Docket No. 15-15566

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AREK R. FRESSADI, ET AL.,

Plaintiffs - Appellants,

vs.

ARIZONA MUNICIPAL RISK RETENTION POOL ("AMRRP"), ET AL.,

Defendants - Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA
DISTRICT COURT NO. CV-14-01231-PHX-DJH
THE HONORABLE DIANE J. HUMETEWA, DISTRICT JUDGE

PLAINTIFFS-APPELLANTS' MOTION TO RECALL & STAY MANDATE

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Pursuant to FRAP 41(d)(2), Plaintiffs-Appellants Arek R. Fressadi and Fressadi Does I-III ("Appellant"/collectively "Appellants") request this court to recall and stay its mandate made on May 17, 2018, until final resolution by the U.S. Supreme Court. Appellants' Petition for a Writ of Certiorari is due October 12, 2018 (originally August 15, 2018). *See* granted extension (DktEntry 143) of DktEntry 142.

The Panel did not consider Cave Creek's *continuing* criminal violations, a series of predicate acts within alleged limitations periods, that toll or bar the Statutes of Limitations ("SOL"). Arizona's Town of Cave Creek defied burden-shifting / heightened scrutiny requirements per *Nollan*, *Dolan*, and *Mullane*.[1] The Panel ignored pre-requisite Mandamus and Quiet Title[2] for equal protection as subject properties remain illegal, caused by Cave Creek's criminal conduct. The Panel ignored Relations Back Doctrine in the ongoing 2006 state court case from which this case arises; Supplemental Jurisdiction was a pre-requisite to determine ripeness per *Williamson*[3] to require remand. *Pro se* Appellants' complaint was removed from lower state court by Defendant BMO and easily amendable to federal pleading standards. Amendment is now required to incorporate new evidence not available until 2 days before the Panel's decision—the subject contract Cave Creek relied on to issue permits was declared void *ab initio* to affect all claims. Further, there is split-circuit decision[4] made 3 days prior to this Circuit's decision to wholly affect this case, requiring U.S. Supreme Court review.

BACKGROUND

After discovering a fraudulent scheme in 2012/2013 committed by Appellees

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[1] *Nollan v. California Coastal Comm'n*, 483 US 825 (1987); *Dolan v. City of Tigard*, 512 US 374 (1994); *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950).
[2] No SOL per *Cook v. Town of Pinetop-Lakeside*, 303 P.3d 67 (Ariz.Ct.App. 2013).
[3] *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 US 172 (1985).
[4] *M.A.K. Investment Group, LLC v. City of Glendale*, No. 16-1492 (10th Cir. 2018).

regarding Appellants' property Parcel 211-10-010 ("010") and adjacent property Parcel 211-10-003 ("003"), Appellants filed their 2014 state court Complaint (Doc. 1-1) for Special Action and Quiet Title (*Id.*, Claims 1 & 9) to pursue §1983 claims (*Id.*, Claim 3) and Arizona RICO (*Id.*, Claim 4). The Complaint alleges that Cave Creek's ***continuous*** defiance of federal law as codified in Arizona Revised Statutes ("A.R.S.") §§ 9-500.12 & 9-500.13 was the lynchpin of predicate acts that involve continuous criminal violations of state zoning and subdivision law and town ordinances (Opening Brief "OB" DktEntry 40 at 68-212, Reply Brief DktEntry 103-1 at 68-141). A.R.S. §§ 9-500.12 and 9-500.13 (OB at 162-164) require municipalities to provide *Mullane* notice of rights and requirements with instructions, administrative hearing, takings report, and burden-shifting on municipalities to establish the nexus and rough proportionality for just compensation per *Nollan*, *Dolan*, *Lucas*[5], and *First English*[6]—*prior to* making exactions or dedications. By failing to abide by these requirements, Cave Creek exacted a strip of land from 010 that became a 4th lot to convert Appellants' 3-lot split into a non-conforming subdivision in April 2003 (Doc. 49-2 at 4). Maricopa County recorded the 010 "metes and bounds" survey in 2003 and assessed the property as saleable lots in violation of A.R.S. §§ 9-463.02 & 9-463.03 as there is no "final plat" (OB at 150-151). Cave Creek issued void permits based on a "legal lot split" and the Declaration of Easement and Maintenance Agreement ("DEMA" Doc.49-4 at 54-58/**Exhibit A**) that was declared void *ab initio* on May 15, 2018 (**Exhibit B**), just before the Panel's Decision.

District Court was confused. It claimed Appellants "should have known" their property was an illegal subdivision by 2009. However, there is no determination in any

[5] *Lucas v. South Carolina Coastal Council*, 505 US 1003 (1992).
[6] *First Lutheran Church v. Los Angeles County*, 482 US 304 (1987).

forum adjudicating Cave Creek caused an illegal subdivision. Nor is there any evidence in 2002[7], when Fressadi Does applied for a lot split of 003, that parcel 010 was already an illegal subdivision. Neither Arizona, Maricopa County, Cave Creek, nor its surety AMRRP can come into any court to enforce Cave Creek's illegal contracts and conduct.

Cave Creek lied to the court, claiming it complied with A.R.S. §§ 9-500.12 and 9-500.13, but provided no evidence that it implemented *Nollan*/*Dolan* requirements (Doc. 56-1 at 9). On August 29, 2016, Cave Creek provided evidence and *admitted* to violating A.R.S. §§ 9-500.12 and 9-500.13 as an Official Policy since September 2001 to affect Appellants' property and hundreds of others (DktEntry 56).

Cave Creek's Zoning Ordinance ("ZO") incorporates the Continuous Violation Doctrine at §1.7 (OB at 204); each day of Cave Creek's and its Zoning Administrator's violations of the ZO is a separate continuing offense, a Class One Misdemeanor. Per ZO §2.3 (**Exhibit C**) and A.R.S.§9-462.05 (OB at 143), the Zoning Administrator and legislative body (*i.e*. Town Council) must enforce the zoning ordinance and prevent or correct the violations. Cave Creek's ZO incorporates state law (*i.e*. OB at 202 §1.3(B)).

Arizona's state law and Constitution incorporates the Supremacy Clause and U.S. Constitution (*i.e*. OB at 107-108, AZ Const. Art.2 §§3&4; OB at 89).

LEGAL STANDARD

Stay and recall of mandate is a well-established remedy applied for good cause

[7] In December 2001, in defiance of A.R.S.§§9-500.12 & 9-500.13, Cave Creek required the omission of a 25-foot strip of land from 010's 3-lot split survey (Maricopa County Recorded Document "MCRD" 2002-0256784, DktEntry 33 at 14-15) and, in 2003, required a new survey to be recorded containing a material misstatement in violation of A.R.S. §33-420 that the 25-foot strip of land be called "Parcel A" and was "conveyed" to Cave Creek (MCRD 2003-0488178, DktEntry 33 at 49-50). Maricopa County assessed "Parcel A" as 4th lot 211-10-010D, which Appellants retain undisturbed possession.

and to prevent injustice. See *Zipfel v. Halliburton Co*., 861 F.2d 565 (9th Cir. 1988):

> The authority of a Court of Appeals to recall its mandate is clear. *Aerojet-General Corp. v. American Arbitration Association,* 478 F.2d 248, 254 (9th Cir.1973). While the authority is not conferred by statute, *id.*, it exists as part of the court's power to protect the integrity of its own processes. *Perkins v. Standard Oil,* 487 F.2d 672, 674 (9th Cir.1973), citing *Briggs v. Pennsylvania R.R. Co.*, 334 U.S. 304, 306, 68 S.Ct. 1039, 1040, 92 L.Ed. 1403 (1948); *Samson Tire & Rubber Corp. v. Rogan,* 140 F.2d 457 (9th Cir.1943); *Huntley v. Southern Oregon Sales, Inc.*, 104 F.2d 153, 155 (9th Cir.1939); *accord*, *Petersen v. Klos,* 433 F.2d 911, 912 (5th Cir.1970). The authority may be exercised for "good cause" or to "prevent injustice." *Aerojet-General* at 254; *Verrilli v. City of Concord*, 557 F.2d 664, 665 (9th Cir.1977).

See also *US v. BOARD OF DIRECTORS OF TRUCKEE-CARSON IRR.*, 723 F. 3d 1029, (9th Cir. 2013), citing *Graham v. Balcor Co.*, 241 F.3d 1246, 1248 (9th Cir.2001) (per curiam) (holding that clarification of previous mandate is appropriate when there is "good cause" and to "prevent injustice"). Stay of the mandate under FRAP 41(b) "would have to be justified upon the same grounds as would justify a recall of mandate." *Adamson v. Lewis*, 955 F.2d 614, 620-21 (9th Cir. 1992).

The Court's mandate must be recalled and stayed for the following reasons:

DISCUSSION

1. District Court lacked jurisdiction per *Williamson*; Void Judgments.

Per *Williamson*, federal jurisdiction is not ripe to address due process claims until state administrative remedies are exhausted (finality); and federal jurisdiction is not ripe to consider takings claims until finality of due process AND just compensation denied. Here, due process has not begun and there has been no denial of Appellants' takings claims[8] by an administrative agency or a state forum. Arizona Court of Appeals

[8] Appellant's complaint argued a wipeout of investment-backed expectations per *Lucas*, a *First English* temporary takings, an invasion takings per *Loretto v. Teleprompter Manhattan CATV Corp*., 458 US 419 (1982), a failure to pay for

holds that damages claims arising from zoning decisions as in this case do not ripen, and SOL does not accrue, until the plaintiff exhausts administrative remedies, but that declaratory judgment claims may be brought before damages claims ripen, and SOL does not run until administrative remedies have been exhausted. *Canyon del Rio Investors, LLC v. City of Flagstaff*, 258 P.3d 154—Ariz:Court of Appeals,1st Div.,Dept.E (2011). As such, the Pullman Abstention[9] may apply. Because Cave Creek did not comply with the pre-requisite administrative due process per A.R.S. § 9-500.12 and 9-500.13, and they have not responded to Appellants' letter insisting compliance and correction of violations (**Exhibit D**/Petitions DktEntry 138 Appx.C at 38-43), there has yet to be an administrative procedure. By failing to address Special Action and Quiet Title before considering federal claims, District Court acted without jurisdiction.

Appellants' Complaint was crafted to address declaratory relief[10] and Arizona Quiet Title issues in order for their §1983 claims to ripen per *Williamson*. Finality of Appellants' §1983 claims is dependant upon Arizona Quiet Title, which has no SOL because "a cause of action to quiet title for the removal of the cloud on title is a **CONTINUOUS** one and **NEVER barred by limitations** while the cloud exists."

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infrastructure per *Armstong v. United States*, 364 US 40 (1960), and a failure to establish nexus and rough proportionality for easements per *Nollan*/*Dolan*.

[9] The Pullman abstention under *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941) is appropriate when there is substantial uncertainty over the meaning of the state law at issue and clarification from the state court could obviate the need for a federal constitutional ruling. See *Ford Motor Co. v. Meredith Motor Co*., 257 F.3d 67, 71 (1st Cir.2001). For example, the state constitution appears to require compensation to owners of property injured by inverse condemnation "even though no specific statutory procedure governs this recovery." *Calmat of Ariz. v. State ex rel. Miller*, 176 Ariz. 190, 192, 859 P.2d 1323, 1325 (1993).

[10] A.R.S. § 12-821.01(G) provides for Special Action prior to addressing other claims (OB at 170).

Cook v. Town of Pinetop-Lakeside, 303 P.3d 67, 70 (Ariz.Ct.App.2013) (quoting *City of Tucson v. Morgan,* 475 P.2d 285, 287 (Ariz.Ct.App.1970)) [emphasis added]. ***SEE* Complaint**, **Claim 9: Quiet Title** (Doc. 1-1 at 29-33).

Appellants still have undisturbed possession of the sliver of land that Cave Creek exacted to convert their lot split into an illegal subdivision. There is no finality because government cannot be estopped "from correcting a mistake of law." *Thomas & King, Inc. v. City of Phoenix*, 208 Ariz. 203, ¶27, 92 P.3d 429, 436 (App.2004) (internal citation omitted), *quoting Valencia Energy*, 191 Ariz. 565, ¶¶ 36, 41, 959 P.2d 1256, 1268, 1270 (1998). Cave Creek must be compelled to correct its mistakes of law and provide due process and just compensation per A.R.S. §§ 9-500.12(H) or 12-821.01(C)[11] in ongoing Maricopa County Superior Court case CV2006-014822 (from which this case arises) per Continuing Violations Doctrine[12] via ZO §1.7, *Krupski v. Costa Crociere*, 177 L.Ed. 48 (9th Cir.2010), and a state court appellate mandate allowing amendment of CV2006-014822 (1CA-CV12-0435 ¶¶27-29). *See* **Exhibit D** and Appellants' Notice of Claim for a pending RICO complaint served on June 21, 2018 **(Exhibit E)** for an updated list of Cave Creek's series of predicate acts, at least one act for every year dating back to 2001, some of which are ongoing daily as a separate ***criminal*** violation per ZO §1.7.

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[11] A.R.S. § 12-821.01(C): "Notwithstanding subsection A, any claim that must be submitted to a binding or nonbinding dispute resolution process or an administrative claims process or review process pursuant to a statute, ordinance, resolution, administrative or governmental rule or regulation, or contractual term shall not accrue for the purposes of this section until all such procedures, processes or remedies have been exhausted. The time in which to give notice of a potential claim and to sue on the claim shall run from the date on which a final decision or notice of disposition is issued in an alternative dispute resolution procedure, administrative claim process or review process. This subsection does not prevent the parties to any contract from agreeing to extend the time for filing such notice of claim." (OB at 170)

[12] i.e. *National Railroad Passenger Corporation v. Morgan*, 536 US 101 (2002).

Finality of §1983 claims also relied on the DEMA (**Exhibit A**), a reciprocal easement and utilities contract that was declared void *ab initio* and recorded just 1 day prior to the Panel's decision (**Exhibit B**). The declaration is a result of Appellant's allegations that Cave Creek illegally subdivided the properties using a scheme or artifice to defraud by violating federal law and due process in A.R.S. §§9-500.12 and 9-500.13 to commit theft, and extortion per A.R.S. §13-2314.04(T)(3)(a)(iii) (OB at 180), as defined in §13-2301(D)(4)(b)(v),(ix),(xx) (**Exhibit F**). Cave Creek's criminal conduct is ongoing and **Appellants' right to exclude began May 16, 2018** (i.e. use of sewer and unlawful easements). See *Dolan* at 384. See also *Nollan* at 831-832:

> [T]he right to exclude [others is] `one of the most essential sticks in the bundle of rights that are commonly characterized as property.' "*Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 433 (1982), quoting *Kaiser Aetna* v. *United States*, 444 U. S. 164, 176 (1979). In *Loretto* we observed that where governmental action results in "[a] permanent physical occupation" of the property, by the government itself or by others, see 458 U. S., at 432-433, n. 9, "our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public *** benefit or has only minimal economic impact on the owner," *id.*, at 434-435. We think a "permanent physical occupation" has occurred, for purposes of that rule, where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed, even though no particular individual is permitted to station himself permanently upon the premises."

