety hazards arising from excessive numbers of street intersections. Generally, blocks shall not exceed 1,500 feet or eight (8) lot widths whichever is greater nor be less than 500 feet in length measured street centerline to centerline.

12. Generally, maximum length of cul-de-sac streets shall be 600 feet or four (4) lot widths on one side of the street, whichever is greater.

13. Street platting shall be curvilinear and meandering throughout the subdivision; a grid-like pattern shall be prohibited.

14. Arterial street intersections shall be designed at a ninety (90) degree angle; local street intersections shall not vary from ninety (90) degrees by more than fifteen (15) degrees.

15. Where a proposed subdivision abuts or contains a drainage way, a limited access highway or an irrigation canal, or abuts a commercial or industrial land use, a street or streets providing suitable separation for the proposed subdivision may be required.

16. Where a proposed subdivision abuts or contains an existing or proposed arterial street, marginal access roads or reverse frontage with non-access easements along the proposed arterial street, or such other treatment as may be justified for protection of residential properties from the nuisance and hazard of high volume traffic and to preserve the traffic function of the arterial street in other types of developments, may be required.

17. Street intersections with more than four (4) legs are prohibited.

18. At local street intersections, property line corners shall be rounded by a circular arc having a minimum radius of twenty (20) feet.

B. RIGHT-OF-WAY WIDTHS

1. Arterial street and highway rights-of-way width may vary from eighty (80) feet to one hundred and ten (110) feet depending on current and projected traffic volumes. Exact width shall be recommended by the Town Engineer. Where auxiliary lanes are required, width requirements may exceed the maximum.

2. Collector Streets: Width of right-of-way shall be eighty (80) feet.

3. Local streets: Width of right-of-way shall be sixty (60) feet.

4. Private Street: Width of right-of-way shall be a minimum of twenty (20) feet.

5. Alleys: Width of right-of-way shall be twenty (20) feet.

6. Pedestrian, Bicycle and Equestrian Ways (pathways): A minimum right-of-way width of ten (10) feet shall be required for pathway access to schools, playgrounds, shopping centers, transportation and other community facilities. Pedestrian ways may overlie utility easements.

7. Cul-De-Sac streets shall terminate in a circular right-of-way forty-five (45) feet in radius. The Town Engineer may recommend an equally convenient form of turning and backing areas where conditions justify.

C. STREET DESIGN STANDARDS

1. Grades: Streets shall be graded to assure safe traffic access for designated town street and highway plan capacities.

a. Maximum Grade:

(1) Arterial streets 8%

(2) Collector streets 10%

(3) Local streets 10% or may be 12% subject to a maximum length of 600 feet.

(4) Private access roads 15%

b. Minimum Grade:

(1) Asphalt streets with concrete gutters or asphalt berms:

(a) Desirable minimum 0.50%

(b) Absolute minimum 0.20%

(2) Asphalt streets without gutters:

(a) Minimum 0.35%

2. Vertical Curves:

a. All vertical curves shall be constructed to provide the required stopping sight distance (SSD) commensurate with the design speed of the street, as recommended by the Planning Department, subject to Planning Commission and Town Council approval. The minimum requirements:

(1)	50 MPH design speed	350' SSD
(2)	40 MPH design speed	275' SSD
(3)	30 MPH design speed	200' SSD

3. Horizontal Curves:

a. Horizontal curves shall be provided based on design speed, stopping sight distance and traffic volume requirements. The minimum requirements are:

(1)	Arterial streets	Minimum radius 850'
(2)	Collector streets	Minimum radius 550'
(3)	Local streets	Minimum radius 300'

(4) Between horizontal reverse curves there shall be a tangent section not less than 100' long for all streets.

4. Surface Treatment:

a. The traveled way of all arterial and collector streets shall be surfaced with asphaltic concrete installed under the generally accepted construction techniques documented by the Arizona Department of Transportation for ½ inch mix requirements unless an alternative surface is approved by the Town Council.

5. Structural:

   a. Arterial and collector street bases and surface thickness shall be recommended by the Town engineer from soil analysis provided by the subdivider. In no case will the base and surface be less than that required for local streets.

   b. Local streets shall have two (2) inch (compacted thickness) of asphaltic concrete placed over a minimum of six (6) inches of approved aggregate base.

D. PAVEMENT AND SHOULDER WIDTH

1. Private streets shall have a minimum roadway width of twelve (12) feet.

2. Local streets shall have a roadway width of twenty-two (22) feet and a shoulder width of five (5) feet.

3. Collector streets shall have a pavement width of thirty-two (32) feet and a shoulder width of eight (8) feet.

4. Arterial streets shall have a pavement width of seventy-two (72) feet and a shoulder width of twelve (12) feet.

5. These widths may vary upon recommendations from the Town Engineer and approval by the Planning Commission and Town Council.

E. STREET NAMING

1. Street names should comply with the Maricopa County street naming system for arterial (section line) and half-section line roads.

2. Street names shall be consistent with the natural alignment and extension of existing named streets.

3. New street names shall not be similar or duplicate an existing street name.

4. Subdivider shall propose the street names at the time of preliminary plat submittal to the Planning Department.

5. Street names shall be recommended by the Commission and approved by Council.

SEC. 4.5 SUBDIVISION IMPROVEMENTS

A. RESPONSIBILITY

1. It shall be the responsibility of the subdivider to provide all subdivision improvements as specified herein both within the subdivision and adjacent thereto when required to serve the subdivision.

2. No grading, grubbing or permanent improvement work shall be commenced until all plans and profiles have been approved by the Town Engineer or consultant as provided by the Town Council.

3. Improvements shall be installed to the permanent line and grade and to the satisfaction of the Town Engineer.

4. The cost of all inspections shall be paid by the subdivider.

5. No grading or grubbing work shall be permitted without first obtaining a permit.

6. No temporary or permanent structure shall be constructed without first obtaining a building permit.

B. REQUIRED IMPROVEMENTS

1. Site grading shall be in accordance with Section 4.2 of this Ordinance.

2. Sewer facilities shall be in accordance with Section 4.1 of this Ordinance.

3. Drainage shall be in accordance with Section 4.2 of this Ordinance.

4. Each lot shall be supplied with potable water in sufficient volume and pressure for domestic use and fire protection purposes. Water mains and fire hydrants connecting to the water system shall be installed per approved plans and hydrant flow tested and recorded by the fire department prior to the issuance of the first building permit.

5. All landscaping, along with appropriate watering systems, within public rights-of-way or landscape easements shall be in accordance with plans approved by the Town. Low water-use, desert landscaping consisting of varieties listed in the Town Zoning Ordinance, Appendix B "Native Indigenous Plants," and low-maintenance ground cover is preferred.

6. Permanent property markers shall be installed in accordance with current Town standards at all corners, angle points, and points of curve at all street intersections; and at all corners, angle points of curve of all conservation easements.

    a. After all improvements have been installed; a registered land surveyor or engineer shall check the locations of the markers and certify their accuracy of placement.

    b. Iron pipes shall be set at all lot corners, angle points and points of curve for each lot within the subdivision, prior to any lot sale, and before the recording of the plat.

    c. Permanent brass cap in concrete markers shall be set in conformance with Maricopa Association of Governments' standards for all subdivision points which are located in public rights-of-way.

7. Streets and Related Improvements

    a. All streets, alleys, and pathways shall be constructed to widths and grades shown on the improvement plans and profiles. The subdivider shall improve the extension of all subdivision streets and pathways to any intercepting or intersecting streets. Access to and within subdivisions shall be provided by paved streets improved to Town standards.

b. Where there are existing streets adjacent to the subdivision, the subdivision streets shall be improved to the intercepting paving line of such existing streets, or to a matching line determined by the Town Engineer. Transition paving shall be installed as required by the Town Engineer.

c. When a subdivision includes or is bounded by a collector or arterial street which is not paved or where there is no paved street between the subdivision and a paved collector or arterial street, an all-weather two lane street that meets the standards of a collector street shall be constructed to the nearest publicly dedicated and paved collector or arterial street. When adequate rights-of-way do not exist, the subdivider shall also acquire the necessary rights-of-way in a location subject to the Town Engineer's approval.

d. Where streets are to be paved a "Maricopa Edge" or ribbon curb shall be installed in accordance with approved Town standards.

e. When required, pathways shall be installed as shown on the improvement plans and profiles.

f. Crosswalks shall be constructed to a width, line and grade approved by the Town Engineer.

g. Street name signs shall be provided by the subdivider and placed at all street intersections and be in place by the time the street pavement is ready for use. Specifications for design, construction, location, and installation shall be by the Town Engineer.

h. All reflectors, traffic control signs and road striping, as required by the Town Engineer, shall be installed by the subdivider before streets are opened for public use.

i. Street lights are not permitted except to illuminate arterial street or highway intersections for safety purposes. Street lighting facilities shall only be provided in accordance with the requirements of the Town.

j. Upon subdivision build out and subject to Town acceptance, all subdivision streets and roadways shall be dedicated to the Town as public streets.

8. New utilities, including, but not limited to electric, communication and cable television lines, shall be installed underground as follows:

a. When overhead utility lines exist within the property being platted, said existing overhead utility lines and the new installations within the platted area shall be placed underground.

b. When overhead utility lines exist on the periphery of the property being platted, said existing overhead utility lines and any additions or replacements needed to increase capacity or to improve service reliability may remain overhead. However, service drops into the platted area from peripheral overhead lines shall be placed underground.

c. When, as a result of the subdivision development, it is necessary to relocate, renew or expand existing facilities within the platted area, the subdivider shall make the necessary arrangements with the serving utility for these installations to be placed underground.

d. The subdivider shall arrange with the serving utility for, and be responsible for, the cost of underground service lines to approved street light locations.

e. The subdivider is responsible for the requirements of this section and shall make arrangements with each of the serving utility companies for the installation of the underground facilities.

f. Letters from each of the serving utility companies Town Engineer at the time the final subdivision plat is submitted for approval.

g. When due to subsurface soil conditions and/or other special conditions it is determined by the Town Engineer that it is impractical to construct facilities underground, installations may be overhead upon positive recommendation by the Planning Commission and approval by the Town Council.

h. Electric lines of greater than 3,000 KVA (kilovolt amperes) capacity, as rated by the American Standard Association, are excluded from the requirements of this section.

i. All underground installations shall be constructed prior to surfacing of the streets.

j. Service stubs to platted lots within the subdivision for underground utilities shall be placed to such length so as not to necessitate disturbance of street improvements when service connections are made.

k. Utilities shall be extended to all properties immediately adjacent to the proposed subdivision.

SEC. 4.6 ENGINEERING PLANS

A. IMPROVEMENT PLANS

1. It shall be the responsibility of the subdivider to have an Arizona registered civil engineer prepare a complete set of engineering plans for construction of all required improvements.

2. The final plat shall not be presented to Council until all engineering plans for water, sanitary sewer, grading, street construction, street lighting, landscaping, and all other required improvements have been approved by the Town Engineer. Such plans shall be based on the approved preliminary plat and be submitted with the final plat.

B. CONSTRUCTION AND INSPECTION

1. All improvements shall be constructed with the inspection and approval of the Town Engineer.

2. All construction requires a Town permit. Construction shall not begin until a permit has been issued for such construction.

3. If work has been discontinued for any reason for a period in excess of six (6) months, work shall not be resumed until after approval is granted in writing by the Town Engineer. Copies of all permits must be prominently displayed at the construction site ninety-six (96) hours prior to construction.

CHAPTER 5. HABITAT, ENVIRONMENTALLY SENSITIVE AREAS AND LANDSCAPE STANDARDS AND PROCEDURES

SEC. 5.1 PRESERVATION OF HABITAT

1. Prior to the submission of the preliminary plat, an environmentally sensitive area survey and landscape conservation plan for the entire proposed subdivision shall be submitted for approval by the Planning Department. The plan shall identify for preservation throughout the subdivision design process areas of significant plant material and natural open space, as they relate to potential home sites and street alignments. (All relevant sections of Chapter 12 of the Town of Cave Creek Zoning Ordinance shall apply).

2. The preliminary plat shall be designed to minimize disturbance of significant trees and cacti and other unique plants, especially threatened or endangered species. (See Chapter 12 of the Town of Cave Creek Zoning Ordinance).

3. Desert wash corridors shall remain undisturbed and extend a minimum of twenty (20) feet from the outer edge of both sides of the bare unvegetated wash bottom and shall remain in their natural course.

4. No structures, including but not limited to walls, houses, and accessory buildings shall be located within a wash.

5. The impact from any road, which crosses a desert wash, shall be minimized to encourage wet crossings.

6. All retention basins shall be constructed and located on the principle that many, small retention areas are better than a few, large retention areas.

7. Environmentally sensitive areas shall be protected by dedication as common parcels to the Homeowner's Association or existing conservation organization approved by Town Council in perpetuity for maintenance purposes. If dedication is not feasible, such environmentally sensitive land areas shall be protected by a conservation easement.

SEC. 5.2 ENVIRONMENTALLY SENSITIVE AREAS

A. PURPOSE

The purpose of this section is to preserve areas that are environmentally sensitive by dedication or conservation easement.

1. WASH AREAS - The area within twenty (20) feet from and including the designated FEMA floodway, which has the presence of a channeled drainage way evidenced by a drainage path, with or without vegetation. (As shown on Appendix A map).

2. RIDGE LINE AREAS - The ridgeline is formed by opposing slopes on a mountain or hill. The ridgeline area to be preserved is that area from the ridgeline to a distance of fifty (50) feet from the ridgeline. (As shown on Appendix B map).

3. PEAK AREAS - The peak is the top point of a mountain or hill formed by opposing slopes from all sides. The peak area to be preserved is that area from the peak to a distance of one hundred (100) feet from the peak. (As shown on Appendix C map).

4. STEEP SLOPES - Any land that has a slope of twenty (20) percent or more. (As shown on Appendix D map).

B. CONSERVATION STATUS

1. Environmentally sensitive areas designated for preservation shall be dedicated as a common parcel.

2. Applicants of subdivisions of twenty (20) acres or more shall dedicate as a common parcel environmentally sensitive areas to the Homeowner's Association for the subdivision or existing conservation organization, approved by Town Council, for perpetual maintenance and preservation in an undisturbed condition.

3. Determination of the environmentally sensitive areas shall be the responsibility of the Zoning Administrator based on Sec. 5.1 of this Ordinance.

4. Maximum amount of environmentally sensitive areas required to be dedicated shall not exceed twenty (20) percent of the total subdivision area.

C. TRANSFER OF DENSITY

1. The applicant shall be allowed to transfer the density (number of dwelling units) from the environmentally sensitive areas (to be dedicated) to the developable areas of the subdivision.

2. For up to twenty (20) percent of environmentally sensitive areas to be dedicated as per this section, the applicant will receive a reduction of the same percentage in the required minimum lot area.

D. CONSERVATION EASEMENT

If dedication of common parcels of environmentally sensitive areas is not achievable, the applicant shall execute a conservation easement agreement with the Town of Cave Creek, which runs with the land.

CHAPTER 6. LOT SPLITS, LOT LINE ADJUSTMENTS and COMBINATIONS

SEC. 6.1 PURPOSE AND INTENT

A. The purpose of these regulations is intended to implement procedures whereby property owners may split parcels of land in compliance with the following objectives:

1. To protect and promote the public health, safety, convenience and welfare.

2. To implement the Town of Cave Creek General Plan and its elements.

3. To provide building sites of sufficient size and appropriate design for the purpose for which they are to be used.

4. To provide for the partitioning or division of land into lots, tracts or parcels of land into two or three parts through a process that is more expeditious than the subdivision process.

5. To maintain accurate records of surveys created to divide existing lots, tracts or parcels of land.

6. To assure that the proposed division of land is in conformance with the standards established by the Town of Cave Creek.

7. To assure adequate legal and physical access to lots, parcels and tracts.

SEC. 6.2 APPLICABILITY OF LOT SPLITS, LOT LINE ADJUSTMENTS AND COMBINATIONS

A. For the purpose of this Chapter, a Lot Split shall include any of the following acts and shall be subject to the provisions of this Chapter:

1. All divisions of land made within the corporate limits of the Town of Cave Creek since July 8, 1986, the Town's incorporation date, or upon the date of annexation to the Town.

2. The allowable divisions of a property are based on the configuration of the "original parcel." An "original parcel" is considered to be a property created prior to that particular property's annexation to the Town. Lot splits shall be based on the property and not ownership.

3. It shall be unlawful for any person, partnership, or other legal entity to sell or offer a contract to sell any parcel that is subject to the requirements of this regulation until an approved Land Split Map complying with the provisions of this regulation has been filed with the Planning Department and approval given by the Zoning Administrator.

4. The division of land into two (2) or three (3) parts when the boundaries of such land have been fixed by a recorded plat, except the division of land into lots, tracts, or parcels each of which results in thirty-six (36) acres or more in area.

B. For the purpose of this Chapter, a Lot Line Adjustment/Combination is where land taken from one (1) parcel is added to an adjacent parcel. A Lot Line Adjustment shall not be considered a Lot Split under the terms of this Section provided that the proposed adjustment does not:

1. Create any new lots;

2. Render any existing lot substandard in size or shape;

3. Render substandard the setbacks to existing development on the affected property;

or

4. Impair any existing access, easement, or public improvement.

SEC. 6.3 CONFORMANCE

A. All Lot Splits shall be approved by the Zoning Administrator and shall comply with this Ordinance. Failure to comply with this Ordinance shall render the property unsuitable for building and not entitled to a building permit.

SEC. 6.4 APPLICATION REQUIREMENTS FOR LOT SPLITS, LOT LINE ADJUSTMENTS AND COMBINATIONS

A. LOT SPLITS

Applications for Lot Splits shall be submitted to the Planning Department for review with the following information:

1. Application form completed

2. Application Fee

3. The application shall include five (5) copies of the proposed land survey as prepared by a registered land surveyor or engineer. The land survey shall include all proposed lots, tracts or parcels and dimensions, square footage and lot width of each lot, tract or parcel, utilities, easements, setback dimensions and other information that is necessary for Town Staff to insure that new lots, tracts or parcels will conform to all provisions of the Zoning and Subdivision Ordinances.

4. All proposed lots, tracts or parcels shall be in conformance with the lot, street, block, alley and easement, improvement and engineering requirements of the Town of Cave Creek Subdivision Ordinance and conform with the lot area, lot width and lot setbacks of the Town of Cave Creek Zoning Ordinance.

5. If offsite improvements are required for public streets, public access easements or public drainage facilities, no building permit for any lot, tract or parcel created will be issued until such improvements are completed and the work accepted by the Town Engineer; or a bond or other acceptable financial security is provided to the Town. The financial security shall be in an amount equal to the Town Engineer's estimate to complete the improvements. Such financial security shall be approved by the Town Attorney. All improvements shall be complete and accepted by the Town Engineer prior to the approval or issuance of a final building inspection or certificate of occupancy.

6. A final map (24" x 36") consistent with the approved plan showing all lot, tract or parcel corners, dimensions, a complete legal description of the site and of each lot, tract or parcel and signature blocks for the Zoning Administrator and attested by the Town Clerk shall be filed with the Planning Department.

7. Upon written approval by the Zoning Administrator and attested to by the Town Clerk, the applicant shall record the final Lot Split Map with the Maricopa County Recorder. A paper copy of the recorded land division shall be provided to the Planning Department after recordation.

8. Any appeal pertaining to subdivision requirements shall be made in accordance with the Cave Creek Subdivision Ordinance. Any appeal pertaining to zoning requirements shall be made in accordance with the Cave Creek Zoning Ordinance.

9. The fee for the Zoning Administrator's review for a land division is noted in Supplement 2 of this Ordinance.

B. LOT LINE ADJUSTMENTS/COMBINATIONS

1. An application for Lot Line Adjustment/Combination shall be submitted to the Planning Department with two Mylars of the Lot Line Adjustment/Combination survey and the application fee. Upon approval of the Planning Director, the land survey shall be recorded by the applicant in the office of the Maricopa County Recorder within ten (10) days. A paper copy of the recorded Lot Line Adjustment/Combination shall be provided to the Planning Department after recordation. No lot remaining after such lot adjustment shall be less than the minimum lot area, setback or other lot standards of the Zoning Ordinance. Existing structures and uses shall be in conformance with the Zoning Ordinance.

CHAPTER 7. ASSURANCES BY THE SUBDIVIDER

SEC. 7.1 PHASING OF IMPROVEMENTS

Upon final plat approval by the Council, the subdivider shall execute agreements covering the following:

A. PHASING

1. The improvements in a recorded subdivision may be constructed in practical increments of lots, subject to provisions for satisfactory drainage, traffic movements, and other services as determined by the Town Engineer.

2. Such improvements must be completed within a specified time period for each increment. A time extension may be granted under conditions specified by the Town.

B. RESTRICTION ON RELEASE OF LOTS

1. No lots shall be released from any approved increment of lots until an assurance of construction deposit or bond has been posted and accepted by the Town Engineer.

C. INSPECTION

1. Construction of all improvements within streets and easements shall be subject to inspection by the Town Engineer.

SEC. 7.2 ASSURANCE OF CONSTRUCTION

The subdivider shall give adequate assurance of the construction of each increment in accordance with this Ordinance.

A. REQUIRED CERTIFICATION, SIGNATURE, AND NOTES

1. Multiple notations are required to appear on a final plat. The notations that are standard on every final plat include, but are not limited to the following:

a. Assurance Statement as follows:

Assurance Statement:

Assurance in the form of a _____, issued from _____, in the amount of $ _____ has been deposited with the Town Engineer to guarantee construction of the required subdivision improvements.

b. Conveyance and Dedication Statement as follows:

Conveyance and Dedication:

Know all men by these presents that (owner's name), as owner, has subdivided (or re-subdivided) under the name of (name of subdivision), (add Section, Township and Range) of the Gila and Salt River Base and Meridian, Maricopa County, Arizona as shown platted hereon, and hereby publishes this plat as and for the plat of said (subdivision name), and hereby declares that said plat sets forth the location and gives the dimensions of all lots, easements, tracts and streets constituting the same, and that each lot, tract and street shall be known by the number, letter and name given each respectively, and that (owner's name), as owner, hereby dedicates to the pubic for use as such the streets and hereby grants to the public the drainage and public utility easements as shown on said plat. In witness (owner's name), as owner, has hereunto caused its name to be signed and the same to be attested by the signature of (owner or designated signatory and title).

By: _____ Date: _____

c. Notary Acknowledgement Statement as follows:

Notary Acknowledgement:

State of Arizona)

County of Maricopa)

On this, the _____ day of _____, (year), before me the undersigned (title) personally appeared (Name) _____ who acknowledges that he/she executed the foregoing instrument for the purposes contained therein.

_____
Notary Public

_____
My Commission Expires

d. Town Approval signatures Blocks as follows:

Town Approval:

Approved by the Town Council of Cave Creek, Arizona, this _____ day of _____(month)_____, ___(year)___.

By: _____ Attest: _____
Mayor Town Clerk

Department Approvals:

This plat was approved by the Town Engineer and the Town Planner.

By:_____ _____
Town Engineer Date

By: _____ _____
Town Planner Date

B. COST ESTIMATES

1. The developer shall provide the Town with an Arizona - certified engineering cost estimate for infrastructure for Town review and approval prior to the final plat recordation.

2. The developer shall provide the Town with an Arizona-certified landscape architect's cost estimate for landscape improvements for Town review and approval prior to the final plat recordation.

C. AGREEMENT BY SUBDIVIDER

1. The subdivision improvements, which includes required landscaping, in an approved development may be constructed in practical increments in accordance with a Council approved Phasing Plan subject to provisions for satisfactory drainage, traffic, circulation, utilities, landscaping and other elements of the total development plan.

2. The improvements shall be constructed in accordance with plans approved by the Town Engineer and shall be completed within an agreed specific time period.

3. The subdivider shall give adequate Assurance for Construction for each phase in accordance with this Ordinance and to the satisfaction of the Town Engineer and Town Attorney.

4. Once a construction permit has been issued for improvements under the Assurance of Construction, work shall proceed without interruption until the improvements are accepted by the Town Engineer.

5. Any work shown on approved plans that has been abandoned for a period of sixty (60) days, or not completed by the subdivider in accordance with an agreed upon time period, may be completed by the Town which shall recover the construction costs from the subdivider.

6. When in the opinion of the Town and the developer it is in the best interest of both parties to delay installation of development required improvement to coincide with adjacent work, the Town Council may elect to accept the estimated cost of said improvements in-lieu of construction by the developer. The timing of this payment will be specified in a Council approved Phasing Plan.

D. ASSURANCES OF CONSTRUCTION

1. The Town Council shall require that the applicant provide cash, a performance bond from a corporate surety licensed to do business as a surety in Arizona, an irrevocable letter of credit, or funds in escrow at the time of application for final subdivision approval in the amount sufficient to secure to the Town the satisfactory construction, installation, and dedication of the required improvements. The amount of the financial guarantee shall be one hundred (100) percent of the cost of the installation and materials necessary to complete the subdivision, plus ten (10) percent.

2. Such financial guarantee shall comply with all statutory requirements and shall be satisfactory to the Town Attorney as to form, sufficiency, and manner of execution, as set forth in this Ordinance. The periods within which required improvements must be completed shall be incorporated in the financial guarantee and shall not, in any event, exceed two years from the date of final approval.

3. The Town shall retain the financial guarantee of off-site improvements for a period of one (1) year from the "Date of Acceptance" of said improvements by the Town Engineer.

4. The Town shall retain the financial guarantee for landscape improvements for a period of two (2) years from the "Date of Acceptance" of said improvements by the Town's consulting arborist.

E. CONSTRUCTION AND INSPECTION

1. All improvements shall be constructed to the latest Uniform Standard Specifications for Public Works Construction as written and promulgated by the Maricopa Association of Governments (MAG) or the latest standards and specifications adopted by the Town.

2. All improvements shall be constructed with the inspection and approval of the Town Engineer and the Town's consulting arborist. All construction shall require a Town construction permit. Construction shall not begin until a permit has been issued for such construction and if work has been discontinued for any reason, it shall not be resumed until after notifying the Town Engineer or the Town's consulting arborist, as appropriate.

3. Utilities must be installed either in public dedicated rights-of-way or public utility easements or easements dedicated specifically by the land owner for such usage and maintenance.

4. All underground utilities to be installed in streets and public access ways shall be constructed prior to the surfacing of such street or private access way.

5. The developer shall provide for an Arizona Registered Engineer to be present on the site for sufficient time to assess compliance with the plans and specifications for each element of construction and no less than once a day when construction is in progress.

6. The Town Engineer shall be notified forty-eight (48) hours prior to any construction on the project site.

7. The Town Engineer shall be notified upon completion of all underground utilities within the street rights-of-way and prior to any street preparation work. Interim as-built plans of the utilities and all passing test results shall be submitted for review. Upon review and approval of the supplied information, the developer may proceed with the installation of street improvements.

8. The developer's engineer shall request the Town Engineer to perform inspections of the subgrade base prior to placement of the overlaying materials. In addition the Town Engineer will perform periodic inspections throughout the course of the construction. These inspections or approvals do not signify that the Town has accepted any of the improvements for maintenance.

9. The developer's engineer shall submit weekly progress reports to the Town Engineer throughout the construction. The weekly progress reports shall include the results of all tests taken during the week.

10. Testing during the construction phase of the project shall be done as required by the Town Engineer.

F. SUBDIVISION IMPROVEMENT ACCEPTANCE

1. General

a. Upon completion of all subdivision improvements and installation of monumentation, a final inspection and review of a final report and as-built drawing will be performed by the Town Engineer.

2. Final Inspection

a. At completion of the project a final inspection shall be requested with the town Engineer. At the time of request for the final inspection, one set of Mylars and two sets of blue-line as-built drawings shall be submitted along with a final engineer's report and one-year warranty statement to the Town Engineer. The as-built drawings shall be certified and contain the following statement:

"I certify that the construction inspection and "as-built" plan preparation were performed by me or under my direct control and supervision. The construction details as shown on the as-builts are accurate and complete to the best of my knowledge and belief."

_____ _____

Arizona Registered Engineer Date

3. Final Report

a. A final report shall be submitted upon completion of the project. The final report shall be compiled by the developer's engineer and shall include the following:

- A brief statement of the testing on the project and a statement as to whether the observations and tests indicate that the various materials in place comply with the plans and specifications.
- A summary of all field density tests and compaction tests on trench backfill, on street subgrade and base material and on any fill material.
- Asphalt and pavement mix design and all results of gradation, asphalt content and compaction tests.
- All concrete mix designs and all test results on air content, slump, unit weight, and compressive strength at seven (7) and twenty-eight (28) days.
- All line pressure, bacteria and manhole test information.
- Any other tests or information that may be required as a part of the specifications or that may add to the integrity of the report.

4. Procedure

a. The following procedure will be followed for final acceptance of the improvements:

- The Town Engineer and the Town's consulting arborist shall make a final inspection of all public improvements in the project. The developer will be notified of any items that are not in conformance with the Town specifications, and shall bring the items into conformance.

- ❖ The as-built plans and final report will be reviewed by the Town Engineer. Any additional information needed will be noted and the plans will be returned to the developer for revision and resubmittal as mylars.

- ❖ When the public improvements have passed the final inspection, the "as-built" plans and final report have been stamped and approved and the warranty statement provided, the Town Engineer shall make a written recommendation to the Town Council to accept the public improvements for maintenance.

5. Warranty Period on Public Improvements

   a. The warranty period begins on the day that the Town Council approves and accepts the public improvements.

   b. During the warranty period the developer is responsible for repair work of any of the public improvements.

   c. The Town Engineer and the Town's consulting arborist will periodically inspect the public improvements and will notify the developer of the necessary repair work.

   d. The developer is responsible for having the repair work completed prior to the end of the warranty period.

   e. Upon completion of the warranty period and successful repair of any necessary warranty items, the remainder of the assurances retained by the Town will be released.

SEC. 7.3 ASSURANCE OF CONSTRUCTION THROUGH LOAN COMMITMENT

In lieu of providing assurance of construction in the manner provided above, the subdivider may provide assurance of construction of required improvements, except those utility facilities specified in this Ordinance, by delivering to the Planning Department, prior to the recording of said plat, an appropriate agreement acceptable to the Town Manager between an approved lending institution and the subdivider.

A. DEPOSIT

The agreement shall contain a statement that funds sufficient to cover the entire cost of installing the required improvements, including engineering and inspection costs, and the cost of replacement or repairs of any existing streets or improvements demanded by the Town in the course of development of the subdivision, in an amount approved by the Town Engineer, have been deposited with such approved lending institution by the subdivider. The agreement shall provide that the funds in the approved amount are specifically allocated, and will be used by the subdivider, or on his behalf, only for the purpose of installing the subdivision improvements.

B. BENEFICIARY

The Town shall be the beneficiary of such agreement, or the subdivider's rights thereunder shall be assigned to the Town and the Town Engineer shall approve each disbursement for such funds. The agreement may also contain terms, conditions, and provisions normally included by such lending institutions in loan commitments for construction funds, or as may be necessary to comply with statutes and regulations applicable to such lending institutions.

SEC. 7.4 ALTERNATIVE ASSURANCE

In lieu of providing a cash or surety bond or an agreement between the subdivision developer and an approved lending institution, the Town Council may approve such alternate assurances that it deems sufficient to guarantee and assure construction of the required improvements, including a contractual agreement by an approved lender guaranteeing the performance of the subdivision developer, or a Performance Deed of Trust in first lien position, or such other assurances as the Town Council shall deem sufficient and appropriate.

CHAPTER 8. DEFINITIONS

Definitions from the Cave Creek Zoning Ordinance are incorporated herein. In case of a conflict between definitions in the Zoning Ordinance and this Ordinance, the more restrictive shall apply. Throughout this Ordinance, the word "shall" is mandatory and "may" is permissive.

ALLEY: A public passageway affording a secondary means of access to abutting property and not intended for general traffic circulation.

APPEAL: Request by any person with standing, aggrieved or affected by any subdivision decision or interpretation by the Zoning Administrator regarding the Subdivision Ordinance

BLOCK: That property fronting on one side of a street and so bounded by other streets, canals, unsubdivided acreage or other barriers (except alleys) of sufficient magnitude to interrupt the continuity of development on both sides.

BUILDING SETBACK LINE: A line that separates the development envelope area and the area, in which no building or structure, or portion thereof shall be erected, constructed or established.

CONDITIONAL APPROVAL: An affirmative action by the Commission or Council indicating that approval will be forthcoming provided certain specified conditions are met.

CONDOMINIUM: The improvement of land with structures containing one or more floors in accordance with Town standards, in which an undivided interest in common, in all or a portion of land, is coupled with the right of exclusive occupancy of any unit of airspace thereon. A condominium may include an individual interest in common in a portion of the building or buildings; a separate interest in a portion of a building; or with a separate interest in a portion of the land, together with an undivided interest in common in a portion of the land.

DECISION: A written decision by the Zoning Administrator regarding subdivision that specifically affects one or a group of parcels or lots.

DEPARTMENT: The Planning Department of the Town of Cave Creek.

DEVELOPMENT: The utilization of land for public or private purpose.

DEVELOPMENT ENVELOPE: The delineated boundary inside the property limits within which all development and disturbance of ground must be contained. No disturbance of any kind for any purpose is allowed outside of the development envelope except for driveway access.

DIRECTOR: The Director of the Planning Department and the Zoning Administrator or designee.

DRIVEWAY: An area used for ingress or egress of vehicles, and allowing access from a street to a building or other structure or facility.

EASEMENT: A grant by the property owner of the use of land by the public, a corporation, or person for specific uses and purposes and so designated.

EASEMENT, CONSERVATION: A conservation easement is an agreement for the protection of open space, historic buildings, archaeological sites, ecologically significant lands, native habitat, scenic road and/or hiking, biking and equestrian trails.

EASEMENT, DRAINAGE: A portion of property reserved for storm water runoff or retention, as defined by the Maricopa County Flood Control District.

ENGINEERING DEPARTMENT: The Town of Cave Creek Public Works Department.

ENGINEERING PLANS: Plans, profiles, cross-sections, and other required details for the construction of improvements which shall be prepared and bear the seal of a professional engineer, currently registered in the State of Arizona under the appropriate discipline for the type of project which has been designed.

ENVIRONMENTALLY SENSITIVE AREAS: Areas that are:

1. WASH AREAS: The area within twenty (20) feet from and including the designated FEMA floodway, which has the presence of a channeled drainage way evidenced by a drainage path with or without vegetation. (As shown on Appendix A map).

2. RIDGE LINE AREAS: The ridgeline is formed by opposing slopes on a mountain or hill. The ridgeline area to be preserved is that area from the ridgeline to a distance of fifty (50) feet from the ridgeline. (As shown on Appendix B map).

3. PEAK AREAS: The peak is the top point of a mountain or hill formed by opposing slopes from all sides. The peak area to be preserved is that area from the peak to a distance of one hundred (100) feet from the peak. (As shown on Appendix C map).

4. STEEP SLOPES: Any land that has a slope of twenty (20) percent or more. (As shown on Appendix D map).

EXCEPTION: Any parcel of land within the subdivision, which is not owned by the subdivider or not included in the recorded plat.

FINAL APPROVAL: Approval of the final plat of subdivision. Such final approval must be certified on the plat by the Mayor and attested by the Town Clerk.

FLOODPLAIN: A portion of property or properties, susceptible to inundation, as defined by the Maricopa County Flood Control District.

HEALTH DEPARTMENT: The Maricopa County Environmental Services Department.

IMPROVEMENTS: Required installations, pursuant to these regulations, including but not limited to: grading, sewer and water utilities, streets, alleys, underground street light circuits, and traffic control devices; as a condition to the approval and acceptance of the final plat; precedent to recordation of an approved final plat.

IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications and instructions to be followed in the planning, design and construction of certain required improvements to property.

LOT: Any lot, parcel, tract of land, or combination thereof, shown on a plat of record or recorded by metes and bounds that is of sufficient area and is occupied or intended for occupancy by a use permitted in the Zoning Ordinance, and having its principal frontage upon a street or upon an officially approved place.

LOT, CORNER: A lot abutting on two intersecting or intercepting streets, where the interior angle of intersection or interception does not exceed one hundred thirty-five (135) degrees.

LOT, INTERIOR: A lot other than a corner lot.

LOT, KEY: A lot adjacent to a corner lot having its side lot line in common with the rear lot line of the corner lot and fronting on the street, which forms the side boundary of the corner lot.

LOT, THROUGH: A lot having a pair of opposite lot lines abutting two streets, and which is not a corner lot (also known as a "double frontage lot").

LOT COVERAGE: The percentage of the area of the lot which is occupied by all buildings or other covered structures using the roof outline for all dimensions.

LOT DEPTH: For lots having front and rear lot lines which are parallel, the horizontal distance between such lines; for lots having front and rear lot lines which are not parallel, the horizontal distance between the midpoint of the front lot line and the midpoint of the rear lot line; and for triangular shaped lots, the horizontal distance between the front line and a line within the lot, parallel to and at a maximum distance from the front lot line, having a length not less than ten (10) feet.

LOT LINE ADJUSTMENT: The adjustment of boundaries between owners of adjacent properties subject to criteria of Chapter 6 of the Cave Creek Subdivision Ordinance.

LOT LINE, FRONT: The boundary of a lot which separates the lot from the street or easement through which access is provided, or as determined by the Zoning Administrator in cases of unique topography or unique lot configuration. In the case of a corner lot, the front lot line is the shorter of the two lot lines separating the lot from the street except that where these lot lines are equal or within fifteen (15) feet of being equal, either lot line may be designated the front lot line by the Zoning Administrator.

LOT LINE, REAR: The boundary of a lot, which is most distant from, and most nearly parallel to, the front lot line. In the absence of a rear lot line, as is the case of a triangular shaped lot, the rear lot line may be considered as a line within the lot, parallel to and at a maximum distance from the front lot line, having a length of not less than ten (10) feet.

LOT OF RECORD: A lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder of Maricopa County; or a lot, parcel or tract of land, the deed of which has been recorded in the office of the County Recorder of Maricopa County on or before June 30, 1987.

LOT SPLIT: The division of land into two (2) or three (3) parts based on the configuration of the original parcel as of July 8, 1986, the Town's incorporation date, or upon the date of annexation to the Town of Cave Creek.

LOT WIDTH: For rectangular lots, lots having side lot lines not parallel, and lots on the outside of the curve of a street, the distance between side lot lines measured at the required front setback line on a line parallel to the street or street chord; and for lots on the inside of the curve of a street, the distance between side lot lines measured thirty (30) feet behind the required front setback line on a line parallel to the street or street chord.

OPEN SPACE LANDS: Any space or area characterized by existing openness, natural condition or present state of use, that if retained, would maintain or enhance the preservation of natural, scenic or recreational resources.

1. NATURAL OPEN SPACE: Open space that has not been disturbed.

2. REVEGETATED OPEN SPACE: Disturbed open space that has been replanted, but has lower resource value because it has been altered.

OWNER: The person or persons holding title by deed to land, or holding title as vendor under a land contract, or holding any other title of record.

PLAT: A map that distinguishes individual parcels of land for purposes of use or ownership.

1. PRELIMINARY PLAT: A tentative map, including supporting data, indicating a proposed subdivision design, prepared by a registered civil engineer, a registered
land surveyor, a landscape architect or architect in accordance with this chapter and the statutes of the State of Arizona.

2. FINAL PLAT: A map of all or part of a subdivision, including supporting data, conforming to an approved preliminary plat, prepared and certified by a registered civil engineer, a registered land surveyor, a landscape architect, architect or land planner in accordance with this chapter and statutes of the State of Arizona.

3. RECORDED PLAT: A final plat bearing all certificates of approval required by this ordinance and the statutes of Arizona and duly recorded in the Maricopa County Recorder's Office.

4. REVERSIONARY PLAT:

    a. A map for the purpose of reverting previously subdivided acreage to unsubdivided acreage, or;

    b. A map for the purpose of vacating rights-of-way previously dedicated to the public and abandoned under procedures prescribed by the Town Code, or;

    c. A map for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

PRE-APPLICATION SKETCH PLAN: A plan of a general nature for review by the Town staff showing the proposed division of land at an early stage to enable discussion of the project between the subdivider and staff so as to identify any items of concern or requirements before the preliminary plat is submitted.

PRELIMINARY PLAT APPROVAL: Affirmative action on a preliminary plat, noted upon the plat, indicating that approval of a final plat will be given upon meeting certain conditions, which constitutes authorization to proceed with final engineering plans and final plat preparation.

PRIVATE STREET: Any private street or private way of access to one or more lots or air spaces which is owned and maintained by an individual or group of individuals and has been improved in accordance with Town standards and plans approved by the Town Engineer. A private access way is intended to apply where its use is logically consistent with a desire for neighborhood identification and control of access, and where special design concepts may be involved, such as within planned area developments, mobile home developments, sub-lot developments, hillside areas and condominiums.

PUBLIC IMPROVEMENT STANDARDS: A set of regulations setting forth the details, specifications and instructions to be followed in the planning, design and construction of certain public improvements in the Town, formulated by the Town Engineer, the Health Department and other Town departments.

RECORDER: The Recorder of Maricopa County.

REFERRAL: Action by the Zoning Administrator to refer subdivision issue to the Planning Commission for decision.

REVEGETATION: Establishing native plants at a density similar to existing conditions.

RIGHT-OF-WAY: Any public or private access way required for ingress or egress, including any area required for public use pursuant to any general or specific plan as provided for in this chapter; rights-of-way may consist of fee title dedications or easements.

STREET: Any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access. A street includes all land within the street right-of-way lines whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges, viaducts and landscaping.

1. COLLECTOR: A street providing direct access to residential areas from major streets and highways, for traffic movement within neighborhoods of the Town and for direct access to abutting property. It collects local traffic from the neighborhoods and delivers the same to the nearest major street or highway.

2. CUL-DE-SAC: A short local street having one end permanently terminated in a vehicular turnaround, or an equally convenient form of vehicular maneuvering area as may be required by the Town Engineer.

3. LOCAL STREET: A street providing for direct access to residential, commercial, industrial or other abutting land and for local traffic movements, and connecting to collector and/or major streets.

4. MAJOR STREET OR HIGHWAY: A street providing for traffic movement between areas and across portions of the Town, direct service to principal land use traffic generators, and connections to external transportation corridors; and, secondarily, for direct access to abutting land. Such streets are subject to regulation of parking, directional controls, turning movements, entrances, exits and curb use; may include divided roadways, and may have some control of access. Individual major streets combine to provide a system of Town- and area-wide traffic movement.

SUBDIVIDER: A person, firm, corporation, partnership, association, syndicate, trust, or other legal entity that files an application and initiates proceedings for a subdivision in accordance with the provisions of this Ordinance and the Arizona Revised Statutes, except that an individual serving as agent for such legal entity is not a subdivider; and said subdivider need not be the owner of the property as defined by this Ordinance.

SUBDIVISION: Improved or unimproved lands divided for the purpose of financing, lease or sale, whether immediate or future, into four or more lots, tracts, or parcels, or fractional interests, with less than thirty-six (36) acres in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot or parcel; or, if a new street is involved, any such property which is divided into two or more lots, tracts or parcels of land; or any such property the boundaries of which have been fixed by a recorded plat which is divided into more than two parts; or for cemetery purposes. Subdivision includes any condominium, cooperative, community apartment, town house or similar project containing four (4) or more parcels in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon.

"Subdivision" does not include the following acts, which shall not be deemed subdivision within the meaning of this Subdivision Ordinance and shall, therefore, be exempt from these regulations except as hereinafter provided:

1. A partitioning or division of land and/or airspace into two or more parts provided that such partitioning or division has first been reviewed by the Planning Department in order to assure compliance with the provisions of the Town of Cave Creek's Zoning and Subdivision Ordinances.

2. A partitioning or division of land into lots, tracts, or parcels, where each lot, tract, or parcel of land will be thirty-six (36) acres or more in area including to the centerline of dedicated roads or easements, if any, contiguous to the lot, tract or parcel provided that approval shall first be obtained as in paragraph No. 1 above.

3. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots; provided that approval shall first be obtained as provided in paragraph No. 1 above.

4. The partitioning of land in accordance with State statutes regulating the partitioning of land held in common ownership.

5. Any partitioning or division into two or more parts of any lot or parcel of land which is zoned commercial or industrial provided that such partitioning or division has first been reviewed by the Planning Department in order to assure compliance with provisions of this chapter. Resulting parcels approved by the Planning Department need not front on a street if such parcels are included in a site plan, which provides for permanent access from the parcel to a public street. Approval of such partitioning or division shall be in written form by the Department and shall be signed by the Planning Director or appropriate Town staff.

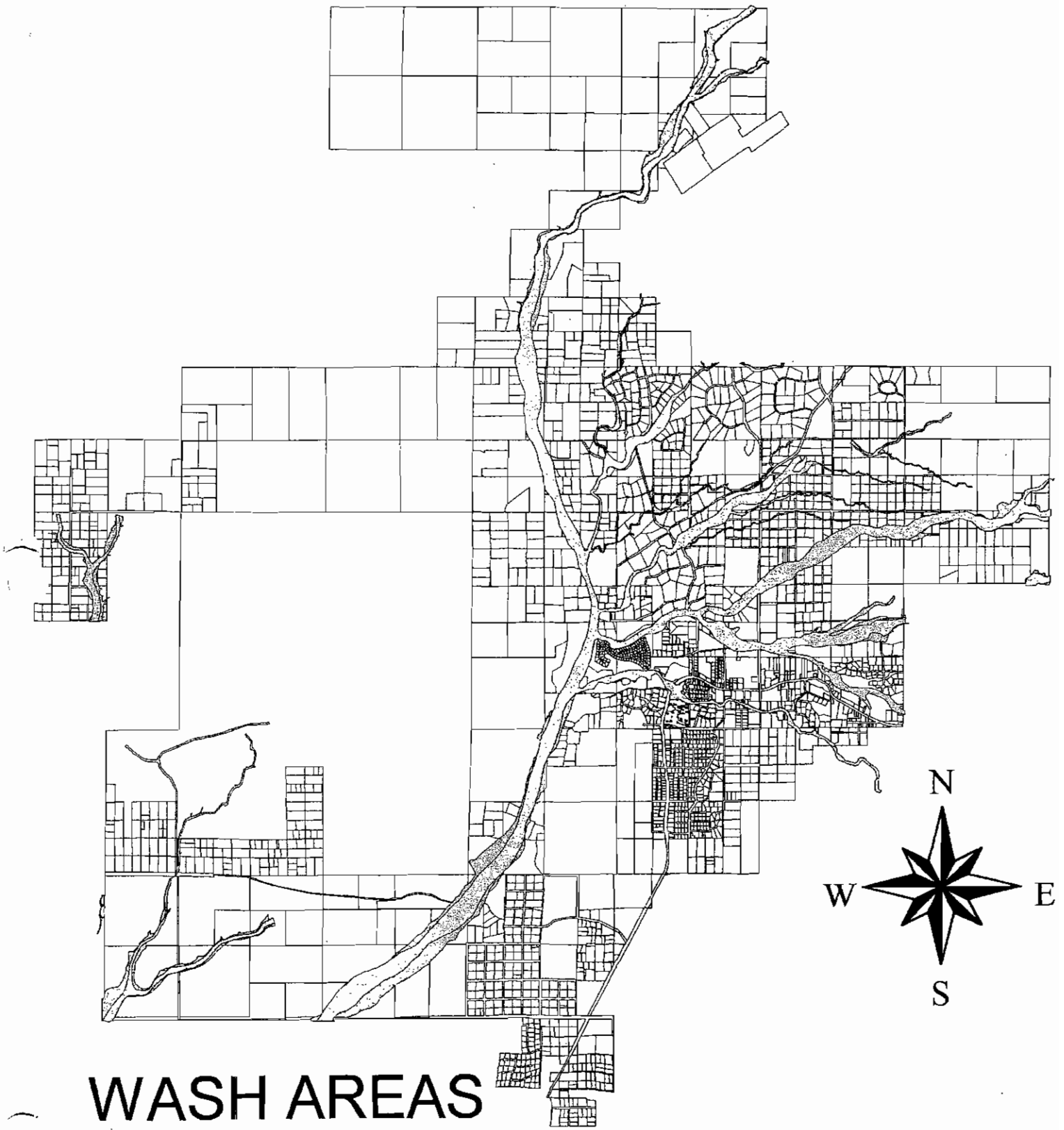
6. Leasing of apartments, offices, stores, or similar space within an apartment building, non-residential building or trailer and/or mobile home park; nor to mineral, oil or gas leases.

SUBDIVISION DESIGN: The designation, for purposes of ownership or development, of street alignments, grades and widths; location and widths of easements and rights-of-way for drainage, sanitary sewers, and public utilities and the arrangement and orientation of lots; locations of buildings together with refuse collection and maintenance easements in condominium developments.

UTILITIES: Installations of facilities, furnished for the use of public electricity, gas, steam, communications, water, television cable, or sewage disposal, owned and operated by any person, firm, corporation, municipal department or board, duly authorized by State or municipal regulations. Utilities as used herein may also refer to such persons, firms, corporations, departments or boards, as applicable herein.

ZONING ADMINISTRATOR: The Town official whose primary responsibility and focus is the enforcement of the Subdivision and Zoning Ordinances for the Town of Cave Creek.

Appendix A



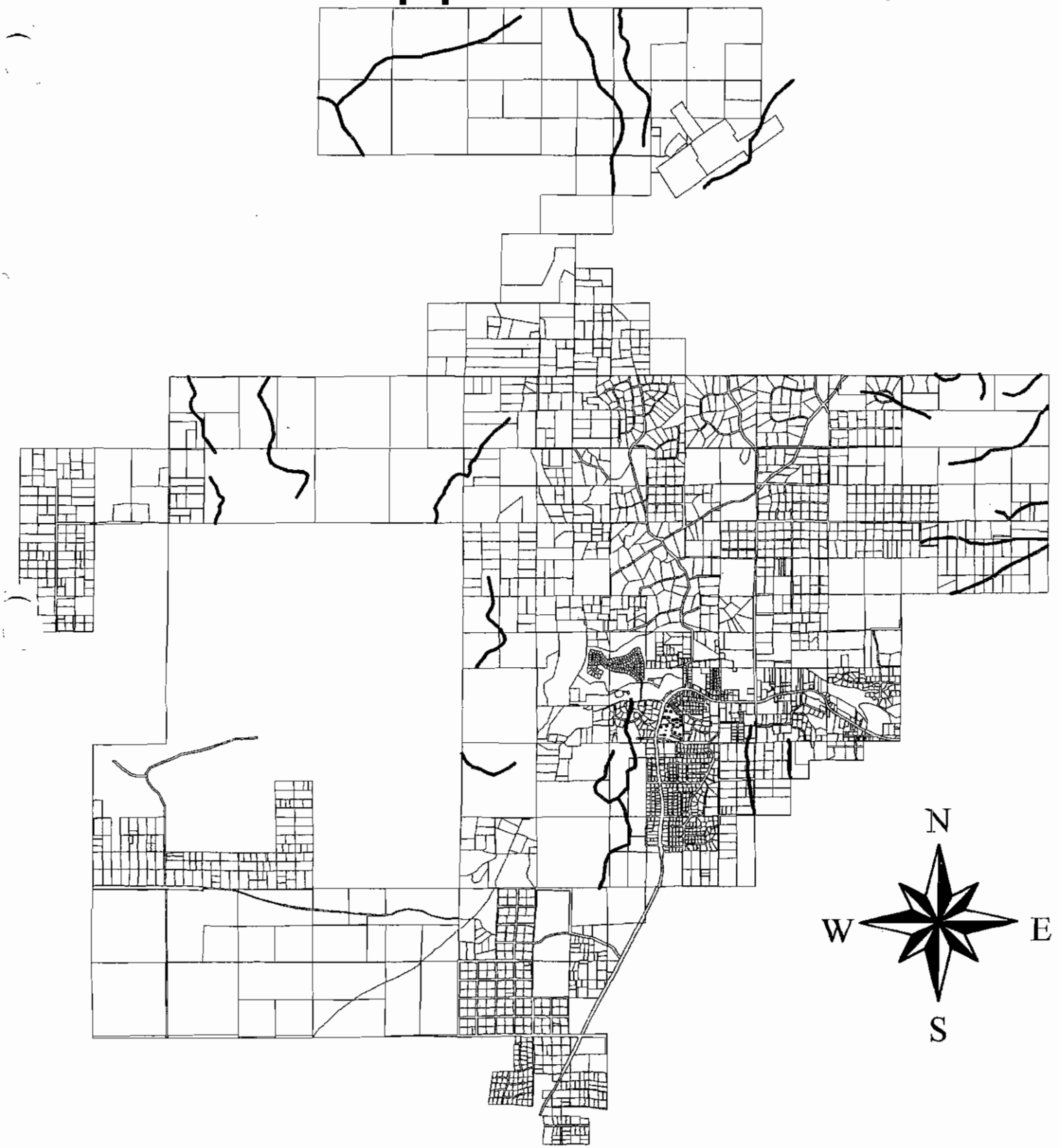
WASH AREAS

Areas of 100-year flood

Floodway

Town of Cave Creek
March 2, 1999

Appendix B

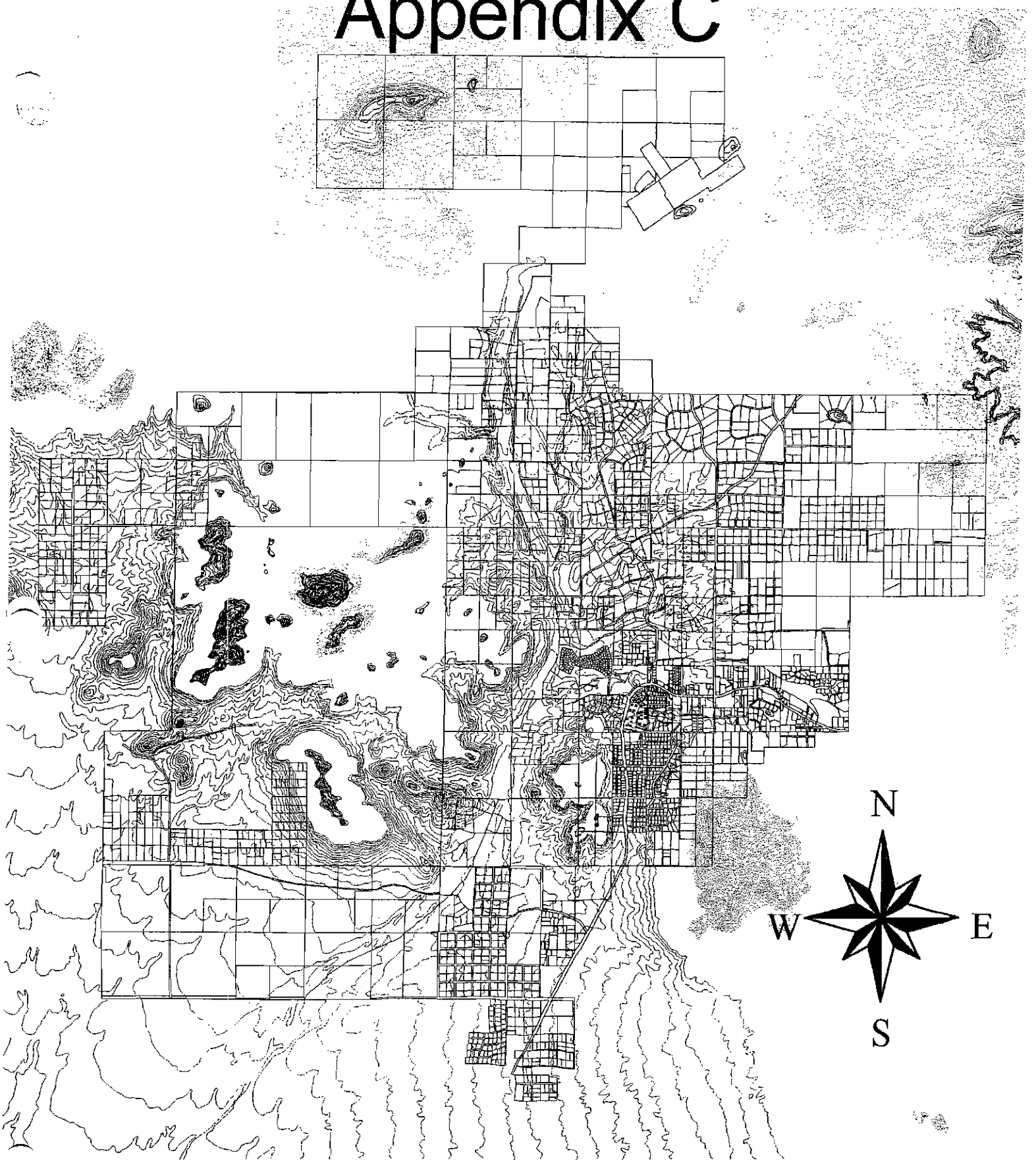


Ridge Lines

Ridge line
Ridge buffer

Town of Cave Creek
Marh 3, 1999

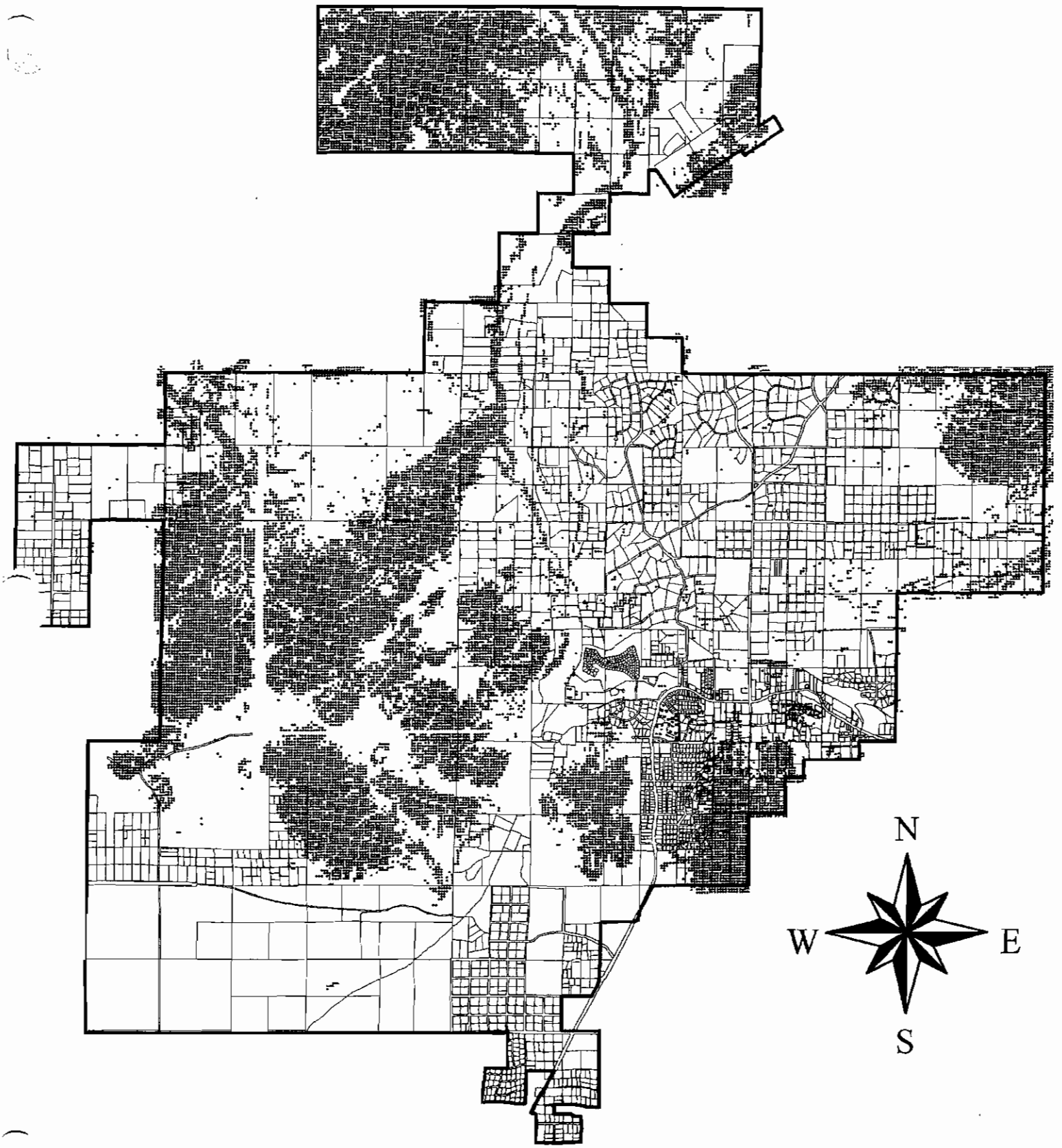
Appendix C



● PEAK AREAS

Town of Cave Creek
March 2, 1999

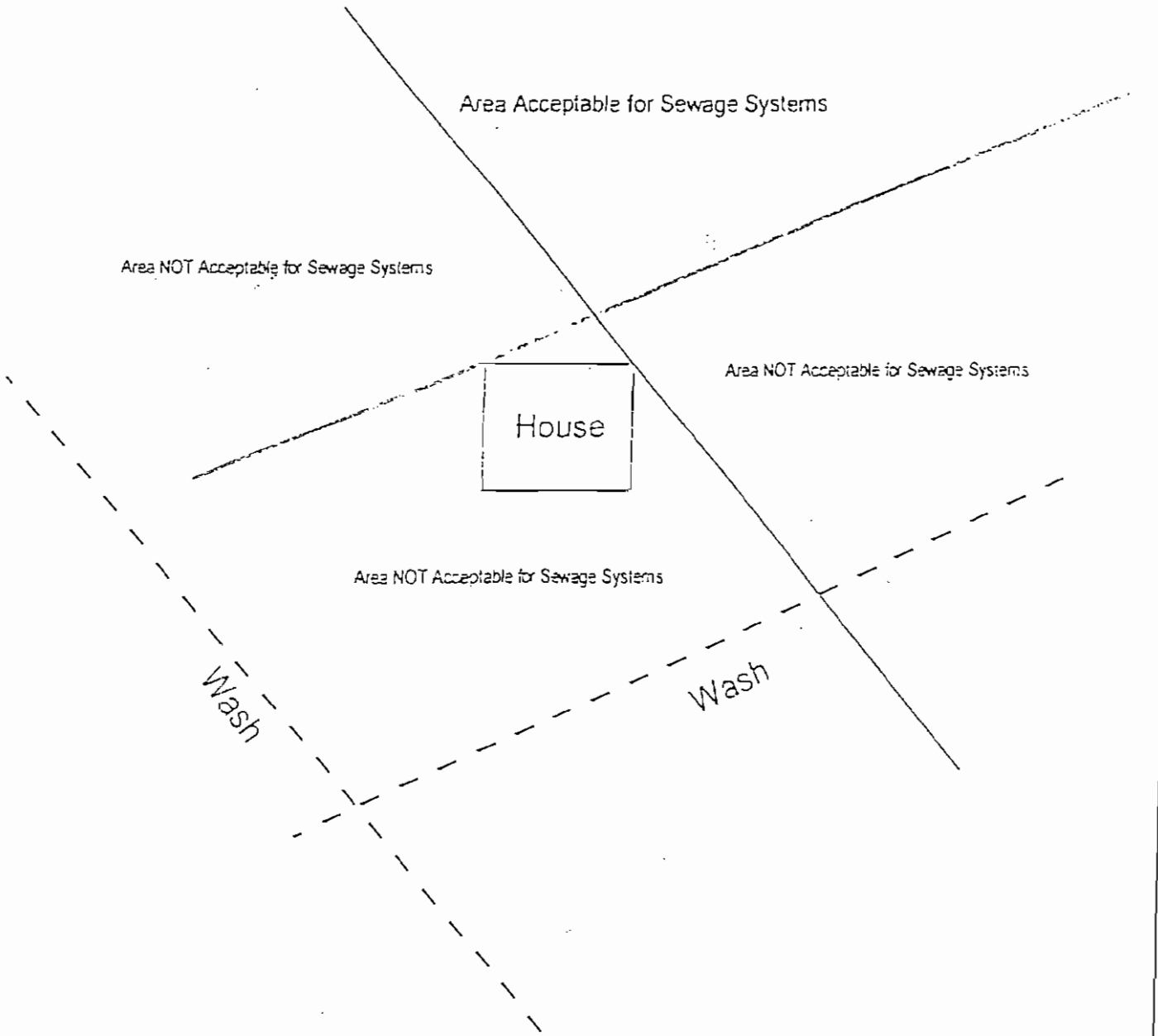
Appendix D



● Slopes of 20% or more

Town of Cave Creek
March 3, 1999

APPENDIX E



Sewage System Placement

TOWN OF CAVE CREEK

SETTLED 1870 · INCORPORATED 1986

TOWN OF CAVE CREEK
PLANNING AND ZONING DEPARTMENT
LIST OF APPLICATIONS
SUPPLEMENT 1

1. Amendment to the Zoning Ordinance
2. Amendment to the Subdivision Ordinance
3. Amendment to the General Plan
4. Amendment to the Town Code
5. Board of Adjustment Appeal
6. Board of Adjustment Variance (Residential)
   Board of Adjustment Variance (Commercial)
7. Exception Request to the Subdivision Ordinance
8. Final Plat
   - Amend Approved Final Plat
   - Amend Approved Final Plat Stipulations
9. Home Occupation Permit
10. Land Split
11. Lot Line Adjustment/Lot Combinations
12. Non-Conforming Use Modification (Residential)
    Non-Conforming Use Modification (Commercial)
13. Other Projects
14. Pre Application Conference
15. Preliminary Plat
    - Amend Approved Preliminary Plat
    - Amend Approved Preliminary Plat Stipulations
16. Referral Cases
17. Request For Proposals
18. Special Event Permit
19. Site Plan Review
20. Special Use Permit
21. Temporary Use Permit
22. Violation of Codes
23. Rezoning
24. Rezoning for Planned Unit Developments/Planned Area Developments
25. Zoning Clearances

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TOWN OF CAVE CREEK
PLANNING & ZONING FEE SCHEDULE
Effective September 21, 2000
Revised August 19, 2002
SUPPLEMENT 2

NO.	TYPE OF APPLICATION	FEE
1.	A = Amendments to the Zoning Ordinance	$ 2500
2.	AS = Amendments to the Subdivision Ordinance	$ 2500
3.	AGP = Amendments to the General Plan	$ 2500
4. a)	ATC= Amendments to the Town Code	$ 2500
b)	Continuance requested by applicant	$ 150
5.	BOA = Board of Adjustment APPEAL Cases	$ 600
6. a)	BOA = Board of Adjustment VARIANCE Cases (Residential)	$ 1250
b)	BOA = Board of Adjustment VARIANCE Cases (Commercial)	$ 1500
c)	Continuance requested by applicant	$ 150
7.	E – Exception Request to Subdivision Ordinance	$ 1250 per exception
8. a)	F = Final Plat Cases	$ 5000 + $ 100 per acre over 10 acres (up to $ 54,000)
b)	Amend Approved Final Plat	$ 2500 + $ 100 per acre over 10 acres (up to $ 51,500)
c)	Amend Approved Final Plat Stipulations	$ 1250
d)	Continuance requested by applicant	$ 150
9.	HO = Home Occupation Permits	$ 50
10. a)	L= Land Split (2-3 parcels, original parcel under 2.5 acres requires Town Council approval)	$ 600
b)	L = Land Division (2-3 parcels, original parcel over 2.5 acres requires only staff approval)	$ 500
11.	LLA = Lot Line Adjustment Cases	$ 500

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TOWN OF CAVE CREEK
PLANNING & ZONING FEE SCHEDULE
Effective September 21, 2000
Revised August 19, 2002
SUPPLEMENT 2

NO.	TYPE OF APPLICATION	FEE
12.a)	NCU= Non-Conforming Use Modification Cases for Residential.	$ 1250 Residential
12.b)	NCU = Non-Conforming Use Modification Cases for Commercial	$ 2500 Commercial
13.	OP = Other Project Cases include Town initiated research projects such as annexations or town core studies.	$ -0-
14.	PAC = Pre-Application Conference Cases	$ -0-
15. a)	P = Preliminary Plat Cases	$ 5000 + $ 100 per acre over 10 acres (up to $54,000)
b)	Amend Approved Preliminary Plat	$ 5000 + $ 100 per acre over 10 acres (up to $54,000)
c)	Amend Approved Preliminary Plat Stipulations	$ 1250
d)	Continuance requested by applicant.	$ 150
16.	REF = Referral Cases	$ -0-
17.	RFP= Request for Proposals	$ -0-
18. a)	SE = Special Event Permits (non-profit)	$ 25
b)	SE = Special Event (non-profit) appeal to the Town Council	$ 15
c)	SE = Special Event Permit (profit)	$ 500
d)	SE = Special Event (profit) appeal to the Town Council	$ 1500

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TOWN OF CAVE CREEK
PLANNING & ZONING FEE SCHEDULE
Effective September 21, 2000
Revised August 19, 2002
SUPPLEMENT 2

NO.	TYPE OF APPLICATION	FEE
19. a)	SPR= Site Plan Review Cases Multi-Family Residential	$ 1000 + $ 500 per dwelling unit
b)	SPR = Amend approved Site Plan Multi-Family Residential	$ 1000 + $ 500 per dwelling unit
c)	SPR = Site Plan Review Cases Commercial -	$ 2000 + $ 1000 per acre over (1) acre for ALL commercial properties.
d)	SPR= Amend approved Site Plan Commercial.	$ 2000 + $ 1000 per acre over (1) acre (for ALL commercial properties.)
e)	Continuance requested by applicant	$ 150
20. a)	SUP = Special Use Permit for Residential Properties	$ 2500
b)	SUP = Special Use Permit for Non-Residential Properties	$ 2500
c)	SUP= Amend Approved Special Use permit	$ 2500
d)	Continuance requested by applicant	$ 150
21. a)	TUP = Temporary Use Permits	$ 200
b)	TUP = Temporary Use Permit, if complaints or renewal.	$ 200
c)	TUP = Temporary Use Permit, if Appeal is requested.	$ 300
22.	VIO = Violations of Codes	$ -0-

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TOWN OF CAVE CREEK
PLANNING & ZONING FEE SCHEDULE
Effective September 21, 2000
Revised August 19, 2002
SUPPLEMENT 2

NO.	TYPE OF APPLICATION	FEE
23. a)	Z = Rezoning to Single Family Residential	$ 3500 + $ 100 per acre over 10 acres.
b)	Z = Rezoning to Multi-Family Residential	$5000 + $500 per acre over 10 acres.
c)	Z= Rezoning to Commercial	$ 5000 + $ 500 per acre over 10 acres.
d)	Z = Amend approved stipulations for single-family, multi-family, & commercial.	$ 1250
e)	Continuance requested by applicant	$ 150
24. a)	Z = P.U.D. / P.A.D. Cases	$ 7500 + $ 100 per acre over 10 acres (up to $ 56,500)
b)	Z = Amend Approved P.U.D./P.A.D.	$7500 + $100 per acre over 10 acres (up to $56,500)
c)	Z = Amend Approved Stipulations	$ 1250
d)	Continuance requested by applicant	$ 150
25. a)	ZC = Zoning Clearances for Fences, Signs, & Buildings under 120 sq. ft.	$ 50
b)	ZC= Zoning Clearances for Residential, & Pools.	$ 250
c)	ZC= Zoning Clearances for Commercial Properties.	$ 250
d)	ZC = Zoning Clearances for Hillside Properties.	$ 300
26. a)	PUBLICATIONS: Zoning Ordinance	$ 20
b)	Zoning Map (small)	$ 5
c)	Subdivision Ordinance	$ 10
d)	General Plan	$ 5
e)	General Plan Map (small)	$ 2

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CAVE CREEK SUBDIVISION ORDINANCE
SUBDIVISION ORDINANCE AMENDMENTS
SUPPLEMENT 3

ORDINANCE NO.	TITLE OF ORDINANCE	DATE ADOPTED
95-08(2)	Adopting the Town Subdivision Ordinance by reference providing for repeal of conflicting ordinances and providing for severability	6/19/1995
O98-10	Amending the Subdivision Ordinance, Article 3 - Subdivision Design, and Declaring an emergency	7/29/1998
O99-10	Amending the Subdivision Ordinance by reference, repealing Ordinance No. 95-08 and providing for severability	8/9/1999
O2003-04	Change to the Subdivision Ordinance – Chapter 12 – Engineering Plans	8/4/2003

REFERENCE MATERIAL

Blue Font = 1999 Subdivision Ordinance
Red Font = proposed 2003 Subdivision Ordinance

CAVE CREEK SUBDIVISION ORDINANCE

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Blue Font = 1999 Subdivision Ordinance
Red Font = proposed 2003 Subdivision Ordinance

Blue Font = 1999 Subdivision Ordinance
Red Font = proposed 2003 Subdivision Ordinance

REFERENCE MATERIAL

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Blue Font = 1999 Subdivision Ordinance
Red Font = proposed 2003 Subdivision Ordinance

APPENDIX 2

TOWN OF CAVE CREEK

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ZONING ORDINANCE

EFFECTIVE DATE: JANUARY 6, 2003

$25.00

ZONING ORDINANCE
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CHAPTER 1 - TITLE, PURPOSE AND SCOPE

SEC. 1.0 SHORT TITLE. These regulations shall be known as the "Cave Creek Zoning Ordinance", may be cited as such and will be referred to herein as "this code", or "this Ordinance". All appendices, exhibits and/or maps attached to this Ordinance are hereby adopted and shall be incorporated herein as a part of this ordinance.

SEC. 1.1 PURPOSE and SCOPE.

A. The purpose of this Ordinance is to provide the minimum requirements for the implementation of the General Plan, to promote the public health, safety, and general welfare of the citizens of the Town of Cave Creek by guiding, controlling, and regulating the future growth and development of the Town in a manner that protects the character and the stability of the Town and is compatible with the low density, desert environment of the community. This Ordinance shall provide for the preservation of open space, protection of natural habitats, scenic vistas, riparian areas, and hillsides, while providing for adequate light and air, avoidance of overcrowding of land and excessive concentration of population by establishing land use classifications and by imposing regulations on the use of land, on the location, height and bulk of buildings and structures and by establishing standards for design and development.

B. This Ordinance shall incorporate all Town adopted codes and ordinances as they relate to the development, construction, alteration, moving, repair and use of any building, parcel of land or sign within the town, public and private utility towers and poles, and public utilities, except work located primarily in a public way, unless specifically mentioned in this ordinance.

C. Where, in any specific case, different sections of this Ordinance or any other town ordinance or code specify different requirements, the more restrictive shall govern. Where there is conflict between a general requirement and a specific requirement, the specific requirement shall apply. This Ordinance is intended to benefit the public as a whole and not any specific person or class of persons. Any benefits and detriments to specific individuals or properties resulting from the implementation, administration and enforcement of this Ordinance are incidental to the overall benefit to the whole community. Therefore, unintentional breaches of the obligations of administration and enforcement imposed on the Town of Cave Creek shall not be enforceable in tort.

D. This Zoning Ordinance establishes procedures, offices, boards, and commissions for the enforcement, interpretation, and processing of amendments, variances, conditional use permits, and appeals and for violations and penalties for infractions of these zoning regulations.

E. All changes to distinguishing traits or primary features or the use of a building or land, as evidenced by increased parking requirements, change of occupancy, change of outside storage, or other features, occurring to existing properties after the effective date of this Ordinance shall be subject to all provisions of this Ordinance. The use of a building or land shall refer to the primary or specific purpose for which the building or land is occupied, designed, intended, or maintained.

SEC. 1.2 FILING FEES.

A. Fees for services shall be charged. All fees shall be set by Resolution of the Town Council and schedules shall be available at the Town Hall. The developer/applicant shall, at the time of filing, pay to the Town those established fees. These fees shall be non-refundable unless otherwise specifically provided herein.

SEC. 1.3 INTERPRETATION.

A. The standards and restrictions established by this Ordinance shall be held to be the minimum requirements for the promotion of the General Plan, and for the interpretation and administration of the zoning regulations, standards, restrictions, uses, procedures, enforcement, fees, administration, and all other areas addressed herein.

B. This Ordinance is not intended to interfere with, abrogate, or annul any existing provisions of other laws or ordinances, except those zoning and building ordinances specifically repealed by this Ordinance, and providing that they are not in conflict with this Ordinance. In the event of a conflict, the provisions of this Ordinance shall govern. This Ordinance is not intended to interfere with, abrogate, or annul any private agreements between persons, such as easements, deeds, covenants, except that if this Ordinance imposes higher standards or a greater restriction on land, buildings or structures than an otherwise applicable provision of a law, ordinance, or a private agreement, the provisions of this Ordinance shall prevail.

C. This Ordinance amends the text of all other Zoning Ordinances previously adopted by the Town of Cave Creek, Arizona.

SEC. 1.4 APPLICABILITY.

A. This Ordinance shall govern the development and or the use of land and structures within the corporate limits of the Town of Cave Creek. All departments, officials and employees charged with the duty or authority to issue permits or licenses shall refuse to issue permits or licenses for uses or purposes where the same would conflict with any applicable provision of this ordinance. Any permit issued in conflict with the terms or provisions of this Ordinance shall be void.

B. All special uses which have been approved by the Town Council shall be permitted to proceed under such approvals provided that a complete application for building permit is submitted to the Town within six (6) months after the effective date of this Ordinance and provided further that all construction is completed within twelve (12) months after the Town Council approval or by such time specified by the Council at the time of approval.

C. No building permit or other permit required by this Ordinance shall be issued unless a site plan and zoning clearance have been submitted and approved by the Town. Except as specifically provided to the contrary in this Ordinance, each review and approval required by this Ordinance shall be independent of every other review and approval, and no review or approval shall be deemed to waive or satisfy any other requirement set forth herein.

SEC. 1.5 ENFORCEMENT.

A. The Zoning Administrator shall interpret, apply and enforce the provisions of this Ordinance to further the promotion of the public health, safety, and general welfare.

B. The Zoning Administrator shall in no case grant permission for the issuance of any permit for the construction, reconstruction, alteration, demolition, movement or use of any building, structure, lot, or parcel if the Zoning Administrator determines that the building, structure, lot or parcel as proposed to be constructed, reconstructed, altered, used, or moved, would be in violation of any of the provisions of this Ordinance, unless directed to issue such permit by the Board of Adjustment after interpretation of the Ordinance or the granting of a variance.

SEC. 1.6 LIABILITY.

A. This Ordinance shall not be construed to relieve from liability or lessen the responsibility of any person owning, operating or controlling any building or parcel of land for any damages to persons or property caused by defects or other conditions on or arising from said building or parcel of land, nor does the Town of Cave Creek assume any such liability by virtue of the reviews or permits issued under this Ordinance.

SEC. 1.7 VIOLATIONS and PENALTIES.

A. Any person who violates any provision of this Ordinance, and any amendments thereto, shall be guilty of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law; and each day of continued violation shall be a separate offense, punishable as described.

B. It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or land or cause or permit the same to be done in violation of this Ordinance. It shall also be unlawful for any person to violate any provision designated as a condition of approval either by the plan review process or through an amendment, conditional use permit, temporary use permit, variance, site plan, or appeal by an office, board, commission, or the Town Council as established by this Ordinance.

C. When any building or parcel of land regulated by this Ordinance is being used contrary to this Ordinance, the Zoning Administrator shall order such use discontinued and the structure, parcel of land, or portion thereof vacated by notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Zoning Administrator after receipt of such notice. The use or occupation of said structure, parcel of land, or portion thereof, shall conform to the requirements of this Ordinance.

SEC. 1.8 SEVERABILITY.

A. If any court of competent jurisdiction shall adjudge any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in said judgment.

B. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Ordinance to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

CHAPTER 2 - ADMINISTRATION

SEC. 2.0 TOWN COUNCIL. Pursuant to Arizona Revised Statutes ("A.R.S.") and this Ordinance, the powers and duties of the Mayor and Town Council ("Council") shall include but not be limited to the following:

A. To hear, review, approve, approve with conditions, or deny zoning applications, use permits, site plans and applications for development, including subdivisions, after recommendation by the Planning Commission in accordance with the provisions of this Ordinance.

B. To hear, review and adopt amendments to the Zoning District Map after recommendation by the Planning Commission in accordance with the provisions of this Ordinance.

C. To hear, review and adopt amendments to the text of this Ordinance after recommendation by the Planning Commission, in accordance with the provisions of this Ordinance.

D. To initiate, adopt, and amend the General Plan, including the text, maps and exhibits, and all elements of the General Plan, after recommendation by the Planning Commission in accordance with the provisions of this Ordinance.

E. To take such action not expressly delegated exclusively to the Zoning Administrator, the Planning Commission, or the Board of Adjustment as the Council may deem desirable and necessary to implement the provisions of this Ordinance and the General Plan.

SEC. 2.1 PLANNING COMMISSION.

A. **Establishment**. There is hereby established, pursuant to Arizona Revised Statutes, a Planning Commission ("Commission"), to be known as the Town of Cave Creek Planning Commission.

B. **Powers**. The Commission is the planning agency for the Town and has the powers necessary to enable it to fulfill its planning function, in accordance with the Arizona Revised Statutes and this Ordinance. The Commission shall advise the Council regarding applications for amendments to the General Plan, Area Specific Plans and this Ordinance, and for development, including subdivisions. In no event is the Commission authorized to render a final decision approving, denying, or conditionally approving a change in this Ordinance or the General Plan, or to make a final decision on an application for development.

C. **Duties.** In addition to any authority otherwise imposed by law, the Commission shall have the following powers and duties, to be exercised in accordance with the terms of this Ordinance:

1. To hold public hearings when necessary or when required by law.

2. To initiate, hear, review, and make recommendations to the Council regarding applications for amendments to the General Plan or Area Specific Plans. On an annual basis make recommendation(s) to the Mayor and Council concerning the General Plan as well as plans for the development of any land outside the Town's border, which in the opinion of the Commission, is substantially related to the planning of the Town.

3. To make recommendations to the Council on all matters concerning or relating to the creation of Zoning Ordinances, the boundaries thereof, the appropriate regulations to be enforced therein, and amendments of this Ordinance and Zoning District Map and to undertake any other activities usually associated therewith and commonly known as "planning and zoning".

4. To hear, review and make recommendations to the Council on all applications for development, including subdivisions, site plans, specific plans, use permits, and any other permit or review process as provided in this Ordinance or the Subdivision Ordinance.

5. To confer and advise with other town, county, regional, or state planning agencies and commissions.

D. **Membership**. The Commission shall consist of seven (7) members, all of whom shall be residents of the Town. The members of the Commission shall be appointed by, and serve at the pleasure of, the Council. The members of the Commission shall serve without compensation.

E. **Term of Office**. The term of office of the members of the Commission shall be three (3) years, with the terms of members so staggered that the terms of no more than three (3) members shall expire in any one-year. In the event of the death, resignation, or removal of a member of the Commission, the Council shall appoint a resident to fill the vacancy for the un-expired term.

F. **Organization.**

1. Officers. The Commission shall elect a chairperson and vice-chairperson from among its own members at its first meeting in January each year. The chairperson shall preside at all meetings. The vice-chairperson shall perform the duties of the chairperson in the latter's absence or disability. The Clerk of the Commission shall be a member of the Town staff appointed by the Town Manager, and is not a voting member of the Commission.

2. Meetings. Meetings of the Commission shall be open to the public. Public input shall be permitted on all matters before the Commission. The minutes of the proceedings, showing the vote of each member and records of its examinations and other official actions, shall be kept and filed in the office of the Town Clerk as a public record.