Continuing violations persist such that Quiet Title must be declared, and Appellants compensated per A.R.S. 9-500.12(H) per mandatory metrics of Town ordinances. SOL have yet to accrue based on Appellant's outstanding Motion for a New Trial and Motion to Amend previous Judgments in CV2006-014822 based on the new findings (**Exhibit G**—*incorporated herein*). "[C]hanges in facts essential to a

judgment will render collateral estoppel inapplicable in a subsequent action raising the same issues." *New Hampshire v. Maine*, 532 US 742, 756 (2001), quoting *Montana v. United States*, 440 US 147, 159 (1979).

District Court based its order on a 2009 breach of contract case that should have been consolidated into CV2006-014822 as it relied on the DEMA, now void *ab initio*. The CV2009-050821 case was not a takings or due process matter. As such, there was no *res judicata*. Maricopa County and Cave Creek used state court, District court, and this Court to enforce illegal contracts.

"[F]ederal court has a duty to determine whether a contract violates federal law before enforcing it." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83 (1982). "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract." *EPIC SYSTEMS CORP. v. Lewis*, Supreme Court 2018 (J. Ginsberg, dissenting), citing *McMullen v. Hoffman*, 174 U.S. 639, 654 (1899). The void *ab initio* determination of the easement agreement based on the illegality of the subdivisions and Cave Creek's admission of its Official Policy to not comply with required federal due process per A.R.S. §§ 9-500.12 & 9-500.13 renders District Courts' ruling void per Fed.R.Civ.P. Rule 60(b)(4). "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286, 291 (1980) (emphasis added), citing *Pennoyer v. Neff*, 95 U. S. 714, 732-733 (1878). Additionally, per Rule 60(b)(1)(2),(3),(5)&(6), relief from judgment is warranted due to "(1)…surprise, or excusable neglect; (2) newly discovered evidence…; (3) fraud…misrepresentation, or misconduct by an opposing party;…(5) the judgment…is based on an earlier

judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief." "[A] defendant whose affirmative acts of fraud or concealment have misled a person from either recognizing a legal wrong or seeking timely legal redress may not be entitled to assert the protection of a statute of limitations." *White v. Aurora Loan Services LLC*, Dist.Court, D.Arizona 2016, citing *Porter v. Spader*, 239 P.3d 743, 747 (Ariz.Ct.App.2010).

2. **Equal Protection and Continuing Violations preclude SOL.**

Where an injury is caused by continuing or repeated acts, SOL may not begin to run even when the tort is complete. 4 Restatement of Torts 2d §899c. SOL may be tolled until the tortious conduct ceases, on the theory that one should not be allowed to acquire a right to continue the tortious conduct. *Donaldson v. O'Connor*, 493 F.2d 507, 529 (5th Cir. 1974), *vacated on other grounds*, 422 U.S. 563, *on remand*, 519 F.2d 59 (1975).

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws." Every property owner in the United States is entitled to every state and its political subdivision complying with the burden-shifting / heightened-scrutiny analysis as determined by the U.S. Supreme Court in *Nollan* and *Dolan*, and follow procedural due process per *Mullane* and just compensation per *Lucas* and *First English*. Per the Supremacy Clause, U.S. Constitution Art.VI Cl.2, every Arizona property owner is entitled to every Arizona town and city complying with federal and state law and municipal ordinances as required for equal protection per A.R.S. §§ 9-500.12 & 9-500.13 regarding the

taking of property for entitlements. "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." A.R.S. §9-500.12(B).

Per Zoning Ordinance §2.3, the Zoning Administrator is required to provide property owners notice of Town requirements with proper forms and instructions with notice of rights per A.R.S. §9-500.12(B) to file an appeal of the Town's requirements *prior to* implementing exactions or dedications, and provide notice of the administrative hearing date along with a Takings Report that establishes the nexus and rough proportionality for just compensation. During the hearing per A.R.S. § 9-500.12(E), the Town's Hearing Officer evaluates whether the Town's requirement is lawful, whether the Town established the essential nexus of proportionality, and whether just compensation is just.

Appellants claims did not accrue per *Monell*[13] until August 29, 2016, when Cave Creek provided evidence and admitted that the Town dismissed its Hearing Officer to defy federal law by continuously violating A.R.S. §§ 9-500.12 & 9-500.13 as its Official Policy just prior to Appellant's application for a lot split. *See* DktEntry 56. A.R.S. §§ 9-500.12(B) (OB at 162) and 12-821.01(C) (*Id*.at170/n.12 herein) preclude any application of SOL. Cave Creek and its attorneys lied to federal Courts by claiming Cave Creek complied with A.R.S. §§ 9-500.12 & 9-500.13 (Doc.56-1 at 9). As such, this Court's refusal to review DktEntry 56 is an abuse of discretion (DktEntry 124-1 at 3). Equal Protection mandates Cave Creek's defiance of federal law in A.R.S. §§ 9-500.12 and 9-500.13 to cause ongoing zoning violations is a

[13] *Monell v. New York City Dept. of Social Servs*., 436 U.S. 658 (1978).

continuous criminal violation per ZO §1.7: "**each day of *continued violation* SHALL be a *separate offence*, punishable as described [Class One Misdemeanor]**" (emphasis added). OB at 204.

"The continuing violation doctrine is an "exception to the normal knew-or-should-have-known accrual date."" *Shomo v. City of New York*, 579 F.3d 176, 181 (2nd Cir. 2009), quoting *Harris v. City of New York*, 186 F.3d 243, 248 (2d Cir.1999). Government is not estopped "from correcting a mistake of law." *Thomas & King, Inc. v. City of Phoenix*, 92 P.3d 429, 436 (Ariz.App.2004) (internal citation omitted), *quoting Valencia Energy v. Arizona Dept. of Rev.*, 191 Ariz. 565, ¶¶ 36, 41 (1998).

See *National Railroad Passenger Corporation v. Morgan*, 536 US 101 (2002), quoting *Morgan v. National Railroad Passenger Corp.*, 232 F.3d 1008 (9th Cir.2000):

> In the Ninth Circuit's view, a plaintiff can establish a continuing violation that allows recovery for claims filed outside of the statutory period in one of two ways. First, a plaintiff may show "a series of related acts one or more of which are within the limitations period." *Ibid.* Such a "serial violation is established if the evidence indicates that the alleged acts [] occurring prior to the limitations period are sufficiently related to those occurring within the limitations period." *Ibid.* The alleged incidents, however, "cannot be isolated, sporadic, or discrete." *Ibid.* Second, a plaintiff may establish a continuing violation if he shows "a systematic policy or practice [] that operated, in part, within the limitations period—a systemic violation." *Id.*, at 1015-1016.

The Panel's decision (DktEntry 124-1) and denial (DktEntry 139) of Appellants' Petitions for Rehearing (DktEntry 138) overlooked Cave Creek's "systematic policy or practice" of violating A.R.S. §§ 9-500.12 & 9-500.13 and the Continuing Violations Doctrine and RICO "serial violation[s]," where each offense is "sufficiently related to those occurring within the limitations period." See *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 392 U.S. 481, 502 n. 15 (1968)

(finding action not time-barred due to "a continuing violation ... which inflicted continuing and accumulating harm").

The U.S. Supreme Court applied the doctrine of continuing violations to price fixing conspiracies where each overt act that injures the plaintiff "starts the statutory period running again, regardless of the plaintiff's knowledge of the alleged illegality at much earlier times." *Klehr v. A.O. Smith Corp*., 521 US 179, 189 (1997).

Although many continuing violations cases adjudicate issues of employment discrimination and have a defining act to set clear accrual dates, such as firing an employee, there is no accrual date when a property *continues* every day to be in *criminal* violation as defined by federal law, state statutes, and municipal ordinances such that it remains illegal to develop or sell, and where the municipality has refused to provide the required administrative hearing to remedy the ongoing violations. Each compounding predicate act (i.e. causing recordation of material misstatements in land surveys incorporated into the DEMA to issue void permits and reneging on promised sewer reimbursement while committing fraud on the court to win favorable rulings) stems from Cave Creek's unlawful exaction of a 4th lot to deceptively convert Appellants' property from a legal lot split to an illegal subdivision by violating A.R.S. §§ 9-500.12 and 9-500.13.

"[T]he continued enforcement of an unconstitutional statute cannot be insulated by the statute of limitations." *Virginia Hosp. Ass'n v. Baliles,* 868 F.2d 653, 663 (4th Cir.1989), *aff'd in part on other grounds sub nom Wilder v. Virginia Hosp. Ass'n,* 496 US 498 (1990); *accord National Adver. Co. v. City of Raleigh,* 947 F.2d 1158 (4th Cir.1991). Enforcement of SOL is unconstitutional if violations of law can continue to occur daily. As a result, "a new injury was inflicted on plaintiffs each

day....Consequently, a new limitations period began to run each day as to that day's damage." *Baker v. F & F Inv. Co.,* 489 F.2d 829 (7th Cir.1973). The test for determining whether a continuing violation exists is summarized as follows:

> First, the defendant's wrongful conduct must continue after the precipitating event that began the pattern.... Second, injury to the plaintiff must continue to accrue after that event. Finally, further injury to the plaintiff[] must have been avoidable if the defendants had at any time ceased their wrongful conduct.
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> *Tolbert v. State of Ohio Dep't of Transp.*, 172 F.3d 934, 940 (6th Cir.1999).

See Appellant's Notice of Claim (**Exhibit E)** and Petitions' Appendices C,D,E (DktEntry 138 at 38-43, 45-50, 52-103) for Appellant's Letter to the Cave Creek requesting Administrative remedy (also at **Exhibit D)**, list of predicate acts and continuing violations, and Relevant Laws. *See* also Appellants' Opening Brief (DktEntry 40), Reply Brief (DktEntry 103-1), and Judicial Notice with evidence of Cave Creek's Official Policy to commit continuing violations (DktEntry 56). Per Cave Creek Zoning Ordinance §2.3 (**Exhibit C**) and A.R.S. §§ 9-462.04 & 9-462.05 (OB at 141-143), Cave Creek's Zoning Administrator and legislative body (i.e. Town Council) have the burden and duty to enforce subdivision and zoning laws, prevent and correct violations, and provide pre-deprivation notice and a hearing per A.R.S. §9-500.12 to abide by *Mullane* and federal cases listed in A.R.S. §9-500.13. However, Cave Creek never provided the required due process, just compensation, and equal protection of the laws as codified in these laws. As its Official Policy, Cave Creek intentionally and covertly caused the conversion of Appellants' property, and the neighboring property that relies on Appellants' land and utilities, into illegal non-conforming subdivisions that are unbuildable, not entitled to permits, and are unlawful to sell. Per A.R.S. 9-500.12(H), a court must declare Appellants are due just

compensation for actual and delay damages based on Cave Creek acting in bad faith.

3. **The State is vicariously liable for Cave Creek's criminal conduct.**

If it is "implicit in the State's obligations to administer the Food Stamp Act, Medicaid Act, and cash assistance programs is a duty to oversee the City defendants' administration of the programs to ensure compliance with federal law," per *Woods v. United States*, 724 F.2d 1444, 1447 (9th Cir. 1984), *then* it is the State of Arizona's duty to ensure Defendant Cave Creek complies with the notice provisions per *Mullane* and burden-shifting / heightened-scrutiny of federal law per *Nollan*/*Dolan* and just compensation per *Lucas* and *First English*.

Per A.R.S. §13-2314 (OB at 175-177), Arizona's Attorney General and Maricopa County's Attorneys have failed to prosecute racketeering crimes on behalf of Appellants, such that the divisions' attorneys can be disbarred (see, e.g., *In re Aubuchon*, 309 P.3d 886 - Ariz: Supreme Court 2013). Cave Creek and its state actors' criminal acts include A.R.S. §§ 13-1003 (conspiracy, DktEntry 103-1 at 134), 13-1004 (facilitation, *Id*. at 135) 13-1802 (theft, OB at 172-173), 13-2311 (fraudulent scheme, OB at 174), 13-2314.04 (Arizona RICO, OB at 178-180), and 33-420 (causing recordation of documents containing material misstatements, OB at 181). Although the State of Arizona "knew or should have known," it failed to prosecute and uphold the law in all related cases incorporated into the Complaint (Doc. 1-1 at 4¶2, 7¶32, 9¶¶56-57, 13§n, 20¶114, 21¶¶117&121, 22¶125). "The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett v. Rose*, 496 US 356, 371 (1990).

4. **Recent Split-Circuit Decision requires Recall and Stay of Mandate.**

Three (3) days prior to the Panel's denial of Appellants' Petitions for Rehearing, the Tenth Circuit issued a ruling on a case similar to this one, upholding Appellants' position. See *M.A.K. Investment Group, LLC v. City of Glendale*, No. 16-1492 (10th Cir. 2018) ("*M.A.K.*"). The *M.A.K.* ruling on the absolute pre-requisite requirement of *Mullane* notice comports with *Brody v. Vill. of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) ("where, as here, a condemnor provides an exclusive procedure for challenging a public use determination, it must also provide notice in accordance with the rule established by *Mullane* and its progeny"), *Hart v. Bayless Investment & Trading Co.*, 86 Ariz. 379, 388, 346 P.2d 1101, 1108 (1960) (well settled principle that notice and hearing requirements in zoning enabling acts are conditions precedent to the proper exercise of the zoning authority), and *Jones v. Flowers*, 547 US 220 (2006) (property owners are entitled to specific notice, designed to provide actual notice). As such, the Panel's decision conflicts with *M.A.K.*, requiring review by the U.S. Supreme Court.

Per *M.A.K.*, property owners "cannot be deprived of [a] state-given cause of action without due process….[The property owner] clearly has a protected property interest in the statutory right to judicial review." *M.A.K.* at §II(A). Per A.R.S. § 9-500.12(B) and ZO §2.3, Cave Creek was required to provide due process notice and a hearing to review the exaction of land that Appellants later discovered had converted their property into a non-conforming subdivision. Appellants "never found out [their] property was so designated" (*M.A.K.* at §II(B)(1)(b)) until Appellant went to Maricopa County's Assessor's website in 2012/2013 by happenchance to discover that the County labeled Appellants' property as an "undefined subdivision." When Appellant inquired, Maricopa County went silent and took down the web page. OB at 19. But a court has yet to determine the status.