3. Quorum. Four (4) members of the Commission shall constitute a quorum for the transaction of business. No matter may be considered by the Commission unless there are four (4) or more members present who are eligible/qualified to vote on the matter. The affirmative vote of at least a majority of the quorum present and voting shall be required to pass a motion. If a member has been present for the entire presentation of an issue that member may abstain from voting only if the member has a conflict of interest. If a member has a conflict of interest he/she shall declare said conflict of interest prior to the presentation and shall abstain from all discussion and deliberation on the matter in question.

4. Rules and Regulations. The Commission may make and publish by-laws to govern its proceedings and to provide for its meetings subject to review by the Town Attorney and approval by the Council.

SEC. 2.2 BOARD of ADJUSTMENT.

A. **Establishment**. There is hereby established a Board of Adjustment ("Board") to be known as the Cave Creek Board of Adjustment.

B. **Duties**. In addition to any authority otherwise granted to the Board by Arizona Revised Statutes, the Board shall have the following powers and duties:

1. To hear and decide appeals in which it is alleged that there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of this Ordinance. The Board may reverse, affirm, or modify, wholly or partly, any order, requirement or decision of the Zoning Administrator properly appealed to the Board, and make such order, requirement, decision or determination as is necessary.

2. To hear and decide appeals for variances from the terms of this Ordinance, only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that: (a) the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; (b) the granting of the adjustment will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.

3. Pursuant to A.R.S. §9-462.06, The Board may not:

   a. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance, provided the restrictions in this paragraph shall not affect the authority to grant variances.

   b. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner

C. **Membership**. The Board shall consist of five (5) members who shall be residents of the Town of Cave Creek. The members of the Board shall be appointed by, and serve at the pleasure of the Council. The members of the Board shall serve without compensation.

D. **Term of Office**. The term of office of the members of the Board shall be three (3) years, with the terms of members so staggered that the terms of no more than two (2) members shall expire in any one-year. In the event of the death, resignation, or removal of a Board member, the Council shall appoint a Town resident to fill the vacancy for the unexpired term.

E. **Organization of Board of Adjustment**.

1. Officers. The Board shall elect a chairperson and a vice-chairperson from among its own members at its first meeting held in each calendar year. The chairperson shall preside at all meetings, administer oaths and take evidence. The vice-chairperson shall perform the duties of the chairperson in the latter's absence or disability. The Clerk of the Board shall be a member of the Town staff appointed by the Town Manager, and is not a voting member of the Board.

2. Meetings. Meetings of the Board of Adjustment will be called as needed by the Chair. Meetings of the Board shall be open to the public and public input shall be taken at the discretion of the chairman. The minutes of the proceedings, showing the votes of each member and records of it examinations and other official actions, shall be kept and filed in the office of the Town Clerk as a public record.

3. Quorum. Three (3) members of the Board shall constitute a quorum for the transaction of business. No matter may be considered by the Board unless there are three (3) or more members present who are eligible/qualified to vote on the matter. The affirmative vote of at least the majority of the quorum present and voting shall be required to pass a motion. If a member has been present for the entire presentation of an issue, that member may abstain from voting only if the member has a conflict of interest. If a member has a conflict of interest he/she shall declare said conflict of interest prior to the presentation and shall abstain from all discussion and deliberation on the matter in question.

4. Rules and Regulations. The Board shall adopt and publish rules and procedures necessary for the conduct of its business, subject to review by the Town Attorney and approval by the Town Council.

F. **Stay of Proceedings**. An appeal to the Board of Adjustment stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, in the Zoning Administrator's opinion, based on the facts stated, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed except by an order granted by the Board or by a court of record on application and notice to the Zoning Administrator. Proceedings shall not be stayed if the appeal requests relief, which has previously been denied by the Board except pursuant to a special action in Superior Court as provided for in state law.

SEC. 2.3 ZONING ADMINISTRATOR.

A. **Establishment**. Pursuant to Arizona Revised Statutes, the staff position of Zoning Administrator is hereby established for the general and specific administration of this Ordinance. The Planning Director shall serve as the Zoning Administrator. During any period that the position of Zoning Administrator is vacant, the Town Manager or his/her designated representative shall perform the duties of the Zoning Administrator.

B. **Powers**. The Zoning Administrator, acting under the direction of the Town Manager, shall have all of the powers of a Zoning Administrator under Arizona law and this Ordinance.

C. **Duties of the Zoning Administrator**. The Zoning Administrator shall have the following duties:

1. To establish rules, procedures and forms to provide for processing of applications or requests for action under the provisions of this Ordinance.

2. To perform all administrative actions required by this Ordinance, including the giving of notice, scheduling of hearings, preparation of reports, receiving and processing appeals, the acceptance and accounting of fees, and the rejection or approval of site plans as provided by this Ordinance.

3. To provide advice and recommendations to the Commission, the Board, and the Council with respect to applications and requests for approvals and permits required by this Ordinance.

4. To assure that any development or use proceed only in accordance with the terms, conditions, or requirements imposed by the Town's Board(s), Commission or Council.

5. To direct such inspections, observations and analysis of any and all erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within the Town as is necessary to fulfill the purposes and procedures set forth in this Ordinance. No building shall be occupied until such time as the Zoning Administrator has issued a letter of compliance with this Ordinance.

6. To take such action as is necessary for the enforcement of this Ordinance including but not limited to the stipulations or conditions of zoning map amendments, conditional use permits, special event permits, abandonments, variances, lot splits and subdivisions.

7. To interpret the Zoning Ordinance to the public, Town departments, and other branches of government, subject to the supervision of the Town Manager and general or specific policies established by the Council.

8. To undertake preliminary discussions with, and provide non-legal advice to, applicants requesting zoning adjustment action.

9. To determine the location of any district boundary shown on the Zoning Map adopted as part of this Ordinance when such location is in dispute.

10. To accept, review, and approve or deny Temporary Use Permits in accordance with the terms of this Ordinance.

11. The Zoning Administrator may, due to the complexity of any matter, unless otherwise noted herein, refer a permit application to the Commission for recommendation.

D. **Limitation on Power of the Zoning Administrator**.

1. The Zoning Administrator may not make any changes in the uses permitted in any zoning classification or zoning district or make any changes in the terms of the Zoning Ordinance.

E. **Appeals**.

1. Any person aggrieved or affected by a decision of the Zoning Administrator may appeal to the Board of Adjustment, by filing a written request with the Zoning Administrator. Upon receiving a written appeal, the Zoning Administrator shall transmit to the Board of Adjustment all records related to the appeal.

2. An appeal under this section must be filed within ten (10) working days from the date the Zoning Administrator has notified the applicant, in writing, via certified mail return receipt requested of his/her decision. If no appeal is filed within the time specified the decision of the Zoning Administrator shall be final.

F. **Submittal Requirements**. All requests for action by the Commission, or Board, shall be filed with the Zoning Administrator. All requests shall be in a form required by the Zoning Administrator and in a manner provided in this Ordinance or in rules or regulations approved by resolution of the Council.

CHAPTER 3 - ZONING PROCEDURES

SEC. 3.0 GENERAL PROCEDURAL REQUIREMENTS.

A. **Application Process:** The purpose of this chapter is to provide procedures for the processing of applications for amendments to the text of this Ordinance, the Official Zoning Map(s), the General Plan, Use Permits, Variances, Site Plan Reviews, Applications for Development, and Appeals. Although the specific procedures followed in reviewing the various applications differ, the procedures for all applications have three (3) common elements: (1) submittal of a completed Town application, together with the required fee payment and appropriate information; (2) review of the submittal by appropriate Town staff, agencies, Commission, and Boards; and (3) action to approve, approve with conditions, or deny the request or application.

1. Pre-application Conference. The applicant shall meet with the Zoning Administrator to discuss the nature of the proposed application, application submittal requirements, the procedure for action, and the standards for evaluation of the application.

2. Sketch Plan. The applicant, at the time of the pre-application conference, shall provide the Zoning Administrator with a sketch plan depicting the boundaries of the property being considered and a tentative development proposal for the property.

3. Complete Submittal. Following the pre-application conference, the applicant shall submit the required materials to the Zoning Administrator. Only complete applications shall be accepted.

B. **Planning Commission:** The Commission shall hold regularly scheduled public hearings to receive and review public input as required by this Ordinance. On those items where it has review authority, the Commission shall recommend that the Council approve, approve with conditions or deny the application. Commission recommendations shall be based on, but not limited to, all of the following:

1. Conformance with this Ordinance, the Subdivision Ordinance, and all other applicable Town policies, rules and regulations;

2. Conformance to the Cave Creek General Plan and other adopted plans;

3. Staff recommendations;

4. Review agency input;

5. Public input and testimony received at the hearing;

6. Effects of the proposal on the health, safety and welfare of the neighborhood, area, and community-at-large;

7. Conformance with applicable Arizona law.

C. **Records:** The Town shall provide for minutes to be written and retained which shall include a record of the evidence submitted, and a summary of the considerations and action taken by the Commission.

D. **Town Council:** The Council shall hold regularly scheduled public hearings to act upon all items as required by this Ordinance. The Council shall decide whether to approve, approve with conditions, or deny an application. Council action shall be based on, but not limited to, all of the following:

1. Planning Commission recommendations;

2. Conformance with this Ordinance, the Subdivision Ordinance, and all other applicable Town policies, rules and regulations;

3. Conformance with the General Plan, and other adopted plans;

4. Staff recommendations;

5. Review agency input;

6. Public input and testimony received at the hearing;

7. Effects of the proposal on the health, safety and welfare of the neighborhood, area, and community-at-large;

8. Conformance with applicable Arizona law.

E. **Scope of Action:** The reviewing body may take any action on the application that is consistent with the public notice. The reviewing body may allow amendments to the application if the effect of the amendments is to decrease the intensity or density from that requested on the original application, or to reduce the impact of the development or the amount of land involved in the development. The reviewing body shall not, in any case, permit a greater intensity or density of development, a greater modification or a use permitted only in a different general use category, or affecting a larger land area than indicated in the application and notice.

SEC. 3.1 NOTIFICATION FOR PUBLIC HEARINGS.

A. **Notice Requirements**. Notification of public hearing(s) required by this Ordinance shall be subject to the notice requirements set forth in A.R.S. §9-462 *et seq.*, and in this Ordinance. In the event of conflict between state law and this Ordinance, state law shall control.

B. **Notification Procedures**. Notice of the date, time, and place of the hearing, including a general explanation of the matter to be considered and a general description of the area affected, shall be given at least fifteen (15) days before the hearing, in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the Town of Cave Creek or, if there is none, notice shall be posted on the affected property in such a manner as to be legible from the public rights-of-way. A posted notice shall be printed so that the following are visible from a distance of one hundred (100) feet, the word "zoning," the present zoning district classification, the proposed zoning district classification where applicable, and the date and time of the public hearing. In addition to notice by publication, the Town may give notice of the hearing in such other manner as it may deem necessary or desirable.

2. In proceedings involving rezoning of land which abuts other municipalities or unincorporated areas of the county, copies of the notice of public hearing shall be transmitted to the planning agency of each governmental unit abutting such land.

3. In proceedings for rezoning that are not initiated by the property owner and which may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and to all property owners, as shown on the last assessment of the property, within three hundred (300) feet of the property to be rezoned.

4. The Town shall provide notice to real property owners pursuant to at least one of the following notification procedures:

   a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the proposed changes.

   b. If the Town issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the Town shall include notice of such changes with such utility bills or other mailings.

   c. The Town shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the Town. The changes shall be published in a "display ad" covering not less than one-eighth (1/8) of a full page.

5. Responsibility for Providing Notice: The Town shall post notice as required and the applicant shall be required to maintain posting and remove the posting within ten (10) days after the hearing and final action. If notice is required to be provided by mail, the applicant shall be responsible for providing the Town with mailing labels containing the names and addresses of all property owners within three hundred (300) feet of the proposed request. Failure to provide a complete list of mailing labels shall constitute an incomplete application. The Town shall be responsible for the first-class mailing of the required notices.

6. If notice is provided pursuant to subparagraphs 4(b) or 4(c) of this subsection, the Town shall also send notice by first class mail to persons who register their names and addresses with the Town as being interested in receiving such notice. The Town may charge the recipient a fee not to exceed five (5) dollars per year for providing this service and may adopt procedures to implement this provision.

7. Notwithstanding the notice requirements set forth in paragraph 4 of this section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the Town for which the notice was given.

SEC. 3.2 SITE PLAN REVIEW.

A. **Purpose:** The purpose of the site plan regulations is to promote the safe, functional and aesthetic development of property and to ensure that new structures, utilities, streets, parking, circulation systems, lighting, signage, landscaping, yards and open spaces are developed in conformance with the standards of this Ordinance, and the General Plan. Site plan review shall consider the proposed development and the relationship of the project to adjacent developments, the surrounding neighborhood, and the community. Site plan review for single-family residences shall be administratively approved at the time of building permit submittal.

B. **Application:**

1. Site Plan Review shall be required for development and construction of multi-family residences and commercial uses and for all development located within the "Town Core Overlay Area", except interior tenant improvements. If the proposed development requires a zoning change (rezoning), the site plan shall be submitted and considered concurrently with the rezoning application. For proposed developments which do not require rezoning, the site plan shall be approved prior to any construction or development.

2. Before the Town accepts any applications, the applicant shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the site plan review pursuant to these regulations. Following the pre-application meeting, the application shall be filed on a form provided by the Town and shall be accompanied by the required fee and all materials required by this Ordinance and/or on the application. Additional materials may be required by the Town in order to adequately review the application.

C. **Submittal Requirements:** All site plan applications shall include, at a minimum, the following information:

1. A map showing the particular property or properties for which site plan approval is requested, and the adjacent properties, buildings and structures, land uses, and public streets and ways within a radius of three hundred (300) feet of the exterior boundaries thereof.

2. A preliminary development plan which, at a minimum, shall include the following:

   a. A site plan drawn to scale and in such a manner as to indicate clearly and precisely what is planned for the subject property. Lot dimensions and topography showing existing and proposed grades and drainage systems, natural and manmade features and indicating which will be retained and which are to be altered or removed.

   b. All existing and proposed buildings and structures.

   c. Proposed block layout, street system, street dedications, improvements and utility plans.

   d. Proposed reservation for parks, parkways, playgrounds, recreation areas, pedestrian access and other open space.

   e. Off-street parking facilities including number of spaces and dimensions of parking area, loading bays and service access drives.

   f. Proposed landscaping, including the native vegetation that will be salvaged, walls and fences, outdoor lighting, signs, and outdoor storage and activities.

3. Additional information and material, including but not limited to the submission of special studies, may be required by the Town where necessary to adequately review the request.

D. Procedures:

1. The applicant shall schedule a pre-application conference with the Zoning Administrator to discuss the proposal.

2. Following the pre-application conference, the applicant shall submit a completed application, the required fees, and all materials and studies related to the site plan.

3. When the Zoning Administrator has determined that the application package is complete and all necessary information has been submitted, the application will be forwarded to the appropriate reviewing agencies and Town Departments for comments, and a public hearing will be scheduled.

4. The applicant shall be responsible for providing the Town with mailing labels containing the names and addresses of all property owners within three hundred (300) feet of the parcel which is the subject of the site plan review.

5. The site plan shall be reviewed by the Commission and the Council as set forth in Section 3.0 of this Ordinance.

6. Notification of public hearings shall be provided as set forth in A.R.S. §9-462(*et seq*) and Sec 3.1 of this Ordinance.

7. When a site plan is accompanied by an application for a special use permit, both applications may be processed and reviewed concurrently.

E. Review Criteria: Site plan review focuses on the layout of proposed developments, including building placement, setbacks, access, parking areas, lighting, external storage areas, open areas and landscaping. Site plan approval may be granted if the reviewing body finds that the applicant has met the following criteria:

1. Public facilities can accommodate the proposed development.
2. Special features of the site such as topography, vegetation, wildlife habitat, archaeological sites, historic sites, etc., have been adequately considered, analyzed, and protected.
3. The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and negative impacts have been sufficiently minimized.
4. Parking areas and entrance/exit points have been designed to facilitate traffic and pedestrian safety and avoid congestion.
5. Parking areas will:
   (a) Minimize the amount of paved surface;
   (b) Screen residential uses from vehicle headlights;
   (c) Soften the impact of parking areas on adjacent public and private spaces through landscaping and screening;
   (d) Promote energy conservation through vegetation to shade and cool parking areas.
6. On-site lighting is designed so that light is reflected away from adjoining properties and streets.

7. Undesirable impacts produced on the site, such as noise, glare, odors, dust or vibrations are adequately screened from adjacent properties.

8. The site will be protected from undesirable impacts which are generated on abutting properties where possible.

9. Unsightly exterior improvements and features such as trash receptacles, exterior vents and mechanical devices will be adequately screened.

10. Storage areas, trash collection facilities and noise generating equipment will be located away from abutting residential districts or development, or site obscuring fencing will be provided.

F. Scope of Action:

1. Approval by the Council shall become effective immediately.

2. The approval of any site plan shall become void within one (1) year (or other period of time as specified at the time of approval) of the date of approval if not exercised. Site plan approval shall be considered exercised when the use has been established or when a building permit has been issued.

3. A site plan approval pursuant to these provisions shall run with the land and shall continue to be valid upon a change of ownership of the site or structure that was the subject of the application.

4. After approval of a site plan by the Council, modifications to the site plan may be approved by the Zoning Administrator, when it is determined that the modifications are minor, such as minor dimensional changes and building configurations.

5. Major modification to a previously-approved site plan, such as changes in uses or densities, encroachments into required yards, or other major changes, shall be reviewed and approved by the Commission and Council following the procedure described in this section for the original Site Plan Review.

6. A "Certificate of Occupancy" shall not be issued if the development does not conform to the approved site plan.

SEC. 3.3 VARIANCES and APPEALS.

A. **Purpose:** The Board may decide appeals from the decisions of the Zoning Administrator and grant variances from the terms of the Zoning regulations that meet the criteria set forth in this Ordinance. Variances as to permitted uses are not allowed.

B. **Application:** Before the Town accepts any applications, the petitioner shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the variance or appeal. Following the pre-application meeting, a request for variance shall be made by filing an application with the Zoning Administrator and paying the required application fee. The application shall be accompanied by a development plan showing such information as the Zoning Administrator may reasonably require for purposes of this Ordinance. In all cases, the application shall address the evaluation criteria set forth in Section C of this chapter. An applicant may appeal a Zoning Administrator's determination. The appeal shall be filed on a Zoning Administrator's Determination-Appeal form available at the Planning Department.

C. **Evaluation Criteria:**

1. Appeals from Decisions of the Zoning Administration. The Board is authorized to hear and decide appeals in which it is alleged that there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement or interpretation of this Ordinance. The Board's review is limited to determining whether the decision or interpretation was in accordance with the intent and requirements of this Ordinance. The Board may reverse, affirm, or modify, wholly or partly, any order, requirement or decision of the Zoning Administrator properly appealed to the Board.

2. Variances.

a. The Board is authorized to hear and decide appeals for variances from the terms of this Ordinance, only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

The granting of the adjustment may not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.

b. Variance Requests. A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in A.R.S. §9-462 (*et seq*) and in Sec. 3.3C of this Ordinance. The Board of Adjustment may not:

i. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance, provided the restrictions in this paragraph shall not affect the authority to grant variances.

ii. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner

D. Procedures:

Public Meetings: Notice of the meeting at which the variance or appeal will be heard, shall be provided in compliance with A.R.S. §9-462 *et seq*. In all cases the notice shall be posted in a conspicuous place on the affected property.

E. **Validity Limit:** Rights and privileges established by the granting of a variance shall be exercised within twelve (12) months following the date of approval unless the Board specifies a different time limit at the time the variance is granted. A variance that is not exercised within the time limits specified is null and void.

F. **Appeals of Board of Adjustment Decision:** A person aggrieved by a decision of the Board or an officer or department of the Town of Cave Creek affected by a decision of the Board may at any time within thirty (30) days after the Board has rendered its decision, file a complaint for special action in Superior Court to review the Board's decision.

G. **Stay of Proceedings:** An appeal to the Board stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, in the Zoning Administrator's opinion, based on the facts stated, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed except by an order granted by the Board or by a court of record on application and notice to the Zoning Administrator. Proceedings shall not be stayed if the appeal requests relief, which has previously been denied by the Board except pursuant to a special action in Superior Court.

SEC. 3.4 ZONING TEXT AMENDMENT and ZONING MAP CHANGES.

A. **Purpose:** In accordance with the provisions of Arizona State Law, the Council may from time to time adopt text amendments to this Ordinance and/or amend the Official Zoning Map(s).

B. **Application:**

1. Applicant. Any person, town staff, Commission, or Council may request an amendment to the text of the Zoning Ordinance. Only the property owner, Commission, or Council may initiate an amendment to the Zoning Map.

2. Pre-application Meeting. Before the Town accepts any applications, the applicant other than the Council, Commission, or Town staff shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the zoning text amendment or zoning map change (rezoning) pursuant to these regulations. Following the pre-application meeting, the application shall be filed on a form provided by the Town and shall be accompanied by the applicable fees and supporting documentation required by this Ordinance and/or on the application form. Additional materials or studies may be required by the Town in order to adequately review the application.

C. **Initiation of Ordinance Text Amendment:** The application must include the exact section of this Ordinance proposed for amendment, the proposed substitute wording, and the reasons for requesting the amendment. Graphic material should also be submitted if it will assist in understanding the benefits of the amendment.

D. **Initiation of a Rezoning:** An owner of real property within the Town, or that owner's authorized representative, may, upon proof of ownership, apply for a change in zoning district boundaries (rezoning) for that landowner's property. The Town staff, the Commission and the Council also may initiate such amendments. If a rezoning application filed by a party other than the Commission or Council includes property not owned by the applicant, the application shall include the signatures of the real property owners representing at least seventy-five (75%) percent of the land in the area proposed to be changed.

E. **Submittal Requirements:** As a prerequisite to the Commission hearing for any rezoning, a neighborhood meeting shall be conducted by the applicant. (A neighborhood meeting is not required for Conditional Use Permit or Site Plan Review). The purpose of the meeting is to provide information to the adjacent property owners and residents and to allow the neighbors and residents to express any issues or concerns that they may have with the proposed rezoning before the public hearing is conducted. The applicant shall provide notice of the meeting to all landowners within three hundred (300) feet of the boundaries of the proposed development, the Town, and any Neighborhood Associations on record with the Town, by first class mail no less than thirty (30) days prior to the scheduled Commission meeting. The applicant shall submit a list of the attendees and minutes of the meeting(s) to the Town Planning Department. All meeting(s) shall be held within the Town of Cave Creek corporate limits.

All zoning text amendments and zoning change applications shall comply with the submittal requirements outlined in Sec. 3.2C of this Ordinance, and those on the application form.

F. **Procedures:** All zoning text amendments and zoning change applications shall be processed in accordance with Sec. 3.2D of this Ordinance.

1. Approval of a petition to rezone land may not be enacted as an emergency measure and the rezoning shall not become effective for at least thirty (30) days after Council approval.

2. If the proposed rezoning is inconsistent with the General Plan – General Land Use Plan, an application for an amendment to the General Land Use Plan shall be submitted by the applicant in accordance with A.R.S. § 9-461 (*et seq*) and Sec. 3.5 of this Ordinance.

G. **Protest:** If a protest is filed in accordance with the requirements of A.R.S. §9-462.04 H, as amended, the amendment shall not pass, unless approved by a vote of three-fourths (3/4) of the Council. The protest petition shall be filed in writing with the Town Clerk at or before noon on the date of the Council hearing.

H. **Subsequent Applications:** In the event that an application for amendment is denied by the Council or that the application is withdrawn after the Commission hearing, the Commission shall not accept another application for the same amendment within one year of the original hearing unless authorized by a vote of three-fourths (¾) of the Commission.

SEC. 3.5 GENERAL PLAN AMENDMENT.

A. **Application:**

1. In accordance with the provisions of Arizona State Law, the Council may update and amend the General Plan. Such amendments or changes may be initiated by the Council, Commission, Town Staff or by a property owner or his/her designated representative. By resolution, the Council may establish a schedule prescribing when and how frequently General Plan Amendments will be considered.

2. Before any applications are accepted by the Town, the applicant shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the General Plan Amendment pursuant to these regulations and the General Plan. All applications shall be filed on a form provided by the Town and shall be accompanied by the required fee and all materials required by this Ordinance and/or on the application form. Additional materials may be required by the Town in order to adequately review the application.

B. **Procedures:** An application for a General Plan Amendment shall be processed and public hearings shall be held in accordance with the requirements of State law.

C. **Approval Criteria:** In determining whether the proposed amendment shall be approved, the Commission and Council shall consider the following factors:

1. The development pattern contained in the land use plan does not adequately provide appropriate optional sites for the use proposed in the amendment.

2. That the amendment constitutes an overall improvement to the Town of Cave Creek General Plan and is not solely for the good or benefit of a particular landowner or owners at a particular point in time.

3. That the amendment will not adversely impact the community as a whole or a portion of the community by:

   a. Significantly altering acceptable existing land use patterns.

   b. Adversely impacting existing uses due to increased traffic on existing systems.

   c. Affecting the livability of the area or the health and safety of the residents.

4. That the amendment is consistent with the overall intent of the General Plan.

5. Whether events subsequent to the General Plan adoption have changed the character and/or condition of the area so as to make the application acceptable.

CHAPTER 4 - USE DISTRICTS

SEC. 4.0 PURPOSE

For the purpose of this Ordinance, land that is inside the corporate limits of the Town of Cave Creek is hereby classified into the following zoning use districts as shown on the Town's zoning district map which is attached hereto and incorporated herein:

A. DESERT RURAL (D) ZONES
B. MOUNTAIN PRESERVATION (MP) ZONES
C. SINGLE-FAMILY RESIDENTIAL (R) ZONES
D. MULTI-FAMILY RESIDENTIAL (M) ZONES
E. COMMERCIAL BUFFER (CB) ZONES
F. CORE COMMERCIAL (CC) ZONES
G. GENERAL COMMERCIAL (GC) ZONES
H. PLANNED DEVELOPMENT (PD) OVERLAY ZONES
I. OPEN SPACE DISTRICTS (OSC-Open Space Conservation) and OSR-Open Space Recreational) (See Chapter 8 – Open Space Zoning Districts)

SEC. 4.1 Desert Rural (D) Zones Zoning Districts

A. Purpose: Desert Rural Zones are created to prevent urban and desert land use conflicts by protecting scenic vistas, preserving natural habitats and natural features such as hillsides and washes, and to ensure that residential development is harmonious and sensitive to the natural environment.

B. Allowable Uses:

1. One single-family residence per lot; ranch uses.

2. Accessory living quarters, accessory buildings, and accessory uses.

C. Divisions:

ZONE	Minimum Lot Size
D-5A	190,000 square ft.
D-2.5A	89,000 square ft.
D-1.75A	70,000 square ft.
D-1A	43,000 square ft.

TABLE 1

D. Bulk Regulations:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
D-5A	2	25	60	30	190,000	300	5%
D-2.5A	2	25	60	30	89,000	250	10%
D-1.75A	2	25	60	30	70,000	250	10%
D-1A	2	25	40	INTERIOR = 30 STREET= 20	43,000	145	15%

TABLE 2

SEC. 4.2 MOUNTAIN PRESERVATION (MP) ZONES

A. Purpose: To conserve and protect the native desert habitat and sight vistas on steep slopes by limiting disturbed areas and the mountaintop profile.

B. Allowable Uses:

1. One single-family residence per lot.

2. Accessory living quarters, accessory buildings and accessory uses.

C. Bulk Regulations:

MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE			
STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE	MAXIMUM DISTURBED AREA
2	25	60	30	89,000	250	10%	10%

TABLE 3

D. Construction:

1. Construction and development shall comply with all Hillside regulations of this ordinance.

2. No zoning clearances can be issued in this district without a staff approved site plan.

3. No portion of a structure shall be constructed above the twenty-degree (20°) horizontal plane (see diagram below).

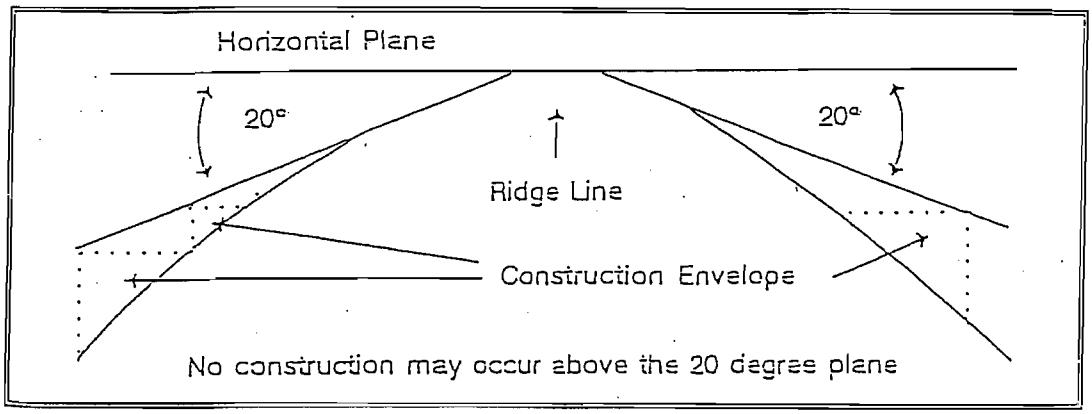


EXHIBIT 1

SEC. 4.3 SINGLE-FAMILY RESIDENTIAL (R) ZONES

A. Purpose: To conserve and protect residential areas intended for single-family uses, taking into consideration existing conditions, current land use, lot sizes, and future land use needs.

B. Allowable Uses:

1. One single-family residence per lot.

2. Accessory buildings and accessory uses, but not accessory living quarters.

C. Divisions:

1. R-35: 35,000 square feet per lot

2. R-18: 18,000 square feet per lot

D. Bulk Regulations:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
R-35	2	25	40	20	35,000	145	20%
R-18	2	25	30	INTERIOR = 10 STREET= 15	18,000	120	25%

TABLE 4

SEC. 4.4 MULTI-FAMILY RESIDENTIAL (MR) ZONES

A. Purpose: To provide for multi-unit residential developments in locations which are suitable and appropriate, taking into consideration existing conditions and future needs. These zones are intended for long-term residential uses.

B. Allowable Uses:

1. Any use permitted in the single-family residential zones and open space uses.

2. Multiple-family residential units and offices, provided a site plan for the use is reviewed by the Planning Commission and approved by the Town Council.

3. Accessory buildings for the exclusive use of on-site tenants and accessory uses.

C. Divisions:
1. MR-14: 14 units per acre
2. MR-21: 21 units per acre
3. MR-43: 43 units per acre

D. Bulk Regulations:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
MR-14	2	25	F=20 R=25	INTERIOR = 5 STREET= 10	6,000 (3,000/DU*)	60	50%
MR-21	2	25	F=20 R=25	INTERIOR = 5 STREET= 10	6,000 (2,000/DU*)	60	50%
MR-43	2	25	F=20 R=25	INTERIOR = 5 STREET= 10	6,000 (1,000/DU*)	60	50%

TABLE 5

SEC. 4.5 COMMERCIAL BUFFER (CB) ZONES

A. Purpose: To provide for smaller shops and services in convenient locations to meet the daily needs of families in the immediate residential neighborhoods.

B. Allowable Uses: All uses permitted in the single-family residential zones and those permitted per Appendix A. All properties, regardless of size, require approval of the site plan by the Town Council upon recommendation by the Planning Commission.

11.22.04

C. Bulk Regulations:

1. Commercial Uses:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
CB	2	25	F=~~10~~* R=~~0~~** OR ~~5~~***	~~0~~**** (OR 10 OR 3)	~~6,000~~ 18,000	~~60~~ 120	~~60%~~ 50%

TABLE 6

(a) * If property line or adjoining street abuts rural or residential zones, same as for that zone except not less than twenty-five (25) feet.

(b) ** If property line or adjoining street or alley abuts rural or residential zones, twenty-five (25)feet.

(c) *** If a rear yard is provided, it shall have a depth of at least three (3) feet.

(d) **** If property line or adjoining street or alley abuts rural or residential zones, ten (10) feet. If a side yard is provided, it shall have a depth of at least three (3) feet.

2. Single-family residential uses:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
CB	2	25	30	INTERIOR = 10 STREET= 15	18,000	120	25%

TABLE 7

SEC. 4.6 CORE COMMERCIAL (CC) ZONES

A. Purpose: To allow a diverse mixed use commercial area to service neighborhood residential and tourist trade in the Historic Town Core area. Allowable uses must be compatible with adjacent land uses and nearby properties.

B. Allowable Uses: A building or premises shall be used only for the uses specified in Appendix A. All properties, regardless of size, require approval of the site plan by the Town Council upon recommendation of the Planning Commission.

C. Bulk Regulations:

1. Commercial uses:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE (	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
CC	2	25	F=10* R=0** OR 3***	0**** (OR 10 OR 3)	6,000	60	60%

TABLE 8

(a) * If property line or adjoining street abuts rural or residential zones, same as for that zone except not less than twenty-five (25) feet.

(b) ** If property line or adjoining street or alley abuts rural or residential zones, twenty-five (25) feet.

(c) *** If a rear yard is provided, it shall have a depth of at least three (3) feet.

(d) **** If property line or adjoining street or alley abuts rural or residential zones, ten (10) feet. If a side yard is provided, it shall have a depth of at least three (3) feet.

2. Single-family residential uses:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
CC	2	25	30	INTERIOR = 10 STREET=15	18,000	120	25%

TABLE 9

3. Multi-family residential uses:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
CC	2	25	F=20 R=25	INTERIOR = 5 STREET =10	6,000 (3,000 sq. ft. per DU*)	60	50%

TABLE 10

SEC. 4.7 GENERAL COMMERCIAL (GC) ZONES

A. Purpose: To provide for commercial retail sales and services, or light industrial uses in locations which are suitable and appropriate, taking into consideration the land uses of adjacent and nearby properties. Access to major streets or highways and the availability of public utilities are particular requirements.

B. Allowable Uses: A building or premises shall be used only for the uses specified in Appendix A. All properties, regardless of size, require approval of the site plan by the Town Council upon recommendation by the Planning Commission.

C. Bulk Regulations:

ZONE	MAXIMUM BUILDING HEIGHT		MINIMUM YARD (FEET)		INTENSITY OF USE		
	STORIES	FEET	FRONT & REAR	SIDE	MINIMUM LOT AREA IN SQUARE FEET	MINIMUM LOT WIDTH FEET	MAXIMUM LOT COVERAGE
GC	2	25	F=10* R=0** OR R=3***	0**** (OR 10 OR 3)	6,000	300	60%

TABLE 11

(a) * If property line or adjoining street abuts rural or residential zones, same as for that zone except not less than twenty-five (25) feet.

(b) ** If property line or adjoining street or alley abuts rural or residential zones, twenty-five (25) feet.

(c) *** If a rear yard is provided, it shall have a depth of at least three (3) feet.

(d) **** If property line or adjoining street or alley abuts rural or residential zones, ten (10) feet. If a side yard is provided, it shall have a depth of at least three (3) feet.

SEC. 4.8 PLANNED DEVELOPMENT (PD) OVERLAY ZONES

A. Purpose: The Planned Development (PD) Overlay District is intended to control the development of aesthetically and topographically unique locations which are critical to the sensitive development of the Town of Cave Creek. The Planned Development Overlay District is designed and intended to enable and encourage the planned development of tracts of land which are under unified ownership to achieve land development patterns which will maintain and enhance the physical, social and economic values of an area.

B. Allowable Uses: No building permit or land division shall be granted in these areas without the prior approval of a specific planned development permit. The approved development plan is an integral part of this zoning district and all development in the district shall comply with the approved development plan.

CHAPTER 5 - DEVELOPMENT STANDARDS

SEC. 5.0 GENERAL DEVELOPMENT REGULATIONS

A. Purpose: The regulations in this Section qualify or supplement the zoning district regulations appearing elsewhere in this ordinance.

SEC. 5.1 ACCESS

A. Purpose: The purpose of this Chapter is to require environmentally sensitive planning of access to properties. The instrument (e.g., deed of dedication or easement) creating the physical access, to which a legal description is attached, shall be reviewed by the town staff and recorded, prior to issuance of the building permit.

B. Definitions:

1. Legal access is defined as a continuous easement and/or dedicated right-of-way (adjoining the subject property) with a minimum width of twenty (20) feet throughout the length of the access to public right-of-way.

2. Physical access is defined as the path of travel from public right-of-way to the subject property that would least disturb the natural environment, as determined through engineering analysis.

C. Implementation:

1. No zoning clearance will be issued for any building or structure on any lot or parcel unless that lot or parcel has permanent legal access to a dedicated street. Said access shall not be less than twenty (20) feet in width throughout its entire length and shall adjoin the lot for a minimum distance of twenty (20) feet.

2. For properties accessed through Bureau of Land Management (BLM) patent reservation easements, a dedication to the Town of the (BLM) easement will be required prior to the issuance of a zoning clearance.

3. The route of legal and physical access shall be the same and shall be approved by the Town and the local fire service agency as part of the building permit application.

4. No Zoning Clearance will be issued for a property, which is not accessible for fire protection, police protection and ambulance service.

5. Prior to issuance of any zoning clearance, right-of-way dedication may be required if the property for which the clearance is requested contains areas that will be needed for the future extension of Town streets as shown on long-range transportation corridor plans as adopted by the Town from time to time. A dedication requirement pursuant to this Section may be appealed as provided in ARS § 9-500.12.

6. Any private access easement road or driveway shall be considered an accessory use to a principal building or use.

7. A performance bond shall be posted before a building permit is issued for any private access easement road or driveway. The bond shall provide that if the building permit expires or the road/driveway is not constructed in conformance with the approved design, the performance bond will be used for the restoration to original condition, or re-vegetation of, the improved road/driveway.

8. No non-public way or driveway shall provide access to more than three (3) residential lots.

SEC. 5.2 ACCESSORY BUILDINGS AND USES

A. General:

1. Construction of private access easement roads or driveways shall not be commenced on a lot until a building permit or zoning clearance for the principal use has been issued.

2. Construction of accessory buildings, accessory quarters or uses, excluding private access roads or driveways, shall not be commenced on a lot until construction on the principal building has been substantially commenced. "Substantially commenced" for purposes of this Chapter shall mean that the building has been sealed from the elements.

3. Accessory buildings, accessory living quarters, accessory uses, satellite dishes five (5) feet and greater in diameter, tennis courts, shall require zoning clearance.

4. Desert Rural accessory buildings or uses may include accessory living quarters, corrals, barns, horse shades, swimming pools, garages, satellite dishes, tennis courts, or other uses incidental to the principal residential use.

5. Residential accessory buildings or uses may include swimming pools, garages, satellite dishes, tennis courts, or other uses incidental to the principal residential use.

6. All accessory buildings or uses, except for wells and related well equipment shall have the same electrical meter as the principal building or use.

B. Accessory Buildings:

1. Accessory buildings shall not be used for dwelling purposes, except if approved for occupancy pursuant to a temporary use permit as provided for in this Ordinance.

2. Accessory buildings and accessory living quarters shall occupy the same lot as the principal use or building and shall be located within the buildable area of the rear or side yard.

3. Detached accessory buildings or accessory living quarters shall not occupy more than thirty (30) percent of the yard area in which they are located.

SEC. 5.3 ADULT USES

A. All adult use businesses require prior approval of a Special Use Permit.

B. An adult-use business may be permitted only in the Commercial Core zone.

C. No adult-use business may be located within:

1. Two thousand (2,000) feet of a park, school, day care center, library or religious or cultural activity; or

2. Two thousand (2,000) feet of any other adult use business or any Desert Rural or any Residential zone boundary.

3. Such distances shall be measured between subject lot lines at their closest proximity on an aerial view without regard to intervening structures or topography.

D. This Section shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.

SEC. 5.4 ALLOWABLE PROJECTIONS INTO YARDS

A. General: Eaves, cornices or other similar architectural features may project into a required yard a maximum of two (2) feet. Chimneys may project no more than two (2) feet, provided the width of any side yard is not reduced to less than thirty (30) inches.

B. Ramps: Open, unenclosed ramps, porches, platforms or landings, not covered by a roof, may extend no more than six (6) feet into the required yard provided such porch does not extend above the first level and is no more than six (6) feet above grade at any point.

C. Bay windows: Bay and bow windows may project into a required rear yard no more than one foot.

SEC. 5.5 COMMERCIAL RANCH

A. All livestock structures, containment areas of facilities used for the stabling, storing, showing or training of livestock and for temporary manure storage shall be set back a minimum of seventy-five (75) feet from any property line. Normal setbacks apply to all other structures and uses. An attendant must be resident on the property of any Commercial Ranch.

B. No shows or other activities that would generate more vehicular traffic than is normal to an area with single-family residences are permitted unless the site has immediate access to a major town street. Occasional small shows may be allowed by temporary use permit. Adequate parking for daily activities and additional parking, as determined by the zoning administrator, must be provided for shows or other special events.

C. All livestock turnout areas and pens shall be enclosed with fences at least five (5) feet in height. The design of these enclosures shall be shown on drawings submitted with the special use permit application.

D. A specific plan for the physical containment and location of manure storage and/or disposal, which minimizes odor and fly impacts on adjacent parcels must be provided. The spreading and tilling of manure into the soil of the paddock, pasture or arena areas may be considered manure disposal.

E. The applicant must provide a specific program for fly control in barn and stable areas, which minimizes the attraction to and successful breeding of flies.

F. All activity and pasture areas shall be grassed, sprinklered, or treated with regularly tilled organic soil mix for dust suppression.

G. With the exception of principal residence and its accessory structures, upon revocation of the Commercial Ranch special use permit or abandonment of the operation, all structures shall be removed.

H. Failure to maintain any of the standards described above is grounds for revocation of the special use permit.

SEC. 5.6 COMMERCIAL ZONE SCREENING

A. A solid wall not less than six (6) feet in height, shall be required along and adjacent to any side or rear property line abutting any Desert Rural, Mountain Preservation or Residential zone, or any alley abutting such zone at the time of development of the commercial property. Any access gates in said solid wall shall be constructed of view-obscuring material to provide effective site screening.

B. The perimeter of any portion of a site not adjacent to a Desert Rural, Mountain Preservation or Residential zone upon which any outdoor use of a commercial nature is developed shall be enclosed to a height of not less than six (6) feet by building walls, walls, or fences of view-obscuring material. No outdoor commercial use or enclosure thereof shall encroach into any required setback area adjacent to any street. Any outdoor storage of products or materials shall not exceed the height of the enclosure in which it is located.

C. No commercial zone screening shall be installed without prior zoning clearance.

SEC. 5.7 CORNERS

A. Buildings, fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, and construction and planting on corner lots in all zoning districts where front yards are required shall be limited as follows:

1. Within the isosceles triangle formed by measuring along both the front and side lot lines a distance of twenty-five (25) feet from their point of intersection and by connecting the ends of the respective twenty-five (25) feet distances, such barriers shall be limited to a height of not over two (2) feet above the elevation of the said street line level.

2. Within the said triangle, when front yards are terraced, the ground elevation of such front yards shall not exceed two (2) feet above the established street line elevation at said intersecting streets.

SEC. 5.8 FENCES AND WALLS

A. General

1. Neither fences nor walls shall be constructed without prior zoning clearance.

2. It is not required that fences and walls be set back from the property line except as otherwise specified in this ordinance.

3. Unless specified otherwise in this Ordinance, fences and walls outside the buildable area shall not exceed six (6) feet in height. Erection or construction of fences or walls exceeding four (4) feet in height require a building permit.

B. Corral fences: Corral fences must be set back a minimum of twelve (12) feet from any property line.

C. Retaining Walls: Construction of any retaining wall four (4) feet or greater in height will require a building permit.

D. Swimming pool fences: See SWIMMING POOL REGULATIONS

E. Tennis court fences: Fences surrounding a tennis court may not exceed twelve (12) feet in height and must be set within the buildable area of a lot.

SEC. 5.9 GRADING

A. Zoning clearance is required prior to the grading and/or grubbing of any area more than five hundred (500) square feet in size. The area within twelve (12) feet of any property line in Desert Rural or Mountain Preservation zones shall be left in a natural state, except for driveway access.

1. The removal or relocation of Saguaro cactus within the Town shall require a grading permit if the Saguaro cactus exceeds four (4) feet in height due to the average disturbance in removing such plants.

2. No Saguaro cactus shall be removed or relocated within the area within twelve (12) feet of any property line in the Desert Rural or Mountain Preservation Zones, except for driveway access, subject to prior approval of the Town.

3. The following protected native plants shall require a grading permit for the removal or relocation of the native plants, due to the average disturbance in removing such plants: Barrel, Cholla, Hedgehog, Night-Blooming Cereus, Saguaro Cactus more than four (4) feet in height, Pincushion and Prickly Pear. In the Desert Rural or Mountain Preservation zones, none of the aforementioned native plants, within twelve (12) feet of any property line, shall be removed or relocated, except for driveway access.

B. Grading Responsibilities:

1. Protection of utilities: Developers shall be responsible for the prevention of damage to any public utilities or services.

2. Protection of adjacent property: Developers shall be responsible for the prevention of damage to adjacent property. No excavating shall be permitted on land sufficiently close to a property line to endanger any adjoining public street, sidewalk, alley or other public or private property, without supporting and protecting such property from any damage that might result.

3. Inspection notice: Developers shall notify the Building Department at least forty-eight (48) hours prior to the start of grading or grubbing work and shall post their grading permit at least forty-eight (48) hours prior to the start of grading or grubbing work in a conspicuous place that can be viewed from the right-of-way.

4. Temporary erosion control: Developers shall put into effect and maintain all precautionary measures necessary to protect adjacent watercourses and public or private property from damage by water erosion, flooding or deposition of mud or debris originating from the site. Precautionary measures must include provisions of properly designed sediment control facilities so that downstream properties are not affected by upstream erosion.

5. Traffic control and protection of streets: Developers shall provide flags, signs, barricades, etc., to ensure adequate safety when working in or near public streets.

6. Hazard from existing grading: If any existing excavation, embankment or fill which has become a hazard to life or limb, or endangers structures, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation, embankment, or fill is located, or other person or agent in control of said property shall, upon receipt of notice in writing from the Town, within the period specified therein, repair, reconstruct or remove such excavations, embankment or fill to eliminate the hazard.

7. Tracking dirt onto public streets and control of dust: Developers shall provide for adequate cleaning of equipment to prevent the tracking of dirt and debris onto public streets, and adequate treatment of soils to control dust from being carried off- site.

8. Maintenance of waterways: Developers shall take all precautionary measures to protect and maintain the flow of waterways.

9. Revegetation: The loss of trees, ground cover, and topsoil shall be minimized on any grading project. In addition to mechanical methods of erosion control, graded areas shall be protected from damage by erosion by application of ground-cover plants and/or trees. Such planting shall provide for rapid, short-term coverage of the slopes as well as long-term permanent coverage. A plan by a landscape architect may be required.

C. Design standards: The grading design standards contained in the Uniform Building Code shall apply to all grading projects.

SEC. 5.10 HEIGHT LIMITS

A. Chimneys, church steeples, ornamental towers or spires, outdoor light stanchions, wireless or amateur towers and mechanical appurtenances necessary to operate and maintain the building, may be erected to a height not exceeding thirty (30) feet, if such structure is set back from each lot line a minimum of five (5) feet for each foot of additional height above twenty-five (25) feet. The above setbacks are measured from the lot line to the closest point (including overhangs or other projections) on the structures.

SEC. 5.11 HILLSIDE

A. Purpose: To allow the reasonable use and development of hillside areas while promoting the public health, safety, convenience and general welfare of the citizens of the Town of Cave Creek, and maintaining the character, identity, and image of hillside areas. The primary objectives of the Hillside Regulations are:

1. To minimize the possible loss of life and property through the careful regulation of development;

2. To protect watershed, natural waterways, and to minimize soil erosion;

3. To ensure that all new development is free from adverse drainage conditions;

4. To encourage the preservation of the existing landscape by maximum retention of natural topographic features;

5. To minimize the visual scarring effects of hillside construction.

B. General Provisions:

1. All portions of a lot or parcel having a natural slope of fifteen (15) percent or greater shall be subject to the regulations set forth in this Section.

2. Provisions for adequate fire flow or a draftable water source shall be assured prior to issuance of any building permit for a building accessed by a hillside driveway.

3. Prior to the issuance of any building or grading permit, site plan approval shall be obtained from the Zoning Administrator.

4. Any building permit for a structure on a site having a natural slope of fifteen (15) percent or greater will limit the maximum permitted disturbed area of the entire property involved to an amount not to exceed the permitted maximum indicated as follows:

ZONE	MAXIMUM LOT COVERAGE	MAX. DISTURBED AREA	ZONE	MAXIMUM LOT COVERAGE	MAX. DISTURBED AREA
D-5A	5%	5%	MR (14/21/43)	40%	10%
D-2.5A	10%	10%	CB	40%	10%
D-1.75A	10%	10%	CB	40%	10%
D-1A	15%	15%	CC	40%	10%
R-35	20%	30%	GC	40%	10%
R-18	25%	25%	GC	40%	10%
MP	10%	10%			

TABLE 12

C. Height Regulations: The height of all structures on portions of property having a natural slope of fifteen (15) percent or greater shall not exceed twenty-five (25) feet from original natural grade through any building cross section, measured vertically at any point along that cross section from original natural grade. This Section shall not apply to transmission towers higher than twenty-five (25) feet for which special permits have been issued.

D. Other Regulations: The use, yard, intensity of use, parking, loading and unloading, and additional regulations which apply to property in any zoning district which requires Hillside Regulations shall remain as specified in the primary zoning district unless otherwise specified herein.

E. Grading and Drainage Requirements: There shall be no grading on or to any site, other than percolation and test boring (one hundred (100) square feet maximum in size), prior to the issuance of a zoning clearance.

1. Raw spill slopes are prohibited.

2. Rock veneered spill slopes may be allowed provided that:

(a) The vertical height of the spill slope does not exceed the vertical height of the exposed cut;

(b) The spill slope does not exceed a one-to-one slope;

(c) Retaining walls used to limit the height of the spill slope are color treated or veneered to blend in with the surrounding natural colors;

(d) The maximum depth of fill must not exceed eight (8) feet except beneath the footprint of the main residence.

3. All exposed disturbed area fill shall be contained behind retaining walls or covered with a natural rock veneer and treated with an aging agent and landscaped with indigenous plant material.

4. When a grading permit is required under this ordinance, developers shall provide the Town with a bond or other acceptable security which places the town in an assured position to do or to contract to do the necessary work to cover, restore and landscape exposed fills and cuts to blend with the surrounding natural terrain. The minimum acceptable bond shall be in a dollar amount equal to the number of total cubic yards of cut and fill multiplied by fifteen (15), or in such greater amount as deemed appropriate by the Town. The bond shall be in such form as deemed appropriate by the Town. In the event that construction has not commenced within six (6) months from the date of issuance of the grading permit or restoration is not complete

within twenty-four (24) months from the date of issuance of the grading permit, such bond shall be forfeited to the Town in such amount necessary for restoring the construction site to its original condition and all authorized permits shall be revoked and become void.

5. Sewage Disposal System: Grading or disturbance of natural terrain and vegetation for the purpose of installing a sewage disposal system shall be confined to within seven (7) feet of the outside edge of the elements of that system such as the leaching bed or pits, tank and distribution box, and connecting lines as required by Maricopa County Health regulations and will be considered part of the disturbed area.

6. Utility lines shall be located underground within the driveway graded area whenever possible. If this location is not possible, then disturbance of natural terrain for these lines shall be confined to within four (4) feet of either side of the lines.

7. Drainage: The entrance and exit points and continuity of all natural drainage channels on hillside sites shall be preserved.

8. All cut and fill slopes shall be completely contained by retaining walls or by substitute materials acceptable under the provisions of the Uniform Building Code (including rip-rap materials) except for:

   (a) The minimum amount of swale grading necessary for drainage purposes; or

   (b) The minimum required to establish a driveway with associated parking and turn around areas (see "Driveway Requirements"); or

   (c) Pursuant to other requirements of this Section.

F. Retaining Wall Requirements:

1. The height of a retaining wall is measured from low side natural grade to the top of the wall whether the top is retaining earth or not. Open railings on top of retaining walls are not included in height measurements. The height of a retaining wall shall be counted as part of the building height

if the face of the building is within fifteen (15) feet of the retaining wall.

2. The average height of a retaining wall shall be computed by taking the total vertical surface area of the wall above grade and dividing it by its length.

3. The finished surfaces of any retaining wall shall be stucco or other material to match building finish or blend into the natural setting.

4. The maximum height and average height of a retaining wall shall not exceed the following:

AVERAGE SLOPE AT BUILDING*	15%-25%	25%-30%	30%-35%	35% & over
Maximum Height** (feet)	10'	13'	13	18'
Average Height** (feet)	6'	8'	9'	11'

TABLE 13

(a) * Average slope at building is determined by averaging percentage of slopes shown on sections through building on site plan submittal.

(b) ** Height shall not exceed eight (8) feet without a minimum four (4) foot wide planter break.

G. Driveway Requirements:

1. Driveways exceeding fifteen (15) percent slope shall be no more than sixteen (16) feet wide and shall be paved with asphalt tinted to blend with the surrounding terrain. The paved width of such driveways shall be constructed to anticipate a maximum weight load of twenty (20) tons.

2. The height of cut and fill slopes shall be limited to an average of four (4) feet but may not exceed eight (8) feet, provided the combination does not exceed twelve (12) feet. A maximum of one-third of the cross sectional width of the driveway at any point may be on fill materials and a minimum of two-thirds (2/3) of the cross sectional width shall be on cut material or natural grade.

H. Slope Stabilization and Restoration: Vegetation shall be re-established on all exposed fill slopes, cut slopes, and graded areas with a mixture of grasses, shrubs, trees or cacti to provide a basic ground cover which will prevent erosion and permit natural re-vegetation. In lieu of the re-establishment of vegetation, all exposed cut slopes shall be rip-rapped with stone or chemically stain treated with materials which blend with the natural setting.

I. Special Procedures:

1. Prior to the issuance of a zoning clearance, proposed developments regulated by this Section must be presented to the Zoning Administrator in the form of a site plan. Site plans for single-family residential uses and their accessories may be approved by the Zoning Administrator. All other hillside development site plans must be reviewed and approved by the Town Council after a Planning Commission recommendation.

2. In relation to its approval of any site plan, the Town Council may include reasonable additional requirements as to grading, cut and fill, slope restoration, signs, vehicular ingress and egress, parking, lighting, setbacks, etc., to the extent that the noted purpose and objectives of this Section are maintained and ensured.

SEC. 5.12 HOME OCCUPATIONS

A. General: Home occupations may be approved by the Zoning Administrator for any property, provided the home occupation is conducted by a resident thereof, and is clearly subordinate and incidental to the residential use.

B. The following and similar home occupations are permitted subject to the provisions of this section:

1. Office, professional or trades business.
2. Service business.
3. Instructional service.
4. Home production or repair service.
5. Day Care involving part-time care and/or instruction, whether or not for compensation, of six (6) or fewer individuals at any time within a dwelling, not including members of the family residing on the premises.

C. Procedure:

1. Conduct of home occupations requires prior approval of a Home Occupation Permit.

D. Standards:

1. Home occupations shall be conducted wholly within a dwelling unit, except that, in the Desert Rural or Single-Family Residential zones, an existing accessory building located within the buildable area of the side or rear yard may be utilized for home occupation purposes.

2. Any exterior change to a residence or site which does not conform to residential appearance is prohibited. This includes but is not limited to signage, lighting, parking, and equipment.

3. Other than the inhabitants of the residence, no more than one full time (40 hours) person may be employed in the operation of a home occupation.

4. Adequate off-street parking must be provided for customers. However, parking or traffic excess, in size or frequency, which disturbs residential tranquility is prohibited.

5. Any activity which produces noise, litter, vibration, glare, fumes, odors, dust or electrical interference noticeable at or beyond the property line is prohibited.

SEC. 5.13 LOADING SPACES

A. General: Loading spaces shall be provided on the same lot for every building in the Core Commercial and General Commercial Zones. No loading space is required if prevented by an existing lawful building.

B. Size: Each loading space shall have a clear height of fourteen (14) feet and shall be directly accessible through a useable door not less than three (3) feet in width and six (6) feet, eight (8) inches high. Loading spaces shall be at least two hundred (200) square feet in area with minimum dimensions of twenty (20) feet by ten (10) feet.

C. Commercial: For all commercial buildings hereafter erected, or for any building converted to such use or occupancy, there shall be provided one loading space for each twenty-five thousand (25,000) square feet of floor area, or fraction thereof, devoted to such use in the building.

SEC. 5.14 MANUFACTURED BUILDINGS

A. Mobile Homes: Mobile homes are not allowed in any zoning district except as provided for in this ordinance under the following Sections: Temporary Construction Site Structures or Existing Non-conforming Mobile Home Parks.

B. Modular Buildings: Modular buildings may be permitted as a special use.

C. Factory Built Buildings: Factory built buildings are not allowed in any zoning district.

SEC. 5.15 NUISANCES

A. General: Uses that produce objectionable smoke, dust, radiation, odor, noise, glare, fumes, or other conditions that adversely affect public health, safety and general welfare are not permitted in any zone.

1. Noise: At certain levels, noises are detrimental to the health and welfare of the citizenry. Noise measured at the property line of an adjacent property exceeding the following levels would be an unnecessary, excessive or offensive noise:

Zone	Time	Sound Level dB(A)
Residential	10:00 p.m.- 7:00 a.m.	45
	7:00 a.m.-10:00 p.m.	55
Commercial	10:00 p.m.- 7:00 a.m.	55
	7:00 a.m.-10:00 p.m.	65

TABLE 14

CHAPTER 6 - NON-CONFORMING USES

SEC. 6.0 GENERAL

A. Except as otherwise required by law, a lot, structure, or use legally established before the adoption of this ordinance shall be considered a nonconformity and may be maintained or continued unchanged.

B. Any lot of record considered a nonconformity because of noncompliance with lot width or area requirements may be used for any use permitted in the zoning district in which it is located, provided compliance with all other applicable regulations of this ordinance are met.

C. In other than criminal proceedings, the owner, occupant or user shall have the burden to show that a nonconforming structure, lot or use was lawfully established prior to the effective date of this ordinance.

D. Discontinuance:

1. Vacancy: Any lot or structure, or portion thereof, occupied by a non-conforming use, which is or hereafter becomes vacant and remains unoccupied by the same nonconforming use for one year shall not thereafter be occupied, except by a use which conforms to this ordinance.

2. Destruction: If more than fifty (50) percent of the area under roof of any nonconforming structure is destroyed, it may not be reconstructed. If less than fifty percent is destroyed, it may be reconstructed within a year provided the resulting structure complies with building codes.

E. Enlargements and Modifications:

1. Maintenance and Repair: Maintenance, repairs and structural alterations which would not expand the square footage of a nonconforming structure or to a building housing a nonconforming use may be allowed with valid building permits.

2. Modification or Expansion of Nonconformities: A non-conformity may not be modified or expanded without a modification permit unless the non-conformity is being eliminated or ameliorated.

SEC. 6.1 APPLICATIONS

A. Applications for modifications of nonconforming uses or structures must include the appropriate fee, a list of the Maricopa County Assessor's tax parcel numbers and mailing labels with the names and addresses of all property owners within three hundred (300) feet of the nonconforming use. The applicant shall be responsible for the accuracy of this list. The applicant shall also submit a site plan and a statement indicating how the proposed modification or expansion meets the requirements of the criteria for approving modification permits.

SEC. 6.2 REVIEW CRITERIA

A. A modification permit may be approved by the Town Council upon receipt of a recommendation from the Planning Commission, if it can be shown that granting the permit will:

1. Not result in:

(a) Any significant increase in vehicular or pedestrian traffic in adjacent areas.

(b) Any nuisance arising from the emission or odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.

(c) Any contribution to the deterioration of the neighborhood, or to the downgrading of property values.

B. Will assure:

1. Compatibility with existing surrounding structures and uses.

2. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

SEC. 6.3 EXISTING NONCONFORMING MOBILE HOME PARKS

A. Replacement of existing mobile homes in existing nonconforming mobile home parks may be permitted if the replacement mobile home is of equal size or smaller than the existing one.

B. Replacement with a mobile home of a larger size, and structural additions to existing mobile homes in such parks shall require approval of a modification permit.

C. Recreational vehicles may occupy mobile home park pads without building permit approval.

D. Installation of any mobile home must be completed in conformance with the Uniform Building Code, the Uniform Plumbing Code, and the National Electric Code.

APPENDIX A - USE DESCRIPTIONS

The uses listed in the following schedule, as well as similar uses, are permitted in the following zones, subject to the general provisions, special conditions, additional restrictions, and exceptions stated in this ordinance. The abbreviations used in the schedule have the following meanings:

S = Use permitted that requires a Site Plan approval prior to the development or occupancy of the site or building.

SUP = Use permitted only through Special Use procedures.

TUP = Use permitted only through Temporary Use procedures.

* = Use **not** permitted in the major zoning district indicated.

USE DESCRIPTIONS	COMMERCIAL ZONING DISTRICTS		
	CB	CC	GC
ACCESSORY BUILDINGS AND USES			
Accessory buildings	S	S	S
AGRICULTURE & NATURAL RESOURCES			
On-site retail sales of site-produced seasonal goods	S	S	S
Plant nurseries and greenhouses	*	S	S
Bulk sales of landscape construction materials & rock products	*	*	SUP
Mining, quarrying, oil and gas extraction & asphalt-concrete batch plants including on-site sales of products	*	*	*
Temporary staging areas for Public Works construction projects	SUP	SUP	SUP
ANIMALS: SERVICES & ENTERPRISES RELATED TO ANIMALS			
Feed stores	*	S	S
Pet stores	*	S	S
Raising of animals, livestock	*	*	*
Kennels, exercise runs	SUP	SUP	SUP
Animal arenas, commercial stables, equestrian center	*	SUP	SUP
Veterinarians, animal hospitals & clinics	*	S	S

USE DESCRIPTIONS	COMMERCIAL ZONING DISTRICTS		
	CB	CC	GC
ANTENNAS & TOWERS			
Public & commercial communication towers & transmitters over 30 feet in height	SUP	SUP	SUP
Antennas, regardless of size, owned & operated by FCC licensed member of amateur radio service	*	SUP	SUP
Satellite dish & all other antennas	S	S	S
ASSEMBLING, PROCESSING, ANALYZING, MANUFACTURING, PACKAGING, CREATING, TREATING, & RENOVATING GOODS, MERCHANDISE, FOOD, PRODUCTS & EQUIPMENT Operations & related storage conducted entirely within enclosed buildings (except shipping & loading):			
Majority of dollar volume of business done with walk-in trade	S	S	S
Majority of dollar volume of business not done with walk-in trade	*	S	S
Operations conducted partially or wholly outside of enclosed buildings (including storage)	*	S	S
EATING & DRINKING ESTABLISHMENTS			
No substantial carry-out or delivery service & no drive-in service	S	S	S
Delicatessen, bake shop, candy shop & sales of other prepared food products where substantial consumption is expected to occur off-premises and not involving drive-up or delivery service	*	SUP	S
All other restaurants & eating establishments	S	S	S
Taverns, bars, nightclubs with outside music or entertainment	*	SUP	SUP
Taverns, bars, nightclubs provided there is no entertainment or music audible off-site.	*	S	S

USE DESCRIPTIONS	COMMERCIAL ZONING DISTRICTS		
	CB	CC	GC
EDUCATIONAL & RELIGIOUS			
Private or public schools:			
Primary, elementary, & secondary school (includes associated grounds, facilities & administrative offices)	SUP	SUP	SUP
Trade schools	*	SUP	SUP
Business or vocational schools	SUP	SUP	SUP
Colleges, universities, community colleges (including associated facilities like dorms, offices, athletic fields, stadiums, research facilities	SUP	SUP	SUP
Churches, synagogues & temples (includes associated grounds, facilities & administrative offices	SUP	SUP	SUP
Art studios, galleries, & centers, fine arts conservatories, music schools, dance studios, antique shops, & similar cultural uses (includes associated educational & instructional activities)	S	S	S
Libraries, museums	S	S	S
Fraternal clubs & lodges, union halls	*	S	S
ESTABLISHMENTS WITH DRIVE-UP WINDOWS	SUP	SUP	S
OFFICES, SERVICES & RESEARCH NOT PRIMARILY RELATED TO ON-SITE RETAIL SALES OR MANUFACTURE OF GOODS OR MERCHANDISE			
Offices intended to attract & serve customers or clients on premises (e.g., attorneys, physicians, counselors, financial institutions, insurance, travel agents, investment services, advertising agencies, real estate, mortuaries)	S	S	S
Offices with limited customer or client traffic (e.g., corporate offices, newspaper, radio, & television offices & studios, engineers, answering or dispatch service)	S	S	S
PARKING LOTS			
Overnight or long-term vehicle or equipment storage lots (e.g., RV storage, contractor equipment storage)	*	*	S
Off-site parking lots for commercial, education, religious, & institutional uses	*	SUP	S
All other on-site parking lots for approved uses	*	S	S

USE DESCRIPTIONS	COMMERCIAL ZONING DISTRICTS		
	CB	CC	GC
PUBLIC & QUASI-PUBLIC USES			
Emergency services (e.g., police & fire stations, ambulance & rescue services	S	S	S
Government offices	S	S	S
Alleys, streets, highways, bridges, sidewalks, bike paths, & related transportation facilities	S	S	S
Utility Facilities:			
Neighborhood utilities including pump stations, electric substations less than 5,000 sq. ft. & all local utility lines	S	S	S
Regional/community utilities including treatment plants, major power generation, major storage facilities, regional transmission facilities, major overhead power lines requiring tower support structures	*	*	SUP
Cemeteries, crematoriums, & mausoleums	*	*	SUP

RECREATION, ENTERTAINMENT, PUBLIC ASSEMBLY			
Activities conducted primarily within structures:			
Bowling alleys, skating rinks, pool halls	*	*	S
Indoor racquet sports clubs, spas, athletic, exercise, & health clubs and similar facilities not constructed as part of planned residential development	*	S	S
Youth clubs, senior centers, community centers	S	S	S
Theaters	*	SUP	S
Adult entertainment	*	SUP	SUP
Games, amusements, arcades	*	SUP	S
Indoor gun clubs	*	S	S
Activities conducted primarily OUTSIDE enclosed buildings:			
Outdoor recreational facilities (e.g., swimming or tennis clubs, etc. not constructed as part of planned residential development, equestrian trails)	SUP	SUP	SUP
Golf courses, country clubs, driving ranges	*	*	*
Miniature golf, skateboard parks, water slides, & similar uses	*	*	S
Motor race tracks	*	*	*
Drive-in movie theaters	*	SUP	SUP
Fairgrounds	*	*	SUP
Public parks and recreational facilities located therein	S	S	S

USE DESCRIPTIONS	COMMERCIAL ZONING DISTRICTS		
	CB	CC	GC
RECYCLING, SALVAGE, JUNKYARDS			
Recycling Centers:			
Processing & sorting operations conducted entirely within enclosed structures & containing a total building area of less than 5,000 sq. ft.	*	*	S
All other material recycling operations excluding metal salvage yards & junkyards	*	*	*
Refuse transfer stations	*	*	SUP

RESIDENTIAL			
Single Family Residences:			
Single family detached, one dwelling per lot	S	S	S
Homes & institutions providing special services, treatment, Or supervision:			
Group care homes	*	SUP	SUP
Hospital	*	*	SUP
Child care home	S	S	S
Child care institution	S	S	S
Jails & detention facilities	*	*	SUP
Miscellaneous rooms for rent situations:			
Rooming houses, boarding houses	*	*	S
Miscellaneous rooms for rent situations: (cont'd.)			
Bed & Breakfast home	S	S	S
Hotels, Motels & Timeshares	*	SUP	S
Temporary residence in conjunction with new construction, emergency repair, or night watchman use	TUP	TUP	TUP

	COMMERCIAL ZONING DISTRICTS		
USE DESCRIPTIONS	CB	CC	GC
SALES, RENTAL & SERVICING OF GOODS, MERCHANDISE & EQUIPMENT			
Automotive, marine, trucks, RV's, Agricultural Machinery, motorcycles and all terrain vehicles (ATV's):			
New and Used sales and rentals, including servicing	*	SUP	S
Parts & accessories sales which may include installation services	SUP	SUP	S
Service, minor repair, & detail shops	*	SUP	S
Paint & body work & major repair (e.g., frame straightening, engine rebuilding)	*	SUP	S
Automobile-oriented fuel sales with or without accessory service bays or accessory convenience sales	SUP	SUP	S
Car washes	*	SUP	S
Truck fuel sales, truck servicing, & related services	*	*	SUP
High volume traffic generation uses conducted within enclosed buildings:			
Retail sales serving frequent neighborhood needs (e.g., grocery, small hardware & garden supply, pharmacies, video rentals, stationery, flowers, etc.)	S	S	S
Other retail sales	*	S	S
Miscellaneous rental merchandise & equipment	*	S	S
Servicing of goods, merchandise, equipment (e.g. laundromats, small appliance repair, shoe repair, tailoring)	S	S	S
Personal services (e.g., barber & beauty shops, therapeutic massage, tanning salons)	S	S	S
Wholesale sales	*	*	S
Low volume traffic generation uses conducted within enclosed buildings:			
Retail sales (e.g., furniture, appliance, floor covering, building supplies, industrial supplies)	*	S	S
Miscellaneous equipment, appliances, & furniture rental	*	S	S
Servicing of appliances, furniture, lawn & garden, industrial, mechanical, heating & cooling, & other bulky equipment or merchandise	*	S	S
Services offered primarily off-site (e.g., janitorial, contractors, carpet cleaning, catering, landscaping, utility services)	*	S	S
Wholesale sales	*	*	S
High volume traffic generation uses involving storage or display outside fully enclosed building:			
Retail sales (e.g., lawn & garden variety stores with regularly maintained outdoor sales, building supplies)	*	*	S
Servicing merchandise & equipment	*	S	S
Wholesale sales	*	*	S
Retail sales & related services	S	S	S
Low volume traffic generation uses involving storage or display outside fully enclosed building:			
Miscellaneous goods & equipment rental	*	S	S
On-site servicing of appliances, furniture, lawn & garden, heating & cooling, industrial, mechanical, & other bulky equipment or merchandise	*	S	S
Services offered primarily off-site (e.g. janitorial, contractors, carpet cleaning, catering, landscaping, utility services)	*	S	S
Wholesale sales	*	S	S

USE DESCRIPTIONS	COMMERCIAL ZONING DISTRICTS		
	CB	CC	GC
STORAGE & WAREHOUSING			
All storage within completely enclosed structures	SUP	S	S
Outside storage or combination of inside & outside storage	SUP	S	S
Mini-warehouses/self-service storage facilities intended for domestic storage	SUP	SUP	SUP

TRANSPORTATION			
Bus stations	*	*	S
Taxi business	*	S	S

APPENDIX B – GLOSSARY TERMS AND DEFINITIONS

APPENDIX B: GENERAL

A. For the purposes of this ordinance, certain terms, phrases, words and their derivatives shall be construed as specified in this article. Words used in the singular include the plural, and the plural shall include the singular. The word "shall" is mandatory and the word "may" is permissive.

B. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster's New World Dictionary of American English, copyright 1991, shall be considered as providing ordinarily accepted meanings.

APPENDIX B: DEFINITIONS

1. **ACCESSORY BUILDING** is an incidental subordinate building, not used as living quarters, customarily incidental to and located on the same lot occupied by the principal use or building.

2. **ACCESSORY LIVING QUARTERS** is attached or detached quarters, with or without kitchen facilities. Such structures may be used for long-term rental with an approved Special Use Permit. Accessory living quarters must meet side, rear, and front setbacks, and shall comply with the following:

   a. Both the principal residence and accessory living quarters shall be served by common single electric and water meters (if applicable).

   b. Both the principal residence and the accessory living quarters shall be served by a single common driveway.

   c. The maximum gross floor area for accessory living quarters (including garage and/or covered carport) shall not exceed fifty (50) percent of the gross floor area of the principal residence (including garage and/or covered carport).

   d. No more than fifty-five (55) feet of separation shall be allowed between the principal residence and detached accessory living quarters.

   e. One (1) accessory living quarters per lot is allowed.

3. **ACCESSORY USE** is a use conducted on the same lot as the principal use of the structure to which it is related; a use which is clearly incidental to, and customarily found in connection with such principal use.

4. **ACREAGE, GROSS**, is the overall total area in fee title.

5. **ADULT USES,** shall include the following:

   a. Adult Bookstore:
      (1) Having as a substantial portion of its stock in trade, books, magazines and other periodicals depicting, describing, or relating to "specified sexual activities" or which are characterized by their emphasis on matter depicting, describing or relating to "specified anatomical areas", or

      (2) Having as a substantial portion of its stock in trade, books, magazines and other periodicals, and which excludes all minors from the premises or a section thereof.

   b. Adult Live Entertainment Establishment: An establishment which features topless or bottomless dancers, go-go dancers, exotic dancers, strippers or similar entertainers.

   c. Adult Theater: An enclosed building:

      (1) Regularly used for presenting any film or plate negative, film or plate positive, film or tape designed to be projected on a screen for exhibition of films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen depicting, describing or relating to "specified sexual areas" or characterized by an emphasis on matter depicting, describing or relating to "specified anatomical areas"; or

      (2) Used for presenting any film or plate negative, film or plate positive, film or tape designed to be projected on a screen for exhibition, or films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen and which regularly excludes all minors.

   d. Adult Only Massage Establishment: An establishment in which is carried on the business of providing any service or massage or body manipulation, including exercises and heat and light treatments of the body, and all forms and methods of therapy and which regularly excludes all minors.

6. **ALTERATION** is any change, addition or modification in construction or use.

7. **APPEAL PERIOD:** In determining the duration of an appeal period, the period shall commence the day after the triggering event (e.g., ten (10) working days after a decision is made).

8. **ARS** is the abbreviation for the Arizona Revised Statutes.

9. **ARTS AND CRAFTS** are articles fashioned chiefly by hand, especially with manual or artistic skill.

10. **AWNING** is a shelter supported entirely from the exterior wall of a building.

11. **BASEMENT** is any floor level below the first story in a building, except that a floor level in a building having only one (1) floor level shall be classified as a basement unless such floor level qualifies as a first story.

12. **BED AND BREAKFAST INN** is a house or portion thereof, including accessory living quarters, where short-term lodging and meals are provided for compensation. No more than four (4) guest rooms are allowed. The operator of the inn shall live on the premises.

13. **BOARD** is the Cave Creek Board of Adjustment.

14. **BOARDING HOUSE** is a building where, for compensation and by pre-arrangement for definite long-term periods, lodging and meals are provided for three or more persons, but not exceeding twenty (20) persons.

15. **BUFFER** is a structure or landscaping element which is at least three (3) feet high, ten (10) feet wide, and which is able to obscure a minimum of fifty (50) percent of see-through visibility.

16. **BUILDABLE AREA** is the portion of a lot which is within the envelope formed by the required setbacks or building envelope, if applicable.

17. **BUILDING** is any structure used or intended for supporting or sheltering any use or occupancy, but does not include anything designed or intended to be licensed for transport on a public roadway.

18. **U.B.C.:** Uniform Building Code.

19. **BUILDING HEIGHT** is the vertical distance above the existing natural grade measured to the highest point of the building. The height of a stepped or terraced building is the maximum height of any segment of the building.

20. **BUILDING LINE** is the perimeter of that portion of a building or structure nearest a property line, but excluding open steps, terraces, cornices and other ornamental features projecting from the walls of the building or structure.

21. **BUILDING, PRINCIPAL**, is a building in which the principal use of the site is conducted.

22. **CANOPY** is a roofed structure constructed of fabric or other material supported by the building or by support extending to the ground directly under the canopy, placed to extend outward from the building and providing a protective shield for doors, windows and other openings.

23. **CARPORT** is a roofed structure open on at least two (2) sides and used for the storage of private or pleasure type vehicles.

24. **COMMERCIAL RETAIL SALES AND SERVICES** are establishments, which engage in the sale of general retail goods and accessory services.

25. **COMMISSION** is the Cave Creek Planning Commission.

26. **CORRAL** is a fenced area for the confinement of large ranch animals.

27. **COUNCIL** is the Cave Creek Town Council.

28. **CVG** is the abbreviation for coverage.

29. **DAY CARE, GROUP**, is an establishment for the care and/or instruction, whether or not for compensation, of seven (7) or more individuals at any one time. Child nurseries and preschool facilities are included in this definition.

30. **DENSITY** is the number of dwelling units, which are allowed on an area of land.

31. **DEVELOPER** is the owner or individual authorized by the owner to obtain permits under this ordinance.

32. **DEVELOPMENT SITE** is the total contiguous area of property owned by a developer.

33. **DISTURBED AREA** is that area of natural ground excluding the area occupied by the lot coverage that has been or is proposed to be altered through grading, cut and fill, removal of natural vegetation, placement of material, trenching or by any means that causes a change in the undisturbed natural surface of the land or natural vegetation. Disturbed areas may be reclaimed if they are restored to their natural contours, vegetation and colors to the satisfaction of the Zoning Administrator.

34. **DOMESTIC MICROBREWERY** is a place where a person engages in the business of manufacturing or producing at least ten thousand (10,000) gallons but less than three hundred ten thousand (310,000) gallons of beer annually.

35. **DU** is the abbreviation for Dwelling Unit.

36. **DWELLING, MULTI-FAMILY**, is a building or portion thereof designed for occupancy by two or more families living independently in which they may or may not share common entrances and/or other spaces.

37. **DWELLING, SINGLE FAMILY**, is a detached dwelling unit with kitchen and sleeping facilities, designed for occupancy by one (1) family.

38. **DWELLING UNIT** is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this ordinance, for not more than one (1) family, or a congregate residence for six (6) or fewer individuals.

39. **FACE OF BUILDING, PRIMARY,** is the wall of a building fronting on a street or right of way, excluding any appurtenances such as projecting fins, columns, pilasters, canopies, marquees, showcases or decorations.

40. **FACTORY-BUILT BUILDING** is a structure, which is assembled on wheels at a factory, other than a mobile home or a recreational vehicle.

41. **FAMILY** is an individual or two or more individuals related by blood, marriage or adoption, or a group not exceeding six (6) unrelated individuals, living together as a single housekeeping unit.

42. **FIFTEEN GALLON TREE** is a tree in a container with a capacity of fifteen (15) gallons.

43. **FLOOR AREA, GROSS**, is the sum of the horizontal areas of floors or a building measured from the exterior face of exterior walls or, if appropriate, from the center line of dividing walls. This includes courts and decks or porches when covered by a roof.

44. **FLOOR AREA, NET**, is the gross floor area exclusive of vents, shafts, courts, elevators, stairways, exterior walls and similar facilities.

45. **FRONTAGE** is the width of a lot or parcel abutting a public right of way measured at the front property line or access easement or as determined by the Zoning Administrator in cases of unique topography or unique lot configuration where there is no abutting public right-of-way.

46. **GARAGE, PRIVATE**, is an accessory building or portion of a principal building designed or used for the parking or temporary storage of motor vehicles of occupants in the building to which such garage is accessory, but not including the parking or temporary storage of delivery or truck motor vehicles having a capacity in excess of one ton.

47. **GRADE** (Adjacent Ground Elevation) is the lowest point of elevation of the existing surface of the ground, within the area between the building and a line five (5) feet from the building.

48. **GRADING** is any excavating or filling to level land or create a slope or combination thereof.

49. **GRUBBING** is the clearing of a majority of the vegetative matter within a certain area.

50. **GUEST RANCH** is a building or group of buildings containing two (2) or more guest rooms, other than a boarding house, hotel or motel, and including outdoor recreational facilities such as, but not limited to, horseback riding, swimming, tennis courts, shuffleboard courts, barbecue and picnic facilities, and dining facilities intended for the use primarily by guests of the guest ranch, but not including bars and restaurants which cater primarily to other than guests of the guest ranch.

51. **HOTEL (or MOTEL)** is a facility containing three (3) or more guest rooms offering short-term accommodations to the general public which provides continuous on-site management.

52. **I.B.C.:** International Building Code

53. **INDUSTRIAL, LIGHT**, is the manufacturing, compounding, processing, assembling, packaging or testing of goods or equipment, including research activities, conducted entirely within an enclosed structure, with no outside storage, serviced by a modest volume of trucks or vans and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust odor, or pollutants.

54. **KENNEL** means an enclosed controlled area inaccessible to other animals, in which a person keeps, harbors or maintains five (5) or more dogs under controlled conditions.

55. **KITCHEN** is any room or portion of a room within a building designed and intended to be used for the cooking or preparation of food.

56. **LANDSCAPING** is the finishing and adornment of unpaved yard areas. Materials and treatment generally include naturally growing elements such as grass, trees, shrubs and flowers. This treatment may also include the use of logs, rocks, fountains, water features and contouring of the earth.

57. **LIVERY** is an operation, sometimes known as a "dude string," where animals are available for rent on an hourly or daily basis to the public for use off the premises.

58. LODGING HOUSE is a building where, for compensation and by pre-arrangement for definite long-term periods, lodging only is provided for three (3) or more persons, but not exceeding twenty (20) persons.

59. **LOADING SPACE** is a permanently maintained space on the same lot as the principal building accessible to a street or alley and not less than ten (10) feet in width, twenty (20) feet in length, and fourteen (14) feet in height.

60. **LONG TERM** is a period of thirty (30) days or more.

61. **LOT** is any lot, parcel, tract of land or combination thereof, shown on a recorded plat or recorded by a metes and bounds description.

62. **LOT AREA** is the area of a horizontal plane within the lot lines of a lot. To calculate minimum lot size, dedicated rights-of-way and easements granted to public agencies such as the U.S. Government (e.g., Bureau of Land Management (BLM) easements) are not part of any lot, whereas easements granted to private individuals are.

63. **LOT, CORNER,** is a lot abutting on two (2) intersecting or intercepting streets, where the interior angle of intersection or interception does not exceed one hundred thirty-five (135) degrees.

64. **LOT COVERAGE** is the percentage of the area of a lot which is occupied by all buildings or other covered structures.

65. **LOT LINE** is any line bounding a lot.

66. **LOT LINE, FRONT**, is the boundary of a lot that separates the lot from the street or easement through which access is provided, or as determined by the Zoning Administrator in cases of unique topography or unique lot configuration. In the case of a corner lot, the front lot line is the shorter of the two lot lines separating the lot from the street except that where these lot lines are equal or within fifteen (15) feet of being equal, either lot line may be designated the front lot line.

67. **LOT LINE, REAR**, is the boundary of a lot, which is most distant from, and is or is most nearly, parallel to the front lot line. In the absence of a rear lot line, as in the case of a triangular shaped lot, the rear lot line may be considered as a line within the lot, parallel to and at a maximum distance from the front lot line, having a length of not less than ten (10) feet.

68. **LOT OF RECORD** is a lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder of Maricopa County, or a lot, parcel or tract of land, the deed of which was recorded in the office of the County Recorder of Maricopa County on or before June 30, 1987.

69. **LOT, THROUGH,** is a lot having a pair of opposite lot lines abutting two (2) streets, and which is not a corner lot. On such a lot, both lot lines are front lot lines, except that, where a non-access easement has been established, the front lot line shall be considered as that lot line most distant from the lot line containing the non-access easement.