Appellants raised issues regarding notice per *Mullane* in their Complaint and throughout all of their court filings. “When in the absence of notice, property owners are likely to lose a property right—in a cause of action or otherwise—the *Mullane* rule applies. At that point, the state must take reasonable steps to provide enough notice for reasonable persons to realize they must investigate possible remedies.” *MA.K.* at §II(B)(1). As in *M.A.K.*, Appellants also cited *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983): "**a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation**." (emphasis added) In Appellants’ case, they did not even have the ability to take steps because they did not discover losses of their property interests until 2013. Regardless, Cave Creek’s mandatory duty to abide by the law and correct its mistakes take precedent. In *Jones v. Flowers*, 547 U.S. 220 (2006), the Supreme Court “held the plaintiff's deficiencies did not excuse the government from following *Mullane*'s rule.” *M.A.K* at §II(B)(1). Even if government entities argue that the property owners "“should have been more diligent,” even though Appellants were as diligent as possible with what they knew at the time, that fact “does not excuse the government from complying with its constitutional obligation of notice.”" *Id.*, citing *Jones v Flowers* at 232, 234. See also *Mennonite*, 462 U.S. at 799; *Garcia-Rubiera v. Fortuno*, 665 F.3d 261, 276 (1st Cir. 2011) (explaining this rule).

However, Appellants never received their due process rights to notice and “*right to review*” per A.R.S. §§ 9-500.12 and 9-500.13. *M.A.K.* at § II(B)(1)(a). In fact, Cave Creek got rid of its Hearing Officer in 2001 when the Town made an Official Policy to stop abiding by A.R.S. §§ 9-500.12 and 9-500.13. Cave Creek “might *never* bring a condemnation proceeding. An opportunity for review that may

never come cannot replace a statutory *right* to review." *M.A.K.* at §II(B)(1)(c) (emphasis in original). Cave Creek required the engineer to make the exaction on Appellants' property without providing notice and a hearing for Appellants, and, in bad faith under color of law, instructed Appellant that a subdivision was "5 or more lots" instead of 4 or more lots. As stated in *M.A.K.*'s Conclusion, §III, Appellant was deprived of due process when told to "not to worry about it." Consequentially, Appellants did not know of their deprivation, that the exaction of the 25-foot sliver of land Maricopa County recorded as a 4th lot based on a "metes and bounds survey" converted their property into an unlawful subdivision without a final plat map. Further, the Town continued to issue *void* permits without notice, and committed other predicate acts based on the unlawful subdivision since 2001. "'"The Supreme Court has repeatedly held that notice by mail is practically "a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party." *Mennonite Bd.*, 462 U.S. at 800."'" *M.A.K.* Conclusion §III. The *M.A.K.* court held that "where, as here, a property owner does not otherwise learn about the blight determination, it violates due process for a City not to send direct notice." *Id.* As such, SOL becomes moot if required constitutional burden-shifting due process procedures has not been implemented as explicitly required per federal and state law and municipal ordinances.

CONCLUSION / REQUEST FOR RELIEF

For reasons stated herein and per DktEntry 142, Appellants respectfully request that this court recalls and stays its mandate until after the U.S. Supreme Court makes its mandate, which may have further instructions to this court. Per FRAP 41(d)(2) and Circuit Rule 41-1, it is a violation of due process for the Court to state

"No further filings will be entertained in this closed case." Appellants' request for recall and stay of mandate is necessary to prevent further injustice and procedural messiness.[14] See *Bell v. Thompson*, 545 US 794, 806 (2005) (courts have equitable authority to stay mandate even when no pending petition for certiorari).

Per FRAP 41(d)(2)(b): "The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition." See also Supreme Court Rule 23. See DktEntry 143 for the U.S. Supreme Court's grant of Appellants' request for a extension per Supreme Court Rule 13.5 to file the Petition for a Writ of Certiorari for good cause per DktEntry 142. As such, Appellants request that the stay continue until the U.S. Supreme Court's final decision.

Per 28 U.S.C. § 1746, Fressadi declares under penalty of perjury that the foregoing is true and correct.

EXECUTED AND SUBMITTED on this 15th day of August, 2018.

/s/ Arek R. Fressadi
Arek R. Fressadi, *pro se*

---

[14] The mandate may not preclude a district court's reconsideration where there are subsequent factual discoveries or changes in the law. *Invention Submission Corp. v. Dudas*, 413 F.3d 411, 414–15 (4th Cir. 2005) (finding reconsideration of an appellate determination appropriate if there is a dramatic change in law, significant new evidence, or blatant error that would result in serious injustice); *EEOC v. Sears, Roebuck & Co.*, 417 F.3d 789, 796 (7th Cir. 2005) (finding reconsideration of an appellate determination appropriate where there has been an intervening change in law). Thus, the judge-made mandate rule is not wholly inflexible. *United States v. Bell*, 988 F.2d 247, 251 (1st Cir. 1993) ("After all, the so-called 'mandate rule' . . . is simply a specific application of the law of the case doctrine and, as such, is a discretion-guiding rule subject to an occasional exception in the interests of justice.").

Docket No. 15-15566

CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS,
AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume limitation of Circuit Rule 27-1(1)(d), having 19 pages, and because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) & Fed. R. App. P. 27(a)(2)(B) and is accompanied with a Motion to File an Enlarge Motion per Fed. R. App. P. 27(d)(2)(a), this document contains 5,695 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman type style.

Dated: August 15, 2018.

/s/ Arek R. Fressadi
Arek R. Fressadi, Appellant-Appellant *pro se*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document of Appellant Arek R. Fressadi was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 15, 2018.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Arek R. Fressadi
Arek R. Fressadi, Appellant-Appellant *pro se*

EXHIBIT A

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Recording Information

Name(s)	Document Code(s)
FRESSADI AREK GV GROUP LLC	EASEMENT AGREEMENT

Recording Date/Time	Recording Number	Pages
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CAPTION HEADING: **DECLARATION OF EASEMENT AND MAINTENANCE AGREEMENT**

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DECLARATION OF DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

Declarants Arek Fressadi and GV Group LLC make this Declaration of Driveway Easement and Maintenance Agreement this 16th day of October 2003. Arek Fressadi is the Owner of Parcels #211-10-010 A, B, & C, and GV Group, LLC is the Owner of Parcels #211-10-003 A, B, C, [collectively known as "the lots"].

Declarants wish to establish a mutual easement for their use and an agreement to improve and maintain the driveway.

NOW, THEREFORE, Declarants hereby declare that the Lots shall be subject to the following easements and covenants, which shall run with each lot or subsequent lots thereof, and shall be binding upon all parties having or acquiring any right, title or interest therein, and shall inure to the benefit of any successor to Declarant in the ownership thereof:

1. Easement. The Lots shall have a perpetual, nonexclusive easement over and upon the Driveway for the purpose of access, maintenance, repair and reconstruction of the Driveway and attendant rock retaining walls, and related utilities. No permanent structure shall be erected or maintained and no party shall obstruct free passage through the Driveway. No party shall use the Driveway for storage of vehicles, boats or any other property.

2. Recording. The easements for ingress and egress are more fully described on the Minor Land Division, Book 631, Page 35, Official Records of Maricopa County Recorder, recorded instrument # 2003-0488178, and Minor Land Division, Book 652, page 28, Official Records of Maricopa County Recorder, recorded instrument #2003-1312578.

3. Caretaker. For so long as Arek Fressadi is a resident and / or owner of one of these properties, Arek Fressadi shall be responsible for the care and maintenance of said Driveway. In the event that Arek Fressadi, is no longer a resident and / or owner, then the Owner(s) of said Lots shall elect a Caretaker by a simple majority vote. Each Lot shall be entitled to one vote. The Caretaker shall provide the Lot Owners an itemized accounting of all maintenance expenses to the easement and the Caretaker shall provide the lot owners a written budget for the next succeeding calendar year on or before December 1st, itemizing the anticipated costs and expenses for maintenance and repair of the driveway and attendant common areas, including any anticipated non recurring costs and expenses. This budget shall be supported, to the extent available, by written estimates, bids and/or contracts for the required maintenance and repair work. Lot owners may, within ten days of receipt of each year's budget, object thereto by giving

written notice thereof to the Caretaker, which said notice shall state with reasonable particularity the reasons for the objection. Within five days of the delivery of such objection to the Caretaker, Lot owners shall meet in order to discuss and attempt to reach agreement on the objection. In the event the parties are unable to reach such an agreement, the parties shall submit the matter to dispute resolution as set forth below.

4. Assessments. A one time driveway improvement fee will be assessed GV Group, LLC, the Owner of Parcels #211-10-003 A, B, C in the amount of $10,483.90, Parcel #211-10-010A in the amount of $10,483.90, Parcel #211-10-010B in the amount of $6,989.27, and parcel #211-10-010C in the amount of $3,494.63.

5. Maintenance. The Owners of the Lots shall be responsible for maintenance of the Driveway, with the cost of such maintenance to be borne by the Owner of each such lot in equal proportions based upon the total number of Lots. The cost of such maintenance shall be assessed to each Lot and a budget itemizing anticipated costs for maintenance and repair shall be furnished to each of the Lot Owners. Such budget shall be supported, to the extent available, by written estimates, bids, and/or contracts for the required maintenance and repair work. Maintenance and repairs of the Driveway shall be undertaken upon obtaining approval of from the majority of the Owners of the Lots. Notwithstanding the foregoing, in the event of an emergency, any Owner may cause the emergency repairs to be undertaken. Each of the Lot Owners shall contribute such Owner's share of the maintenance costs within ten (10) days after written notice from any other Owner. If any Owner shall fail to pay such Owner's share within thirty (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.

6. Damage to Driveway. In the event of damage to the Driveway because of the negligence of any Owner, or such Owner's agents, invitees or contractors, or due to construction or repair work performed on behalf of any owner, such owner shall be solely responsible for repairing the damage.

7. Indemnification. The Owner of each Lot shall forever defend, indemnify and hold the other Owners harmless from any claim, loss or liability arising out of or in any way connected with that Owner's use of the easements created by this Declaration.

8. Benefits and Burdens. The benefits and burdens of the easements and covenants contained in this Declaration shall run with the Lot so benefited or burdened. Such easements are also for the benefit of any present or future mortgagees or holders of trust deeds on any portion of the Lots and may not be amended, repealed or modified without the written consent of each such mortgagee or beneficiary.

9. Disputes. In the event of any dispute among the parties regarding their obligations under this Declaration, such matter shall be presented to the Caretaker for resolution. The determination of the Caretaker shall be binding upon the parties.

10. Remedies. In the event of any breach of the provisions of this Declaration, the aggrieved party or parties shall be entitled to exercise any remedy provided by law or equity, including the remedies of injunction and/or specific performance. In the event litigation is commenced to enforce the provisions of this Declaration, the prevailing party shall recover from the other party, in addition to all other costs and damages, reasonable attorneys' fees at trial, in arbitration or upon any appeal or petition for review thereof.

11. Notices. Any notice under this Declaration shall be in writing and shall be effective when actually delivered, or if mailed, posted as certified mail, return receipt requested, postage prepaid. Mail shall be directed to the mail address of the lot in question, if a dwelling has been constructed on such Lot, or if no dwelling has been constructed on such Lot, to the address of the record owner at the address for tax statements as shown on the real property tax records of Maricopa County, Arizona, or to such other address as the owner may specify by notice to the other owners.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first set forth above.

Arek Fressadi

Keith Vertes
GV Group, LLC

Acknowledgment of Arek Fressadi

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16TH day of October 2003, 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.

CAROL R. THOMSON
Notary Public – Arizona
Maricopa County
Expires 02/15/07

Carol R. Thomson
Notary Public for Arizona
Residing at: 6300 E. Cave Creek Rd*
My commission expires: 2/15/07
*Cave Creek, AZ

Acknowledgment of Keith Vertes

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16TH day of October 2003, before me, a notary public for said state, personally appeared Keith Vertes, GV Group, LLC, known or identified to me to be the person who executed the within instrument on behalf of the said entity.

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

CAROL R. THOMSON
Notary Public – Arizona
Maricopa County
Expires 02/15/07

Carol R. Thomson
Notary Public for Arizona
Residing at: 6300 E. Cave Creek Rd. *
My commission expires: 2/15/07

* Cave Creek, AZ

EXHIBIT B

ADRIAN FONTES
MARICOPA COUNTY RECORDER

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DECLARATION OF THE EXECUTORS OF THE DECLARATION OF EASEMENT AND MAINTENANCE AGREEMENT MCRD # 2003-1472588

Date: May 15, 2018

On April 17, 2003, the Town of Cave Creek subdivided parcel #211-10-010 into four lots (Lots 1, 2, 3, and Parcel A), by metes and bounds survey. MCRD #2003-0488178.

On September 16, 2003, the Town of Cave Creek subdivided parcel 211-10-003 into four lots, (Lots 1, 2, 3, and Parcel A), by metes and bounds survey. MCRD #2003-1312578.

Because no lots were dedicated in the above, neither subdivision of parcel 211-10-010 or 211-10-003 may conform to the Town's Subdivision Ordinance.

Regarding the Declaration of Easement and Maintenance Agreement ("DEMA"), MCRD 2003-1472588, Arek R. Fressadi hereby declares that due to the conduct of Cave Creek, the DEMA was illegal. Keith Vertes takes no position regarding the illegality of the DEMA.

The Town of Cave Creek required that the lots subdivided from parcel 211-10-003 connect to the sewer that was constructed to serve lots 211-10-010 A, B, & C. The DEMA was executed to provide access and related utilities (sewer) to the lots to be bound by the DEMA. MCRD #2003-1472588.

As parcels 211-10-003 and 211-10-010 were apparently subdivided into non-conforming subdivisions, Arek R Fressadi declares that the purpose of the DEMA failed for frustration of purpose and impracticability. Arek R. Fressadi and Keith Vertes declare the DEMA void *ab initio*.

By: _____
Arek R. Fressadi

By: _____
Keith Vertes

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 15th day of May 2018, 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.

MICHAEL BONNO
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
May 4, 2021

_____
Notary Public for Arizona
Residing at: 630 E Rudasill Rd

EXHIBIT C

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.

EXHIBIT D

Ian Cordwell, Director of Planning, Zoning Administrator
Town of Cave Creek
37622 N. Cave Creek Rd.
Cave Creek, AZ 85331

December 23, 2017

Dear Ian,

For years you told me that you made mistakes; that you were ordered to do so sometimes, but you never said what the mistakes were or who ordered you to make them. As nothing prevents you from correcting your mistakes, I submit the following:

Pursuant to A.R.S. §9-463.01, the Town Council of Cave Creek **SHALL** regulate and **SHALL** exercise authority over the subdivision of all lands within its corporate limits. The Town adopted a Subdivision Ordinance that SHALL apply to all land in the corporate limits of Cave Creek per Section 1.1(A)(1)[1] of the Subdivision Ordinance, which supplements A.R.S. §§ 9-463.01 and 9-463.04 per Section 1.1(A)(3): "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." [emphasis added]

Under color of law, on which I detrimentally relied, you told me in 2001 to develop parcels 211-10-010 and 211-10-003 by a "series of lot splits;" that in consideration for down zoning the density on these parcels from 18,000 sq ft lots to ¾ acre lots, the Town would allow me to build out 8 homes rather than plat a subdivision. You also said that a subdivision was "5 or more lots."

Years later, I discovered that A.R.S. §9-463.02 defines a subdivision and A.R.S. §9-463.03 renders the sale of any portion of a subdivision unlawful until a final plat map is recorded. Subdivision Ordinance Sections 1.1(A)(2) & 1.1(A)(4) limit the subdivision process and sale of subdivided property in Cave Creek. **Specifically, the subdivision of any parcel of land into four (4) or more parcels must comply with the ordinance.**

The Subdivision Ordinance is incorporated into the Zoning Ordinance per Section 1.1(B) of the Zoning Ordinance. In any conflict of regulation, the more restrictive ***shall*** govern per Section 1.1(C) of the Zoning Ordinance.

Carrie Dyrek admitted on August 29, 2016, that Cave Creek stopped complying with A.R.S. §§ 9-500.12 & 9-500.13 as its official policy when I applied to split parcel 211-10-010 into three lots in October 2001. Jodi Netzer witnessed Carrie's admission. Carrie provided evidence requested through the Freedom of Information Act that Cave Creek knew its duty to abide by A.R.S. §9-500.12 and complied to varying degrees from 1997 to September 2001, but completely stopped thereafter. By violating A.R.S. §9-500.12, Cave Creek denied due process to avoid its burden to establish the nexus of proportionality for requiring the exaction of a 25-foot wide strip of land from parcel 211-10-010 to approve the split of parcel 211-10-010 on December 31, 2001, Maricopa County Recorded Document ("MCRD") 2002-0256784. The Town surreptiously turned this strip of land into "Parcel A" to approve sewer permits in 2003, and required the survey to say it was dedicated in 2003 without complying with A.R.S. §9-500.12 or the Subdivision Ordinance, MCRD 2003-0488178. Sometime between 2003 and 2013, Maricopa County Assessor's Office issued "Parcel A" a parcel number, #211-10-010D, and classified the split of parcel 211-10-010 into lots 211-10-010 A, B, C, & D as an "undefined subdivision." I never received notice or explanation as

[1] All cited Ordinances herein refer to those adopted or in effect in the **2003** Ordinance booklets.

to why or how “Parcel A” had to be dedicated to Cave Creek. Cave Creek never established the nexus of proportionality for the dedication nor just compensation such that it was never dedicated per Section 2.4(D)(2)(b)(2) of the Subdivision Ordinance (“Execution of the dedication shall be certified by a notary public”).

Section 2.3(C) of the Zoning Ordinance establishes your duties as the Zoning Administrator. Section 2.3(D) establishes the limitations of your power as Zoning Administrator. Pursuant to Section 2.3(C)(1), you are required to establish rules, procedures, and forms to provide for processing of applications or requests for action under the provisions of the Zoning Ordinance. Per Section 2.3(C)(2), you are required to perform ALL administrative actions required by this Ordinance **to include giving notice, scheduling of hearings, and preparing reports**. It is your duty that Cave Creek complies with Federal law in A.R.S. §§ 9-500.12 & 9-500.13 when the Town exacts land, improvements, or dedications of easements to approve entitlements.

By violating your duty to perform ALL administrative actions that require Cave Creek to comply with A.R.S. §§ 9-500.12 & 9-500.13, you violated your oath of office. You / Cave Creek exacted a 25-foot wide strip of land that converted my “metes & bounds” survey of parcel 211-10-010 into a 4-lot non-conforming subdivision. A “metes and bounds” survey is not a final plat map vetted by the Planning Commission and Town Council. Further, lot 211-10-010D blocked access to lots 211-10-010 A, B, & C. Per Section 1.1(B)(1) of the Subdivision Ordinance, you ***shall*** enforce the Subdivision Ordinance. By violating your duties in Section 2.3(C)(2) of the Zoning Ordinance, the Town violated A.R.S. §9-500.12 for you to approve the “metes & bounds” survey of parcel 211-10-010 into 4 lots on December 31, 2001, in violation of Sections 1.1(A)(1-4), (B), (C), & (D), 6.1(A), 6.2(B)(4), 6.3(A), and Chapter 2 especially 2.5(E) of the Subdivision Ordinance.

Per Section 1.1(B)(2) of the Subdivision Ordinance, ALL officials and employees of the Town who are vested with the authority to issue permits SHALL ONLY issue permits or otherwise perform duties in accordance with the Subdivision Ordinance. Because no lot split from parcel 211-10-010 is entitled to a building permit per Section 6.3(A) of the Subdivision Ordinance, any permit issued to a non-conforming lot of parent parcel 211-10-010 conflicts with Section 6.3(A) of the Subdivision Ordinance as to be void per Section 1.4 of the Zoning Ordinance.

As such, each and every lot split from parcel 211-10-010 and all permits issued to these lots violates the Subdivision Ordinance to be a separate offense punishable against you, Cave Creek, and other complicit Town officials per Sections 1.7(A),(B),&(C) of the Zoning Ordinance. Per Sections 1.1(C), 1.5, & 1.7 of the Zoning Ordinance, you have no discretion but to order the use of all improvements discontinued on lots in parcel 211-10-010 and order the property vacated. Per Section 1.7(A),(B),&(C), each and every day that you do not order the use of improvements on lots in parcel 211-10-010 discontinued and the land vacated is a continued violation that shall be a separate offense against you and Cave Creek punishable as described in Section 1.7(A).

August 5, 2002. http://www.cavecreek.org/Archive.aspx?ADID=154
In furtherance of your instruction to develop parcels 211-10-010 and 211-10-003 by a “series of lot splits,” The Cybernetics Group applied to split parcel 211-10-003 into two (2) lots. Once again, you violated your duty as Zoning Administrator by failing to notice The Cybernetics Group of its right to a hearing and a takings report per A.R.S. §9-500.12 when Cave Creek required a 25-foot wide strip of land along Schoolhouse Road as a condition to approve the lot split. The Town had the burden to establish the nexus of proportionality and provide a takings report for this 3rd lot / 25-foot wide strip of land.

As part of a civil conspiracy, you told Town Council that "the issue is land planning and where the line is crossed that separates lot splitting and the subdivision processes," but you didn't tell Town Council that the "series of lot splits" was by your instruction; that you violated your duties as Zoning Administrator per Section 2.3(C)(2) of the Zoning Ordinance for Cave Creek to exact a strip of land, a 4th lot to transform the split of parcel 211-10-010 into a non-conforming subdivision by failing to follow Federal law, State statutes, and Town ordinances. You said that parcel 211-10-010 was split into 3 lots, when in fact it was already a non-conforming subdivision of 4 lots. Based on my 12.5% interest in Cybernetics, Town Council denied the Cybernetics lot split, but 211-10-003 was NEVER part of a parent parcel with 211-10-010. As it was painfully obvious that the principles in "A Pattern Language" would never manifest in Cave Creek, Cybernetics sold parcel 211-10-003 to Keith Vertes contingent upon Vertes obtaining a lot split of parcel 211-10-003.

April 21, 2003. http://www.cavecreek.org/Archive.aspx?ADID=246
You told Town Council that Vertes applied to split parcel 211-10-003 into 3 lots; that "all 3 lots would be considered hillside in that they have slopes of 15% or more so the Zoning Code on them is hillside." You told Town Council "that there is a required sewer line by the Town Engineering Department to be placed on property to the north [211-10-010 lots]. This property [211-10-003] has its own access and would be required to tie into sewer given that it is within 300 feet."

You did not tell Town Council that Cave Creek required a strip of land, "Parcel A," to approve the "metes & bounds" survey of parcel 211-10-003, which converted the lot split into a non-conforming subdivision of 4 lots that violated Subdivision Ordinance Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E).

You did not tell Town Council that you were required to order the use of the sewer constructed on parcel 211-10-010 discontinued per Sections 1.5 & 1.7 of the Zoning Ordinance because the subdivision of 211-10-010 into 4 lots did not comply with Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E) of the Subdivision Ordinance; such that the lots were not entitled to building permits; such that the sewer permits issued to the 211-10-010 lots conflicted with Zoning Ordinance and thus void per Section 1.4 of the Zoning Ordinance. Additionally, you failed to comply with A.R.S. §9-500.12 per Section 2.3 of the Zoning Ordinance when the Town required easements on parcel 211-10-010 for the *ultra vires* sewer and required the 211-10-003 lots to connect to the *ultra vires* sewer on my property to approve the non-conforming subdivision of parcel 211-10-003 into four (4) lots.

On August 16, 2003, you misrepresented that 211-10-003's 4th lot "Parcel A" had been dedicated to the Town of Cave Creek on MCRD #2003-1312578 to violate A.R.S. §33-420. In fact, the 25-foot wide strip of land was never dedicated to Cave Creek per of Section 2.4(D)(2)(b)(2) of the Subdivision Ordinance. "Parcel A" on MCRD #2003-1312578 became lot 211-10-003D, which continues to block legal and physical access to lots 211-10-003A, B, & C and blocks the easement on lots 211-10-003 A & B in violation of Section 5.1 of the Zoning Ordinance.

Thinking at the time that the lot splits of parcels 211-10-010 and 211-10-003 were lawful as Cave Creek continued to issue permits and never disclosed the non-conforming subdivision status of the lots, a Home Owners Association ("HOA") was executed by and between myself as the owner of lots 211-10-010 A, B, & C and Keith Vertes of GV Group LLC, purporting that the LLC was the owner of lots 211-10-003 A, B, & C. The agreement ran with the lots to provide mutual and reciprocal access to the easements on the 211-10-003 lots and the 211-10-010 lots.

The intent of the agreement required mutual and reciprocal easement access to comply with Zoning Ordinance Section 5.1, especially 5.1(C)(3) ("the route of legal and physical access shall

be the same") & 5.1(C)(8), and Subdivision Ordinance Section 2.5(A)(6) ("No non-public way or driveway shall provide access to more than three (3) residential lots"). Mutual and reciprocal access was also required to build an adjoining driveway over parcels 211-10-003 & 211-10-010 to facilitate 211-10-003's Hillside designation per Section 5.11 of the Zoning Ordinance.

However, GV Group LLC did not own lots 211-10-003 A, B, & C and Vertes sold lot 211-10-003A to Jocelyn Kremer the day before executing the HOA to not bind the lot and to block access to the 211-10-003 easement *ab initio*. Additionally, access to the 211-10-003 easement was blocked by the 25-foot wide sliver of land, now lot 211-10-003D, which was never dedicated to Cave Creek as you, Carrie, and Mayor Vincent Francia attested.

In hindsight, the HOA violated the Zoning Ordinance *ab initio*. The HOA intended one driveway to serve a build out of nine (9) residential lots. You said we could disregard Section 5.1(C)(8) of the Zoning Ordinance if the HOA shared mutual and reciprocal access of the 211-10-003 & 211-10-010 easements. But lot 211-10-003D (a/k/a "Parcel A" on MCRD #2003-1312578) blocked legal and physical access to the 211-10-003 easement in violation of Section 5.1 of the Zoning Ordinance. As such, the HOA not only violates Section 5.1(C)(8) of the Zoning Ordinance, but also 2.5(A)(6) of the Subdivision Ordinance. Therefore, the HOA did not comply with Zoning Ordinance Sections 1.1(C) & 1.3(B) (if this Ordinance imposes higher standards or greater restrictions, the provisions of this Ordinance shall prevail).

In 2004, I invoiced Cave Creek for the repair and extension of the Town's sewer not knowing at the time that the lots and sewer violated the Subdivision & Zoning Ordinances. In response, you placed me "under investigation" on February 28, 2004, for alleged "potential violations" of the "lot splits" of parcels 211-10-010 & 211-10-003, and "red tagged" all building permits to the lots. You later told me that you were ordered to write that letter of the bogus investigation, which contains no explanation of why or how "potential violations" existed. The Town Marshal said "reassemble the lots," which I did, but recording a reassemblage was only construed for tax purposes by the County. According to Maricopa County Assessor's Office in 2014, only a Court can undo Cave Creek's subdivision violations by striking the lot splits.

Nonetheless, you approved building permits to construct homes on non-conforming subdivided lots 211-10-003 A, B, & C based on drawings that violated hillside coverage restrictions, using an *ultra vires* sewer and access from my property, in violation of A.R.S. § 9-500.12, Subdivision Ordinance Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E), and Zoning Ordinance Sections 5.1, 1.3, 1.5, 1.4, 1.7, & 2.3(C)(4).

In violation of Section 2.3(E)(1) of the Zoning Ordinance, you did not transmit plans and permits (i.e. all records) to the Board of Adjustment for the variance applications for lots 211-10-003 C & B. The variance applications rely on the HOA. The applications claim that "blocked access" to my property was the cause of the excessive disturbance on lots 211-10-003 C & B. However, you had notice that the HOA was rescinded in 2005 because it was disavowed by REEL, BMO Harris Bank, and Kremer due to Vertes's breach *ab initio*, such that plans and permits for lots 003 B & C using access from my property violates Sections 5.1 of the Zoning Ordinance.

Per Subdivision Ordinance Section 1.1(A)(4): No person shall subdivide any parcel of land into four (4) or more lots except in compliance with this Ordinance. Cave Creek's requirement to exact strips of land that became 4th lots caused the unlawful subdivision of parcels 211-10-010 and 211-10-003.

It is your duty to enforce the Subdivision & Zoning Ordinances per Sections 1.5 & 2.3 of the Zoning Ordinance and Section 1.1 of the Subdivision Ordinance, also incorporated in the Zoning Ordinance per Section 1.1(B). Based on A.R.S. §9-463.03 and Subdivision Ordinance Section 1.1(A)(2), the sale of lots 211-10-003 A, B, C, & D, and the sale of lots 211-10-010 A & C are unlawful because there are no recorded final plat maps of these lots that conform to the Town's Subdivision Ordinance. Because YOU violated your duty to enforce the Ordinances, I did not know that it was unlawful to sell any part of parcels 211-10-010 or 211-10-003.

Pursuant to Subdivision Ordinance Section 1.1(A)(5), no lot within a subdivision can be altered or further divided without the approval of Town Council. Parcel 211-10-010 was subdivided into 4 lots. It's a subdivision. Since the further split of lot 211-10-010A was not approved by Town Council such that lots 211-10-010 L, M, & N do not conform to the Subdivision Ordinance and are therefore unsuitable for building and not entitled to building permits per Subdivision Ordinance Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E), and Zoning Ordinance Sections 5.1, 1.3, 1.5, 1.4, 1.7, & 2.3(C)(4).

Per Section 2.3(C)(11), you had authority to refer all permit applications for 211-10-010 or 211-10-003 lots to the Planning Commission. The division of these parcels into 4 lots each rendered the properties unsuitable for building and not entitled to building permits per Section 6.3(A), yet you continue their unlawful use and continue to issue void permits. In violation of A.R.S. §9-500.12(C) and Section 2.3(C)(2) of the Zoning Ordinance, no takings report was ever generated as required.