70. **LOT WIDTH** is, for rectangular lots having side lot lines not parallel and for lots outside the curve of a street, the distance between side lot lines measured at the required minimum front yard line on a parallel to the street or street chord. For lots inside the curve of a street, lot width is the distance between side lot lines measured thirty (30) feet behind the required minimum front yard line on a line parallel to the street or street chord (see Exhibit 5 in Appendix B).

71. **MAJOR CACTUS** is any cactus more than six (6) feet in height.

72. **MAJOR TREE** is any tree greater than two (2) inches in caliper.

73. **MANUFACTURING, ARTS AND CRAFTS** is the manufacturing, compounding, processing, assembling, and packaging of arts and crafts materials or products, conducted entirely within an enclosed structure, with no outside storage, with no more than four (4) employees, serviced by a modest volume of trucks or vans, and imposing a negligible impact on the surrounding environment by noise, vibration, smoke, dust, odor, or pollutants.

74. **MOBILE HOME** is a vehicle, other than a motor vehicle, greater than three hundred twenty (320) square feet in gross floor area designed with attached axles and wheels, which may be used for permanent or semi-permanent housing or human occupancy, and which is designed to be drawn by a motor vehicle. The term also shall include any vehicle meeting the above description, which is used for an office, a classroom, a laboratory processing, manufacturing, retail sales or other use.

75. **MODULAR BUILDING** is a structure of which sections or components are produced at a factory for assembly on-site.

76. **NATIVE HABITAT CORRIDOR** is a twelve (12) foot undisturbed strip of land extending inward from the boundaries of parcels one (1) acre and larger in the Desert Rural or Mountain Preservation zones. Except for driveway access, this area shall be left in a natural state.

77. **NATURAL STATE** is undisturbed or native desert vegetation.

78. **NATURAL WATERWAYS** are those areas, varying in width along streams, creeks, springs, gullies or washes, which are natural drainage channels as determined and identified by the jurisdiction.

79. **NONCONFORMING BUILDING** is a building or structure or portion thereof lawfully existing at the time this ordinance became effective, which does not conform to the zoning regulations of the district in which it is located.

80. **NONCONFORMING LOT** is a lot lawfully existing at the time this ordinance became effective, which does not now conform.

81. **NONCONFORMING SIGN** is a sign or sign structure or portion thereof lawfully existing at the time this ordinance became effective, which does not now conform.

82. **NONCONFORMING USE** is a use, which lawfully occupied a building or land at the time this ordinance became effective, which has been lawfully continued, and which does not now conform with the use regulations.

83. **OPEN SPACE** is land areas that are not occupied by buildings, structures, parking areas, streets, or alleys. Open space may be devoted to landscaping, preservation of natural features, patios, and recreational areas and facilities.

84. **OUTSIDE DISPLAY** is materials and items for sale in conjunction with a retail business that are displayed outside or underneath a canopy for an indefinite period and which are not stored within a building. This does not include outside vending machines or architectural props or decorations. It does include up to six (6) bales of hay, alfalfa and other baled items.

85. **OUTSIDE STORAGE** is materials and items for sale in conjunction with a retail business that are stored outside or underneath a canopy for an indefinite period and which are not stored within a building. This does not include outside vending machines or architectural props or decorations.

86. **PARKING LOT** is an open area, other than a street, used for the parking of motor vehicles.

87. **PARKING SPACE, AUTOMOBILE**, is a space within a building or private or public parking lot, exclusive of driveways, ramps, columns, office and work areas, for the parking of an automobile.

88. **PETS** are dogs, cats, rabbits, birds, etc., weighing less than one hundred fifty (150) pounds, for family use only (not kept for business purposes).

89. **PLANNED AREA DEVELOPMENT (PAD)** is a residential or commercial development guided by a total design plan in which one or more zoning development standards, including use regulations, may be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with general guidelines.

90. **PLANNED UNIT DEVELOPMENT (PUD)** is a residential or commercial development guided by a total design plan in which one or more of the development standards of this ordinance, other than use regulations, may be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with general guidelines.

91. **PLANNING COMMISSION** is the Cave Creek Planning Commission.

92. **PLANT NURSERY** is an establishment where trees, shrubs, flowers and other plants are grown on the premises or brought to the premises and maintained there for sale from said premises.

93. **PUBLIC WAY** is any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

94. **RANCH** is an area of not less than two (2) contiguous acres, used for the keeping of ranch animals, along with the necessary accessory uses. A RANCH is permitted five (5) large and ten (10) medium ranch animals per acre up to five (5) acres. Thereafter, an additional two (2) large and four (4) medium ranch animals are allowed for each acre. A RANCH is allowed an unlimited amount of small animals. Allowed ranch uses include: boarding; breeding; equine training; equine lessons; and the sale of ranch animals; 4 H and other youth-related activities are permitted. Allowed RANCH uses do not include: dairies; liveries; the retail sale of hay, feed or tack; or equine activities open to the general public.

95. **RANCH, COMMERCIAL** is an area of not less than five (5) contiguous acres which may be open to the general public and may be used for: all allowed RANCH uses; polo fields; riding arenas used for scheduled public or club events or activities such as barrel racing, bull riding, cutting, gymkhanas, roping, team penning or other rodeo related activities. COMMERCIAL RANCH uses do not include: dairies, liveries, and the retail sale of hay, feed or tack, or livestock auctions. Swine, except for potbellied pigs kept as household pets, are not allowed. A COMMERCIAL RANCH requires a special use permit.

96. **RANCH ANIMALS** are animals, other than household pets, that are kept and maintained for production and sale, family food production, education or recreation. Ranch animals are classified as large animals (this category includes, but not limited to, horses, burros, donkeys and mules, cattle, and ostriches); medium animals (e.g., sheep, goats, llamas, miniature horses and pot-bellied pigs); and small animals (e.g., rabbits, chinchillas, chickens, pheasants, geese, ducks, and pigeons).

97. **RECREATIONAL VEHICLE** is a vehicular unit, other than a mobile home, whose gross floor area is less than three hundred twenty (320) square feet, which is designed as a temporary dwelling for travel, recreational and vacation use, and which is either self propelled, mounted on, or pulled by another vehicle. Examples include, but are not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth wheel trailer or van.

98. **RENOVATION** is interior or exterior remodeling of a structure, other than ordinary repair.

99. **RETAINING WALL** is a wall or terraced combination of walls used to retain earth but not supporting a wall of a building.

100. **SETBACK** is the minimum required distance between the property line and the building line.

101. **SPECIFIED SEXUAL ACTIVITIES** are:

a. Human genitals in a state of sexual stimulation or arousal;
b. Acts of human masturbation, sexual intercourse, or sodomy;
c. Fondling or other erotic touching of human genitals, pubic region, buttock, or breasts.

102. **SPECIFIED ANATOMICAL AREAS** are:
a. Less than completely and opaquely covered:
b. Human genitals, pubic region,
c. Buttock, and
d. Breast below a point immediately above the top of the areola; and
e. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

103. **SPECIMEN NATIVE PLANT** is a non-introduced indigenous plant that has been part of the ecosystem for at least one hundred (100) years.

104. **STORY** is that portion of building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under floor space is more than six (6) feet above grade as defined herein for more than fifty (50) percent of the total perimeter or is more than twelve (12) feet above grade as defined herein at any point, such usable or unused under floor space shall be considered as a story.

105. **STREET, PUBLIC**, is any thoroughfare or public way, which has been dedicated or deeded to the public for public use.

106. **STRUCTURAL ALTERATION** is any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any complete rebuilding of the roof or exterior walls.

107. **STRUCTURE** is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which requires location on the ground or is attached to something having location on the ground.

108. **SUBDIVISION** is improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four (4) or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. Subdivision also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

109. **SWIMMING POOL** is any structure intended for swimming, diving or recreational bathing which contains water eighteen (18) inches or more in depth at any point, including temporary, portable or permanent swimming pools, whether located indoors, outdoors, in ground, on grade or above grade but not including hot tubs or spas.

110. **THEATER** is a building used primarily for the presentation of live stage productions, performances or motion pictures.

111. **TRACTOR TRAILER RIG** is a semi or full trailer exceeding twenty-eight (28) feet in length or truck-tractor or any combination thereof, or any truck exceeding twenty-six thousand (26,000) pounds in gross vehicle weight rating (GVWR).

112. **USE** is the activity occurring on a lot for which land or a building is arranged, designed or intended, or for which land or a building is or may be occupied.

113. **USE, PRINCIPAL**, is the main use of land or a building as distinguished from an accessory use.

114. **YARD** is an open, unoccupied space on a lot, other than a court, which is unobstructed from the ground upward by buildings or structures except as otherwise provided in this ordinance.

115. **YARD, FRONT**, is a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel to a line passing through the nearest point of the principal structure.

116. **YARD, REAR**, is a yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and a line parallel to a line passing through the nearest point of the principal structure.

117. **YARD, REQUIRED**, is the minimum open space required for front, rear or side yards, as distinguished from any yard area in excess of the minimum required (see BUILDABLE AREA).

118. **YARD, SIDE**, is a yard on the same lot with the principal structure and between the building line of the principal structure and the side lot line.

119. **ZONING CLEARANCE** is the verification by the Zoning Administrator indicating that a proposed building, structure or use meets all the requirements of this ordinance.

120. **ZONING ADMINISTRATOR** is designated by the Town Manager and is charged with the responsibility of administering and enforcing the Cave Creek Zoning Ordinance.

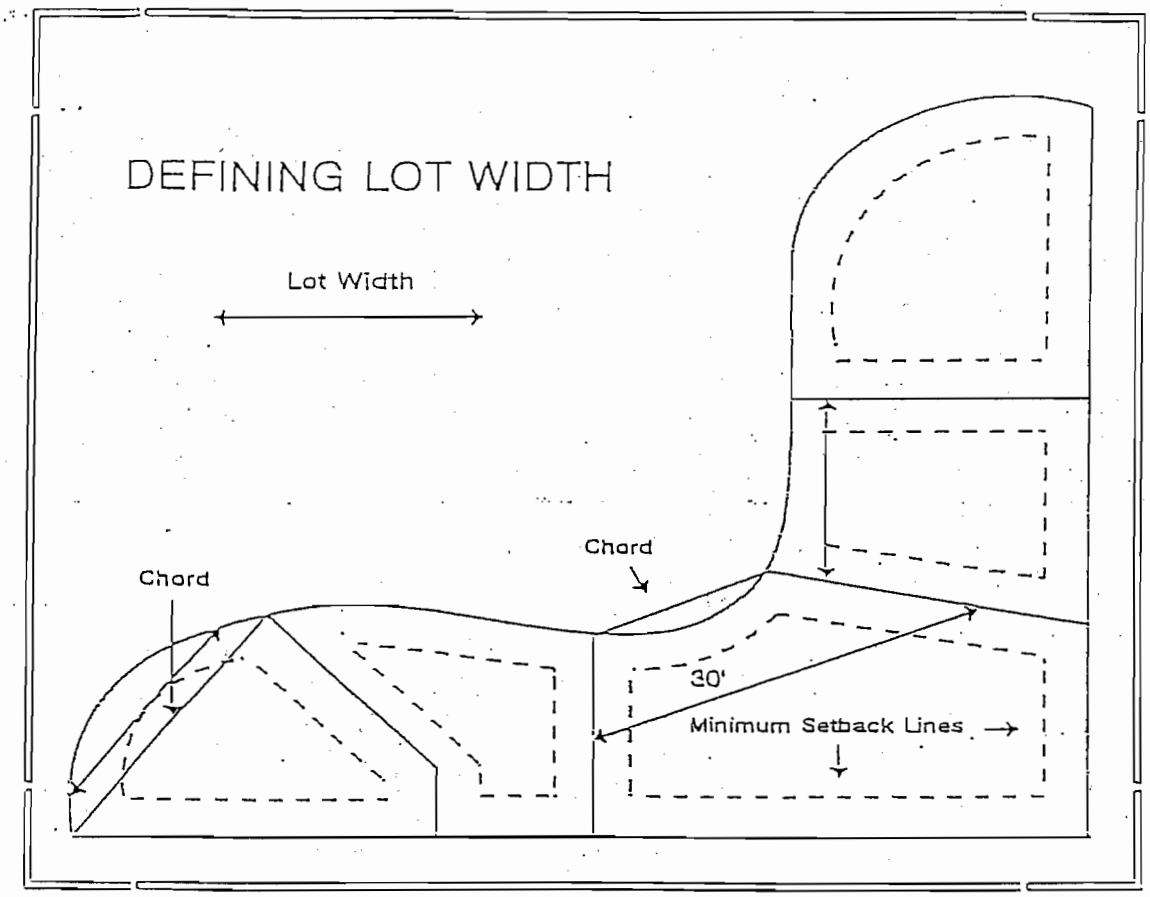

DEFINING LOT WIDTH
Lot Width
Chord
Chord
30'
Minimum Setback Lines

EXHIBIT 7

APPENDIX C ZONING ORDINANCE AMENDMENTS

ORDINANCE #	CHANGE, ADDITIONS, DELETIONS	ADOPTED DATE
86-9-4	PROHIBITING OFF-SITE SIGNS (BILLBOARDS). ALSO DECLARING AN EMERGENCY AND PROVIDING PENALTIES FOR THE VIOLATION	9/25/1986
87-6-5	ADOPTING THE CAVE CREEK ZONING ORDINANCE	6/29/1987
88-2	AMENDING ZONING CODE BY AMENDING ZONING MAP BY CHANGING THE ZONING CLASSIFICATION IN REZONING CASE CCZ-87-01 FROM MULTIPLE FAMILY RESIDENTIAL (R-5) AND RURAL ZONING DISTRICT (RURAL 70) TO PLANNED CENTER ZONING DISTRICT (C-S) AND PROVIDING DEVELOPMENT CONDITIONS AND PENALTIES	4/18/1988
88-14	AMENDING ZONING CODE BY AMENDING ZONING MAP ZONING CLASSIFICATION R1-18, SINGLE FAMILY RESIDENTIAL TO C-2, INTERMEDIATE COMMERCIAL AS PETITIONED IN REZONING CASE Z88-002	8/1/1988
88-18	AMENDING THE ZONING CODE BY ADDING DOMESTIC MICROBREWERY AS SPECIAL USE	9/6/1988
88-24	AMENDING ZONING CODE BY DELETING THE MINIMUM FIVE GROSS ACRE REQUIREMENT FOR PLANNED DEVELOPMENT OVERLAY ZONING DISTRICT, AND AMENDING ARTICLE XXII-B, SECTION 2202-B.1, SECTION 2205-B.1 AND 6	12/5/1988
89-1	AMENDING ZONING CODE AND MAPS AND CLASSIFICATION OF CERTAIN REAL PROPERTY FROM COUNTY RURAL-43 TO CAVE CREEK RURAL-43	1/3/1989
89-6	AMENDING ZONING DISTRICTS MAP BY CHANGING ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY FROM R-5 & C-2 TO C-2P.D.	5/1/1989
89-8	AMENDING ZONING CODE, ARTICLE XIII, SECTION 1302(5.A) BY INSERTING THE OUTDOOR LIGHTING CODE; AMENDING ARTICLE XVIII, SECTION 1802, PARAGRAPHS 5 AND 10, ARTICLE XXI, SECTION 2109(1), ARTICLE XXII-A, SECTION 2201-A, ARTICLE XXIII, SECTION 2317(20)	5/1/1989
89-11	AMENDING ZONING CODE BY CHANGING THE DEFINITION OF HOME OCCUPATION IN ARTICLE II, SECTION 202-36, BY ADDING NEW SECTION 2320, HOME OCCUPATIONS TO ARTICLE XXIII, GENERAL PROVISIONS	7/5/1989
89-13	AMENDING ZONING CODE, ARTICLE XVIII (C-2), SECTION 1808 REGARDING OUTSIDE STORAGE AND DISPLAYS	7/5/1989
89-15	AMENDING ZONING CODE BY AMENDING ZONING DISTRICT MAPS BY CHANGING ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY TO C-3P.D. (PRECISE), C-3 P.D. (CONCEPT), I-1P.D. (CONCEPT)	8/7/1989

APPENDIX C ZONING ORDINANCE AMENDMENTS

89-16	AMENDING ORDINANCE 89-8 AND ZONING CODE, ARTICLE XXVII, SECTION 2701 (D) REGARDING AFFIRMATIVE VOTE OF THE BOARD OF ADJUSTMENT	8/7/1989
89-17	AMENDING ZONING CODE AND ZONING DISTRICT MAPS BY ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY TO (RURAL-43, R1-35 R.U.P.D.C-2, MANUFACTURED HOUSE RESIDENTIAL OVERLAY (M.H.R.)	10/2/1989
90-1	AMENDING ZONING CODE BY AMENDING ZONING DISTRICT PAYS BY ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY TO R1-35 AND R1-35 S.U.P (MOBILE HOME SUBDIVISION)	1/2/1990
90-2	AMENDING ZONING DISTRICT MAPS BY REMOVING THE MANUFACTURED HOUSING OVERLAY ZONING (MHR) FROM A CERTAIN ONE ACRE PARCEL OF REAL PROPERTY LOCATED IN THE TOWN	3/5/1990
90-5	PURSUANT TO ARTICLE XXVIII, SECTION 2801 OF THE TOWN ZONING ORDINANCE AMENDING ARTICLE XXIV, SECTION 24, BY PROVIDING FOR A SPECIAL USE PERMIT IN ZONING DISTRICT C-1, C-2 AND C-3 FOR THE USE OF LIMITED SMALL SCALE AND SPECIALTY FOOD PREPARATION SHOPS	3/5/1990
90-31	AMENDING ZONING CODE, ARTICLE III, SECTION 309 UNLAWFUL USES; ARTICLE IV, SECTION 402(17) OUTDOOR LIGHTING CODE; ARTICLE VII, SECTION 702.11 OUTDOOR LIGHTING CODE; ARTICLE XV-A, DELETING SENIOR CITIZEN OVERLAY ZONING; ARTICLE XII, SECTION 1202.3.A REGARDING OUTDOOR LIGHTING CODE; ARTICLE XVIII, SECTION 1802.38 DELETING; ARTICLE XXII, SECTION 2313.C CHANGING ZONING INSPECTOR TO ZONING ADMINISTRATOR; ARTICLE XXIII SECTION 2313 CHANGING USE PERMIT TO TEMPORARY USE PERMIT; ARTICLE XXIII, SECTION 2313.4 CHANGING USE PERMIT TO TEMPORARY USE PERMIT; ARTICLE XXIII, SECTION 2314.5 DELETING; ARTICLE XXIII, SECTION 2314.2 CHANGING USE PERMIT TO SPECIAL USE PERMIT; ARTICLE XXIV, SECTION 2401.DD RENUMBERING FORMER SECTION 1802.38	10/15/1990
91-05	AMENDING ZONING CODE, ARTICLE II, SECTION 202 RULES AND DEFINITIONS, ARTICLE IV, SECTION 402 USE REGULATIONS AND ARTICLE XXIV, SECTION 2401 SPECIAL USES	4/14/199
91-21	AMENDING THE ZONING CODE ARTICLE IV (RURAL-190) RURAL ZONING DISTRICT; AND AMENDING ARTICLE VII (R1-35) SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT TO DELETE GOLF COURSES AS A PERMITTED USE IN ALL RURAL AND RESIDENTIAL ZONING DISTRICTS; AND AMENDING ARTICLE XXIV (SPECIAL USES AND UNIT PLANS OF DEVELOPMENT) TO ADD GOLF COURSES AS A SPECIAL USE	10/7/1991

APPENDIX C ZONING ORDINANCE AMENDMENTS

91-24	AMENDING THE ZONING CODE BY AMENDING THE ZONING MAP OF THE TOWN BY CHANGING THE ZONING CLASSIFICATION IN REZONING CASE Z-91-1 FROM PLANNED SHOPPING CENTER ZONING DISTRICT (C-S) TO INTERMEDIATE COMMERCIAL ZONING DISTRICT (C-2); PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING PENALTIES	11/4/1991
91-25	AMENDING THE ZONING CODE BY AMENDING THE ZONING MAP BY CHANGING THE ZONING CLASSIFICATION IN REZONING CASE Z-91-2 OF 12.3 ACRES FROM R1-25 AND 6.7 ACRES FROM RURAL 70 TO C-2P.D.; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES	11/18/1991
92-06	AMENDING THE ZONING CODE OF THE TOWN BY AMENDING THE ZONING DISTRICT MAPS OF THE TOWN BY ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY TO RURAL-43 AND C-2P.D.	8/31/1992
92-12	AMENDING THE ZONING CODE BY AMENDING CHAPTER XXVII PROCEDURES RELA5TED TO THE BOARD OF ADJUSTMENT	10/5/1992
92-13	AMENDING THE ZONING CODE OF THE TOWN BY AMENDING THE ZONING DISTRICT MAPS OF THE TOWN BY ESTABLISHING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY TO RURAL 70	1/4/1993
93-01	AMENDING THE ZONING CODE BY AMENDING ARTICLE XXIV SPECIAL USES AND UNIT PLANS OF DEVELOPMENT SECTION 2401, SPECIAL USES BY ADDING LUMBERYARDS TO THE LIST OF PERMITTED SPECIAL USES	1/4/1993
93-09	AMENDING THE ZONING CODE BY AMENDING THE ZONING DISTRICT MAPS OF THE TOWN BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY FROM C-3 AND I-1 TO RURAL-43	4/5/1993
93-15	AMENDING THE ZONING CODE BY AMENDING ARTICLE II "RULES AND DEFINITIONS" AND ARTICLE XXII "GENERAL PROVISIONS" ADDING DEFINITIONS FOR "DISTURBED AREA", "GRADING", "LANDSCAPING", "NATURAL STATE", AND PROHIBITING CERTAIN GRADING WITHIN 12' OF PROPERTY LINE	10/14/1993
94-01	AMENDING THE ZONING CODE TO REQUIRE ALL PROPERTIES IN THE C-2 ZONE LARGER THAN 89,000 SQ. FT. TO MEET THE REQUIREMENTS OF THE PLANNED DEVELOPMENT OVERLAY ZONE REGULATIONS	2/28/1994

APPENDIX C ZONING ORDINANCE AMENDMENTS

94-13	ADOPTING "THE CAVE CREEK ZONING ORDINANCE" BY REFERENCE; ESTABLISHING LAND USE CLASSIFICATIONS; DIVIDING THE TOWN IN ZONING DISTRICTS' IMPOSING REGULATIONS, PROHIBITIONS AND RESTRICTIONS FOR THE PROMOTION OF HEALTH, SAFETY, MORAL CONVENIENCE AND WELFARE; GOVERNING THE USE OF LAND FOR RESIDENTIAL AND NON-RESIDENTIAL PURPOSES; REGULATING AND LIMITING THE HEIGHT AND BULK OF BUILDINGS AND OTHER STRUCTURES; LIMITING LOT OCCUPANCY AND THE SIZE OF YARDS AND OTHER OPEN SPACES; ADOPTING A MAP OF SAID ZONING DISTRICTS; PRESCRIBING PROCEDURES FOR CHANGES OF ZONING DISTRICTS, USE PERMITS, VARIANCES AND OTHER PERMITS; PROVIDING PENALTIES FOR THE VIOLATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY	6/20/1994
94-18	AMENDING THE ZONING MAP BY CHANGING THE ZONING CLASSIFICATION FOR CERTAIN PROPERTIES FROM D-2.5A TO D-5A AND FROM R-70 TO D-2.5A	8/8/1994
95-03	AMENDING THE ZONING ORDINANCE BY AMENDING THE ZONING MAP AS SHOWN ON FIGURE ONE FROM D-2.5A TO CC	1/3/1995
95-09	AMENDING THE ZONING ORDINANCE TO ADD A SECTION FOR SPECIAL EVENTS (SECTION 16-13) AND REVISE ORDINANCE REQUIREMENTS FOR TEMPORARY USES AND STRUCTURES (SECTION 16-10)	7/5/1995
95-10	AMENDING THE ZONING ORDINANCE TO CLARIFY THE MINIMUM LOT SIZE REQUIREMENTS FOR PROPERTIES IN DESERT RURAL ZONING DISTRICTS, TO CLARIFY THE DEFINITION OF A NATIVE HABITAT CORRIDOR, TO CLARIFY LANDSCAPING REQUIREMENTS AND TO CLARIFY THE APPROVAL PROCESS FOR OBTAINING SIGN PERMITS	6/19/1995
95-16	AMENDING THE ZONING ORDINANCE OF THE TOWN BY AMENDING THE ZONING DISTRICT MAPS OF THE TOWN BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY FROM R-43 TO D-2.5A	11/6/1995
95-19	AMENDING THE ZONING ORDINANCE TO TEMPORARILY WAIVE SPECIAL USE PERMIT REQUIREMENTS FOR PUBLIC UTILITY TREATMENT AND GENERATING PLANTS AND FACILITIES, INCLUDING ANCILLARY OFFICES, IF THE PUBLIC UTILITY IS OWNED BY THE TOWN AND THE FACILITY IS LOCATED WITHIN THE GEOGRAPHIC AREA SERVED BY THE TOWN-OWNED PUBLIC UTILITY	11/6/1995

APPENDIX C ZONING ORDINANCE AMENDMENTS

95-20	AMENDING THE ZONING MAP TO CHANGE PARCEL 211-05-007A FROM SINGLE FAMILY RESIDENTIAL, ONE DWELLING UNIT PER 35,000 SQ. FT. (R-35) TO DESERT RURAL SINGLE FAMILY RESIDENTIAL, ONE DWELLING UNIT PER 190,000 SQ. FT. (D-5A)	12/5/1995
95-21	AMENDING THE ZONING ORDINANCE TO CHANGE THE RANCH DEFINITION TO INCREASE THE NUMBER OF LARGE AND MEDIUM ANIMALS ALLOWED ON A RANCH	12/4/1995
96-01	AMENDING THE ZONING MAP TO CHANGE PARCEL 211-07-007E FROM SINGLE FAMILY RESIDENTIAL, DESERT RURAL SINGLE FAMILY RESIDENTIAL, ONE DWELLING UNIT PER 89,000 SQ. FT. (D-2.5A) TO ONE DWELLING UNIT PER 35,000 SQ. FT. (R-35)	1/16/1996
96-07	AMENDING THE ZONING ORDINANCE OF THE TOWN BY CHANGING THE ZONING CLASSIFICATION ON CERTAIN REAL PROPERTY FROM D-2.5A TO RURAL-35 AND AMENDING THE ZONING MAP	6/31/1996
96-08	AMENDING ARTICLE 16-9 SPECIAL USES AND APPENDIX A OF THE ZONING ORDINANCE TO PROVIDE FOR RESIDENTIAL USES IN THE COMMERCIAL ZONING DISTRICTS AFTER APPROVAL OF A SPECIAL USE PERMIT, AND AMENDING ARTICLE 16-9 SPECIAL USES TO PROVIDE FOR AMENDMENTS, EXPIRATION, CONDITIONS, LIMITATIONS AND RESTRICTIONS, AND PROVIDING THAT PROVISIONS OF THIS AMENDMENT SHALL EXPIRE 120 DAYS AFTER THE ENACTMENT	9/3/1996
96-15	AMENDING THE ZONING ORDINANCE OF THE TOWN BY AMENDING THE ZONING DISTRICT MAP OF THE TOWN BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY LOCATED ON MARK WAY AND LINDA DRIVE	10/7/1996
97-07	AMENDING ZONING CODE BY ADDING NEW 1.75 ZONING DISTRICT	4/7/1997
97-13	AMENDING ZONING MAP – PARCEL ON BELLA VISTA 216-07-048 FROM D-2.5A TO CC	8/18/1997
97-17	AMEND ZONING DISTRICT MAPS ON LANDS NORTH OF TOWN LIMITS IN ANNEXATION 96-01	10/20/1997
97-21	CHANGE ZONING MAPS ON TWO PROPERTIES TO COMMERCIAL CORE 216-06-212 & 43A (FOR PARKING)	1/5/1998
97-22	CHANGE ZONING MAPS – LIBRARY SITE FROM R-70 TO CC	6/16/1997
97-23	AMENDING ZONING CODE ARTICLE 16-3 SPECIAL EVENTS	6/30/1997
97-24	ADOPTING THE CAVE CREEK ZONING ORDINANCE REVISED AND CONVERTED TO MICROSOFT WORK FORMAT, INCORPORATING CHANGES MADE TO ZONING CODE BY ORDINANCE 97-07 AND 97-23	1/5/1998

APPENDIX C ZONING ORDINANCE AMENDMENTS

O98-03	CASE A-98-3AMENDING THE ZONING CODE, USE DISTRICTS; COMMERCIAL BUFFER AND COMMERCIAL CORE SITE PLANS FOR ALL COMMERCIAL PROPERTIES REGARDLESS OF SIZE TO BE REVIEWED BY THE PLANNING COMMISSION AND APPROVED BY THE TOWN COUNCIL – ARTICLE 16-3, SECTIONS 6 & 7	5/18/1998
O98-04	CASE A-98-4 AMENDING ARTICLE 16-9, SPECIAL USES AND ARTICLE 16-4, APPENDIX A REQUIRING SPECIAL USE PERMITS FOR CERTAIN USES WHEREVER SITE PLAN APPROVAL HAS PREVIOUSLY BEEN REQUIRED	7/6/1998
O98-11	REPLACING ZONING ORDINANCE ARTICLE 16-4-14 AND 16-4-17 WITH NEW ARTICLE 16-4-14 LANDSCAPING AND NATIVE HABITAT PRESERVATION	10/19/1998
O98-12	AMENDING THE ZONING CODE SECTION 16-4-22 SWIMMING POOLS, PARAGRAPH "A"	8/31/1998
O99-05	AMENDING ZONING MAP "THE STABLE" TULL STUDIO - (CASE Z98-02)	5/31/1999
O99-06	AMENDING THE ZONING ORDINANCE ARTICLE 16-4-10-B 'GRADING AND GRUBBING RESPONSIBILITIES TO INCLUDE SAGUARO CACTUS (CASE A-99-3)	7/6/1999
O99-08	AMENDING THE ZONING ORDINANCE ARTICLE 16-5-6-A-3 FENCES SHALL NOT EXCEED 6 FT. IN HEIGHT (CASE A-99-2)	5/3/1999
O99-09	AMENDING THE ZONING ORDINANCE ARTICLE 16-5-6-A PROHIBITED SIGNS (CASE A-99-1)	9/20/1999
O99-20	AMENDING ZONING ORDINANCE, ARTICLE 16-3 – USE DISTRICTS SECTION 6 COMMERCIAL BUFFER (CB) AND SECTION 7 COMMERCIAL CORE (CC)	11/5/1999
O2000-09	AMENDING THE ZONING ORDINANCE 94-13, CHAPTER XV LAND USE, CHAPTER 154.210 THROUGH 154.214 SPECIAL EVENTS (CASE 98-09)	11/20/2000
O2001-02	AMENDING THE ZONING MAP AND REZONING JULIE TERRY'S PROPERTY TO COMMERCIAL CORE (CC) BASED ON A SITE PLAN DATED 11/29/00 BY PD ARCHITECTS	4/2/2001
O2002-01	AMENDING THE ZONING ORDINANCE, PLANNED UNIT DEVELOPMENT (PUD) INCREASING THE LOT COVERAGE FOR CANYON RIDGE ESTATES	4/15/2002
O2002-02	ADOPTING THE ZONING ORDINANCE, CHAPTER ONE, BY REFERENCE, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	
O2002-04	AMENDING THE ZONING ORDINANCE, PLANNED UNIT DEVELOPMENT (PUD) INCREASING THE LOT COVERAGE FOR RED DOG RANCH	4/15/2002
O2002-05	AMENDING THE ZONING ORDINANCE, PLANNED UNIT DEVELOPMENT, INCREASING THE LOT COVERAGE FOR SPUR CROSS ESTATES	4/15/2002

APPENDIX C ZONING ORDINANCE AMENDMENTS

O2002-06	ADOPTING ZONING ORDINANCE, CHAPTER TWO, BY REFERENCE, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	6/3/2002
O2002-07	ADOPTING ZONING ORDINANCE, CHAPTER THREE, BY REFERENCE, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	6/3/2002
O2002-14	ADOPTING ZONING ORDINANCE, CHAPTER 8, OPEN SPACE ZONING DISTRICTS, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	7/1/2002
O2002-20	ADOPTING ZONING ORDINANCE, CHAPTER 12, NATIVE PLANT PRESERVATION, SALVAGE AND LANDSCAPE REGULATIONS, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	7/15/2002
O2002-22	ADOPTING ZONING ORDINANCE, CHAPTER 14, OUTDOOR LIGHTING PROVISIONS, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	7/15/2002
O2002-23	ADOPTING ZONING ORDINANCE, CHAPTER 15, SIGN REGULATIONS, REPEALING ORDINANCE NO. 97-24 AND PROVIDING FOR SEVERABILITY	7/15/2002
O2002-31	AMENDING ORDINANCE O2002-02, O2002-06, O2002-07 AND O2002-14 CHANGING THE DELAYED EFFECTIVE DATE TO NOVEMBER 1, 2002 AND DECLARING AN EMERGENCY	9/16/2002
O2002-34	AMENDING THE DELAYED EFFECTIVE DATE OF ORDINANCES O2002-02, O2002-06, O2002-07, O2002-14, O2002-18, O2002-20, O2002-22 AND O2002-23 FROM NOVEMBER 1, 2002 TO JANUARY 6, 2002; AUTHORIZING THE TOWN CLERK AND ZONING ADMINISTRATOR TO REVISE THE ALPHA NUMERIC PORTION OF THE ZONING CODE FOR CONSISTENCY AND CORRECT FOR CONSISTENCY ALL SPELLING AND GRAMMATICAL ERRORS	10/1/2002

APPENDIX 3

9-462.02. Nonconformance to regulations; outdoor advertising change; enforcement

A. The municipality may acquire by purchase or condemnation private property for the removal of nonconforming uses and structures. The elimination of such nonconforming uses and structures in a zoned district is for a public purpose. Nothing in an ordinance or regulation authorized by this article shall affect existing property or the right to its continued use for the purpose used at the time the ordinance or regulation takes effect, nor to any reasonable repairs or alterations in buildings or property used for such existing purpose.

B. A municipality shall not require as a condition for a permit or for any approval, or otherwise cause, an owner or possessor of property to waive the right to continue an existing nonconforming outdoor advertising use or structure without acquiring the use or structure by purchase or condemnation and paying just compensation unless the municipality, at its option, allows the use or structure to be relocated to a comparable site in the municipality with the same or a similar zoning classification, or to another site in the municipality acceptable to both the municipality and the owner of the use or structure, and the use or structure is relocated to the other site. The municipality shall pay for relocating the outdoor advertising use or structure including the cost of removing and constructing the new use or structure that is at least the same size and height. This subsection does not apply to municipal rezoning of property at the request of the property owner.

C. A municipality must issue a citation and file an action involving an outdoor advertising use or structure zoning or sign code violation within two years after discovering the violation. Such an action shall initially be filed with a court having jurisdiction to impose all penalties sought by the action and that jurisdiction is necessary for effective filing. Only the superior court has jurisdiction to order removal, abatement, reconfiguration or relocation of an outdoor advertising use or structure. Notwithstanding any other law, a municipality shall not consider each day that an outdoor advertising use or structure is illegally erected, constructed, reconstructed, altered or maintained as a separate offense unless the violation constitutes an immediate threat to the health and safety of the general public.

9-462.05. Enforcement

A. The legislative body of a municipality has authority to enforce any zoning ordinance enacted pursuant to this article in the same manner as other municipal ordinances are enforced.

B. If any building structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of the provisions of this article or of any ordinance adopted pursuant to the provisions of this article, the legislative body of the municipality may institute any appropriate action to:

1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.
2. Restrain, correct or abate the violation.
3. Prevent the occupancy of such building, structure or land.
4. Prevent any illegal act, conduct, business or use in or about such premises.

C. By ordinance, the legislative body shall establish the office of zoning administrator. The zoning administrator is charged with responsibility for enforcement of the zoning ordinance.

D. By ordinance, the legislative body shall establish all necessary and appropriate rules and procedures governing application for zoning amendment, review and approval of plans, issuance of any necessary permits or compliance certificates, inspection of buildings, structures and lands and any other actions which may be considered necessary or desirable for enforcement of the zoning ordinance.

APPENDIX 4

9-463. Definitions

In this article, unless the context otherwise requires:

1. "Design" means street alignment, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers and the arrangement and orientation of lots.
2. "Improvement" means required installations, pursuant to this article and subdivision regulations, including grading, sewer and water utilities, streets, easements, traffic control devices as a condition to the approval and acceptance of the final plat thereof.
3. "Land splits" as used in this article means the division of improved or unimproved land whose area is two and one-half acres or less into two or three tracts or parcels of land for the purpose of sale or lease.
4. "Municipal" or "municipality" means an incorporated city or town.
5. "Planning agency" means the official body designated by local ordinance to carry out the purposes of this article and may be a planning department, a planning commission, the legislative body itself, or any combination thereof.
6. "Plat" means a map of a subdivision:
(a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance.
(b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute.
(c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute.
7. "Right-of-way" means any public or private right-of-way and includes any area required for public use pursuant to any general or specific plan as provided for in article 6 of this chapter.
8. "Street" means any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access or a street shown in a plat heretofore approved pursuant to law or a street in a plat duly filed and recorded in the county recorder's office. A street includes all land within the street right-of-way whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges and viaducts.
9. "Subdivider" means a person, firm, corporation, partnership, association, syndicate, trust or other legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this article, any local applicable ordinance and other state statute, except that an individual serving as agent for such legal entity is not a subdivider.
10. "Subdivision" means any land or portion thereof subject to the provisions of this article as provided in section 9-463.02.
11. "Subdivision regulations" means a municipal ordinance regulating the design and improvement of subdivisions enacted under the provisions of this article or any prior statute regulating the design and improvement of subdivisions.

9-463.01. Authority

A. Pursuant to this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.

2. Standards governing the design of subdivision plats.

3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities and improvements as a condition of final plat approval.

C. By ordinance, the legislative body of any municipality shall:

1. Require the preparation, submission and approval of a preliminary plat as a condition precedent to submission of a final plat.

2. Establish the procedures to be followed in the preparation, submission, review and approval of preliminary plats.

3. Make requirements as to the form and content of preliminary plats.

4. Either determine that certain lands may not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements and impose other regulations deemed reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics.

5. Require payment of a proper and reasonable fee by the subdivider based upon the number of lots or parcels on the surface of the land to defray municipal costs of plat review and site inspection.

6. Require the dedication of public streets, sewer and water utility easements or rights-of-way, within the proposed subdivision.

7. Require the preparation and submission of acceptable engineering plans and specifications for the installation of required street, sewer, electric and water utilities, drainage, flood control, adequacy of water and improvements as a condition precedent to recordation of an approved final plat.

8. Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

D. The legislative body of any municipality may require by ordinance that land areas within a subdivision be reserved for parks, recreational facilities, school sites and fire stations subject to the following conditions:

1. The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.

2. The required reservations are in accordance with definite principles and standards adopted by the legislative body.

3. The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

4. The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

E. The public agency for whose benefit an area has been reserved shall have a period of one year after recording the final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value of the reserved land area at the time of the filing of the preliminary subdivision plat plus

the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider in the maintenance of such reserved area, including the interest cost incurred on any loan covering such reserved area.
F. If the public agency for whose benefit an area has been reserved does not exercise the reservation agreement set forth in subsection E of this section within such one year period or such extended period as may be mutually agreed upon by such public agency and the subdivider, the reservation of such area shall terminate.
G. The legislative body of every municipality shall comply with this article and applicable state statutes pertaining to the hearing, approval or rejection, and recordation of:
1. Final subdivision plats.
2. Plats filed for the purpose of reverting to acreage of land previously subdivided.
3. Plats filed for the purpose of vacating streets or easements previously dedicated to the public.
4. Plats filed for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.
H. Approval of every preliminary and final plat by a legislative body is conditioned upon compliance by the subdivider with:
1. Rules as may be established by the department of transportation relating to provisions for the safety of entrance upon and departure from abutting state primary highways.
2. Rules as may be established by a county flood control district relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation.
3. Rules as may be established by the department of health services or a county health department relating to the provision of domestic water supply and sanitary sewage disposal.
I. If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within an active management area, as defined in section 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. The legislative body of the municipality shall note on the face of the final plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to section 45-576, or is exempt from the requirement pursuant to section 45-576.
J. Except as provided in subsections K and P of this section, if the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the director of water resources has given written notice to the municipality pursuant to section 45-108, subsection H, the final plat shall not be approved unless one of the following applies:
1. The director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 and the subdivider has included the report with the plat.
2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.
K. The legislative body of a municipality that has received written notice from the director of water resources pursuant to section 45-108, subsection H or that has adopted an ordinance pursuant to subsection O of this section may provide by ordinance an exemption from the requirement in subsection J or O of this section for a subdivision that the director of water resources has determined will have an inadequate water supply because the water supply will be transported to the subdivision by motor vehicle or train if all of the following apply:
1. The legislative body determines that there is no feasible alternative water supply for the subdivision and that the transportation of water to the subdivision will not constitute a significant risk to the health and safety of the residents of the subdivision.
2. If the water to be transported to the subdivision will be withdrawn or diverted in the service area of a municipal provider as defined in section 45-561, the municipal provider has consented to the withdrawal or diversion.
3. If the water to be transported is groundwater, the transportation complies with the provisions governing the transportation of groundwater in title 45, chapter 2, article 8.
4. The transportation of water to the subdivision meets any additional conditions imposed by the legislative body.
L. A municipality that adopts the exemption authorized by subsection K of this section shall give written notice of the adoption of the exemption, including a certified copy of

the ordinance containing the exemption, to the director of water resources, the director of environmental quality and the state real estate commissioner. If the municipality later rescinds the exemption, the municipality shall give written notice of the rescission to the director of water resources, the director of environmental quality and the state real estate commissioner. A municipality that rescinds an exemption adopted pursuant to subsection K of this section shall not readopt the exemption for at least five years after the rescission becomes effective.