Each and every day that you fail to enforce the Subdivision & Zoning Ordinances as required per Sections 1.5 & 2.3 of the Zoning Ordinance ***shall*** be a separate offense punishable per Section 1.7 of the Zoning Ordinance. Per Section 1.7(A) of the Zoning Ordinance effective when you approved my lot split and began issuing me permits to my property in 2001, if you or the Town (i.e. any person) violates any provision of the Town's Ordinances, you (and Cave Creek) ***shall*** be guilty of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law for ***each day*** of continued violation. ***Knowing*** that you and other town officials could be liable for violating the Town Ordinances, in bad faith, you and the Prosecuting Attorney requested that this language be changed to a Civil Code Infraction in 2005. All of the above are continuing violations of Cave Creek's Ordinances, caused or created by you as Zoning Administrator on behalf of the Town, requiring the use of parcels 211-10-003 & 211-10-010 discontinued and the parcels vacated to Quiet Title in conformance with the Subdivision Ordinance and A.R.S. §9-463.03. See *Zrihan v. Wells Fargo Bank*, NA, Dist. Court, D. Arizona 2014: ""[A] cause of action to quiet title for the removal of the cloud on title is a continuous one and never barred by limitations while the cloud exists." *Cook v. Town of Pinetop-Lakeside*, 303 P.3d 67, 70 (Ariz. Ct. App. 2013) (quoting *City of Tucson v. Morgan,* 475 P.2d 285, 287 (Ariz. Ct. App. 1970))."

Since it is well established law[2] that you and Cave Creek can correct mistakes of law at any time, the purpose of this letter is to establish a clear line, a date certain, as to whether you and Cave Creek intend to resolve these matters. Per Section 2.3(D) of the Zoning Ordinance, you may not make any changes in the uses permitted in any zoning classification or zoning district

[2] See *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), and *Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, lst Div., Dept. D 1996."

or make any changes in the terms of the Zoning Ordinance. As such, you have no discretion to change “SHALL” provisions of the Zoning Ordinance.

My family and I have been substantially aggrieved by your decisions that violate your duty to enforce the Zoning and Subdivision Ordinance as outlined above. Each and every day that you fail to correct your mistakes becomes a separate violation punishable as outlined in Section 1.7 of the Zoning Ordinance. As such, per Zoning Ordinance Section 2.3(E)(1), this letter is our request for your decision to correct your dereliction of duties as outlined above.

Per Zoning Ordinance Section 2.3(E)(2), I hereby request your decision in writing, via certified mail, return receipt requested as to your intention to correct the continuing violations of the zoning and subdivision ordinances that you and other Cave Creek officials or employees knowingly concealed from me since 2001 as outlined above.

Cordially,

Arek R. Fressadi

Arek R. Fressadi

Cc: Town Council, Town Manager, Jeff Murray, Esq.

EXHIBIT E

Arek Fressadi

June 21, 2018
Via Hand-Delivery by Process Server

Carrie Dyrek, Town Manager and Town Clerk
Ian Cordwell, Zoning Administrator
Town of Cave Creek
37622 N. Cave Creek Road
Cave Creek, Arizona 85331

Assessor Paul D. Petersen
Maricopa County Assessor's Office
301 W Jefferson St.
Phoenix, AZ 85003

Arizona State Legislature
c/o Steve Yarbrough, Senate President
and c/o J.D. Mesnard, House Speaker
Arizona State Capitol Complex
1700 W. Washington St.
Phoenix, AZ 85007
syarbrough@azleg.gov
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State of Arizona
Arizona Attorney General Mark Brnovich
400 West Congress
South Building, Suite 315
Tucson, AZ 85701-1367
Mark.Brnovich@azag.gov

Re: Notice of Claim, Continuing Violations, A.R.S. §§ 9-500.12, 9-500.13 ("9-500.12/13") 13-2314.04, 33-420, Parcels # 211-10-010 and 211-10-003

FOURTH AMENDED AND SUPPLEMENTAL CLAIM[1]

Article 2, Section 3(A) of Arizona's Constitution states that: "The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject." In 1995, Arizona's legislature enacted 9-500.12/13 to require municipalities to fully comply with Federal and State law. The Town of Cave Creek, as its Official Policy, has continuously violated 9-500.12/13 since 2001 to affect hundreds of property owners in Cave Creek. As the Town adopted the Continuous Violations Doctrine,[2] a claim based on a series of related wrongful acts is considered continuous, and accrual begins at the termination of the wrongdoing, rather than at the beginning. *Watkins v. Arpaio,* 239 Ariz. 168, ¶ 9, 367 P.3d 72, 75 (App. 2016); *see Floyd v. Donahue,* 186 Ariz. 409, 413, 923 P.2d 875, 879 (App.1996). As such, the time to file a Notice of Claim had not begun, and will not commence until the termination of wrong doing. The legitimate concern of the continuing violation doctrine is preventing the potentially infinite continuance of torts into the future.

Therefore, Fressadi sent Cordwell and other Town Officials a letter on December

[1] Arek R. Fressadi incorporates his Notices of Claim dated 10/24/2008, 4/1/2010, 6/30/2013.
[2] *See* Section 1.7 Town of Cave Creek Zoning Ordinance, Town ordinances mentioned herein refer to the 2003 version.

23, 2017, **Exhibit A,** that requested Cordwell, on behalf of Cave Creek, comply with Federal and State law and Town Ordinances as to the unlawfully subdivided lots from parcels 211-10-010 and 211-10-003 and resulting violations of subdivision and zoning ordinances requiring mandatory enforcement. Nonconforming uses are not favored by the law and "should be eliminated or reduced to conformity as quickly as possible." *Rotter v Coconino County,* 169 Ariz. 269, 272, 275, 818 P.2d 704, 707, 710; *accord Outdoor Sys., Inc. v. City of Mesa,* 169 Ariz. 301, 307, 819 P.2d 44, 50 (1991); *Gannett Outdoor Co. of Ariz. v. City of Mesa,* 159 Ariz. 459, 461, 768 P.2d 191, 193 (App. 1989). Further, his land remains unusable, which is against public policy and must be remedied. As no action has been taken to stop the continuing violations and predicate acts, the Parties must be compelled by court action to provide full compensation for the multiple takings and to provide a legal remedy—including correcting the subject properties that Cave Creek covertly converted into illegal non-conforming subdivisions that are unsuitable for building, unlawful to sell, and not entitled to permits per state law and Town ordinances.

Out of an abundance of caution, Fressadi submits this Notice of Claim as may be required by A.R.S. § 12-821.01.[3]

Cave Creek's and its actors' continuing violations of its Zoning and Subdivision Ordinances are criminal per Section 1.7 of the Zoning Ordinance. The Parties must strictly comply with Federal and State law, and Cave Creek and its actors must strictly comply with the Town's mandatory "shall" ordinances. Cave Creek failed to follow A.R.S. §§ 9-500.13 and 9-500.12, which materially affects the adjudication of CV2006-014822 and the title (i.e. Quiet Title) of the lots in Cave Creek parcels 211-10-010 and 211-10-003 subject to the Covenant (MCRD 2003-1472588).

A Notice of Claim is not required to be served upon government entities or its actors as a prerequisite to a lawsuit for declaratory relief, injunctive relief, or for claims based upon federal law. See, e.g., *Morgan v. City of Phoenix*, 162 Ariz. 581, 785 P.2d 101 (App. 1989); *Castaneda v. City of Williams,* No. 07-001229, 2007 WL 1713328, at *4 (D.Ariz. June 12, 2007); *Felder v. Casey,* 487 U.S. 131, 138 (1988). See also *Cook v. Town of Pinetop-Lakeside*, 232 Ariz. 173, 303 P.3d 67 at 70 (App. 2013)(a cause of action to quiet title for the removal of the cloud on title is a continuous one and never barred by limitations while the cloud exists). Fressadi is still in title and possession of the strip of land exacted by Cave Creek that converted 211-10-010 into a non-conforming subdivision.

Immunities contained in A.R.S. §§ 12-820.01 to 820.05 apply only to suits for money damages, not to suits for injunctive, declaratory, or other equitable relief. *Zeigler v. Kirschner*, 162 Ariz. 77, 84, 781 P.2d 54, 61 (App. 1989).

CONSTITUTIONAL CHALLENGE OF A.R.S. § 12-820 through A.R.S. § 12-821.01

Sovereign immunity was abolished in *Stone v. Ariz. Highway Comm'n,* 381 P.2d

[3] Fressadi intends to either amend the pleadings in CV 2006-014822 to conform to new evidence pursuant to Ariz.R.Civ.P. 15 or file a new complaint per 60(d)(3) and name as indispensible parties Maricopa County, the State of Arizona, and the Town of Cave Creek and its actors (Zoning Administrator and Planning Director Ian Cordwell, Town Manager and Town Clerk Carrie Dyrek, former Town Manager Usama Abujbarah, former Mayor Vincent Francia) backed by its surety Arizona Municipal Risk Retention Pool ("AMRRP"), facilitated by Cave Creek/AMRRP's joint attorney Jeffrey Murray, and propagandized to cast Fressadi in false light by the publisher of the Town's official newspaper Donald Sorchych / Conestoga Merchants Inc. in civil conspiracy (collectively "Parties").

107, 109, 112 (Ariz. 1963), but replaced with A.R.S. §§ 12-820 through 12-821.01. *VINIEGRA v. TOWN OF PARKER MUNICIPAL PROPERTY CORPORATION*, Ariz: Court of Appeals, 1st Div. 2016, No.1 CA-CV 15-0359, explains the State's current rationale on the constitutionality of A.R.S. §§ 12-820 through 12-821.01, that these statutes do not conflict with Ariz. Const. Art. 18 § 6. "We held in *Flood Control District of Maricopa County v. Gaines,* 202 Ariz. 248, 253-54, ¶¶ 14-17 (App. 2002), that § 12-821 was constitutional because it does not abrogate the fundamental right to sue, but merely provides a *reasonable* period of time within which it might be brought. As such, it does not violate the anti-abrogation clause." *VINIEGRA* at ¶17.

The alleged purpose of A.R.S. § 12-821.01 is to give public entities time to evaluate and settle claims before they are dragged into court. *Vasquez v. State*, 220 Ariz. 304, 308, ¶9, 206 P.3d 753, 757 (App. 2008) (Notice of Claim Statute anticipates that government entities will investigate and assess claims and permits possible settlement). However, other than low-money claims for personal injury or property damage, few significant claims that are submitted for evaluation are either evaluated or settled. The vast majority of them are simply ignored.

The practical purpose of these statutes is to block claims that are made too late or for some reason fail to comply with the statute's requirements. Courts routinely throw out legitimate claims against government entities due to noncompliance with A.R.S. § 12-820 thru A.R.S. § 12-821.01.For example, time-barredness can occur due to lack of notice about the statutes and potential waiver of rights when incidents occur, long-term hospitalization of incident victims, lack of discovery information, and fraudulent concealment conducted by government entities and their private corporate partners, such as in this case. Courts may not throw out all claims as it could with sovereign immunity, but A.R.S. §§ 12-820 through 12-821.01 significantly reduces the number of claims. The statutes as written and applied deny persons due process to routinely affect a taking of life, liberty, or property in violation of the Fifth, Ninth, and Fourteenth Amendments of the U.S. Constitution.[4]

"[P]rocedural due process rules are shaped by the risk of error inherent in the truth–finding process as applied to the generality of cases." *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). Procedural due process rules "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v.*

[4] As stated in *Holland v. Florida*, 130 S. Ct. 2549 - Supreme Court 2010: "We have said that courts of equity "must be governed by rules and precedents no less than the courts of law." *Lonchar v. Thomas,* 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996) (internal quotation marks omitted). But we have also made clear that often the "exercise of a court's equity powers ... must be made on a case-by-case basis." *Baggett v. Bullitt,* 377 U.S. 360, 375, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964). In emphasizing the need for "flexibility," for avoiding "mechanical rules," *Holmberg v. Armbrecht,* 327 U.S. 392, 396, 66 S.Ct. 582, 90 L.Ed. 743 (1946), we have followed a tradition in which courts of equity have sought to "relieve hardships which, from time to time, arise from a hard and fast adherence" to more absolute legal rules, which, if strictly applied, threaten the "evils of archaic rigidity," *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238, 248, 64 S.Ct. 997, 88 L.Ed. 1250 (1944). The "flexibility" inherent in "equitable procedure" enables courts "to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct... particular injustices." *Ibid.* (permitting postdeadline filing of bill of review).

Shevin, 407 U.S. 67, 81 (1972).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950). The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. *Id.*, *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970) Ordinarily, service of the notice must be reasonably structured to assure that the person to whom it is directed receives it. *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965); *Robinson v. Hanrahan*, 409 U.S. 38 (1974); *Greene v. Lindsey*, 456 U.S. 444 (1982).

A.R.S. §§ 12-820 through 12-821.01 contains no requirement of notice to an affected person per *Mullane* that his rights to life, liberty or property can be denied or diminished by A.R.S. §§ 12-820 through 12-821.01. Persons have a protected interest in being noticed of A.R.S. §§ 12-820 through 12-821.01 at the time of the incident. Therefore, A.R.S. § 12-820 through A.R.S. § 12-821.01 are unconstitutional as applied.

Fressadi argues that Cave Creek and its actors intentionally violated 9-500.12/13 and in doing so, concealed their malfeasance to obtain favorable time barred rulings per A.R.S. §§ 12-820 through 12-821.01. As such, Fressadi seeks declaratory and injunctive relief that the statute of limitations for RICO claims against any public entity or public employees should be governed by A.R.S. § 13-2314.04(F) and not A.R.S. § 12-821.

THE PARTIES' PREDICATE ACTS & CONTINUING VIOLATIONS

1. May 2001: Fressadi expresses his opinion at a Town Council meeting, that the Town would benefit by the development of a "Town Centre"—a core mixed use business and arts district to define Cave Creek and generate tax revenue. This idea is disfavored by Sorchych and Town Officials. In apparent civil conspiracy, Cave Creek's attorneys, its Town Manager Usama Abujbarah, Town Mayor Vincent Francia, Zoning Administrator Ian Cordwell, and Donald Sorchych, publisher of Cave Creek's Official Newspaper, the Sonoran News, concocted a surreptitious 1st Amendment retaliation scheme by violating federal and state due process as required in 9-500.12/13 and Town ordinances to convert his property into an illegal subdivision to harm Fressadi's business, reputation, and property and wipe out his investment backed expectations.

2. July 2001: In violation of 9-500.12/13 and Town's Zoning & Subdivision Ordinances, Cordwell instructs Fressadi to downzone his property from 18,000 square foot lots to ¾ acre lots and develop parcels 211-10-003 & 211-10-010 through "series of lot splits" rather than plat a subdivision in order to save time, avoid costs, and avoid a referendum by Sorchych. Having previously built in series of lot splits when he lived in Guam prior to moving to and building in Cave Creek, and as Fressadi detrimentally relied on the Town's / Cordwell's instructions and duty to enforce/uphold the law, Fressadi believed that applying for a series of lot splits was legal. As such, the Town/Cordwell fraudulently induced Fressadi.