M. If the legislative body of a municipality approves a subdivision plat pursuant to subsection J, paragraph 1 or 2 or subsection O of this section, the legislative body shall note on the face of the plat that the director of water resources has reported that the subdivision has an adequate water supply or that the subdivider has obtained a commitment of water service for the proposed subdivision from a city, town or private water company designated as having an adequate water supply pursuant to section 45-108.

N. If the legislative body of a municipality approves a subdivision plat pursuant to an exemption authorized by subsection K of this section or granted by the director of water resources pursuant to section 45-108.02 or 45-108.03:

1. The legislative body shall give written notice of the approval to the director of water resources and the director of environmental quality.

2. The legislative body shall include on the face of the plat a statement that the director of water resources has determined that the water supply for the subdivision is inadequate and a statement describing the exemption under which the plat was approved, including a statement that the legislative body or the director of water resources, whichever applies, has determined that the specific conditions of the exemption were met. If the director subsequently informs the legislative body that the subdivision is being served by a water provider that has been designated by the director as having an adequate water supply pursuant to section 45-108, the legislative body shall record in the county recorder's office a statement disclosing that fact.

O. If a municipality has not been given written notice by the director of water resources pursuant to section 45-108, subsection H, the legislative body of the municipality, to protect the public health and safety, may provide by ordinance that, except as provided in subsections K and P of this section, the final plat of a subdivision located in the municipality and outside of an active management area will not be approved by the legislative body unless the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108. Before holding a public hearing to consider whether to enact an ordinance pursuant to this subsection, a municipality shall provide written notice of the hearing to the board of supervisors of the county in which the municipality is located. A municipality that enacts an ordinance pursuant to this subsection shall give written notice of the enactment of the ordinance, including a certified copy of the ordinance, to the director of water resources, the director of environmental quality, the state real estate commissioner and the board of supervisors of the county in which the municipality is located. If a municipality enacts an ordinance pursuant to this subsection, water providers may be eligible to receive monies in a water supply development fund, as otherwise provided by law.

P. Subsections J and O of this section do not apply to:

1. A proposed subdivision that the director of water resources has determined will have an inadequate water supply pursuant to section 45-108 if the director grants an exemption for the subdivision pursuant to section 45-108.02 and the exemption has not expired or if the director grants an exemption pursuant to section 45-108.03.

2. A proposed subdivision that received final plat approval from the municipality before the requirement for an adequate water supply became effective in the municipality if the plat has not been materially changed since it received the final plat approval. If changes were made to the plat after the plat received the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If the municipality approves a plat pursuant to this paragraph and the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat.

Q. If the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the municipality has not received written notice pursuant to section 45-108, subsection H and has not adopted an ordinance pursuant to subsection O of this section:

1. If the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or if the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108, the municipality shall note this on the

face of the plat if the plat is approved.
2. If the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.
R. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.
S. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.
T. The legislative bodies of cities and towns may regulate by ordinance land splits within their corporate limits. Authority granted under this section refers to the determination of division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels that are not the result of land splits as defined in section 9-463.
U. For any subdivision that consists of ten or fewer lots, tracts or parcels, each of which is of a size as prescribed by the legislative body, the legislative body of each municipality may expedite the processing of or waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and may waive or reduce infrastructure standards or requirements proportional to the impact of the subdivision. Requirements for dust-controlled access and drainage improvements shall not be waived.

9-463.02. Subdivision defined; applicability

A. "Subdivision" means improved or unimproved land or lands divided for the purpose of financing, sale or lease, whether immediate or future, into four or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two or more lots, tracts or parcels of land, or, any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon, but plats of such projects need not show the buildings or the manner in which the buildings or airspace above the property shown on the plat are to be divided.

B. The legislative body of a municipality shall not refuse approval of a final plat of a project included in subsection A under provisions of an adopted subdivision regulation because of location of buildings on the property shown on the plat not in violation of such subdivision regulations or on account of the manner in which airspace is to be divided in conveying the condominium. Fees and lot design requirements shall be computed and imposed with respect to such plats on the basis of parcels or lots on the surface of the land shown thereon as included in the project. This subsection does not limit the power of such legislative body to regulate the location of buildings in such a project by or pursuant to a zoning ordinance.

C. "Subdivision" does not include the following:

1. The sale or exchange of parcels of land to or between adjoining property owners if such sale or exchange does not create additional lots.
2. The partitioning of land in accordance with other statutes regulating the partitioning of land held in common ownership.
3. The leasing of apartments, offices, stores or similar space within a building or trailer park, nor to mineral, oil or gas leases.

9-463.03. Violations

It is unlawful for any person to offer to sell or lease, to contract to sell or lease or to sell or lease any subdivision or part thereof until a final plat thereof, in full compliance with provisions of this article and of any subdivision regulations which have been duly recorded in the office of recorder of the county in which the subdivision or any portion thereof is located, is recorded in the office of the recorder, except that this shall not apply to any parcel or parcels of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with any law or subdivision regulation regulating the subdivision plat design and improvement of subdivisions in effect at the time the subdivision was established. The county recorder shall not record a plat located in a municipality having subdivision regulations enacted under this article unless the plat has been approved by the legislative body of the municipality.

9-463.04. Extraterritorial jurisdiction

A. In any county not having county subdivision regulations applicable to the unincorporated territory, the legislative body of any municipality may exercise the subdivision regulation powers granted in this article both to territory within its corporate limits and to that which extends a distance of three contiguous miles in all directions of its corporate limits and not located in a municipality. Any ordinance intended to have application beyond the corporate limits of the municipality shall expressly state the intention of such application. Such ordinance shall be adopted in accordance with the provisions set forth therein.

B. The extraterritorial jurisdiction of two or more municipalities whose territorial boundaries are less than six miles apart terminates at a boundary line equidistant from the respective corporate limits of such municipalities, or at such line as is agreed to by the legislative bodies of the respective municipalities.

C. As a prerequisite to the exercise of extraterritorial jurisdiction, the membership of the planning agency charged with the preparation or administration of proposed subdivision regulations for the area of extraterritorial jurisdiction shall be increased to include two additional members to represent the unincorporated area. Any additional member shall be a resident of the three mile area outside the corporate limits and be appointed by the legislative body of the county in which the unincorporated area is situated. Any such member shall have equal rights, privileges and duties with the other members of the planning agency in all matters pertaining to the plans and regulations of the unincorporated area in which they reside, both in preparation of the original plans and regulations and in consideration of any proposed amendments to such plans and regulations.

D. Any municipal legislative body exercising the powers granted by this section may provide for the enforcement of its regulations for the area of extraterritorial jurisdiction in the same manner as the regulations for the area within the municipality are enforced.

9-463.05. Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.

B. Development fees assessed by a municipality under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.

3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.

4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.

5. Development fees may not be used for any of the following:

(a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.

(b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.

(c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.

(e) Administrative, maintenance or operating costs of the municipality.

6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.

7. Development fees may be collected if any of the following occurs:

(a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.

(b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.

(c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:

(i) The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

(ii) The municipality reimburses the owner for those costs from the development fees

paid from all developments that will use those necessary public services or facility expansions.
(iii) For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.
8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.
9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.
10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.
11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.
12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.
13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.
14. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the municipality shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a website a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.
2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.
3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.
4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.
5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.
6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.
7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.
8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:

(a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.
(b) A description and map of the service area in which an update has been

determined to be unnecessary.
(c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.
(d) A statement identifying the person or entity to whom the written request for an update should be sent.
9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.
10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall provide notice to the advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.
E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall include:
1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.
2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.
3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.
4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.
5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.
6. The projected demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.
7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.
F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:
1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:
(a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.
(b) The advisory committee shall serve in an advisory capacity and shall:
(i) Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.
(ii) Review the infrastructure improvements plan and file written comments.
(iii) Monitor and evaluate implementation of the infrastructure improvements plan.
(iv) Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.
(v) Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.
(c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.
(d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.
2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.
H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:
1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.
2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.
3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.
I. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.
J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.
K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under

this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.
2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.

L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.

M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.

N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:

1. The amount assessed by the municipality for each type of development fee.
2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.
3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.
4. The amount of development fee monies used to repay:

(a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.

(b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.
6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.

Q. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.

R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:

1. Development fees were pledged to repay debt service obligations related to the construction of the facility.
2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.

S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:

1. The facility that is being financed is a facility that is described under subsection T, paragraph 7, subdivisions (a) through (g) of this section.
2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.
3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.

T. For the purposes of this section:
1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.
2. "Development" means:
(a) The subdivision of land.
(b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.
(c) Any use or extension of the use of land that increases the number of service units.
3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.
4. "Final approval" means:
(a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.
(b) For a single family residential development, the approval of a final subdivision plat.
5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.
6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.
7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:
(a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.
(b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.
(c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.
(d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.
(e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.
(f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.
(g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.
(h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.
8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.
9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.
10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

9-463.06. Standards for enactment of moratorium; land development; limitations; definitions

A. A city or town shall not adopt a moratorium on construction or land development unless it first:

1. Provides notice to the public published once in a newspaper of general circulation in the community at least thirty days before a final public hearing to be held to consider the adoption of the moratorium.

2. Makes written findings justifying the need for the moratorium in the manner provided for in this section.

3. Holds a public hearing on the adoption of the moratorium and the findings that support the moratorium.

B. For urban or urbanizable land, a moratorium may be justified by demonstration of a need to prevent a shortage of essential public facilities that would otherwise occur during the effective period of the moratorium. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. A showing of the extent of need beyond the estimated capacity of existing essential public facilities expected to result from new land development, including identification of any essential public facilities currently operating beyond capacity and the portion of this capacity already committed to development, or in the case of water resources, a showing that, in an active management area, an assured water supply cannot be provided or, outside an active management area, a sufficient water supply cannot be provided, to the new land development, including identification of current water resources and the portion already committed to development.

2. That the moratorium is reasonably limited to those areas of the city or town where a shortage of essential public facilities would otherwise occur and on property that has not received development approvals based upon the sufficiency of existing essential public facilities.

3. That the housing and economic development needs of the area affected have been accommodated as much as possible in any program for allocating any remaining essential public facility capacity.

C. A moratorium not based on a shortage of essential public facilities under subsection B of this section may be justified only by a demonstration of compelling need for other public facilities, including police and fire facilities. This demonstration shall be based on reasonably available information and shall include at least the following findings:

1. For urban or urbanizable land:

(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.

(b) That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or town are not unreasonably restricted by the adoption of the moratorium.

(c) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.

(d) That the city or town has determined that the public harm that would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands and the overall impact of the moratorium on population distribution.

(e) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

2. For rural land:
(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas.
(b) Stating the reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.
(c) That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium.
(d) That the city or town proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.
D. Any moratorium adopted pursuant to this section does not affect any express provision in a development agreement entered into pursuant to section 9-500.05 or as defined in section 11-1101 governing the rate, timing and sequencing of development, nor does it affect rights acquired pursuant to a protected development right granted according to chapter 11 of this title or title 11, chapter 9. Any moratorium adopted pursuant to this section shall provide a procedure pursuant to which an individual landowner may apply for a waiver of the moratorium's applicability to its property by claiming rights obtained pursuant to a development agreement, a protected development right or any vested right or by providing the public facilities that are the subject of the moratorium at the landowner's cost.
E. A moratorium adopted under subsection C, paragraph 1 of this section shall not remain in effect for more than one hundred twenty days, but such a moratorium may be extended for additional periods of time of up to one hundred twenty days if the city or town adopting the moratorium holds a public hearing on the proposed extension and adopts written findings that:
1. Verify the problem requiring the need for the moratorium to be extended.
2. Demonstrate that reasonable progress is being made to alleviate the problem resulting in the moratorium.
3. Set a specific duration for the renewal of the moratorium.
F. A city or town considering an extension of a moratorium shall provide notice to the general public published once in a newspaper of general circulation in the community at least thirty days before a final hearing is held to consider an extension of a moratorium.
G. Nothing in this section shall prevent a city or town from complying with any state or federal law, regulation or order issued in writing by a legally authorized governmental entity.
H. A landowner aggrieved by a municipality's adoption of a moratorium pursuant to this section may file, at any time within thirty days after the moratorium has been adopted, a complaint for a trial de novo in the superior court on the facts and the law regarding the moratorium. All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party.
I. In this section:
1. "Compelling need" means a clear and imminent danger to the health and safety of the public.
2. "Essential public facilities" means water, sewer and street improvements to the extent that these improvements and water resources are provided by the city, town or private utility.
3. "Moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or construction on, any land. It does not include denial or delay of permits or authorizations because they are inconsistent with applicable statutes, rules, zoning or other ordinances.
4. "Rural land" means all property in the unincorporated area of a county or in the incorporated area of the city or town with a population of two thousand nine hundred or less persons according to the most recent United States decennial census.
5. "Urban or urbanizable land" means all property in the incorporated area of a city or town with a population of more than two thousand nine hundred persons according to the most recent United States decennial census.
6. "Vested right" means a right to develop property established by the expenditure of substantial sums of money pursuant to a permit or approval granted by the city, town or county.

APPENDIX D

FILE
Dawn
7.4.07

CAVE CREEK
ARIZONA

SETTLED 1870 · INCORPORATED 1986

June 26, 2007

Mr. Arek Fressadi
37934 N. Schoolhouse Road
Cave Creek, AZ 85331

Dear Mr. Fressadi:

In response to your letter of June 21, 2007, you are reminded that you came to the Town to pursue installing a sewer line to serve the lots in your subdivision. The Town's Ordinance is quite clear on sewer extensions outside of the boundaries of Sewer Improvement District #2, in that the developer is responsible for all costs of installation and the facilities in Town Right-Of-Way or easement become the property of the Town. You obviously chose to develop your lots with sewer service rather than septic systems, even though your septic system "works fine".

It would be a criminal offense and a felony to remove public sewer from Town Right-Of-Way or easement and would be dealt with accordingly.

Sincerely,

Wayne E. Anderson

Wayne E. Anderson, P.E.
Town Engineer

Cc: Town Manager
Director of Planning
Utilities Manager
Assistant Town Engineer
Town Marshal
Town Attorney
Sheriff's Office

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331

ADMINISTRATION	480/488-1400	BUILDING / SAFETY	480/488-1414	MARSHAL	480/488-6636
COURT	480/488-1409	PLANNING & ZONING	480/595-1930		
ENGINEERING	480/595-1935	FAX	480/488-2263		

APPENDIX E

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.216.4103
arek@fressadi.com

ARIZONA SUPREME COURT

AREK FRESSADI, Plaintiff – Appellant - Petitioner v. TOWN OF CAVE CREEK, Defendant - Appellee	CA-CV-13-0209-PR Court of Appeals, Div. One, No. 1 CA-CV-12-0238 Maricopa County Superior Court Case No. CV2009-050821 **AFFIDAVIT IN SUPPORT OF PETITION FOR REVIEW**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

RALPH D. NISENBAUM, PE being of full age and duly sworn upon his oath, hereby affirms as follows:

1. I am a Registered Civil Engineer in the State of Arizona. I make this Affidavit based on my personal knowledge of the facts stated herein.

2. I recently returned to Arizona having been a resident of Alaska for the last three years. Prior to residing in Alaska, I resided in Texas for one year.

3. Arvel R. Jones, RLS and I performed background research, office drafting, and field surveying to record the following documents in Maricopa County: #2002-0256784, #2003-0481222, and #2003-0488178 for parcel #211-10-010 and #2003-1312578 for parcel 211-10-003.

4. The Town of Cave Creek required Arvel R. Jones, RLS to write the legal descriptions including easements and to draft the surveys for parcels 211-10-010 and 211-10-003 with a strip of land twenty-five feet (25') wide adjacent to Schoolhouse Rd. that could be dedicated by separate instrument to the Town of Cave Creek as a part of the lot split approval process.

5. The Town indicated that they would handle the paperwork for the dedications of the twenty-five foot wide strips of land exacted from parcels 211-10-010 and 211-10-003.

6. The Town required the dedication of easements to approve the split of parcel 211-10-010, and that the survey be recorded (#2002-0256784) in order to permit driveways to the subject lots in March, 2002.

7. The Town required the dedication of an easement over the entirety of the twenty-five foot strip of land exacted from the split of parcel 211-10-010 as an easement in order to permit the sewer extension in July, 2002.

8. I designed and Arvel Jones, RLS surveyed the installation of the sewer extension including the Andorra Wash crossing on Schoolhouse Rd. to serve the buildable lots split from parcel 211-10-010.

9. Cave Creek required the dedication of lot 211-10-010D to be recorded in April, 2003 (#2003-0488178) for final approval of the sewer installed to serve the buildable lots split from parcel 211-10-010.

Further Affiant sayeth naught.

Ralph D. Nisenbaum, PE

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me this 17th day of September, 2013, by Ralph D. Nisenbaum, PE.

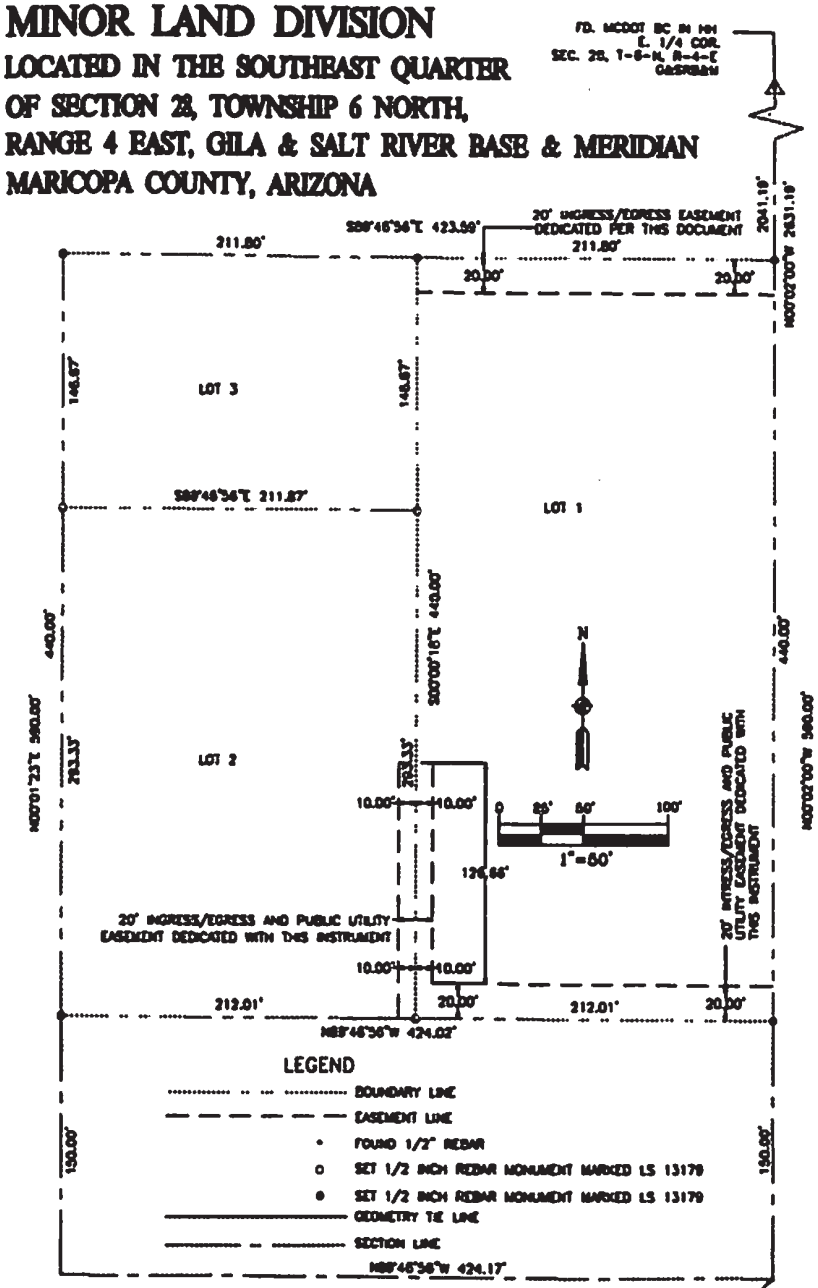
Notary Public
My Commission Expires: 09/12/2015

By:_____

Troy Tagaban
Notary Public
Maricopa County, Arizona
My Comm. Expires 09-12-15

MINOR LAND DIVISION

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA



AREAS		
LOT 1	LOT 2	LOT 3
93,237 SQ. FT.	62,160 SQ. FT.	31,000 SQ. FT.
2.14 ACRES	1.43 ACRES	0.71 ACRE

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'36"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'36"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'36"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 212.01' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'36"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.80' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28;
THENCE S00°02'00"E ALONG SAID EAST LINE A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT UNDER AND ACROSS THE NORTH AND THE SOUTH 20' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES UNDER AND ACROSS THE WEST 10' OF THE NORTH 126.665' OF THE SOUTH 146.665' THEREOF.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N89°46'36"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE 212.01' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'36"W ALONG SAID PARALLEL LINE A DISTANCE OF 212.01' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'36"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.87' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES UNDER AND ACROSS THE EAST 10' OF THE SOUTH HALF THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°46'36"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE, A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'36"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.80' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.67' TO THE POINT OF BEGINNING.

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS _____ DAY OF _____ OF 2001.

ATTESTED:

_____ _____
DIRECTOR OF PLANNING DATE

_____ _____
TOWN CLERK, TOWN OF CAVE CREEK DATE

CBR CONSULTANTS
CIVIL ENGINEERING AND LAND SURVEYING
700 E. MESQUITE, UNIT 0 212
TEMPE, ARIZONA 85281-1957
PHONE: (480) 377-1264
CELL: (480) 600-1123
FAX: (480) 377-1267
RALPH D. NEEDHAM, P.E.
ARCEL R. JONES, P.L.S.

THIS IS TO CERTIFY THAT I, ARCEL R. JONES AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION, DURING THE MONTH OF OCTOBER 2001, THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS NOTED AND THAT SAID SURVEY MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

13179 ARCEL R. JONES

JOB NUMBER: M1103
DWG NAME: School House
FILE LOCATION: C:\Land Projects\M1103 School House\Survey.dwg

CC0355

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.216.4103
arek@fressadi.com

ARIZONA SUPREME COURT

AREK FRESSADI, Plaintiff – Appellant - Petitioner v. TOWN OF CAVE CREEK, Defendant - Appellee	CA-CV-13-0209-PR Court of Appeals, Div. One, No. 1 CA-CV-12-0238 Maricopa County Superior Court Case No. CV2009-050821 **AFFIDAVIT IN SUPPORT OF PETITION FOR REVIEW**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

RALPH D. NISENBAUM, PE being of full age and duly sworn upon his oath, hereby affirms as follows:

1. I am a Registered Civil Engineer in the State of Arizona. I make this Affidavit based on my personal knowledge of the facts stated herein.

2. I recently returned to Arizona having been a resident of Alaska for the last three years. Prior to residing in Alaska, I resided in Texas for one year.

3. Arvel R. Jones, RLS and I performed background research, office drafting, and field surveying to record the following documents in Maricopa County: #2002-0256784, #2003-0481222, and #2003-0488178 for parcel #211-10-010 and #2003-1312578 for parcel 211-10-003.

4. The Town of Cave Creek required Arvel R. Jones, RLS to write the legal descriptions including easements and to draft the surveys for parcels 211-10-010 and 211-10-003 with a strip of land twenty-five feet (25') wide adjacent to Schoolhouse Rd. that could be dedicated by separate instrument to the Town of Cave Creek as a part of the lot split approval process.

5. The Town indicated that they would handle the paperwork for the dedications of the twenty-five foot wide strips of land exacted from parcels 211-10-010 and 211-10-003.

6. The Town required the dedication of easements to approve the split of parcel 211-10-010, and that the survey be recorded (#2002-0256784) in order to permit driveways to the subject lots in March, 2002.

7. The Town required the dedication of an easement over the entirety of the twenty-five foot strip of land exacted from the split of parcel 211-10-010 as an easement in order to permit the sewer extension in July, 2002.

8. I designed and Arvel Jones, RLS surveyed the installation of the sewer extension including the Andorra Wash crossing on Schoolhouse Rd. to serve the buildable lots split from parcel 211-10-010.

9. Cave Creek required the dedication of lot 211-10-010D to be recorded in April, 2003 (#2003-0488178) for final approval of the sewer installed to serve the buildable lots split from parcel 211-10-010.

Further Affiant sayeth naught.

Ralph D. Nisenbaum, PE

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me this 17th day of September, 2013, by Ralph D. Nisenbaum, PE.

Notary Public
My Commission Expires: 09/12/2015

By:_____

Troy Tagaban
Notary Public
Maricopa County, Arizona
My Comm. Expires 09-12-15

APPENDIX F

RECORDED DOCUMENT SEARCH DETAIL

View Basket | New Search | CONTACT US

RECORDING INFORMATION

Name(s)	Document Code(s)
JONES ARVEL R MINOR LAND DIVISION	SUR MAP BIG MAP

Recording Date/Time	Recording Number	Pages
3/13/2002 9:56:29 AM	20020256784	1
		View Unofficial Documents by clicking the number above.

DOCKET/BOOK	PAGE
587	7

VIEWING OPTIONS

PNG - Select to view one page at a time

PDF - Select to view all the pages

View Image

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HOURS & LOCATIONS

Recorder and Elections - Main Office (Downtown)
111 S. Third Ave.
Phoenix AZ 85003
Hours: 8:00 A.M. - 5:00 P.M. Monday - Friday
Phone: 602-506-3535
T.D.D. 602-506-2348

Recorder and Elections - Southeast Office (Mesa)
222 E. Javelina
Mesa AZ 85210
Hours: 8:00 A.M. - 5:00 P.M. Monday - Friday
Phone: 602-506-3535
T.D.D. 602-506-2348

Elections - MCTEC Office

510 S. Third Ave., Phoenix AZ 85003
Hours: 8:00 A.M. - 5:00 P.M. Monday - Friday
Phone: 602-506-1511
T.D.D. 602-506-2348

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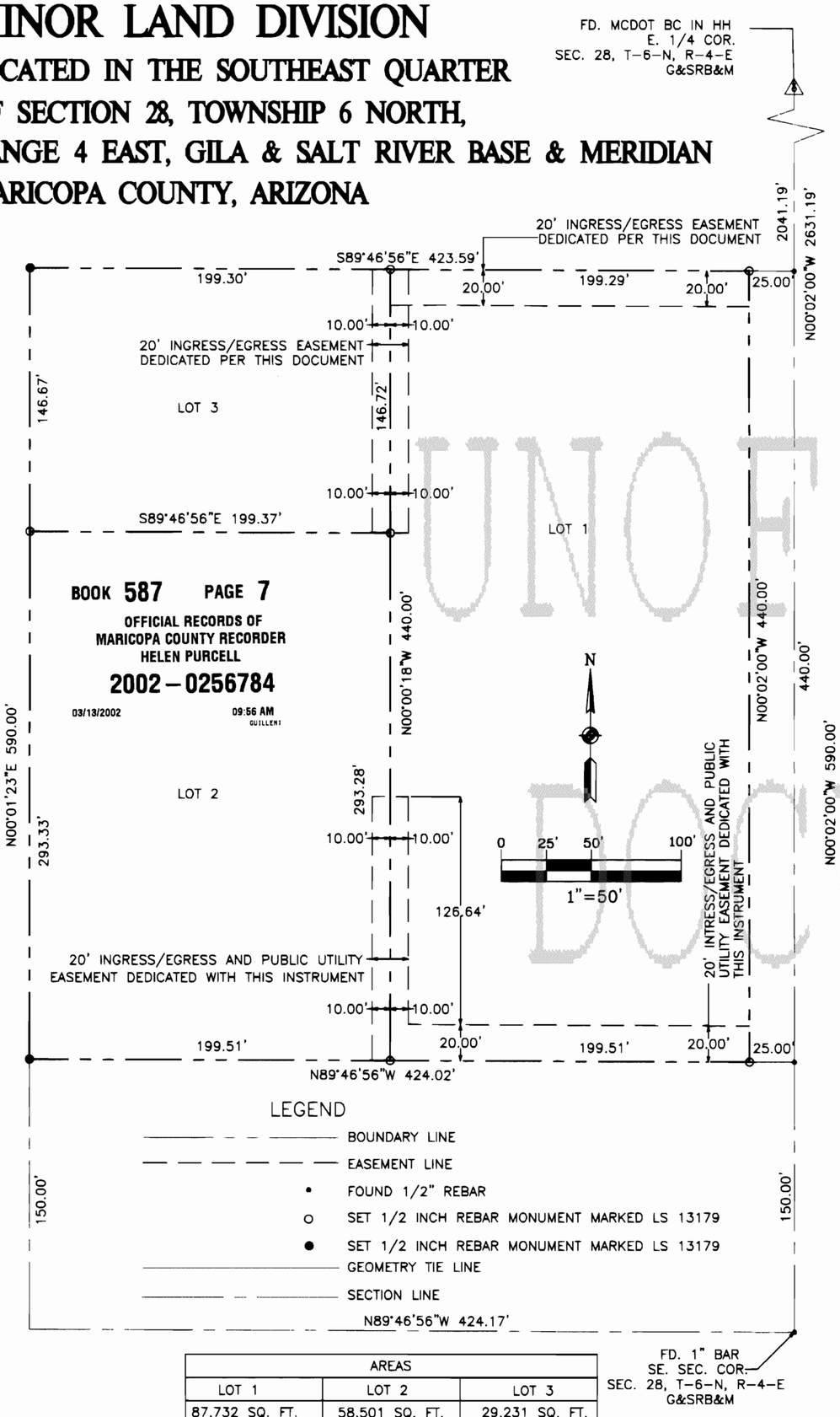
Polls are open on Election Day from 6:00 AM to 7:00 PM.

L-01-10

MINOR LAND DIVISION

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA



LEGEND

- BOUNDARY LINE
- EASEMENT LINE
- FOUND 1/2" REBAR
- SET 1/2 INCH REBAR MONUMENT MARKED LS 13179
- SET 1/2 INCH REBAR MONUMENT MARKED LS 13179
- GEOMETRY TIE LINE
- SECTION LINE

AREAS		
LOT 1	LOT 2	LOT 3
87,732 SQ. FT.	58,501 SQ. FT.	29,231 SQ. FT.
2.01 ACRES	1.34 ACRES	0.67 ACRE

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 25.00';
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE, A DISTANCE OF 199.51' TO THE POINT OF BEGINNING OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 199.29' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING 25.00' FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;
THENCE S00°02'00"E ALONG SAID PARALLEL LINE A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT OVER, UNDER AND ACROSS THE NORTH AND THE SOUTH 20' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE WEST 10' OF THE SOUTH 126.64' AND THE NORTH 146.72' THEREOF.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE 199.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE A DISTANCE OF 199.51' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.37' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.28' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE SOUTH HALF OF THE EAST 10' THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.30' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.72' TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 31st DAY OF DECEMBER OF 2001.

ATTESTED:

DIRECTOR OF PLANNING — DATE 12/31/01

TOWN CLERK, TOWN OF CAVE CREEK — DATE 1/2/02

CBR CONSULTANTS
CIVIL ENGINEERING AND LAND SURVEYING
700 E. MESQUITE, UNIT 0 212
TEMPE, ARIZONA 85281-1957
PHONE: (480) 377-1264
CELL: (480) 600-1123
FAX: (480) 377-1267
RALPH D. NISENBAUM, P.E.
ARVEL R. JONES, R.L.S.

THIS IS TO CERTIFY THAT I, ARVEL R. JONES AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION, DURING THE MONTH OF OCTOBER 2001. THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS NOTED AND THAT SAID SURVEY MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

REGISTERED LAND SURVEYOR — CERTIFICATE NO. 13179 — ARVEL R. JONES — Date Signed 12/31/01 — ARIZONA U.S.A.

JOB NUMBER: M102
JOB NAME: School House

FILE LOCATION:
D:\Land Projects\M102
School House\Survey.dwg

587-7

APPENDIX G

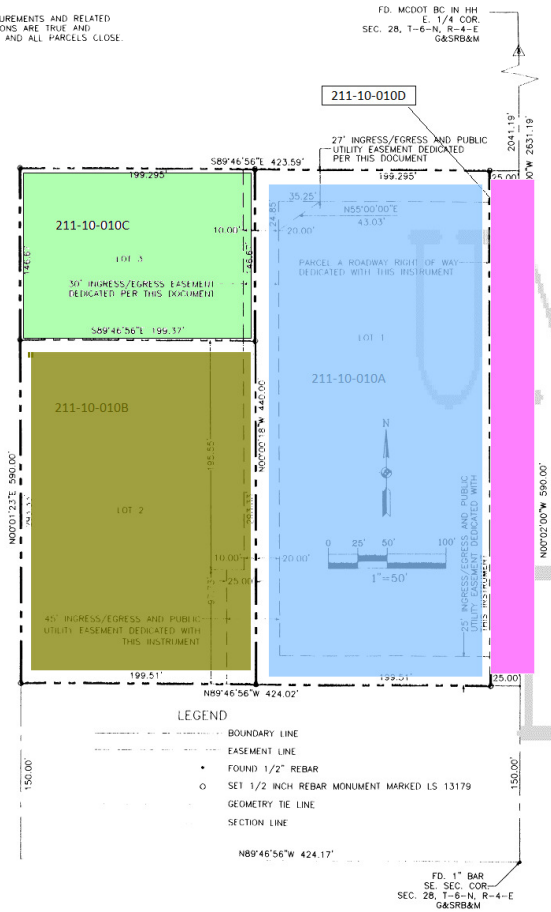
MINOR LAND DIVISION

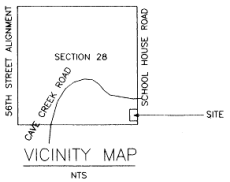
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

AREAS		
LOT 1	LOT 2	LOT 3
87,732 SQ. FT.	58,501 SQ. FT.	29,231 SQ. FT.
2.01 ACRES	1.34 ACRES	0.67 ACRE

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.





LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 25.00' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE, A DISTANCE OF 199.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 199.295' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING 25.00' FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;
THENCE S00°02'00"E ALONG A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT OVER, UNDER AND ACROSS THE NORTH 27' AND THE SOUTH 25' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE WEST 20' THEREOF.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS A WEDGE SHAPED AREA CONNECTING AND ENLARGING THE WEST AND THE NORTH EASEMENTS MENTIONED ABOVE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THIS PARCEL;
THENCE S89°46'56"E ALONG THE NORTH LINE OF THIS PARCEL A DISTANCE OF 55.27' TO A POINT ON SAID NORTH LINE;
THENCE S00°00'18"E ALONG A LINE PARALLEL TO THE WEST LINE OF THIS PARCEL A DISTANCE OF 27' TO A POINT ALONG THE SOUTH LINE OF THE SAID NORTHERLY EASEMENT, THE POINT OF BEGINNING;
THENCE S55°00'00"W A DISTANCE OF 43.03' TO A POINT ON THE EAST LINE OF THE SAID WESTERLY EASEMENT;
THENCE N00°00'18"W ALONG EAST LINE OF SAID WESTERLY EASEMENT A DISTANCE OF 24.81' TO A POINT INTERSECTING THE EAST LINE OF THE WESTERLY EASEMENT WITH THE SOUTH LINE OF THE NORTHERLY EASEMENT;
THENCE S89°46'56"E ALONG THE SOUTH LINE OF THE NORTHERLY EASEMENT A DISTANCE OF 35.25' TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE 224.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE A DISTANCE OF 199.51' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.37' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

AND TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 25' OF THE SOUTH 97.73 FEET THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.295' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.67' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N89°46'56"W A DISTANCE OF 199.37' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179 THE POINT ALSO BEING LOCATED ON THE EAST LINE OF SAID "VILLAGE VISTA", THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

PARCEL A

THE EAST 25' OF THE FOLLOWING PARCEL IS CONVEYED TO THE TOWN OF CAVE CREEK, CAVE CREEK, ARIZONA FOR THE PURPOSES OF ROADWAY RIGHT OF WAY INCLUDING PUBLIC UTILITIES.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

631-35

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 17th DAY OF April OF 2003 (12/06/01)

ATTESTED:

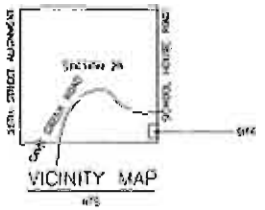
DIRECTOR OF PLANNING — DATE 4/17/03

TOWN CLERK, TOWN OF CAVE CREEK — DATE 4/17/03

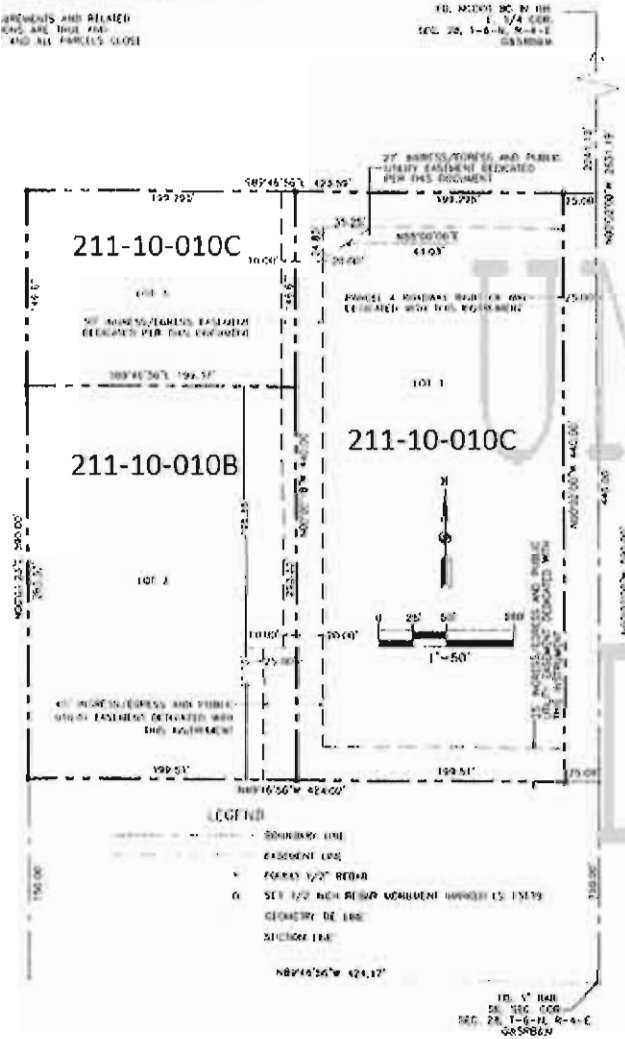
BOOK 631 PAGE 35
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2003-0488178
04/17/2003 03:56 PM

MINOR LAND DIVISION

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA



VICINITY MAP
NTS



BOOK 631 PAGE 35
OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL
2003-0488178

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION AS RECORDED IN BOOK 62 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 500.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.58' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 500.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 28, A
DISTANCE OF 25.00' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE, A DISTANCE OF 199.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 199.24' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179,
SAID POINT BEING 25.00' FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;
THENCE S00°02'00"E ALONG A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT OVER, UNDER AND ACROSS THE NORTH 25' AND THE SOUTH 25' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE WEST 25' THEREOF.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS A WEDGE SHAPED AREA CONNECTING AND ENLARGING THE WEST AND THE NORTH EASEMENTS MENTIONED ABOVE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THIS PARCEL;
THENCE S89°46'56"E ALONG THE NORTH LINE OF THIS PARCEL A DISTANCE OF 55.27' TO A POINT ON SAID NORTH LINE;
THENCE S00°01'23"E ALONG A LINE PARALLEL TO THE WEST LINE OF THIS PARCEL A DISTANCE OF 27' TO A POINT ALONG THE SOUTH LINE OF THE SAID NORTHERLY EASEMENT, THE POINT OF BEGINNING;
THENCE S55°09'50"W A DISTANCE OF 43.81' TO A POINT ON THE EAST LINE OF THE SAID WESTERLY EASEMENT;
THENCE N00°01'16"W ALONG EAST LINE OF SAID WESTERLY EASEMENT A DISTANCE OF 24.81' TO A POINT INTERSECTING THE EAST LINE OF THE WESTERLY EASEMENT WITH THE SOUTH LINE OF THE NORTHERLY EASEMENT;
THENCE S89°46'56"E ALONG THE SOUTH LINE OF THE NORTHERLY EASEMENT A DISTANCE OF 30.25' TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 224.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE A DISTANCE OF 199.51' TO A CORNER OF THIS PARCEL, LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 62 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.51' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°01'16"E, A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

AND TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 25' OF THE SOUTH 87.73 FEET THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE S89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 424.17' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 62 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.24' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°01'16"E A DISTANCE OF 146.67' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N89°46'56"W A DISTANCE OF 199.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179 THE POINT ALSO BEING LOCATED ON THE EAST LINE OF SAID "VILLAGE VISTA", THE POINT OF BEGINNING

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF

PARCEL A

THE EAST 25' OF THE FOLLOWING PARCEL IS CONVEYED TO THE TOWN OF CAVE CREEK, CAVE CREEK, ARIZONA FOR THE PURPOSES OF ROADWAY RIGHT OF WAY, INCLUDING PUBLIC UTILITIES.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 62 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 500.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.58' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 500.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

631-35

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 7TH DAY OF APRIL, OF 2003 (10/06/03)

ATTESTED:
DIRECTOR OF PLANNING — 4/17/03 DATE
TOWN CLERK, TOWN OF CAVE CREEK — 4/17/03 DATE

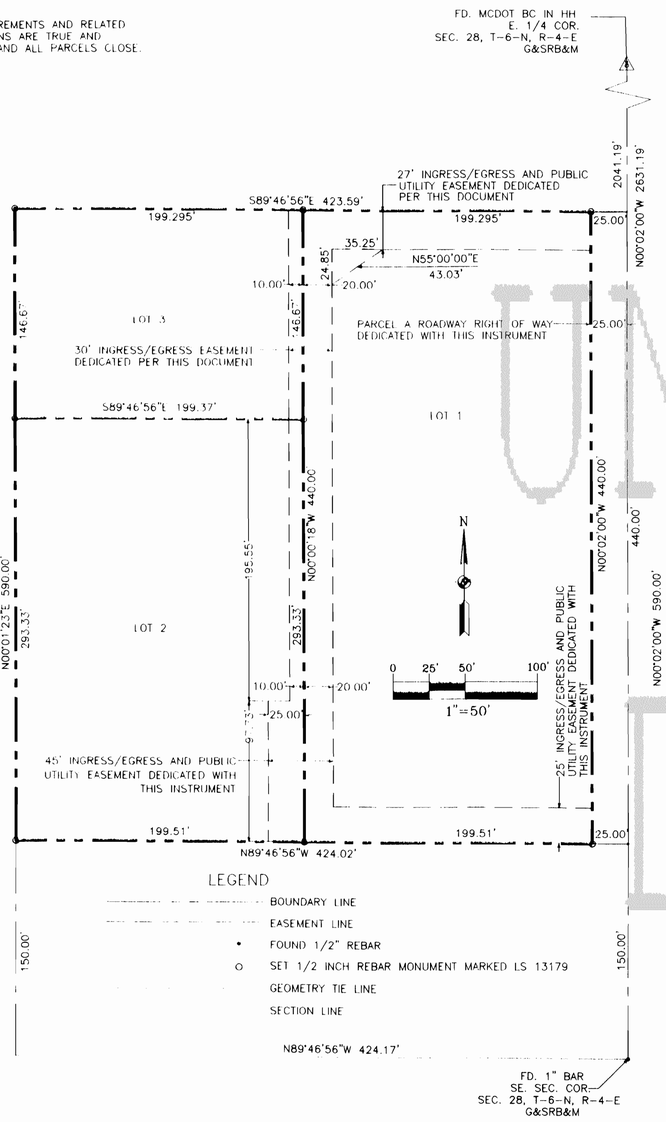
CIVIL ENGINEERING

L-01-10

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

AREAS		
LOT 1	LOT 2	LOT 3
87,732 SQ. FT.	58,501 SQ. FT.	29,231 SQ. FT.
2.01 ACRES	1.34 ACRES	0.67 ACRE

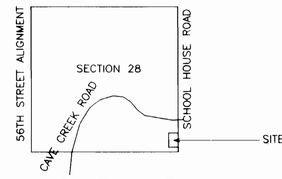
NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.