3. July 2001: Under color of law and in violation of the Town's Zoning & Subdivision Ordinances, Cordwell tells Fressadi, who detrimentally relies on the Town's / Cordwell's instructions and duty to enforce/uphold the law, that a subdivision is "5 or more lots" instead of "4 or more." Consequentially, Fressadi believed that having 4 lots within a parcel was lawful.

4. October 2001 to present: Cave Creek violates 9-500.12/13 as its Official Policy when Fressadi applies for his first lot split for parcel 211-10-010 in 2001. The Town admitted its violations in 2016 after providing evidence via the Freedom of Information Act ("FOIA"). Each and every day that Cave Creek fails to follow 9-500.12/13 regarding any exaction of land, improvement or dedication of easement for any Cave Creek property is a separate violation/predicate act punishable per Section 1.7 of the Town's Zoning Ordinance**.**

5. Each and every day that the Zoning Administrator does not follow 9-500.12/13 for any property in Cave Creek is a separate violation/predicate act per Sections 1.7 and 2.3 of the Town's Zoning Ordinance. Cave Creek's Official Policy has affected *hundreds* of Cave Creek property owners.

6. December 31, 2001: Without providing Fressadi notice and hearing per 9-500.12/13, Cordwell/Cave Creek excludes a 25-foot strip of land along the eastern edge of parcel 211-10-010 to approve the survey lot split to subdivide parcel 211-10-010 into four lots.

7. February 2002: Abujbarah fraudulently induces Fressadi to repair and extend the Town's sewer in thick bedrock with the promise of reimbursement, reviewing multiple drafts of the reimbursement agreement with Fressadi.

8. December 8, 2003 to present: Cave Creek Town Code, Title V § 50.016 regarding sewer reimbursement, was passed on December 8, 2003, and the Town deleted it on January 11, 2009, after Fressadi sent the Town a Notice of Claim for reimbursement on October 24, 2008. The Town's reneged promised reimbursement caused Fressadi to become insolvent to cause foreclosure on lot 211-10-010A.

9. April 2002: Cave Creek requires Fressadi to dedicate easements in order to issue permits without establishing the nexus of proportionality and just compensation in continuing violation of 9-500.12/13.

10. On 3/13/02, 4/16/03, 4/17/03, in violation of A.R.S. §§ 9-500.12, 9-500.13, 13-1802 and 13-2314.04, Cave Creek required the omitted 25-foot strip of land on the 2001 survey of parcel 211-10-001 to be designated as "Parcel A" and "conveyed" to Cave Creek without Fressadi's knowledge or consent, such that it was never conveyed in order to grant final approval of Fressadi's sewer repair and extension. Cave Creek actors claimed the Town would "handle the paperwork," which never happened, such that Cave Creek caused the recording of the survey to contain a material misstatement in violation of A.R.S. §33-420, where each and every day is a separate criminal predicate act violation per Section 1.7 of the Town's Zoning Ordinance.

11. August 5, 2002: The Cybernetics Group Ltd. applies for a lot split of parcel 211-10-003 into two lots, the 2nd in Cordwell's series of lot splits application/downzoning solution. Town Council vetoes the lot split, claiming Fressadi's adjoining lots split from parcel 211-10-010 is a subdivision by claiming parcels 211-10-003 & 211-10-010 were part of a parent parcel when they were not. As Manager, Fressadi had a 12.5% interest in Cybernetics. Cordwell did not inform Town Council or Fressadi that his parcel 211-10-010 was already an illegal "non-conforming subdivision" of 4 lots, and/or it was Town Council's duty to know and inform Fressadi about the illegal nature of the lots.

12. February 21, 2003 to present: The Cybernetics Group Ltd. ("Cybernetics") sells parcel 211-10-003 to Keith Vertes *on condition* that Vertes obtains a legal lot split. If not, the property is required to be quit claimed back to Cybernetics, with Fressadi as successor in interest. Since Cave Creek converted the parcel into an illegal subdivision rather than a legal lot split, the property must be quit claimed back to Fressadi.

13. 2003-present: Maricopa County Assessor's Office knowingly assesses, values, and taxes the lots and improvements unlawfully divided from parcels 211-10-010 and 211-10-003 as saleable in violation of A.R.S. § 9-463.03, every year since 2003. The Assessor's Office classifies the "undefined subdivisions," to transform the "Parcel A" 25-foot eastern strips of land on MCRD 2003-0488178 and 2003-1312578 into 4th lots 211-10-010D and 211-10-003D, such that said surveys contain material misstatements in violation of A.R.S. § 33-420. As such, Cave Creek's violation of 9-500.12/13 to exact a 4th lot from parcels 211-10-003 and 211-10-010 caused the lots within the parcels to form "non-conforming" subdivisions that violate Sections 1.1(A)(2), 1.1(A)(4), 6.1(A)(7), and 6.3(A) of the Subdivision Ordinance, which are incorporated into the Zoning Ordinance per Section 1.1, where each and every day of each and every subdivision violation is a separate criminal predicate act per Section 1.7 of the Zoning Ordinance.

14. 2002 to present: In violation of 9-500.12/13, Cave Creek issued permits to lots unlawfully split or subdivided from parcels 211-10-010 and 211-10-003. Cave Creek's exaction of 4th lots caused 211-10-010 and 211-10-003 to become "non-conforming subdivisions," in violation of Sections 1.1(A)(2), 1.1(A)(4), 6.1(A)(7), and 6.3(A) of the Subdivision Ordinance such that the lots are unsuitable for building, unlawful to sell per A.R.S. 9-463.03, and not entitled to permits. Any permit issued to any 211-10-010 or 211-10-003 lot is in violation of Sections 1.1(A)(2), 1.1(A)(4), 1.1(B), 1.1(C), and 1.4 of the Zoning ordinance such that the Zoning Administrator must enforce and order the sewer, structures, and land vacated, and the use discontinued per Sections 1.5, 1.7(C), and 2.3 of the Zoning Ordinance, where each and every day of each and every violation is a separate, criminal continuing violation of predicate acts punishable as provided in Section 1.7(A) of the Zoning Ordinance.

15. 2002 to 2013: By violating 9-500.12/13 and issuing permits to Fressadi's 211-10-010 lots and to the 211-10-003 lots, Cave Creek fraudulently induced Fressadi into believing that the splits of parcels 211-10-010 and 211-10-003 were lawful and the permits vested when, in fact, the parcels were unlawfully subdivided, and the permits are void.

16. 2002 to present: By continuing to issue lot splits and permits for 211-10-010 lots and 211-10-003 lots, Cave Creek fraudulent induced all successor parties in interest into believing that the splits of parcels 211-10-010 and 211-10-003 are lawful and the permits vested when, in fact, the parcels were unlawfully subdivided, and the permits are void.

17. 9/18/03 to present: In violation of 9-500.12/13, Cave Creek required a strip of land along the eastern edge of parcel 211-10-003, "Parcel A," to be dedicated to Cave Creek to approve the survey split of parcel 211-10-003 into three lots.

18. 9/18/03 to present: In violation of A.R.S. § 33-420, Cave Creek's Zoning Administrator Ian Cordwell, Town Clerk (and now Town Manager) Carrie Dyrek, and the Town's former Mayor Vincent Francia attested that Keith Vertes had dedicated "Parcel A" to the Town of Cave Creek on MCRD 2003-1312578 when, in fact, Vertes continued to

own the strip of land which became a 4th lot 211-10-003D, in violation of Sections 1.1(A)(2), 1.1(A)(4), 6.1(A)(7), and 6.3(A) of the Subdivision Ordinance, where each and every day of each and every subdivision violation is a separate criminal predicate act per Section 1.7 of the Zoning Ordinance.

19. 10/16/03 to 5/16/18: Believing that parcels 211-10-010 and 211-10-003 were lawfully split and permits to lots 211-10-010 A, B, & C were lawfully vested, Fressadi executed a Declaration of Easement and Maintenance Agreement ("DEMA"), MCRD 2003-1472588, with Keith Vertes, Manager of GV Group LLC, the alleged owner of parcel 211-10-003, to provide mutual access to the easements serving parcels 211-10-010 and 211-10-003 in order to comply with Section 5.1(c)(8) of the Town' Zoning Ordinance and share the costs of driveway improvements, and related utilities, because the Town required the 211-10-003 lots to hook into the sewer on Fressadi's property in order to approve the 211-10-003 lot split. The DEMA is subject to Section 1.3 of the Zoning Ordinance. The DEMA was declared void in CV2006-014822, MCRD 2018-0372838. Any permit, ruling in a lawsuit, grant of variance, or any other entitlement based on the DEMA is void, where each and every day of reliance on the DEMA for an entitlement or ruling is a separate criminal predicate act per Section 1.7 of the Zoning Ordinance.

20. 4/21/03 to present: In violation 9-500.12/13, Cave Creek required adjacent lots 211-10-003 to connect to Fressadi's ultra vires sewer as a condition of lot split. However, Cave Creek's requirements for strips of land converted the splits of parcels 211-10-010 and 211-10-003 into unlawful subdivisions in violation of Sections 1.1(A)(2), 1.1(A)(4), 6.1(A)(7), and 6.3(A) of the Subdivision Ordinance rendering the lots unsuitable for building and not entitled to permits, per Sections 1.1(B), 1.1(C), and 1.4 of the Zoning ordinance such that all permits are void; Cordwell must enforce and order the sewer, structures, and land vacated and the use discontinued per Sections 1.5, 1.7(C), and 2.3 of the Zoning Ordinance, where each and every day of each and every violation is a separate, criminal continuing violation of predicate acts punishable as provided in Section 1.7(A) of the Zoning Ordinance.

21. 9/18/03 to present: In violation of 9-500.12/13, Cave Creek issued permits to lots 211-10-003 A, B, & C based off access and utilities from Fressadi's property that continue to rely on the void DEMA—a private takings—without notice and hearing to establish the nexus of proportionality and just compensation. Cave Creek issued permits to the 211-10-003 lots that are landlocked because Cave Creek's actors attested that lot 211-10-003D (a/k/a "Parcel A") had been dedicated to the Town when it was still owned by Keith Vertes, such that lots 211-10-003 A, B, & C were landlocked, unsuitable for building, and not entitled to permits per Sections 1.1(B), 1.1(C), and 1.4 of the Zoning Ordinance. In addition, the permits violate the Hillside Ordinance (Section 5.11 of the Zoning Ordinance) and rely on 211-10-010 DEMA access and utilities that is void *ab initio*, the sewer is *ultra vires*. The elevated 211-10-003 driveway adjacent to Fressadi's property is in violation of grading and Hillside Ordinances, such that Cordwell must enforce and order the improvements and land vacated and the use discontinued per Sections 1.5, 1.7(C), and 2.3 of the Zoning Ordinance, where each and every day of each and every violation is a separate, criminal continuing violation of predicate acts punishable as provided in Section 1.7(A) of the Zoning Ordinance.

22. 2/21/04 to present: Cave Creek has not paid Fressadi for repairing and installing public infrastructure. Cave Creek fraudulently induced Fressadi into repairing and installing the sewer with promised reimbursement, but reneged by claiming Fressadi was

responsible for the cost of improvements as a subdivider and that claims against the Town were time barred per A.R.S. § 12-821. In fact, Fressadi's property is a continuous violation of Cave Creek's Subdivision Ordinance, caused by Cave Creek's continuous violation of A.R.S. §§ 9-500.12/13, such that the 211-10-010 lots are in violation of Sections 1.1(A)(2), 1.1(A)(4), 6.1(A)(7), and 6.3(A) of the Subdivision Ordinance rendering the lots unsuitable for building and not entitled to permits per Sections 1.1(B), 1.1(C), and 1.4 of the Zoning ordinance such that the sewer permits are void; that Cordwell must enforce and order the sewer, structures, and land vacated and the use discontinued per Sections 1.5, 1.7(C), and 2.3 of the Zoning Ordinance, where each and every day of each and every violation is a separate, criminal continuing violation of predicate acts punishable as provided in Section 1.7(A) of the Zoning Ordinance.

23. 11/21/2005 to present: In bad faith, as Cordwell and the Town were knowingly violating 9-500.12/13 as its official policy in order to violate Town Subdivision and Zoning Ordinances, Cordwell and Cave Creek's Prosecuting Attorney submitted changes to the Zoning Ordinance to reduce ordinance violations from Class One Misdemeanors to Town Code Infractions to limit Cordwell's, the Town's, and other state actors' liability.

24. 2010 Foreclosure, 2011 Sale: Subsequent owners of the 211-10-003 lots (most notably BMO Harris Bank who foreclosed on lots 211-10-003 B, A, D) also refused to equitably contribute to the cost of repairing and extending the sewer on Fressadi's property for its use. Cave Creek and the subsequent lot owners caused Fressadi to be insolvent such that BMO Harris bank (subsequent owner of 211-10-003 B, A, D) foreclosed on Fressadi's home on lot 211-10-010A, and Maricopa County Sheriff's Office sold it in violation of A.R.S. § 9-643.03 as there is no final plat map of a subdivision.

25. On or about 10/8/10, BMO Harris Bank had Cave Creek arrest Fressadi for moving rocks ***on his own property***. BMO falsely claimed that the rocks were on their property. The Prosecuting Attorney told the Court Administrator that he filed charges against Fressadi to please the Town Manager. When some of the Prosecuting Attorney's shenanigans were made public, the Town Council fired the Prosecuting Attorney and the Complaint was dismissed. CR2010-0109 (Cave Creek) Municipal Court filed 12/22/2010, transferred as JC2011-065147 (Maricopa County Justice Courts).

26. On or about 11/28/11, BMO Harris Bank had Maricopa County Sheriff's Office falsely arrest Fressadi for trespassing ***on his own property***. Fressadi was tasered twice and incarcerated causing physical injury, on the night prior to his required appearance at a morning court hearing regarding the subject property. JC2012-065297 (Desert Ridge Justice Court of Maricopa County). Maricopa County Attorneys dismissed the case.

27. 10/6/09 & 1/12/10 (Variances to REEL for 211-10-010C), 10/12/10 (Variance to M&I Bank/BMO for 211-10-010B): By violating 9-500.12/13 and relying upon the void *ab initio* DEMA, Cave Creek issued variances to (unlawful) lots 211-10-010 B & C for self-imposed excessive disturbance of land based on allegations that Fressadi blocked access to his driveway. As stated above, the 211-10-003 lots are not entitled to permits as the lots are a non-conforming subdivision, and further legal and physical access to the 211-10-003 lots must be the same per Section 5.1 of the Zoning Ordinance. As Cave Creek actors falsely attested that "Parcel A" (lot 211-10-003D) had been dedicated to the Town when it had not such that it blocked access *ab initio*, Cave Creek caused a material misstatement such that any requirement for a variance is self-imposed.

28. 2012 to present: Cave Creek split 211-10-010A into 3 lots and continue to issue permits to these lots within the non-conforming subdivision. As the foreclosure of 211-10-010A was caused by Cave Creek's reneging of reimbursement of the sewer installation and Maricopa County sold the property in violation of A.R.S. §9-463.03, Fressadi insists that the original lot and the lots within the lot (currently 211-10-010 L, M, N) be returned to Fressadi.