BOOK 631 PAGE 35
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2003-0488178
04/17/2003 03:56 PM

MINOR LAND DIVISION

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA



VICINITY MAP
NTS

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A
DISTANCE OF 25.00' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE, A DISTANCE OF 199.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 199.295' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING 25.00' FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;
THENCE S00°02'00"E ALONG A LINE PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT OVER, UNDER AND ACROSS THE NORTH 27' AND THE SOUTH 25' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE WEST 20' THEREOF.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS A WEDGE SHAPED AREA CONNECTING AND ENLARGING THE WEST AND THE NORTH EASEMENTS MENTIONED ABOVE, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THIS PARCEL;
THENCE S89°46'56"E ALONG THE NORTH LINE OF THIS PARCEL A DISTANCE OF 55.27' TO A POINT ON SAID NORTH LINE;
THENCE S00°00'18"E ALONG A LINE PARALLEL TO THE WEST LINE OF THIS PARCEL A DISTANCE OF 27' TO A POINT ALONG THE SOUTH LINE OF THE SAID NORTHERLY EASEMENT, THE POINT OF BEGINNING;
THENCE S55°00'00"W A DISTANCE OF 43.03' TO A POINT ON THE EAST LINE OF THE SAID WESTERLY EASEMENT;
THENCE N00°00'18"W ALONG EAST LINE OF SAID WESTERLY EASEMENT A DISTANCE OF 24.81' TO A POINT INTERSECTING THE EAST LINE OF THE WESTERLY EASEMENT WITH THE SOUTH LINE OF THE NORTHERLY EASEMENT;
THENCE S89°46'56"E ALONG THE SOUTH LINE OF THE NORTHERLY EASEMENT A DISTANCE OF 35.25' TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE 224.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE A DISTANCE OF 199.51' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.37' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

AND TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 25' OF THE SOUTH 97.73 FEET THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.295' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.67' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N89°46'56"W A DISTANCE OF 199.37' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179 THE POINT ALSO BEING LOCATED ON THE EAST LINE OF SAID "VILLAGE VISTA", THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

PARCEL A

THE EAST 25' OF THE FOLLOWING PARCEL IS CONVEYED TO THE TOWN OF CAVE CREEK, CAVE CREEK, ARIZONA FOR THE PURPOSES OF ROADWAY RIGHT OF WAY INCLUDING PUBLIC UTILITIES:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

631-35

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 17TH DAY OF APRIL OF 2003 (12/01/01)

ATTESTED:
DIRECTOR OF PLANNING — 4/17/03 DATE

TOWN CLERK, TOWN OF CAVE CREEK — 4/17/03 DATE

CIVIL ENGINEERING
LAND SURVEYING
CBR CONSULTANTS
ARVEL R. JONES, P.L.S.
PRINCIPAL
RALPH D. NISENBAUM, P.E.
PRINCIPAL
131 SOUTH 20th STREET
PHOENIX, ARIZONA 85034
PHONE: 602.253.6464
FAX: 602.712.1969
CELL: 480.430.1448
e-mail: rdnisenbaum@millerls.com

THIS IS TO CERTIFY THAT I, ARVEL R. JONES AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION, DURING THE MONTH OF OCTOBER 2001. THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS NOTED THAT SAID SURVEY MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. AND BASED UPON THE COMMITMENT FOR TITLE INSURANCE, ORDER NUMBER 22002453-B, PREPARED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY THERE ARE NO EASEMENTS OR RIGHT OF WAYS ON, OVER OR ACROSS THIS SUBJECT PROPERTY EXCEPT AS SHOWN HEREON.

REGISTERED LAND SURVEYOR
ARVEL R. JONES
13179
ARIZONA U.S.A.
Date Signed

JOB NUMBER: M102 & M2-26
JOB NAME: School House Road
FILE LOCATION:
C:\Land Projects\M2-27 School House Survey Maps\1st-lotsplit-rev-5-26-02.dwg

APPENDIX H

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.216.4103
arek@fressadi.com

ARIZONA SUPREME COURT

AREK FRESSADI, Plaintiff – Appellant - Petitioner v. TOWN OF CAVE CREEK, Defendant - Appellee	CA-CV-13-0209-PR Court of Appeals, Div. One, No. 1 CA-CV-12-0238 Maricopa County Superior Court Case No. CV2009-050821 **AFFIDAVIT IN SUPPORT OF PETITION FOR REVIEW**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

RALPH D. NISENBAUM, PE being of full age and duly sworn upon his oath, hereby affirms as follows:

1. I am a Registered Civil Engineer in the State of Arizona. I make this Affidavit based on my personal knowledge of the facts stated herein.

2. I recently returned to Arizona having been a resident of Alaska for the last three years. Prior to residing in Alaska, I resided in Texas for one year.

3. Arvel R. Jones, RLS and I performed background research, office drafting, and field surveying to record the following documents in Maricopa County: #2002-0256784, #2003-0481222, and #2003-0488178 for parcel #211-10-010 and #2003-1312578 for parcel 211-10-003.

4. The Town of Cave Creek required Arvel R. Jones, RLS to write the legal descriptions including easements and to draft the surveys for parcels 211-10-010 and 211-10-003 with a strip of land twenty-five feet (25') wide adjacent to Schoolhouse Rd. that could be dedicated by separate instrument to the Town of Cave Creek as a part of the lot split approval process.

5. The Town indicated that they would handle the paperwork for the dedications of the twenty-five foot wide strips of land exacted from parcels 211-10-010 and 211-10-003.

6. The Town required the dedication of easements to approve the split of parcel 211-10-010, and that the survey be recorded (#2002-0256784) in order to permit driveways to the subject lots in March, 2002.

7. The Town required the dedication of an easement over the entirety of the twenty-five foot strip of land exacted from the split of parcel 211-10-010 as an easement in order to permit the sewer extension in July, 2002.

8. I designed and Arvel Jones, RLS surveyed the installation of the sewer extension including the Andorra Wash crossing on Schoolhouse Rd. to serve the buildable lots split from parcel 211-10-010.

9. Cave Creek required the dedication of lot 211-10-010D to be recorded in April, 2003 (#2003-0488178) for final approval of the sewer installed to serve the buildable lots split from parcel 211-10-010.

Further Affiant sayeth naught.

Ralph D. Nisenbaum, PE

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me this 17th day of September, 2013, by Ralph D. Nisenbaum, PE.

Notary Public
My Commission Expires: 09/12/2015

By:_____

Troy Tagaban
Notary Public
Maricopa County, Arizona
My Comm. Expires 09-12-15

http://www.cavecreek.org/Archive.aspx?ADID=246

MONDAY, APRIL 21, 2003

Ian Cordwell, Director of Planning, reported that this property was previously under a different ownership and first split into two parcels under the name of Cybernetics Group represented by Arek Fressadi. Council denied that split when it was determined that the owner actually had something to do with the property to the north of that. Since that time, Mr. Fressadi, together with Cybernetics, has sold the property to Keith Vertes. Mr. Vertes owns property south of this, east of School House Road, on which he is developing his own home. The request is to split a 1.46-acre parcel into three separate lots. The underlying zoning is R-18; minimum lot size required is 18,000 square feet. All three lots are at least 19,950 square feet. Minimum width in R-18 is 120 feet. Width proposed is 133 feet on all three lots. All three lots would be considered hillside in that they have slopes of 15% or more so the Zoning Code on them is hillside.

Town Code Section 153.01 Land Split: The Town Code provides the parameters for the Town Council to consider in making a decision on a lot split application. Town Code stipulates, "Council shall determine before granting such approval that:

1) The splitter division will not interfere with the orderly growth and harmonious development of the Town as defined in the Subdivision Code and Comprehensive Plan, including but not limited to provision for public dedication of rights-of way, for streets and alleys;

2) That there is provision for connections to necessary utilities;

3) That the new and residually created parcels meet the minimum frontage and area requirements in the Zoning Code."

1a) The land split meets the requirements of Cave Creek Zoning Ordinance adopted July 7, 1994 for properties located in the residential R-18 Zoning District.

2a) The applicant has submitted the required documentation providing verification of property ownership and a survey of the property by a registered land surveyor.

3a) The property has the required legal access and further, the applicant has agreed to dedicate the eastern 25 feet of the property to the Town of Cave Creek for right-of-way in the School House Road alignment.

Staff recommends approval of land split L-03-03 based on the condition that the land split would not be considered final and no lot may be sold separately until a copy of the survey has been recorded at the Maricopa County Recorders Office and a copy of the recorded plat has been submitted to the Town.

COUNCIL QUESTIONS

Mozilo asked if this had been verified to be a legal sale and transfer of property. **Cordwell** replied that as stated in the Staff Report, Staff had the necessary information providing the change of ownership and requires that it be recorded at the County Recorders Office. There was a quitclaim deed to Mr. Vertes and Staff does not determine how the property is paid for.

Meeth inquired if prior open improvement permits were on some of this land, were they still open?

Cordwell clarified for **Meeth** that there is a required sewer line by the Town Engineering Department to be placed on property to the north. This property has its own access and would be required to tie into sewer given that it is within 300 feet.

Mozilo asked about Town protections relating to Mr. Vertes' quit claim because much of this is improved and he would be able to quitclaim the property right back to Cybernetics.

Cordwell stated that the issue would be referred to the Department of Real Estate to investigate. Town reviews splits of three acres or three lots or less and if Mr. Vertes wants to do that, we could refer it to the Department of Real Estate.

Mozilo asked if that would invalidate the split or would the Town have to go through an adjudication to do that.

Farrell responded to **Mozilo** that in looking at the vicinity map, he would not understand why it was done. **Mozilo** stated that the original reason why it was turned down was because of a subdivision issue, something to do with adjacent property of the previous owner, stating that he could put 8 or 10 units on the property.

Farrell stated that it appeared that if it was a scheme to violate State Subdivision regulations, yes a Court could order, or the Commissioner could order, that a lot split be set aside. Generally speaking, for the land use decision, the land and benefits and burdens continue as the land is sold. In a normal course of sale without any intent to break any of the existing laws, each successive buyer would have the benefit of the lot splits.

Mr. Keith Vertes, applicant spoke to assure Council that he is building on this property.

COUNCIL QUESTIONS

Vertes responded to Mozilo that he is a builder.

PUBLIC COMMENTS None

COUNCIL COMMENTS

M/Mozilo, S/Lopez to approve the lot split (Case No. L-03-03) per Staff recommendations.

Stanfield stated that she had a lot of concerns that need research so she would prefer to continue this.

Meeth agreed with Stanfield and she also had questions. She stated that she needed answers. Council was uncomfortable with this split before and a transaction has been made with no money down. Meeth believes that this property was still being advertised and this item warrants further investigation

Mozilo asked for further information from Meeth before deciding if a continuation is needed. Meeth responded that she had an ad she thought was from "The Focus" for Black Mountain properties and it has been advertised for some time. She believes this property is part of the advertisement and also some of the wording seems odd to her.

Keith Vertes stated that he is not sure if Mr. Fressadi includes this lot in his marketing ads. He has no intention of selling through Fressadi. He stated that he would be happy to provide documentation on the sale of the property. It is a "no money down" transaction.

Vertes responded to Stanfield that he would close on this property June 1st and that he is the owner of this property because the former owner had quit claimed it to him. On June 1st, one of the lots would be clear by virtue of money exchange. After June 1st; the other two would technically still be tied up until money is exchanged for those lots. The purpose of this is to ensure that Mr. Vertes will actually get the lot split before he spends money to finish drawings, etc.

Flickinger stated that it was obvious that has done his research on this to make it work.

In light of the new information, Abujbarah requested that Staff research the issue and continue this item to May 19, 2003.

1-03-03

652-28

MINOR LAND DIVISION
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, T 6 N, R 4 E, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

BOOK 652 PAGE 28
OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER
HELEN PURCELL
2003-1312578

LEGAL DESCRIPTION OF PARENT PARCEL

THE SOUTH 150' OF THE FOLLOWING PARCEL.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'36"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'36"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°03'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

LEGAL DESCRIPTION OF PARCEL A (ROADWAY DEDICATION)

THE EAST 25' OF THE SOUTH 150' OF THE FOLLOWING PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
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LEGAL DESCRIPTION OF LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'36"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
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THENCE S00°03'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE EAST 25 AND EXCEPT THE WEST 266' OF THE SOUTH 150' THEREOF

TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER UNDER AND ACROSS THE NORTH 25' THEREOF.

BASIS OF BEARING N00°03'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT

NOTE
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE

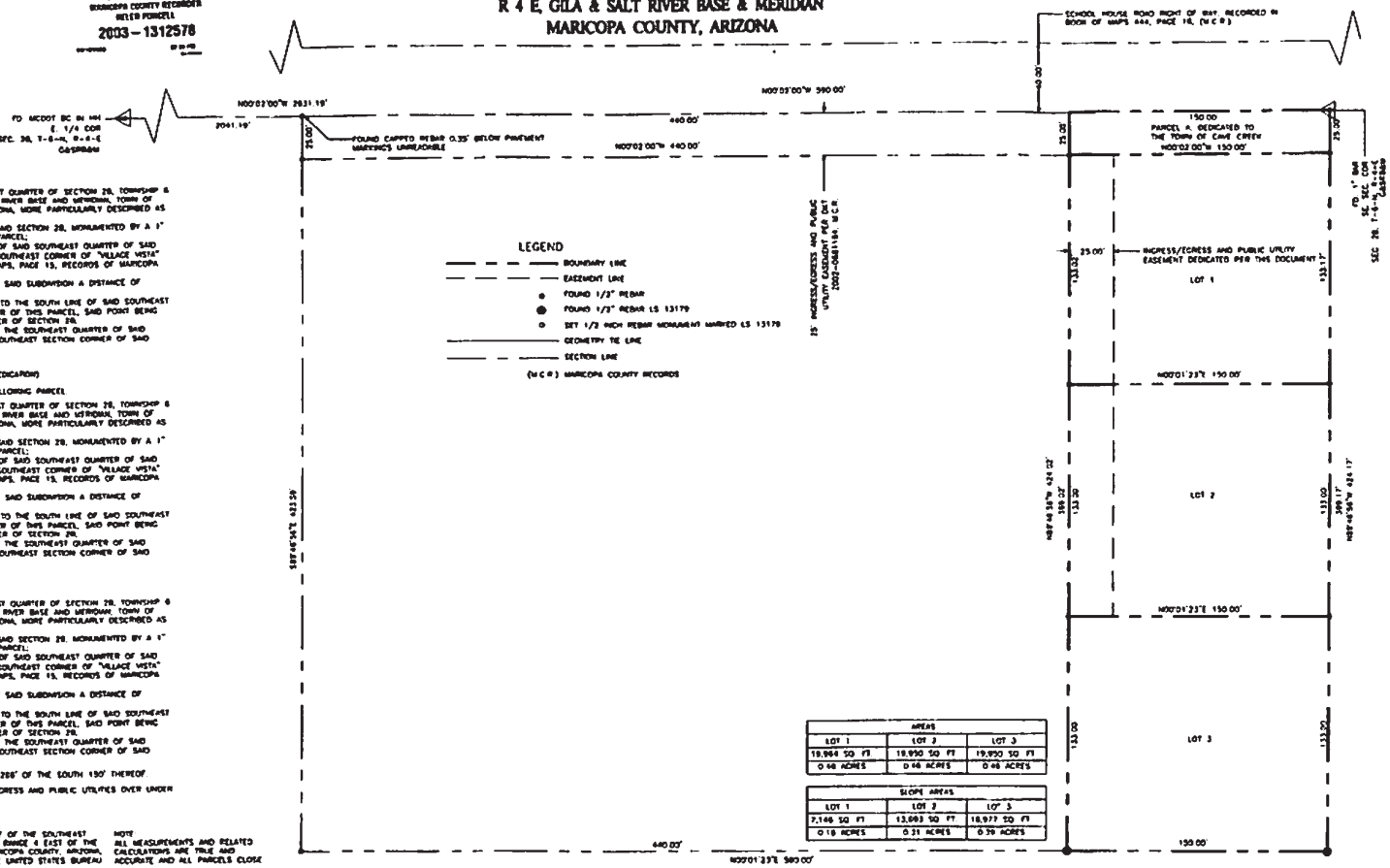
ROADWAY DEDICATION TO THE TOWN OF CAVE CREEK

THIS IS TO CERTIFY THAT PARCEL A SHOWN HEREON WAS DEDICATED TO THE TOWN OF CAVE CREEK ON THIS 16th DAY OF September OF 2003, BY THE OWNER BOTH VESTED WITH AGREEMENT OF THE INTERESTED PARTIES, REPRESENTING THE INSTITUTIONS HOLDING LIEN AGAINST THIS PROPERTY AND ACCEPTED BY THE AUTHORIZED REPRESENTATIVE OF THE TOWN OF CAVE CREEK, FINALLY BEING WITNESSED BY THE TOWN CLERK OF THE TOWN OF CAVE CREEK.

ATTESTED:

KEITH WERTES — DATE
DIRECTOR OF PLANNING — 9/18/03 DATE
TOWN CLERK, TOWN OF CAVE CREEK — 9/18/03 DATE

Mayor, Town of Cave Creek — 9/18/03 DATE



LEGAL DESCRIPTION OF LOT 2

THE EAST 133' OF THE WEST 266' OF THE SOUTH 150' OF THE FOLLOWING PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS

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TOGETHER WITH AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER UNDER AND ACROSS THE NORTH 25' THEREOF.

LEGAL DESCRIPTION OF LOT 3

THE WEST 133' OF THE SOUTH 150' OF THE FOLLOWING PARCEL.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS

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THENCE S00°03'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 18th DAY OF SEPTEMBER OF 2003.

ATTESTED:

DIRECTOR OF PLANNING — 9/18/03 DATE
Mayor, Town of Cave Creek — 9/18/03 DATE
TOWN CLERK, TOWN OF CAVE CREEK — 9/18/03 DATE

CIVIL ENGINEERING
LAND SURVEYING
CBR CONSULTANTS
APRIL B. JONES, R.L.S. PRINCIPAL
RALPH J. HERDMAN, P.E. PRINCIPAL
18021 N. 30TH STREET, #101
PHOENIX, ARIZONA 85032
PHONE: 602.332.6444
FAX: 602.867.2366

MINOR LAND DIVISION
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, T 6 N, R 4 E, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.216.4103
arek@fressadi.com

ARIZONA SUPREME COURT

AREK FRESSADI, Plaintiff – Appellant - Petitioner v. TOWN OF CAVE CREEK, Defendant - Appellee	CA-CV-13-0209-PR Court of Appeals, Div. One, No. 1 CA-CV-12-0238 Maricopa County Superior Court Case No. CV2009-050821 **AFFIDAVIT IN SUPPORT OF PETITION FOR REVIEW**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

RALPH D. NISENBAUM, PE being of full age and duly sworn upon his oath, hereby affirms as follows:

1. I am a Registered Civil Engineer in the State of Arizona. I make this Affidavit based on my personal knowledge of the facts stated herein.

2. I recently returned to Arizona having been a resident of Alaska for the last three years. Prior to residing in Alaska, I resided in Texas for one year.

3. Arvel R. Jones, RLS and I performed background research, office drafting, and field surveying to record the following documents in Maricopa County: #2002-0256784, #2003-0481222, and #2003-0488178 for parcel #211-10-010 and #2003-1312578 for parcel 211-10-003.

4. The Town of Cave Creek required Arvel R. Jones, RLS to write the legal descriptions including easements and to draft the surveys for parcels 211-10-010 and 211-10-003 with a strip of land twenty-five feet (25') wide adjacent to Schoolhouse Rd. that could be dedicated by separate instrument to the Town of Cave Creek as a part of the lot split approval process.

5. The Town indicated that they would handle the paperwork for the dedications of the twenty-five foot wide strips of land exacted from parcels 211-10-010 and 211-10-003.

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7. The Town required the dedication of an easement over the entirety of the twenty-five foot strip of land exacted from the split of parcel 211-10-010 as an easement in order to permit the sewer extension in July, 2002.

8. I designed and Arvel Jones, RLS surveyed the installation of the sewer extension including the Andorra Wash crossing on Schoolhouse Rd. to serve the buildable lots split from parcel 211-10-010.

9. Cave Creek required the dedication of lot 211-10-010D to be recorded in April, 2003 (#2003-0488178) for final approval of the sewer installed to serve the buildable lots split from parcel 211-10-010.

Further Affiant sayeth naught.

Ralph D. Nisenbaum, PE

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me this 17th day of September, 2013, by Ralph D. Nisenbaum, PE.

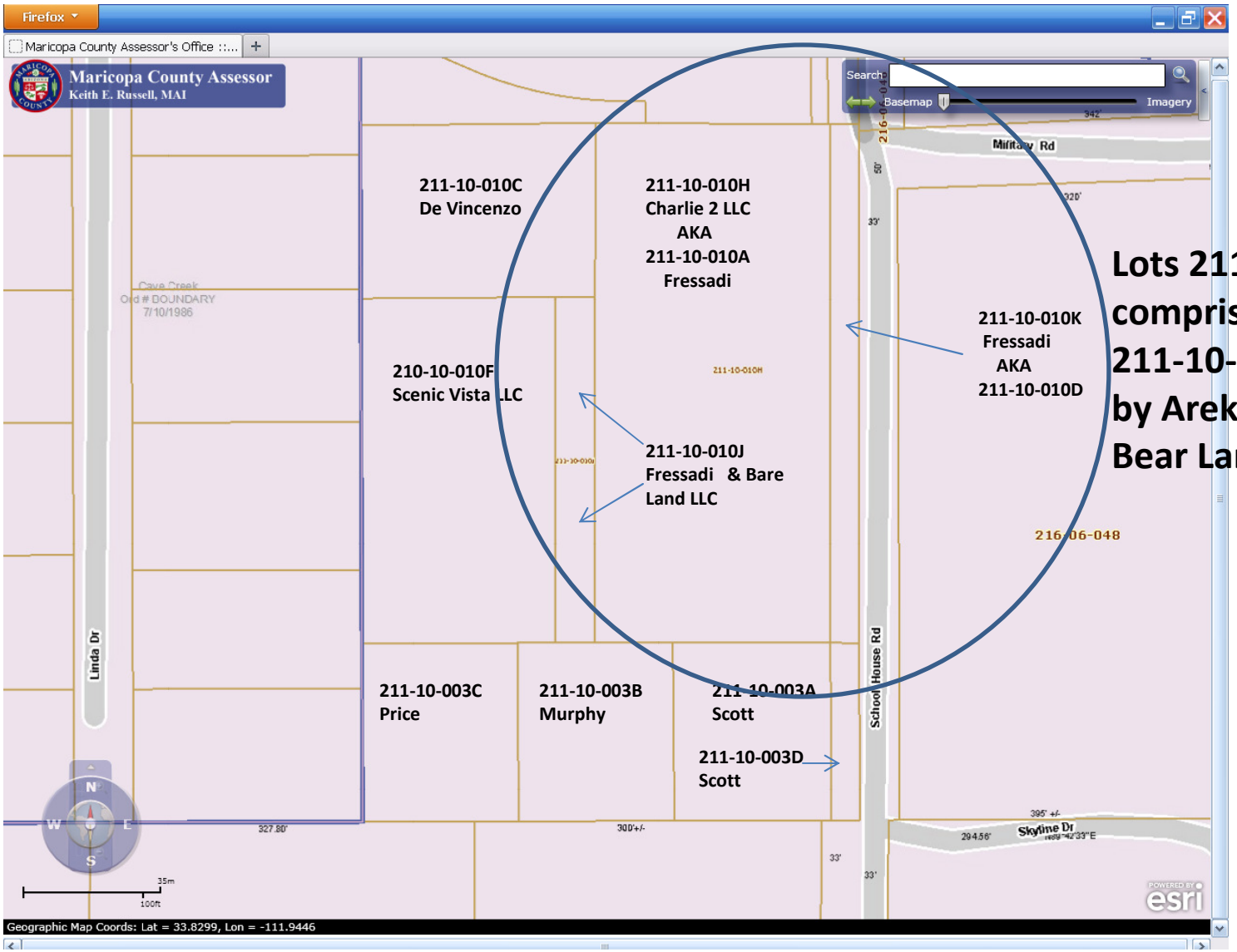
Notary Public
My Commission Expires: 09/12/2015

By:_____

Troy Tagaban
Notary Public
Maricopa County, Arizona
My Comm. Expires 09-12-15

APPENDIX I

2013 Quiet Title Issues



Lots 211-10-010H,J,K comprise the former 211-10-010G owned by Arek Fressadi & Bear Lande LLC

APPENDIX J

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.216.4103
arek@fressadi.com

ARIZONA SUPREME COURT

AREK FRESSADI, Plaintiff – Appellant - Petitioner v. TOWN OF CAVE CREEK, Defendant - Appellee	CA-CV-13-0209-PR Court of Appeals, Div. One, No. 1 CA-CV-12-0238 Maricopa County Superior Court Case No. CV2009-050821 **AFFIDAVIT IN SUPPORT OF PETITION FOR REVIEW**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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9. Cave Creek required the dedication of lot 211-10-010D to be recorded in April, 2003 (#2003-0488178) for final approval of the sewer installed to serve the buildable lots split from parcel 211-10-010.

Further Affiant sayeth naught.

Ralph D. Nisenbaum, PE

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me this 17th day of September, 2013, by Ralph D. Nisenbaum, PE.

Notary Public
My Commission Expires: 09/12/2015

By:_____

Troy Tagaban
Notary Public
Maricopa County, Arizona
My Comm. Expires 09-12-15

EXHIBIT 4

ON-SITE SEWER PLAN

GENERAL NOTES

1. All construction shall conform to the Maricopa Association of Governments (M.A.G.) Standard Details and Specifications from the outfall upslope to the end of the 8" line where there is a cleanout. Beyond that all additional construction shall conform to the latest addition of the Uniform Plumbing Code, unless modified in these plans or specifications.

2. It is the sole responsibility of the contractor to obtain at his own expense all permits required for this project from the appropriate agency.

3. The Town Engineer shall be notified 48 hours prior to the beginning of any construction. Call (480) 488-1400 to for notification.

4. Work performed without the approval of the Town Engineer and/or all work and materials not in conformance with the plans and specifications is subject to removal and replacement at the Contractor's expense.

5. The Contractor shall keep suitable equipment on hand at the job site for maintenance of dust control and shall conform with the Maricopa County Health Department, Bureau of Air Pollution Control, Regulation II, Rule 20-A-3. Water or other approved dust palliative in sufficient quantities shall be applied during all phases of construction involving open earthwork.

6. A thorough attempt has been made to show the locations of all underground obstructions and utility lines in the work area; however, the Contractor shall be responsible for any damage to obstructions and utility lines encountered during construction and shall determine the exact location of utility lines in advance of trenching. Neither the Engineer, nor the Town will guarantee any elevations or locations of existing underground utilities shown on these plans. Locations shown on the plans are approximate, and for general information purposes only.

7. The quantities shown are an estimate of the Engineer. The Contractor shall make his own independent estimate of quantities and notify the Engineer of any discrepancies and base his bid thereon.

8. The Contractor shall be responsible for coordinating the relocation of all utilities, power poles, power pole bracing, and traffic control signs that may be necessary.

9. The Contractor is required to contact Blue Stake two working days (48 hours) prior to commencement of construction.

10. Were there is a conflict between plans and specifications the most stringent will apply.

11. All trenching at depths greater than 4 feet must be shored for stability to meet OSHA requirements.

12. Prior to filling in the sewer line trench, the Town Engineer must inspect the sewer line and manhole connection(s).

13. Prior to final inspection, the Town Engineer must be present for testing of the sewer pipe.

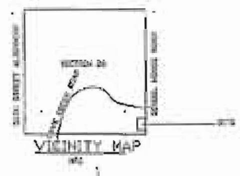
15. Two as-built (one mylar and one blue line) copies of the sewer line must be submitted and approved by the Town Engineer prior to final signoff on the construction of the sewer line.

ENGINEER'S NOTES

1. The Engineer will be held harmless for any errors in construction that may occur as a result of improper staking (unless performed by the Engineer), deviation from this plan or faulty construction.

2. If disputes arise, the Engineer is to be notified before construction stakes are moved and within 24 hours.

3. Any fill used shall be screened for organic materials and debris which shall be disposed of and not reintroduced into the fill.



VICINITY MAP

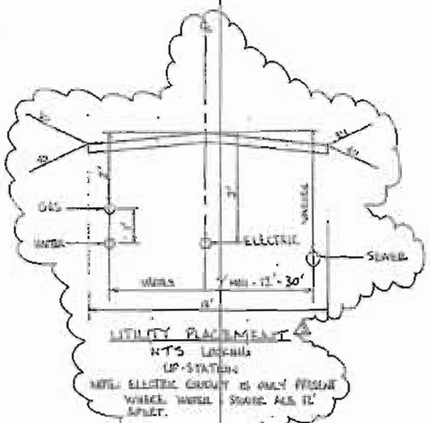
NTS

SURVEY CONTROL INFORMATION

BASIS OF BEARING: N00°02'00"W, THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, T-6-N, R-4-E, G&SRB&M MARICOPA COUNTY, ARIZONA

BASIS OF ELEVATION: 2211.48, 1" IRON BAR, SOUTHEAST SECTION CORNER, SECTION 28, T-6-N, R-4-E, G&SRB&M MARICOPA COUNTY, ARIZONA, ESTABLISHED BY PATRICK NEAL, R.L.S., ARIZONA LICENSE 14189

ELEVATION EQUATION 2211.48 - 262.75 = 1948.73

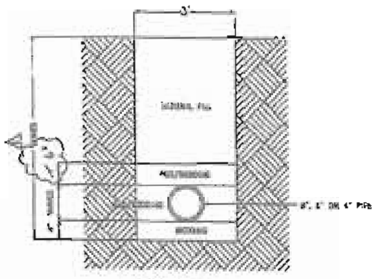


UTILITY PLACEMENT

NTS

NOTE: ELECTRIC CIRCUIT IS ONLY PRESENT WHERE WATER & SEWER ARE 12' APART.

CALL TWO WORKING DAYS BEFORE YOU DIG 263-1100 INSIDE MARICOPA COUNTY



SEWER TRENCH

NOTES:

1. BEDDING/ABC TO BE COMPACTED TO 90% AT OPTIMUM MOISTURE CONTENT (OMC).
2. NATURAL FILL TO BE SCREENED FOR ORGANICS AND IF PRESENT, REMOVED.

CONSTRUCTION NOTES:

(1) 8" DIAMETER SEWER PIPE LENGTH AS NOTED ON PLAN

(2) CONSTRUCT 4' DIA. M.H. PER M.A.G. STD. DET. 420 W/24" FRAME & COVER.

(3) 8" CLEANOUT INVERT AS SHOWN ON PLAN

(4) 4" CLEANOUT INVERT AS SHOWN ON PLAN

(5) 4" TO 8" WYE

(6) 4" HBC LOCATION AND INVERT AS NOTED ON PLAN

(7) EXISTING WATER SERVICE

(8) PROPOSED ELECTRICAL TRANSFORMER NOTE LOCATION THAT IS DIFFERENT THAN ELECTRICAL DESIGN

(9) 4" DIAMETER SEWER PIPE LENGTH AS NOTED ON PLAN

SPECIAL CONSTRUCTION NOTES:

1. FOR PIPE, CLEANOUTS AND SPECIAL FITTINGS, CALL DARREN VAN AT FULLERFORM CO. 602 268-5701 OR OTHER RESPONSIBLE PIPE SUPPLIER/FABRICATOR.

APPROVALS

TOWN OF CAVE CREEK REPRESENTATIVE DATE

T. S. Chill 032119 6/25/02

MARICOPA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES REPRESENTATIVE DATE

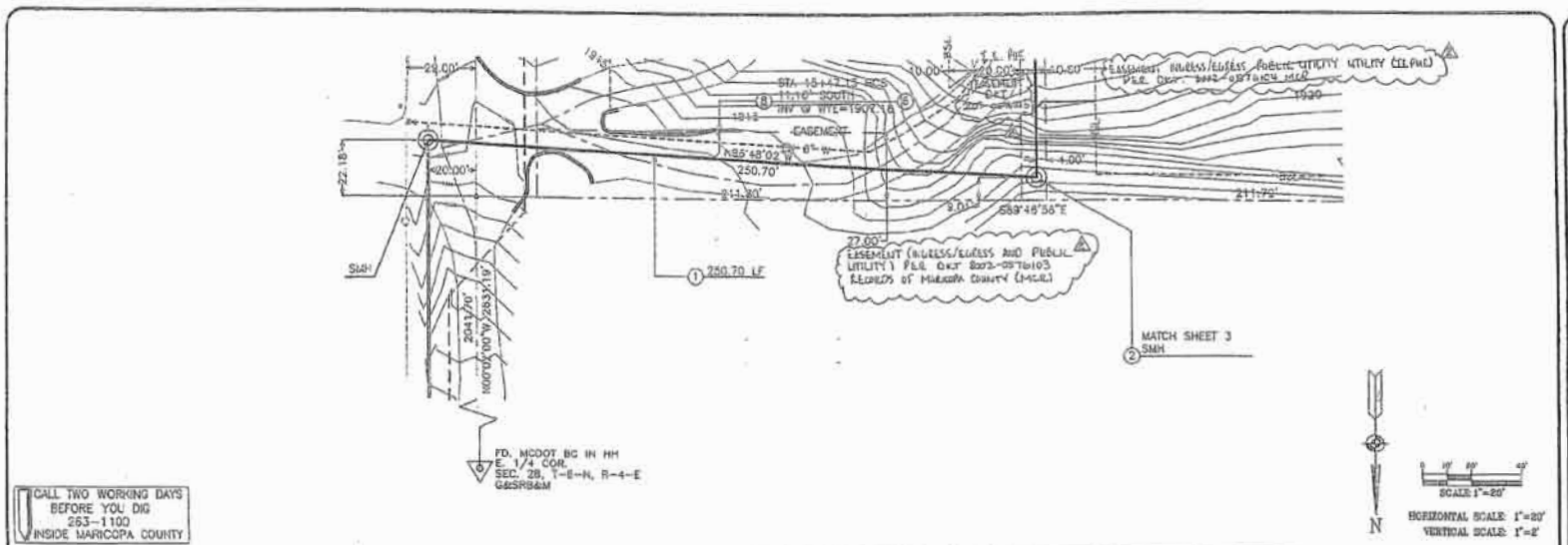
ON SITE SEWER PLAN

37934 N. SCHOOL HOUSE ROAD

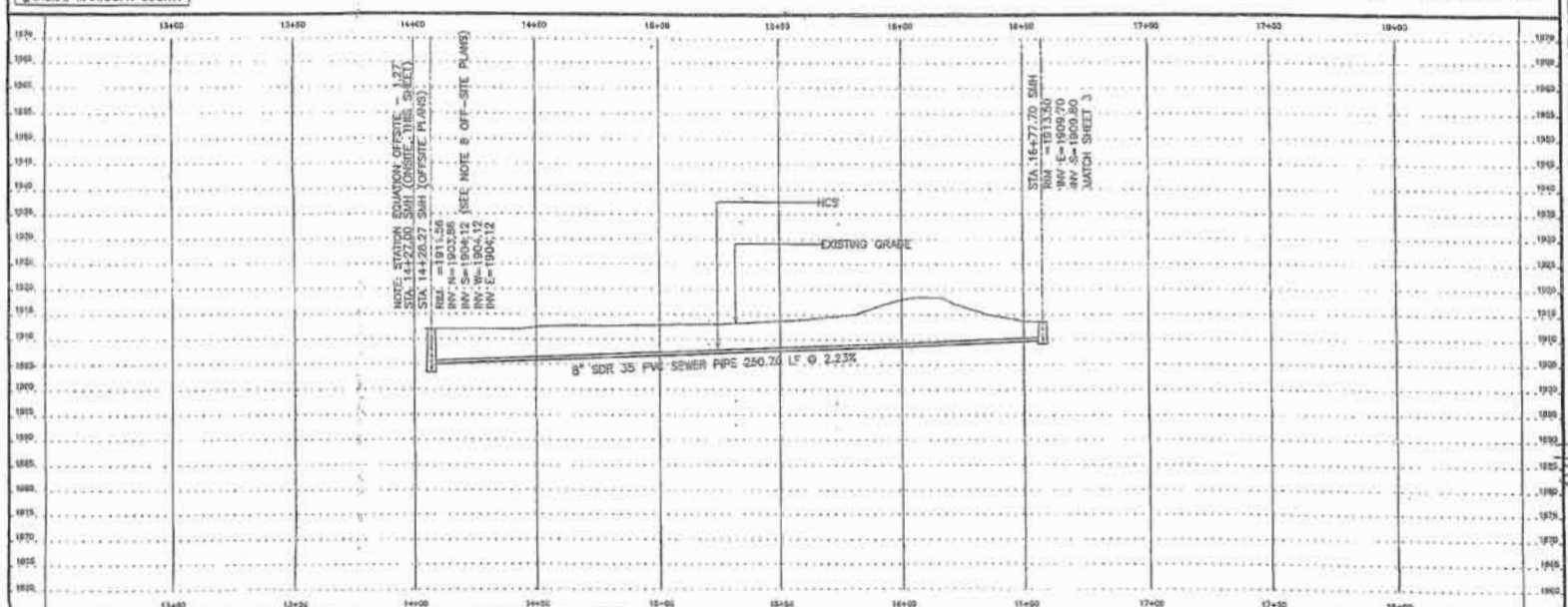
CAVE CREEK, ARIZONA 85331

SHEET No.