29. 2002 to present: As part of the fraudulent scheme and predicate acts to cause harm to Fressadi's property, reputation, and business, Conestoga Merchants, Inc. d/b/a Sonoran News and its President/Publisher Donald Sorchych engages in continuous tortious conduct by publishing and maintaining disparaging articles each and every day on the Internet that cast Fressadi in a false light resulting from Cave Creek's 1st Amendment retaliation scheme that required the Town to continuously violate 9-500.12/13 and its own ordinances, which began with Cordwell telling Fressadi to downzone his property and develop it by a series of lot splits to avoid a referendum against a subdivision by Sorchych.

30. 2001 to Ongoing: Cave Creek's violation of 9-500.12/13 and failure to disclose this damaging information were predicate acts[5] to affect the outcomes of:

CV2000-011913

G02-1330 & G03-0202

CV03-00031RA / Appeal LC2004-000419-001DT

CV2006-014822 / Appeals 1 CA-CV 11-0728, 1 CA-CV 12-0435, 1 CA-CV 12-0601

ROC 09-2934

CV2009-050821 (Appeals 1 CA-CV 12-0238, CV 13-0209)
CV2009-050924 (Appeal 1 CA-CV 11-0051 / Descendant Case CV-12-0212-PR)

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[5] Cave Creek continues to commit constructive fraud and fraud on the court to obtain favorable rulings based on Statutes of Limitations ("SOL") rather than remedying the continuing violations. Fraud on the court is a variety of extrinsic fraud. *See, e.g., Dockery v. Cent. Ariz. Power & Light Co.,* 45 Ariz. 434, 450-51, 45 P.2d 656, 662-63 (1935). The doctrine may allow relief when, by fraud, a party has prevented "a real contest before the court of the subject matter of the suit," *id.,* or, put differently, has committed "some intentional act or conduct . . . [that] has prevented the unsuccessful party from having a fair submission of the controversy," *Bates v. Bates,* 1 Ariz. App. 165, 169, 400 P.2d 593, 597 (1965). The court has the power to set aside a judgment "[w]hen a party obtains a judgment by concealing material facts and suppressing the truth with the intent to mislead the court." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 299, ¶ 42, 257 P.3d 1168, 1179 (App. 2011) (complaint contained false statements and material omissions, and counsel made false statements in ex parte hearing). A judgment resulting from a fraud on the court may be set aside by motion or by an independent action. *Cypress,* 227 Ariz. at 299, ¶ 42, 257 P.3d at 1179. Fraud has damaged the "integrity of the judicial process" and is a "wrong against the institutions set up to protect and safeguard the public." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.,* 322 U.S. 238, 246 (1944), *abrogated on other grounds, Standard Oil of Cal. v. United States,* 429 U.S. 17 (1976); *see also Cleveland Demolition Co., Inc. v. Azcon Scrap Corp.,* 827 F.2d 984, 986 (4th Cir. 1987) (fraud on the court is a "corruption of the judicial process itself") (quoting *In re Whitney-Forbes,* 770 F.2d 692, 698 (7th Cir. 1985)).

LC2010-000109-001DT—Cordwell omitted plans—specifications indicating that the zoning infractions were self-imposed and permits were issued in violation of the Zoning Ordinance, rendering the permits void. Cordwell also omitted that the Town continuously violated 9-500.12/13 to affect a takings of Fressadi's property.

CV2010-029559

CV2010-013401

CV2010-004383

CV2011-014289

4:11-bk-01161-EWH / Appeal AZ-11-1209

CV2012-016136

4:12-CV-00876-FRZ / CV-13-00252-PHX-SLG

LC2006-000206 / CV-14-01231-PHX-DJH / 15-15566

Fressadi argues that he is entitled to damages for having to correct rulings obtained by Cave Creek committing fraud on the court as a series of predicate acts in bad faith and civil conspiracy with its surety AMRRP, sharing the same attorney, Jeffrey Murray.

CAVE CREEK IS NOT A SOVEREIGN ENTITY / STATE LIABILITY

"[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). Since zoning and subdivision authority comes from the state, a city must exercise their 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. "[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).

THE STATE OF ARIZONA REQUIRES MUNICIPALITES TO COMPLY WITH U.S. SUPREME COURT RULINGS AS CODIFIED IN A.R.S.§ 9-500.13. TO INSURE DUE PROCESS, THE STATE REQUIRES MUNICIPALITIES TO COMPLY WITH A.R.S. § 9-500.12.

Cave Creek violated A.R.S. § 9-500-13 by requiring a fourth lot to approve lot splits. Cave Creek has the burden, but never established, the nexus requiring a fourth lot to approve the split of parcels 211-10-010 or 211-10-003 per A.R.S. § 9-500.12(E).[6]

Cave Creek required an easement over lot 211-10-010D in order to permit sewer to lots 211-10-010 A, B, & C with promises of reimbursement, but failed to follow the

[6] 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..."

requirements of due process as required in A.R.S. § 9-500.12 and failed to reimburse Fressadi. Cave Creek failed to follow A.R.S. § 9-500.12 because Cave Creek did not comply with A.R.S. § 9-500.13 by requiring the creation of lot 211-10-010D. *See* MCRD 2012-0377104 for revocation of easements and lot splits.

The State enabling statutes governing zoning and subdivision are A.R.S. §§ 9-462 and 9-463 *et seq*. 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(A) defines a subdivision as: "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 ordinance and other state statute."

MCRD 2003-0481222, 2003-0488178, and 2003-1312578 are not a "recorded plat" of a "final plat" that were vetted through the Town's subdivision ordinance per A.R.S. §9-463(6).

Cave Creek claims that "any one property that is subdivided into four or more lots is defined as a subdivision under the Town's Subdivision Ordinance.[7]"

By requiring a fourth lot as a condition to approve the split of parcel 211-10-010 and 211-10-003 in violation of 9-500.12/13, Cave Creek created unlawful subdivisions per their ordinance that did not comply with A.R.S. § 9-463 *et seq*. because the surveys of lot splits are not recorded final plats of preliminary plats that were vetted by the Planning Commission and Town Council per the Town's Subdivision Ordinance.

See MCRD 2003-0481222, 2003-0488178, and 2003-1312578 and the County Assessor records for lots 211-10-010 A-N and 211-10-003 A, B, C & D.

Since the subsequent lots from parcels 211-10-003 and 211-10-010 do not comply with the Town's Subdivision Ordinance, the lots are unsuitable for building per Section 6.3(A) of the Subdivision Ordinance. *See also* Section 6.1(A)(7) of the Town's Subdivision Ordinance.

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."

Lot 211-10-003D blocks legal and physical access to lots 211-10-003 A, B & C. Section 5.1(B)(4) indicates: "The route of legal and physical access shall be one and the same." Section 151.36(A) of Cave Creek's Building safety code 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**." The building permits for lots 211-10-003 A, B, & C were issued with access for fire safety and utilities via a reciprocal easement agreement, MCRD # 2003-1472588, that required access across 211-10-003D and therefore was declared void *ab initio*, MCRD 2018-0372838.[8]

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[7] CV2009-050821, Separate Verified Answer of Town of Cave Creek, 3/13/09, paragraphs 17, 18, 20, 21, 38. Cave Creek's Subdivision Ordinance, ~2003 is incorporated by reference herein.

[8] Further, the reciprocal easement agreement is unenforceable as a right arising from an illegal transaction as all of the lots governed by the Covenant are unlawful. *See Landi v.*

"[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)). See *Havasu Heights II,* 167 Ariz, at 389, 807 P.2d at 1125 (laws of the state are a part of every contract). A court has a duty to determine whether the requirement of a fourth lot to split parcels 211-10-010 and 211-10-003 violated U.S. Supreme court rulings and to Quiet Title pursuant to A.R.S. §§ 12-1101 through 12-1104 accordingly.

CAVE CREEK IS FINANCIALLY LIABLE FOR ZONING VIOLATIONS CAUSED BY ISSUING VOID PERMITS

According to Section 1.7 of the Town's Zoning Ordinance: (A) "***any person*** (to include the Town of Cave Creek as a corporate person and its actors) 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."[9]

Pursuant to Section 1.1(B) of the Town's Zoning Ordinance operational at the time, the Zoning Ordinance incorporated all adopted Town codes and ordinances as they relate to the development or construction of any building or parcel of land.

Pursuant to Section 1.1(C) of the Town's Zoning Ordinance operational at the time, wherever a conflict occurs between codes, rules, or ordinances, the more restrictive shall govern. Further, where there is a conflict between general and specific requirements, the specific shall govern.

Pursuant to Section 1.7(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 or land or portion thereof vacated by notice served on any person cause such use to be continued. Such person shall discontinue the use with 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."

None of these provisions are discretionary. Cave Creek must comply with A.R.S. §§ 9-500.13, 9-500.12, 9-463 *et seq.*, 9-462 *et seq.*, and the specific sections identified herein from its Subdivision and Zoning Ordinances.

There is no evidence that Cave Creek complied with 9-500.12/13 in requiring a fourth lot to approve the splits of parcels 211-10-003 and 211-10-010. The consequence

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Arkules, 172 Ariz. 126, 136, 835 P.2d 458, 468 (App.1992) *See Nat'l Union Indem. Co. v. Bruce Bros.,* 44 Ariz. 454, 467-68, 38 P.2d 648, 653-54 (1934) (where illegality of contract appears on face of contract or appears from evidence necessary to prove contract, court has duty to declare contract void); *see also Clark v. Tinnin,* 81 Ariz. 259, 263, 304 P.2d 947, 950 (1956) (waiver and estoppel cannot be invoked against void contract); *cf. Kaiser Steel Corp. v. Mullins,* 455 U.S. 72, 83 (1982) (federal court has duty to determine whether contract violates federal law before enforcing it).

[9] Pursuant to Section 1.4(D) 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." http://www.cavecreek.org/DocumentCenter/View/994

of requiring a fourth lot was to convert the lot split applications into unlawful subdivisions in violation of A.R.S. § 9-463 *et seq.* and the Town's Subdivision Ordinance, rendering the lots unsuitable for building and not entitled to building permits. Given that none of the lots divided from parcels 211-10-010 or 211-10-003 comply with the Subdivision Ordinance, all of the lots are unsuitable for building and not entitled to permits per Section 6.3(A) of the Subdivision Ordinance.

Ergo, when the Town issued building permits and granted variances, it violated Section 1.7 of the Town's Zoning Ordinance for each permit and each variance, which continue to be relied upon daily as a separate offense. The maximum fine attributable to a corporation (i.e. incorporated government land, AMRRP) for each Class 1 Misdemeanor is $20,000 pursuant to A.R.S. § 13-803.

Per Section 1.4(A) of the Zoning Ordinance, the following permits and variances are void: #02-057, #02-058, #02-256, #02-260, #02-263, 2002-031, #03-475, #05-095, #03-497, #04-269, #04-655, #04-655, #06-225, and variances B-09-03, B-10-01. Void permits create no vested property right—a complete wipeout of Fressadi's investment-backed expectations. *See Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, 1st Div., Dept. D 1996.

The maximum penalty attributable to Cave Creek (a corporate enterprise) as of the date of this writing is a staggering 1.2 Billion Dollars based on the Zoning Ordinance effective January 6, 2003. Clearly Cave Creek was cognizant that it could be liable for violating its own Zoning Ordinances and, in a surreptitious manner, the Town adopted a new Zoning Ordinance effective December 21, 2005 removing the class 1 misdemeanor liability language from Section 1.4. See attached Spreadsheets, **Exhibit B**.

Should the Town look to Sections 1.6 and 1.1(C) of the Zoning Ordinance to circumvent liability, I will request the court to rule these provisions as invalid and unconstitutional—an abrogation of rights.

OFFER OF SETTLEMENT / CONCLUSION.

Cave Creek has previously declared that it can correct a mistake of law per *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). In other words, Cave Creek can correct all its previous mistakes "by the book."

Cave Creek must comply with A.R.S. §§9-500.13, 9-500.12, and 9-463 *et seq*. and its own Subdivision and Zoning Ordinances.

Given that the lots do not comply with the subdivision ordinance and therefore are unsuitable for building, the permits issued for driveways, sewer, and single family homes are void, and the improvements ultra vires, the Zoning Administrator must order the use of the single family homes on lots 211-10-010A, 211-10-003A, 211-10-003B, and 211-10-003C discontinued according to Section 1.7(C). This is declaratory relief.

Sum certain:
For Cave Creek's continuing violations of A.R.S. §§9-500.12, 9-500.13, 9-463 et seq., 33-420, 13-2310, 13-2311, 13-2314.04, and its Zoning and Subdivision Ordinances to affect a takings in bad faith per ARS 9-500.12(H) as outlined above, and for the other Parties' complicit and/or facilitative acts in civil conspiracy per A.R.S. §§ 13-1003 and 13-1004, Fressadi hereby agrees to settle all claims against the State of Arizona, the County of Maricopa, the Town of Cave Creek, and respective state actors for the sum certain of One Hundred Sixty Million Dollars, $160,000,000, less than 10% of possible bad faith delay damages based on Section 1.7 fine schedule and treble damages per

A.R.S. §§13-2314.04 and 33-420. The $160 Million can be divided as follows:
$10 Million: Carrie Dyrek
$10 Million: Ian Cordwell
$10 Million: Usama Abujbarah
$10 Million: Vincent Francia
$10 Million: Donald Sorchych / Conestoga Merchants Inc.
$10 Million: Jeffrey Murray, Esq.
$10 Million: Maricopa County
$50 Million: Town of Cave Creek, backed by its surety AMRRP
$40 Million: State of Arizona for allowing Cave Creek to continually violate state and federal law and its own ordinances by failing to enforce RICO statutes and judicial takings, *supra*.

Fressadi reserves all rights, claims, and remedies arising out of or in any way relating to this matter, and further reserves the right to present additional claims, arguments and/or evidence to the Parties and/or in any subsequent litigation that may arise through further discovery.

Sincerely,

Arek R. Fressadi

Enclosures

EXHIBIT A

Ian Cordwell, Director of Planning, Zoning Administrator
Town of Cave Creek
37622 N. Cave Creek Rd.
Cave Creek, AZ 85331

December 23, 2017

Dear Ian,

For years you told me that you made mistakes; that you were ordered to do so sometimes, but you never said what the mistakes were or who ordered you to make them. As nothing prevents you from correcting your mistakes, I submit the following:

Pursuant to A.R.S. §9-463.01, the Town Council of Cave Creek **SHALL** regulate and **SHALL** exercise authority over the subdivision of all lands within its corporate limits. The Town adopted a Subdivision Ordinance that SHALL apply to all land in the corporate limits of Cave Creek per Section 1.1(A)(1)[1] of the Subdivision Ordinance, which supplements A.R.S. §§ 9-463.01 and 9-463.04 per Section 1.1(A)(3): "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." [emphasis added]

Under color of law, on which I detrimentally relied, you told me in 2001 to develop parcels 211-10-010 and 211-10-003 by a "series of lot splits;" that in consideration for down zoning the density on these parcels from 18,000 sq ft lots to ¾ acre lots, the Town would allow me to build out 8 homes rather than plat a subdivision. You also said that a subdivision was "5 or more lots."