1 OF 3



CALL TWO WORKING DAYS BEFORE YOU DIG 263-1100 INSIDE MARICOPA COUNTY



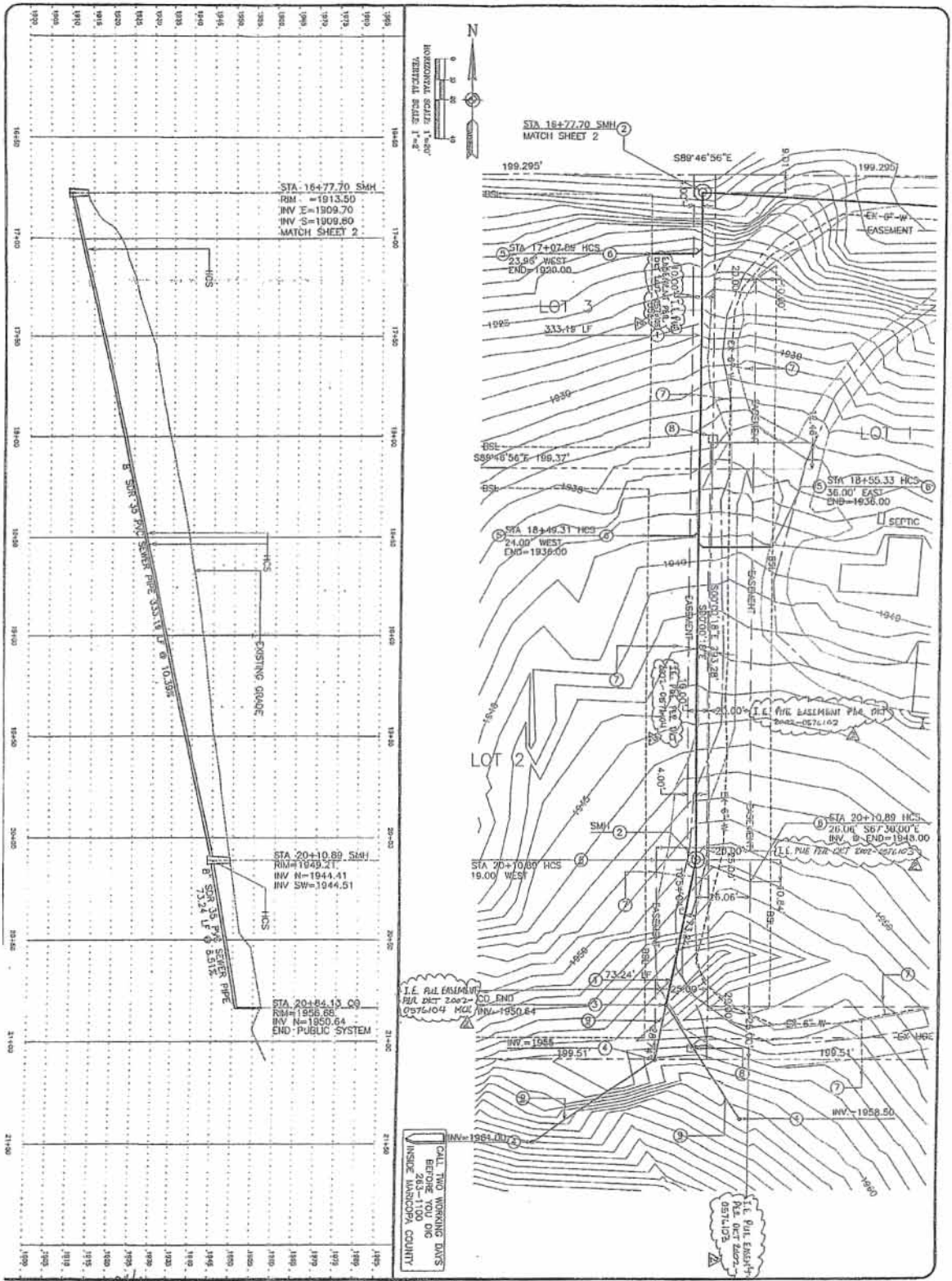
ON SITE SEWER PLAN

37934 N. SCHOOL HOUSE ROAD
CAVE CREEK, ARIZONA 85331

DATE	REVISION

CIVIL ENGINEERING
LAND SURVEYING

SHEET No.
2 OF 3



ON SITE SEWER PLAN

37934 N. SCHOOL HOUSE ROAD
CAVE CREEK, ARIZONA 85331

DATE	REVISION

SHEET No. 3 OF 3

CIVIL ENGINEERING LAND SURVEYING
CONSULTANTS
2010 S. MILL AVE. STE 110
TEMPE, ARIZONA 85282
PHONE (480) 831-7401
FAX (480) 557-7107

EXHIBIT 5

TOWN OF CAVE CREEK

[illegible] NORTH CAVE CREEK ROAD
CAVE CREEK, ARIZONA 85331
PHONE: (480) 488-1400 FAX: (480) 488-2263
INSPECTION REQUEST LINE: (480) 488-7092

SETTLED 1870 · INCORPORATED 1986

APPLICATION FOR PLAN REVIEW, BUILDING PERMIT & ZONING CLEARANCE

BUILDING PERMIT #: 02-256
D: 7/3/02
DATE ISSUED: 10/30/02
DATE COMPLETED: 4/24/2003
MCR NO.
ASSESSOR CODE: 99
BIN#: FILE
Res. ☑ Comm. ☐

APPLICANT INFORMATION

SITE ADDRESS: 37934 School House Rd
SUBDIVISION: LEGAL LOT NO.
ASSESSOR'S PARCEL NO.: 211-10-010 A,B,E
OWNER: AREK FRESSADI
PHONE: WORK (480) 437 9008 HOME (SAME
MAILING ADDRESS: PO BOX 4791
TOWN: CAVE CREEK STATE: AZ ZIP: 85327
CONTRACTOR: TO BE DETERMINED EARTH PRO
PHONE: WORK (866) 305 6654 CELL ( )
MAILING ADDRESS: 140 W OAK ST
TOWN: GLOBE STATE: AZ ZIP: 85501
CONTRACTOR LIC. #: 192472 STATE TAX ID #: 04-014621L
DESCRIBE PROJECT: ON-SITE SEWER LINE
PLAN NO.

DATE: 7/3/02 SIGNATURE: Arek Fressadi
PHONE: SAME PRINT NAME: AREK FRESSADI

PLANNING

ZONING DISTRICT: R-18	# OF D.U.:	# STORIES:	LOT DIST. %:

FRONT YARD	REAR YARD	SIDE YARD (1)	SIDE YARD (2)	FRONTAGE	BLDG. HEIGHT	LOT COVER %

REMARKS:

ZONING CLEARANCE APPROVED BY: [signature] DATE: 10/2/02 4/3/02

ENGINEERING / OTHER

SEWER REQUIRED: ☒ YES ☐ NO
WW NO.
ACCESS APPROVAL:
REMARKS:
APPROVED: DATE: 10/17/02

To keep your permit active and avoid unnecessary expiration, an inspection must be requested and approved every 180 days.

PROVISIONS. The applicant is advised that issuance of this permit will not relieve responsibility of the owner or owner's agents to comply with the provisions of all laws and ordinances, including federal, state and local jurisdictions, which regulate construction and performance of construction, or with any private deed restrictions or requirements of the applicable fire district.

I hereby certify that I am the owner or duly authorized owner's agent, that I have read this application and that all information is correct. I further certify that I have read, understand and will comply with all of the provisions outlined hereon. I also certify that the plot plan submitted is a complete and accurate plan showing any and all existing and proposed structures on the subject property.

SIGN HERE WHEN PERMIT ISSUED

Date: 10.30.02
Signature: [signature]
Print Name: AREK FRESSADI

CONDITIONS FOR APPROVAL AND PRIOR TO ISSUING PERMIT

DUST CONTROL RECEIVED DATE: ☐
HEALTH DEPARTMENT RECEIVED DATE: ☐
FIRE DEPARTMENT RECEIVED DATE: ☐

BUILDING DEPARTMENT

VALUATION: DETERMINED BY BUILDING OFFICIAL $ 50,000-

BLDG. AREA:	GARAGE AREA:	MISC. AREA:	TOTAL SQ. FT.: 963
CONSTR. TYPE: VB	OCCUPANCY: —	OCCUP. LOAD: —	# STORIES: 1

REMARKS: 8 LATERALS @ $15/

BUILDING OFFICIAL APPROVED: [signature] DATE: 10/21/02

JARED 480 437 9008

FEES

PERMIT FEE	$	101.50
PLAN CHECK FEE	$	
IMPACT FEE	$	
ENGINEERING FEE	$	225 675
INVESTIGATION FEE	$	
SEWER FEES	$	
OTHER FEE	$	
ZONING CLEARANCE FEE	$	50 150
TOTAL OF ALL FEES	$	1006.50
DEPOSIT PAID: # 5058 BUILDING 140	$	475 - (02-263) 140 -
ZONING CLEARANCE		
ENGINEERING		365 - (02-260)
BALANCE TO BE PAID:	$	
DATE PAID: 6/30/02 METHOD OF PAY: MST CASH		26.50

APPROVED DRAWING MUST BE ON SITE
ADDRESS MUST BE VISIBLY DISPLAYED

TOWN OF CAVE CREEK
BUILDING SAFETY DEPARTMENT

37622 NORTH CAVE CREEK ROAD
CAVE CREEK ARIZONA 85331
PHONE (480) 488-1400 FAX (480) 488-2263
INSPECTION REQUEST LINE (480) 488-7092
APPLICATION FOR PLAN REVIEW, BUILDING PERMIT & ZONING CLEARANCE

SETTLED 1870 · INCORPORATED 1986

RCVD LS 7/12/02

BUILDING PERMIT # 02-260	
DATE REC'D: 7/08/02	MCR NO.
DATE ISSUED: 10/30/02	ASSESSOR CODE 99 (DCC013)
DATE COMPLETED: 4/24/2003	
BIN # FILE	

APPLICANT INFORMATION

SITE ADDRESS: 37954 School House Rd.		
SUBDIVISION: 37914	LEGAL LOT NO.	
ASSESSOR'S PARCEL NO.: 211-10-010, B		
OWNER: AREK FRESSADI		
PHONE: WORK (480) 437-9008 HOME (SAME		
MAILING ADDRESS PO Box 4791		
TOWN CAVE CREEK	STATE AZ	ZIP 85327
CONTRACTOR: NOT YET DETERMINED EARTH PRO		
PHONE: WORK (928) 425 (6854)		
MAILING ADDRESS 1140 W OAK ST		
TOWN GLOBE	STATE AZ	ZIP 85501
CONTRACTOR LIC. # 172472	STATE TAX ID # 21-0148211	
DESCRIBE PROJECT: ON-SITE SEWER LINE	PLAN NO.	

DATE: 7-08-02 SIGNATURE: [signature]
PRINT NAME: GAIRED FRESSADI

PLANNING

ZONING DISTRICT:	# OF D.U.:	# STORIES:	LOT DIST. %:

FRONT YARD	REAR YARD	SIDE YARD (1)	SIDE YARD (2)	FRONTAGE	BLDG. HEIGHT	LOT COVER %

PRELIMINARY TO FLOOD CONTROL _____ DATE:
REMARKS:
ZONING CLEARANCE APPROVED BY: [signature] DATE: 10/21/02

ENGINEERING / OTHER

SEWER REQUIRED: ☐ YES ☐ NO
REMARKS:
APPROVED: [signature] DATE: 10/18/02

To keep your permit active and avoid unnecessary expiration, please call for an inspection at least every 180 days.

PROVISIONS: The applicant is advised that issuance of this permit will not relieve responsibility of the owner or owner's agents to comply with the provisions of all laws and ordinances, including federal, state and local jurisdictions, which regulate construction and performance of construction, or with any private deed restrictions or requirements of the applicable fire district. This permit becomes null and void if the construction work is not begun within 180 days from date of issue or if at any time prior to final inspection and approval the work is suspended or abandoned for a period of 180 days.

I hereby certify that I am the owner or duly authorized owner's agent, that I have read this application and that all information is correct. I further certify that I have read, understand and will comply with all of the provisions outlined hereon. I also certify that the plot plan submitted is a complete and accurate plan showing any and all existing and proposed structures on the subject property.

SIGN HERE WHEN PERMIT ISSUED

Date: 10-30-02 Signature: [signature]
Print Name: Arek Fressadi

CONDITIONS FOR APPROVAL AND PRIOR TO ISSUING PERMIT

FLOOD CONTROL RECEIVED DATE:	Jan 10/18/02
HEALTH DEPARTMENT RECEIVED DATE:	
FIRE DEPARTMENT RECEIVED DATE:	

FEES

BLDG. PERMIT FEE	$	0
PLAN CHECK FEE	$	
POOL / SPA FEE	$	
IMPACT FEE	$	
ENGINEERING FEE SEE	$	225
INVESTIGATION FEE 02-256		
SEWER FEES	$	
OTHER	$	
ZONING CLEARANCE FEE ✓	$	50
TOTAL OF ALL FEES	$	
DEPOSIT PAID BUILDING VISA 140	$	305-
ZONING CLEARANCE		
ENGINEERING 225		
BALANCE TO BE PAID:	$	
DATE PAID:		
METHOD OF PAY:	TRANX TO 02-256	

BUILDING DEPARTMENT

VALUATION: DETERMINED BY BUILDING OFFICIAL $ See 02-256

FLOOD CONTROL:	HEALTH DEPT.	FIRE ACCESS:	FIRE SPRINKLER:
BLDG. AREA:	GARAGE AREA:	MISC. AREA:	TOTAL SQ. FT.:
CONSTR. TYPE:	OCCUPANCY:	OCCUP. LOAD:	# STORIES:

REMARKS: Fees & values on 02-256

BUILDING OFFICIAL APPROVAL [signature] DATE: 10/21/02

APPROVED DRAWING MUST ON SITE
ADDRESS MUST BE VISIBLY DISPLAYED

TOWN OF CAVE CREEK

37622 NORTH CAVE CREEK ROAD
CAVE CREEK, ARIZONA 85331
PHONE: (480) 488-1400 FAX: (480) 488-2263
INSPECTION REQUEST LINE: (480) 488-7092

SETTLED 1870 · INCORPORATED 1986

APPLICATION FOR PLAN REVIEW, BUILDING PERMIT & ZONING CLEARANCE

BUILDING PERMIT #: 02-2103

DATE REC'D: 7/08/02	MCR NO. 2001-0017
DATE ISSUED: 10/30/02	ASSESSOR CODE: 9936
DATE COMPLETED: 4/24/2003	
BIN# FILE	Res. ☑ Comm. ☐

APPLICANT INFORMATION

SITE ADDRESS: 37954 37934 Schoolhouse Rd
SUBDIVISION: 211-10-010, C 6F | LEGAL LOT NO.
ASSESSOR'S PARCEL NO.: 211-10-010, C
OWNER: AREK FRESSADI
PHONE: WORK 480 437 9008 HOME (same
MAILING ADDRESS PO Box 4791
TOWN CAVE CREEK | STATE AZ | ZIP 85327
CONTRACTOR: NYD EARTH PRO
PHONE: WORK (860 335 6005 CELL ( )
MAILING ADDRESS 1140 W OAK ST
TOWN GLOBE | STATE AZ | ZIP 85501
CONTRACTOR LIC. # 172472 | STATE TAX ID # 04-0148211
DESCRIBE PROJECT: ON-SITE SEWER LINE | PLAN NO.

DATE: _____ SIGNATURE: _____
PHONE: _____ PRINT NAME: _____

BUILDING DEPARTMENT

VALUATION: DETERMINED BY BUILDING OFFICIAL $ See 02-256

BLDG. AREA:	GARAGE AREA:	MISC. AREA:	TOTAL SQ. FT.:
CONSTR. TYPE:	OCCUPANCY:	OCCUP. LOAD:	# STORIES:

REMARKS: FEES & VALUES ON 02-256

BUILDING OFFICIAL APPROVED: _____ DATE: 10/21/02

PLANNING

ZONING DISTRICT:	# OF D.U.:	# STORIES:	LOT DIST. %:

FRONT YARD	REAR YARD	SIDE YARD (1)	SIDE YARD (2)	FRONTAGE	BLDG. HEIGHT	LOT COVER %

REMARKS:

ZONING CLEARANCE APPROVED BY: _____ DATE: 10/21/02

ENGINEERING / OTHER

SEWER REQUIRED: ☒ YES ☐ NO
WW NO.
ACCESS APPROVAL:
REMARKS:

APPROVED _____ DATE: 10/18/02

To keep your permit active and avoid unnecessary expiration, an inspection must be requested and approved every 180 days.

PROVISIONS: The applicant is advised that issuance of this permit will not relieve responsibility of the owner or owner's agents to comply with the provisions of all laws and ordinances, including federal, state and local jurisdictions, which regulate construction and performance of construction, or with any private deed restrictions or requirements of the applicable fire district.

I hereby certify that I am the owner or duly authorized owner's agent, that I have read this application and that all information is correct. I further certify that I have read, understand and will comply with all of the provisions outlined hereon. I also certify that the plot plan submitted is a complete and accurate plan showing any and all existing and proposed structures on the subject property.

SIGN HERE WHEN PERMIT ISSUED

Date: 10-30-02
Signature: Arek Fressadi
Print Name: AREK FRESSADI

CONDITIONS FOR APPROVAL AND PRIOR TO ISSUING PERMIT

DUST CONTROL RECEIVED DATE: ☐
HEALTH DEPARTMENT RECEIVED DATE: ☐
FIRE DEPARTMENT RECEIVED DATE: ☐

FEES

PERMIT FEE	$	Ø
PLAN CHECK FEE	$	
IMPACT FEE	$	
ENGINEERING FEE SEE	$	225
INVESTIGATION FEE 02-256		
SEWER FEES	$	
OTHER FEE	$	
ZONING CLEARANCE FEE	$	50
TOTAL OF ALL FEES	$	
DEPOSIT PAID: 7/08/02	$	475-
BUILDING VIS		
ZONING CLEARANCE 250		
ENGINEERING 225		
BALANCE TO BE PAID:	$	
DATE PAID:		Thank TO 02-256
METHOD OF PAY:		

APPROVED DRAWING MUST BE ON SITE
ADDRESS MUST BE VISIBLY DISPLAYED

EXHIBIT 6

TOWN OF CAVE CREEK
PUBLIC WORKS DEPARTMENT
37622 North Cave Creek Road
Cave Creek, Arizona 85331
(480) 488-1400 (Office)
(480) 488-2263 (Fax)

SETTLED 1870 · INCORPORATED 1986

ROW Permit No. 2002-031

APPLICATION FOR PERMIT TO PERFORM WORK OR DISPLAY IN PUBLIC RIGHT OF WAY

JOB LOCATION	DATE ISSUED	EXPIRATION DATE
MILITARY & SCHOOLHOUSE RD	7/10/02	7/10/03
OWNER NAME	**ADDRESS**	**PHONE NO.**
AREK FRESSADI	PO BOX 4791 CAVE CREEK AZ 85327	480-437-900
CONTRACTOR and LICENSE NO.	**ADDRESS**	**PHONE NO.**
OWNER	SAME	SAME
Description of Work		
OFFSITE SEWER LINE INSTALL		

1. This permit is issued for the purpose described in the application and upon the express condition that every agreement and covenant in th application for this permit is faithfully performed. Work or construction shall be performed in accordance with approved plans and MAC Uniform Standards and Specifications for Public Works Construction adopted by the Town of Cave Creek and any special requirements, all o which are hereby made part of this permit.

2. This permit along with an approved set of plans shall be kept at the jobsite and be available upon request.

3. The Town shall be notified no later than 24 hours before beginning work so inspections can be made. Call (480) 488-1400.

4. Blue Stake Center, (602) 263-1100 shall be notified before digging.

5. Traffic control and barricading plan shall be submitted in accordance with MAG Specifications Section 107.7 and 401 Traffic Control and approved by the Town Engineer a minimum of 48 hours prior to any work in the traveled right-of-way.

6. During Construction of this project, the Developer/Contractor shall be required to perform daily clean up, dust control and maintenance of al adjacent (off-site) roadways used during the course of this construction pursuant to MAG Specifications Section 104.1.3.

7. For any permanent Pavement Replacement the Developer/Contractor shall match the existing thickness of asphalt, pavement, and install it over a minimum 12-inch thick concrete slurry, which shall be placed on backfill compacted to 95% density.

8. Proof of Insurance and or Bonding may be required based on the location and magnitude of the project.

FAILURE OF APPLICANT TO COMPLY WITH CONDITIONS SET FORTH WILL RESULT IN AN IMMEDIATE STOP WORK ORDER BEING ISSUED.

I agree to all conditions set forth on this permit and understand that the work must be done in conformity with applicable laws and specifications stated herein.

Arek Fressadi
Applicant (Print Name)

Signature

Phone

TOWN OF CAVE CREEK
04/30/2002 12:21pm
2002-221
FROM: HOST
625.00

Permit Application Fee ($300 plus $50 per affected lot frontage)	$	300
Plan Check Fee ($225 per page for each of the first and second submittals; third submittals $275 per page).	$	225
Inspection Fee (3% of project valuation or $100 minimum; re-inspection caused by changes in plans or inspection of specifications, e.g., failed compaction test, will be charged an additional fee at $75/hour, $75 minimum).	$	100
TOTAL	$	625.00

Approved by:

Jeff M. Law
TOWN ENGINEER

7/10/02
DATE

TCC00004

WHITE COPY – Permittee YELOW COPY – P & Z PINK COPY – Subdivision File CARD COPY – Public Works Department

EXHIBIT 7

ON-SITE SEWER PLAN

THIS SITE [illegible] DEVELOPED IN ACCORDANCE WITH THE APPROVED GRADING & DRAINAGE PLANS

GENERAL NOTES

1. All construction shall conform to the Maricopa Association of Governments (M.A.G.) Standard Details and Specifications from the outlet upstream to the end of the [illegible] where there is a cleanout. Beyond that all additional construction shall conform to the latest edition of the Uniform Plumbing Code, unless modified in these plans or specifications.

2. It is the sole responsibility of the contractor to obtain at his own expense all permits required for the project from the appropriate agency.

3. The Town Engineer shall be notified 48 hours prior to the beginning of any construction. Call (480) 488-1400 [illegible] for notification.

4. Work performed without the approval of the Town Engineer and/or all work and materials not in conformance with the plans and specifications is subject to removal and replacement at the Contractor's expense.

5. The Contractor shall keep suitable equipment on hand at the job site for maintenance of dust control and shall conform with the Maricopa County Health Department, Bureau of Air Pollution Control, Regulation II, Rule 20-A-2. Water or other approved dust palliative in sufficient quantities shall be applied during all phases of construction involving open earthwork.

6. A thorough attempt has been made to show the locations of all underground obstructions and utility lines in the work area, however, the Contractor shall be responsible for any damage to obstructions and utility lines encountered during construction and shall determine the exact location of utility lines in advance of trenching. Neither the Engineer nor the Town will guarantee any elevations or locations of existing underground utilities shown on these plans. Locations shown on the plans are approximate and for general information purposes only.

7. The quantities shown are an estimate of the Engineer. The Contractor shall make his own independent estimate of quantities and notify the Engineer of any discrepancies and base his bid thereon.

8. The Contractor shall be responsible for coordinating the relocation of all utilities, power poles, power pole bracing and traffic control signs that may be necessary.

9. The Contractor is required to contact Blue Stake two working days (48 hours) prior to commencement of construction.

10. Where there is a conflict between plans and specifications the most stringent will apply.

11. All trenching of depths greater than 4 feet must be shored for stability to meet OSHA requirements.

12. Prior to tying in the sewer line [illegible] the Town Engineer must inspect the sewer line and manhole connection(s).

13. Prior to final inspection the Town Engineer must be present for testing of the sewer pipe.

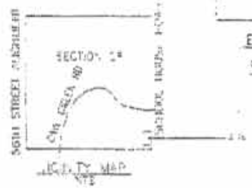
14. Two as-built (one mylar and one blue line) copies of the sewer line must be submitted and approved by the Town Engineer prior to final signoff on the construction of the sewer line.

ENGINEER'S NOTES

1. The Engineer will be held harmless for any errors in construction that may occur as a result of improper staking (unless performed by the Engineer) deviation from the plan or faulty construction.

2. If disputes arise the Engineer is to be notified before construction stakes are moved [illegible] 24 hours.

3. Any fill used shall be suitable [illegible] organic materials and debris which shall be disposed of and not reintroduced into the fill.



VICINITY MAP
NTS

APPROVED
TOWN OF CAVE CREEK ENGINEERING DEPARTMENT
TOWN ENGINEER
DATE: 10/11/02

SURVEY CONTROL INFORMATION

BASIS OF BEARING: NORTH 00°[illegible] THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, T-6-N, R-4-E, G&SRB&M, MARICOPA COUNTY, ARIZONA

BASIS OF ELEVATION: 2211.48 [illegible] IRON BAR SOUTHEAST SECTION CORNER SECTION 28, T-6-N, R-4-E, G&SRB&M, MARICOPA COUNTY, ARIZONA. ESTABLISHED BY PATRICK NEAL, R.L.S., ARIZONA LICENSE 14199

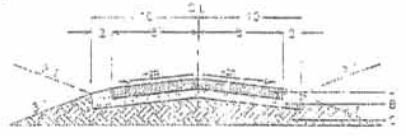
ELEVATION EQUATION: 2211.48 − 252.75 = 1958.73

CAVE CREEK SPECIAL NOTES

1. ALL EASEMENTS ARE SPECIFICALLY FOR INGRESS, EGRESS AND PUBLIC UTILITIES INCLUDING SEWER, ELECTRICITY, WATER AND GAS.

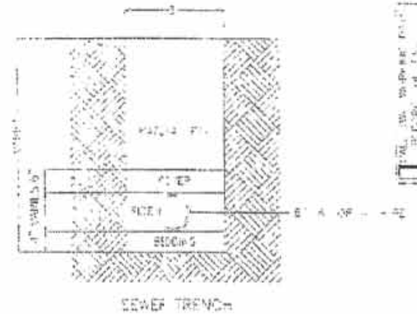
2. ABOVE GROUND OBSTRUCTIONS LOCATED LESS THAN 10' ON EITHER SIDE OF THE SEWER LINE ARE SUBJECT TO REMOVAL DURING REPAIR OR MAINTENANCE OPERATIONS. CARE SHALL BE CONSIDERED BY MAINTENANCE CREWS FOR VEGETATION.

3. AS-BUILTS WILL BE PROVIDED TO THE TOWN ENGINEER PRIOR TO FINAL INSPECTION.



PRIVATE ROADWAY CROSS-SECTION
NOT TO SCALE

NOTES
A. 3" RECYCLED ASPHALT (3/8" AGGREGATE) FOR SECTIONS WITH SLOPES GREATER THAN 10% OTHERWISE COBBLES SET IN MORTAR OR DECOMPOSED GRANITE OR COMPACTED ABC (95% AT OMC). USE CONCRETE HEADERS AT MATERIAL CHANGE LOCATIONS.
B. 4" AGGREGATE BASE COURSE COMPACTED TO 95% AT OMC.
C. UNDISTURBED SOIL OR COMPACTED FILL (TEST [illegible] 95% AT OMC).



SEWER TRENCH

NOTES:

1. BEDDING MATERIAL TO BE SAND OR ABC COMPACTED TO 90% AT OPTIMUM MOISTURE CONTENT (OMC)
2. SIDE AND COVER TO BE ABC COMPACTED TO 90% AT OMC OR 3/4" MINUS SCREENED NATURAL MATERIAL (SCREENED FOR 3/4" DIA. OR FINER SOIL)
3. NATURAL FILL TO BE SCREENED FOR ORGANIC MATTER AND IF PRESENT REMOVED

ASBUILT CERTIFICATION

I, [illegible], hereby certify that I am a registered land surveyor in the state of Arizona and that this map, consisting of 3 sheets, correctly represents an as-built survey done under my direction during the month of April, 2002.

1. 6" DIAMETER SEWER PIPE LENGTH AS NOTED ON PLAN
2. CONSTRUCT 4' DIA. M.H. PER M.A.G. STD. DET. 420 W/24" FRAME & COVER
3. 6" CLEANOUT INVERT AS SHOWN ON PLAN
4. 4" CLEANOUT INVERT AS SHOWN ON PLAN
5. 4" TO 6" WYE
6. 4" PSC LOCATION AND INVERT AS NOTED ON PLAN
7. EXISTING WATER SERVICE
8. PROPOSED ELECTRICAL TRANSFORMER (CTE) LOCATION, THAT IS DIFFERENT THAN ELECTRICAL DESIGN
9. 4" DIAMETER SEWER PIPE LENGTH AS NOTED ON PLAN
10. RELOCATE ELECTRIC WHERE CONFLICTING WITH SEWER BY APS

FINAL INSPECTIONS REQUIRED
- Building 480-488-7022
- Zoning 480-488-7002
- Eng Grading 480-488-7000
- Environmental Health 602-506-6666
- Road/Fire 480-627-6200
- Special Inspections
- As-Built Engr [illegible]

SPECIAL CONSTRUCTION NOTES

FOR PIPE CLEANOUTS AND SPECIAL FITTINGS CALL DARWIN VIKER AT FULLERFORM CO. 602 268-5791 OR OTHER RESPONSIBLE PIPE SUPPLIER/FABRICATOR

APPROVALS

TOWN OF CAVE CREEK REPRESENTATIVE — DATE

MARICOPA COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES REPRESENTATIVE — DATE

ON SITE SEWER PLAN
37934 N. SCHOOL HOUSE ROAD
CAVE CREEK, ARIZONA 85331

CBR CIVIL ENGINEERING LAND SURVEYING CONSULTANTS

SHEET No. [illegible] OF 3

CONSTRUCTION NOTES

1. 8" DIAMETER SEWER PIPE LENGTH AS NOTED ON PLAN
2. CONSTRUCT 4' DIA MH PER MAG STD DET 420 W/24" FRAME & COVER
3. 6" CLEANOUT ANVERT AS SHOWN ON PLAN
4. 4" CLEANOUT ANVERT AS SHOWN ON PLAN
5. 1' TO 8' LINE
6. 4" MSD LOCATOR AND ANVERT AS NOTED ON PLAN
7. EXISTING WATER SERVICE
8. PROPOSED ELECTRICAL TRANSFORMER NOTE LOCATION (NOT LESS THAN ELECTRICAL DESIGN)
9. 4" DIAMETER SEWER PIPE LENGTH AS NOTED ON PLAN
10. RELOCATE ELECTRIC METER CONFLICTING WITH SEWER BY OPS

NOTE: STATION ELEVATION OFFSITE 1.27'
STA 14+27.00 SMH (ONSITE, THIS SHEET)
STA 14+28.27 SMH (OFFSITE PLANS)
RIM ~~1911.56~~ 1912.44 AB
INV N=~~1903.85~~ 1905.91 AB
INV S=~~1904.12~~ 1905.18 AB (SEE NOTE ON OFF-SITE PLANS)
INV W=~~1904.12~~ 1905.18 AB
INV E=~~1904.12~~ 1905.47 AB

8" SDR 35 PVC SEWER PIPE @ 2.20% SLOPE

STA 16+77.70 SMH
RIM ~~1913.32~~ 1912.44 AB
INV E= 1909.70 1912.51 AB
INV S=1909.80 1912.65 AB
MATCH SHEET 3

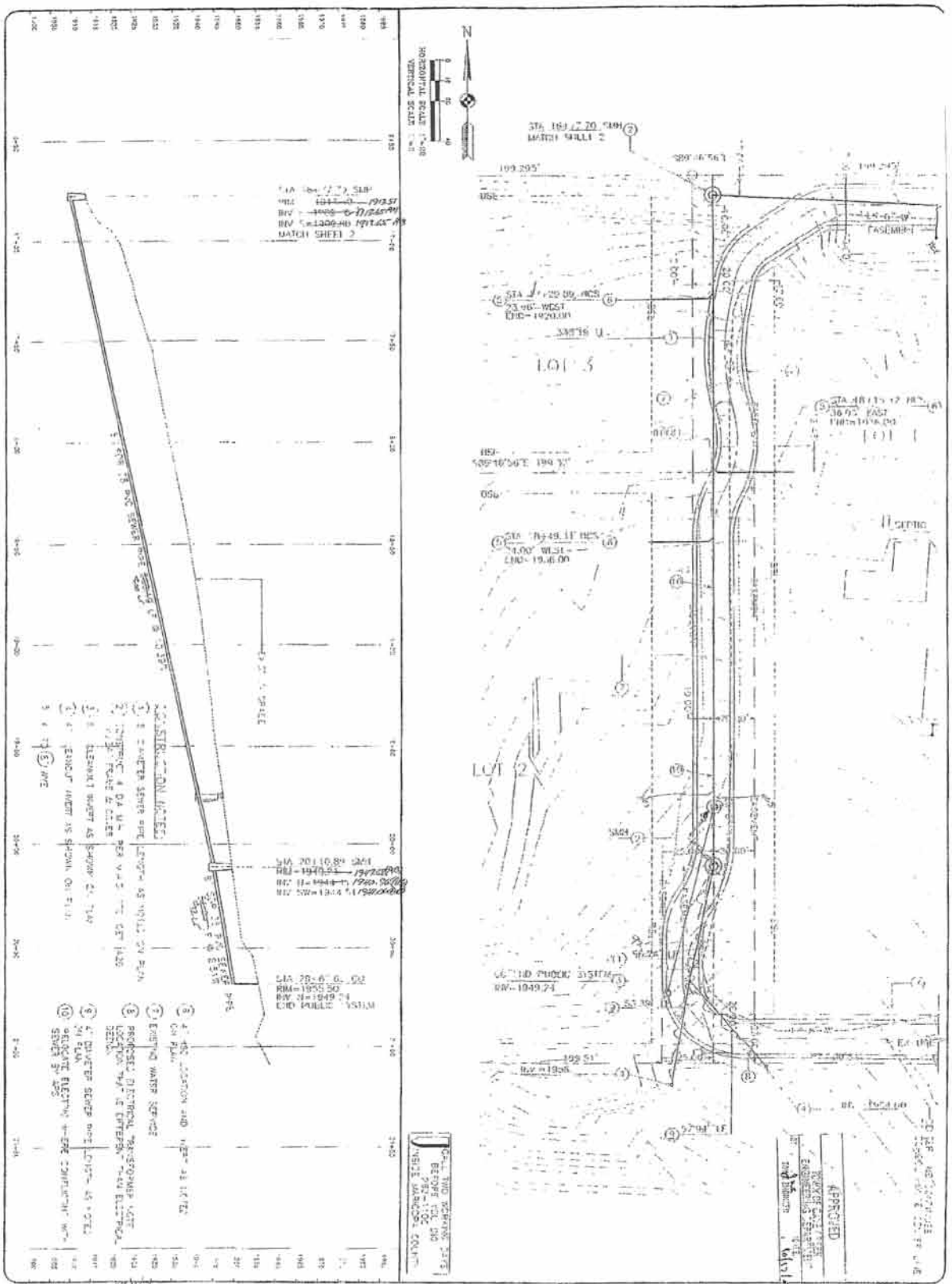
MATCH SHEET 1

APPROVED

ON SITE SEWER PLAN
37934 N. SCHOOL HOUSE ROAD
CAVE CREEK, ARIZONA 85331

DATE	REVISION

SHEET No 2 OF 3



ON SITE SEWER PLAN

37934 N. SCHOOL HOUSE ROAD
CAVE CREEK, ARIZONA 85331

SHEET NO. 2 OF 3

CIVIL ENGINEERING
LAND SURVEYING

DATE REVISION

EXHIBIT 8

TOWN OF CAVE CREEK
37622 North Cave Creek Road
Cave Creek, Arizona 85331
(480) 488-1400 (Office)
(480) 488-2263 (Fax)

SETTLED 1870 · INCORPORATED 1986

MEMORANDUM

PAGES 1

July 19, 2002

TO: Arek Fressadi

FROM: Jeff Low, Assistant Town Engineer
Town of Cave Creek
Phone (480) 488-1400
Fax (480) 488-2263

RE: 2nd Review - Building Permits 02-256, 02-260, and 02-263; 37934 School House Road; On-Site Sewer Line

Prior to the Engineering Department's approval of the building permit, the project engineer must resolve the following comments with a revised site plan:

1. The road design must detail the following:
   a. Under the private roadway cross-section change all notes to the specification outlined by the Geotechnical Engineer (Mr. Gregg Creaser).
   b. Fire Truck turnouts are required every 200 feet, 20-feet by 45 feet long unless a waiver is obtained from Rural Metro.

2. Show the roadway outline within the I.E. P.U.E. so the sewerline route can be seen in relation to the access road.

3. Provide copies of the I.E. P.U.E. documents for our review. These documents must detail a minimum of 20-feet for the P.U.E.

If you have any questions, please call Jeff Low.

APPENDIX K

When Recorded Mail To:
Arek Fressadi, Trustee
10780 S. Fullerton Rd.
Tucson, AZ 85736

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2012-0377104 05/03/12 04:13 PM
1 OF 1
FLORESC

REVOCATION OF EASEMENTS

Date: May 4, 2012

On December 31, 2001, Ian Cordwell, the Zoning Administrator and Director of Land Planning for the Town of Cave Creek approved the split of parcel #211-10-010 into three lots. MCRD # 2003-0481222. Cave Creek agreed to reimburse the property owner for repairing and replacing a substandard and defective sewer to serve the above lots. As a condition for issuing sewer permits in keeping with a Development Agreement for reimbursement, and for maintenance of the sewer, the Town required the legal descriptions of the lot split above to be corrected and exacted a fourth lot. MCRD #2002-0576103, MCRD #2002-0576104, MCRD #2002-0576105, and MCRD #2004-553551, transforming the original lot split as recorded in MCRD #2003-0481222 into MCRD # 2003-0488178.

On September 16, 2003, the Town of Cave Creek approved the split of parcel 211-10-003 into four lots, MCRD #2003-1312578. The Town required that the lots connect into the sewer. A covenant that runs with the lots was executed on October 16, 2003 to provide access and related utilities (sewer) to the lots. MCRD #2003-1472588.

The Covenant that runs with the lots was revoked. See MCRD #2010-0708186. The Court ruled in CV2006-014822 that the covenant does not exist. Although the rulings in this case are on Appeal in CV-11-0728, upon discovery as memorialized by this Notice, and pursuant to the recorded notices above, Arek Fressadi as Trustee hereby revokes the lot splits and easements to parcel #211-10-010 as described in MCRD #2002-0576103, MCRD #2002-0576104, MCRD #2002-0576105, and MCRD #2004-553551, and MCRD #2003-1472588.

By: _____
Arek Fressadi, Trustee

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 30th day of APRIL 2012, before me, a notary public for said state, personally appeared Arek Fressadi, know or identified to me as the person who executed this instrument.

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

MIGUEL ROMERO
Notary Public - Arizona
Pima County
My Comm. Expires Oct 4, 2015

_____
Notary Public for Arizona
Residing at: Tucson Az
My commission expires: Oct 04 2015

APPENDIX L

Arizona Acts

Chapter 1 of the 4th Special Session 2000

9-500.12. Appeals of municipal actions; dedication or exaction; excessive reduction in property value; burden of proof; attorney fees A. Notwithstanding any other provision of this chapter, ~~if a property owner requests and an administrative agency or official of a city or town makes a final determination that grants an approval for the use, improvement or development of real property subject to the requirement of a dedication or exaction as a condition of granting the approval, the property owner may appeal the required dedication or exaction to a hearing officer designated by the city or town.~~ A PROPERTY OWNER MAY APPEAL THE FOLLOWING ACTIONS RELATING TO THE OWNER'S PROPERTY BY A CITY OR TOWN, OR AN ADMINISTRATIVE AGENCY OR OFFICIAL OF A CITY OR TOWN, IN THE MANNER PRESCRIBED BY THIS SECTION: 1. THE REQUIREMENT BY A CITY OR TOWN OF A DEDICATION OR EXACTION AS A CONDITION OF GRANTING APPROVAL FOR THE USE, IMPROVEMENT OR DEVELOPMENT OF REAL PROPERTY. THIS SECTION DOES NOT APPLY TO A DEDICATION OR EXACTION REQUIRED IN A LEGISLATIVE ACT BY THE GOVERNING BODY OF A CITY OR TOWN THAT DOES NOT GIVE DISCRETION TO THE ADMINISTRATIVE AGENCY OR OFFICIAL TO DETERMINE THE NATURE OR EXTENT OF THE DEDICATION OR EXACTION. 2. THE ADOPTION OR AMENDMENT OF A ZONING REGULATION BY A CITY OR TOWN THAT CREATES A TAKING OF PROPERTY IN VIOLATION OF SECTION 9-500.13. B. The city or town shall notify the property owner that the property owner has the right to appeal the ~~dedication or exaction~~ CITY'S OR TOWN'S ACTION pursuant to this section and shall provide a description of the appeal procedure. The city or town shall not request the property owner to waive the right of appeal or trial de novo at any time during the consideration of the property owner's request. ~~B. This section does not apply to a dedication or exaction required in a legislative act of a city or town council that does not give discretion to an administrative agency or official to determine the nature or extent of the dedication or exaction.~~ C. The appeal shall be in writing and filed with or mailed to ~~the~~ A hearing officer ~~as~~ designated by the city or town within thirty days after the final ~~determination is made~~ ACTION IS TAKEN. THE MUNICIPALITY SHALL SUBMIT A TAKINGS IMPACT REPORT TO THE HEARING OFFICER. No fee shall be charged for filing the appeal. D. After receipt of an appeal, the hearing officer shall schedule a time for the appeal to be heard not later than thirty days after receipt. The property owner shall be given at least ten days' notice of the time when the appeal will be heard unless the property owner agrees to a shorter time period. E. In all proceedings under this section ~~the agency or official of~~ the city or town has the burden to establish that there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, ~~or~~ exaction OR ZONING REGULATION is roughly proportional to the impact of the proposed use, improvement or development OR, IN THE CASE OF A ZONING REGULATION, THAT THE ZONING REGULATION DOES NOT CREATE A TAKING OF PROPERTY IN VIOLATION OF SECTION 9-500.13. If more than a single parcel is involved this requirement applies to the entire property ~~that is subject to the approval~~. F. The hearing officer shall decide the appeal within five working days after the appeal is heard. If ~~the agency of~~ the city or town does not meet its burden under subsection E OF THIS SECTION, the hearing officer shall: 1. Modify or delete the requirement of the dedication or exaction APPEALED UNDER SUBSECTION A, PARAGRAPH 1 OF THIS SECTION. 2. IN THE CASE OF A ZONING REGULATION APPEALED UNDER SUBSECTION A, PARAGRAPH 2 OF THIS SECTION, THE HEARING OFFICER SHALL TRANSMIT A RECOMMENDATION TO THE GOVERNING BODY OF THE CITY OR TOWN. G. If the hearing officer modifies or affirms the requirement of the dedication, ~~or~~ exaction OR ZONING REGULATION, a property owner aggrieved by a decision of the hearing officer may file, at any time within thirty days after the hearing officer has rendered a decision, a complaint for a trial de novo in the superior court on the facts and the law regarding the issues of the condition or requirement of the dedication, ~~or~~ exaction OR ZONING REGULATION. In accordance with the standards for granting preliminary injunctions, the court may exercise any legal or equitable interim remedies that will permit the property owner to proceed with the use, enjoyment and development of the real property ~~subject to the dedication or exaction~~ but that will not render moot any decision upholding the dedication, ~~or~~ exaction OR ZONING REGULATION. H. All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters, and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party. The court may further award damages that are deemed appropriate to compensate the property owner for direct and actual delay damages on a finding that the city or town acted in bad faith ~~in requiring the dedication or exaction~~.