Years later, I discovered that A.R.S. §9-463.02 defines a subdivision and A.R.S. §9-463.03 renders the sale of any portion of a subdivision unlawful until a final plat map is recorded. Subdivision Ordinance Sections 1.1(A)(2) & 1.1(A)(4) limit the subdivision process and sale of subdivided property in Cave Creek. **Specifically, the subdivision of any parcel of land into four (4) or more parcels must comply with the ordinance.**

The Subdivision Ordinance is incorporated into the Zoning Ordinance per Section 1.1(B) of the Zoning Ordinance. In any conflict of regulation, the more restrictive ***shall*** govern per Section 1.1(C) of the Zoning Ordinance.

Carrie Dyrek admitted on August 29, 2016, that Cave Creek stopped complying with A.R.S. §§ 9-500.12 & 9-500.13 as its official policy when I applied to split parcel 211-10-010 into three lots in October 2001. Jodi Netzer witnessed Carrie's admission. Carrie provided evidence requested through the Freedom of Information Act that Cave Creek knew its duty to abide by A.R.S. §9-500.12 and complied to varying degrees from 1997 to September 2001, but completely stopped thereafter. By violating A.R.S. §9-500.12, Cave Creek denied due process to avoid its burden to establish the nexus of proportionality for requiring the exaction of a 25-foot wide strip of land from parcel 211-10-010 to approve the split of parcel 211-10-010 on December 31, 2001, Maricopa County Recorded Document ("MCRD") 2002-0256784. The Town surreptiously turned this strip of land into "Parcel A" to approve sewer permits in 2003, and required the survey to say it was dedicated in 2003 without complying with A.R.S. §9-500.12 or the Subdivision Ordinance, MCRD 2003-0488178. Sometime between 2003 and 2013, Maricopa County Assessor's Office issued "Parcel A" a parcel number, #211-10-010D, and classified the split of parcel 211-10-010 into lots 211-10-010 A, B, C, & D as an "undefined subdivision." I never received notice or explanation as

[1] All cited Ordinances herein refer to those adopted or in effect in the **2003** Ordinance booklets.

to why or how “Parcel A” had to be dedicated to Cave Creek. Cave Creek never established the nexus of proportionality for the dedication nor just compensation such that it was never dedicated per Section 2.4(D)(2)(b)(2) of the Subdivision Ordinance (“Execution of the dedication shall be certified by a notary public”).

Section 2.3(C) of the Zoning Ordinance establishes your duties as the Zoning Administrator. Section 2.3(D) establishes the limitations of your power as Zoning Administrator. Pursuant to Section 2.3(C)(1), you are required to establish rules, procedures, and forms to provide for processing of applications or requests for action under the provisions of the Zoning Ordinance. Per Section 2.3(C)(2), you are required to perform ALL administrative actions required by this Ordinance **to include giving notice, scheduling of hearings, and preparing reports**. It is your duty that Cave Creek complies with Federal law in A.R.S. §§ 9-500.12 & 9-500.13 when the Town exacts land, improvements, or dedications of easements to approve entitlements.

By violating your duty to perform ALL administrative actions that require Cave Creek to comply with A.R.S. §§ 9-500.12 & 9-500.13, you violated your oath of office. You / Cave Creek exacted a 25-foot wide strip of land that converted my “metes & bounds” survey of parcel 211-10-010 into a 4-lot non-conforming subdivision. A “metes and bounds” survey is not a final plat map vetted by the Planning Commission and Town Council. Further, lot 211-10-010D blocked access to lots 211-10-010 A, B, & C. Per Section 1.1(B)(1) of the Subdivision Ordinance, you ***shall*** enforce the Subdivision Ordinance. By violating your duties in Section 2.3(C)(2) of the Zoning Ordinance, the Town violated A.R.S. §9-500.12 for you to approve the “metes & bounds” survey of parcel 211-10-010 into 4 lots on December 31, 2001, in violation of Sections 1.1(A)(1-4), (B), (C), & (D), 6.1(A), 6.2(B)(4), 6.3(A), and Chapter 2 especially 2.5(E) of the Subdivision Ordinance.

Per Section 1.1(B)(2) of the Subdivision Ordinance, ALL officials and employees of the Town who are vested with the authority to issue permits SHALL ONLY issue permits or otherwise perform duties in accordance with the Subdivision Ordinance. Because no lot split from parcel 211-10-010 is entitled to a building permit per Section 6.3(A) of the Subdivision Ordinance, any permit issued to a non-conforming lot of parent parcel 211-10-010 conflicts with Section 6.3(A) of the Subdivision Ordinance as to be void per Section 1.4 of the Zoning Ordinance.

As such, each and every lot split from parcel 211-10-010 and all permits issued to these lots violates the Subdivision Ordinance to be a separate offense punishable against you, Cave Creek, and other complicit Town officials per Sections 1.7(A),(B),&(C) of the Zoning Ordinance. Per Sections 1.1(C), 1.5, & 1.7 of the Zoning Ordinance, you have no discretion but to order the use of all improvements discontinued on lots in parcel 211-10-010 and order the property vacated. Per Section 1.7(A),(B),&(C), each and every day that you do not order the use of improvements on lots in parcel 211-10-010 discontinued and the land vacated is a continued violation that shall be a separate offense against you and Cave Creek punishable as described in Section 1.7(A).

August 5, 2002. http://www.cavecreek.org/Archive.aspx?ADID=154
In furtherance of your instruction to develop parcels 211-10-010 and 211-10-003 by a “series of lot splits,” The Cybernetics Group applied to split parcel 211-10-003 into two (2) lots. Once again, you violated your duty as Zoning Administrator by failing to notice The Cybernetics Group of its right to a hearing and a takings report per A.R.S. §9-500.12 when Cave Creek required a 25-foot wide strip of land along Schoolhouse Road as a condition to approve the lot split. The Town had the burden to establish the nexus of proportionality and provide a takings report for this 3rd lot / 25-foot wide strip of land.

As part of a civil conspiracy, you told Town Council that "the issue is land planning and where the line is crossed that separates lot splitting and the subdivision processes," but you didn't tell Town Council that the "series of lot splits" was by your instruction; that you violated your duties as Zoning Administrator per Section 2.3(C)(2) of the Zoning Ordinance for Cave Creek to exact a strip of land, a 4th lot to transform the split of parcel 211-10-010 into a non-conforming subdivision by failing to follow Federal law, State statutes, and Town ordinances. You said that parcel 211-10-010 was split into 3 lots, when in fact it was already a non-conforming subdivision of 4 lots. Based on my 12.5% interest in Cybernetics, Town Council denied the Cybernetics lot split, but 211-10-003 was NEVER part of a parent parcel with 211-10-010. As it was painfully obvious that the principles in "A Pattern Language" would never manifest in Cave Creek, Cybernetics sold parcel 211-10-003 to Keith Vertes contingent upon Vertes obtaining a lot split of parcel 211-10-003.

April 21, 2003. http://www.cavecreek.org/Archive.aspx?ADID=246
You told Town Council that Vertes applied to split parcel 211-10-003 into 3 lots; that "all 3 lots would be considered hillside in that they have slopes of 15% or more so the Zoning Code on them is hillside." You told Town Council "that there is a required sewer line by the Town Engineering Department to be placed on property to the north [211-10-010 lots]. This property [211-10-003] has its own access and would be required to tie into sewer given that it is within 300 feet."

You did not tell Town Council that Cave Creek required a strip of land, "Parcel A," to approve the "metes & bounds" survey of parcel 211-10-003, which converted the lot split into a non-conforming subdivision of 4 lots that violated Subdivision Ordinance Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E).

You did not tell Town Council that you were required to order the use of the sewer constructed on parcel 211-10-010 discontinued per Sections 1.5 & 1.7 of the Zoning Ordinance because the subdivision of 211-10-010 into 4 lots did not comply with Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E) of the Subdivision Ordinance; such that the lots were not entitled to building permits; such that the sewer permits issued to the 211-10-010 lots conflicted with Zoning Ordinance and thus void per Section 1.4 of the Zoning Ordinance. Additionally, you failed to comply with A.R.S. §9-500.12 per Section 2.3 of the Zoning Ordinance when the Town required easements on parcel 211-10-010 for the *ultra vires* sewer and required the 211-10-003 lots to connect to the *ultra vires* sewer on my property to approve the non-conforming subdivision of parcel 211-10-003 into four (4) lots.

On August 16, 2003, you misrepresented that 211-10-003's 4th lot "Parcel A" had been dedicated to the Town of Cave Creek on MCRD #2003-1312578 to violate A.R.S. §33-420. In fact, the 25-foot wide strip of land was never dedicated to Cave Creek per of Section 2.4(D)(2)(b)(2) of the Subdivision Ordinance. "Parcel A" on MCRD #2003-1312578 became lot 211-10-003D, which continues to block legal and physical access to lots 211-10-003A, B, & C and blocks the easement on lots 211-10-003 A & B in violation of Section 5.1 of the Zoning Ordinance.

Thinking at the time that the lot splits of parcels 211-10-010 and 211-10-003 were lawful as Cave Creek continued to issue permits and never disclosed the non-conforming subdivision status of the lots, a Home Owners Association ("HOA") was executed by and between myself as the owner of lots 211-10-010 A, B, & C and Keith Vertes of GV Group LLC, purporting that the LLC was the owner of lots 211-10-003 A, B, & C. The agreement ran with the lots to provide mutual and reciprocal access to the easements on the 211-10-003 lots and the 211-10-010 lots.

The intent of the agreement required mutual and reciprocal easement access to comply with Zoning Ordinance Section 5.1, especially 5.1(C)(3) ("the route of legal and physical access shall

be the same") & 5.1(C)(8), and Subdivision Ordinance Section 2.5(A)(6) ("No non-public way or driveway shall provide access to more than three (3) residential lots"). Mutual and reciprocal access was also required to build an adjoining driveway over parcels 211-10-003 & 211-10-010 to facilitate 211-10-003's Hillside designation per Section 5.11 of the Zoning Ordinance.

However, GV Group LLC did not own lots 211-10-003 A, B, & C and Vertes sold lot 211-10-003A to Jocelyn Kremer the day before executing the HOA to not bind the lot and to block access to the 211-10-003 easement *ab initio*. Additionally, access to the 211-10-003 easement was blocked by the 25-foot wide sliver of land, now lot 211-10-003D, which was never dedicated to Cave Creek as you, Carrie, and Mayor Vincent Francia attested.

In hindsight, the HOA violated the Zoning Ordinance *ab initio*. The HOA intended one driveway to serve a build out of nine (9) residential lots. You said we could disregard Section 5.1(C)(8) of the Zoning Ordinance if the HOA shared mutual and reciprocal access of the 211-10-003 & 211-10-010 easements. But lot 211-10-003D (a/k/a "Parcel A" on MCRD #2003-1312578) blocked legal and physical access to the 211-10-003 easement in violation of Section 5.1 of the Zoning Ordinance. As such, the HOA not only violates Section 5.1(C)(8) of the Zoning Ordinance, but also 2.5(A)(6) of the Subdivision Ordinance. Therefore, the HOA did not comply with Zoning Ordinance Sections 1.1(C) & 1.3(B) (if this Ordinance imposes higher standards or greater restrictions, the provisions of this Ordinance shall prevail).

In 2004, I invoiced Cave Creek for the repair and extension of the Town's sewer not knowing at the time that the lots and sewer violated the Subdivision & Zoning Ordinances. In response, you placed me "under investigation" on February 28, 2004, for alleged "potential violations" of the "lot splits" of parcels 211-10-010 & 211-10-003, and "red tagged" all building permits to the lots. You later told me that you were ordered to write that letter of the bogus investigation, which contains no explanation of why or how "potential violations" existed. The Town Marshal said "reassemble the lots," which I did, but recording a reassemblage was only construed for tax purposes by the County. According to Maricopa County Assessor's Office in 2014, only a Court can undo Cave Creek's subdivision violations by striking the lot splits.

Nonetheless, you approved building permits to construct homes on non-conforming subdivided lots 211-10-003 A, B, & C based on drawings that violated hillside coverage restrictions, using an *ultra vires* sewer and access from my property, in violation of A.R.S. § 9-500.12, Subdivision Ordinance Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E), and Zoning Ordinance Sections 5.1, 1.3, 1.5, 1.4, 1.7, & 2.3(C)(4).

In violation of Section 2.3(E)(1) of the Zoning Ordinance, you did not transmit plans and permits (i.e. all records) to the Board of Adjustment for the variance applications for lots 211-10-003 C & B. The variance applications rely on the HOA. The applications claim that "blocked access" to my property was the cause of the excessive disturbance on lots 211-10-003 C & B. However, you had notice that the HOA was rescinded in 2005 because it was disavowed by REEL, BMO Harris Bank, and Kremer due to Vertes's breach *ab initio*, such that plans and permits for lots 003 B & C using access from my property violates Sections 5.1 of the Zoning Ordinance.

Per Subdivision Ordinance Section 1.1(A)(4): No person shall subdivide any parcel of land into four (4) or more lots except in compliance with this Ordinance. Cave Creek's requirement to exact strips of land that became 4th lots caused the unlawful subdivision of parcels 211-10-010 and 211-10-003.

It is your duty to enforce the Subdivision & Zoning Ordinances per Sections 1.5 & 2.3 of the Zoning Ordinance and Section 1.1 of the Subdivision Ordinance, also incorporated in the Zoning Ordinance per Section 1.1(B). Based on A.R.S. §9-463.03 and Subdivision Ordinance Section 1.1(A)(2), the sale of lots 211-10-003 A, B, C, & D, and the sale of lots 211-10-010 A & C are unlawful because there are no recorded final plat maps of these lots that conform to the Town's Subdivision Ordinance. Because YOU violated your duty to enforce the Ordinances, I did not know that it was unlawful to sell any part of parcels 211-10-010 or 211-10-003.

Pursuant to Subdivision Ordinance Section 1.1(A)(5), no lot within a subdivision can be altered or further divided without the approval of Town Council. Parcel 211-10-010 was subdivided into 4 lots. It's a subdivision. Since the further split of lot 211-10-010A was not approved by Town Council such that lots 211-10-010 L, M, & N do not conform to the Subdivision Ordinance and are therefore unsuitable for building and not entitled to building permits per Subdivision Ordinance Sections 1.1(A)(1-4),(B),(C),&(D), 6.1(A), 6.2(B)(4), 6.3(A) & Chapter 2 especially 2.5(E), and Zoning Ordinance Sections 5.1, 1.3, 1.5, 1.4, 1.7, & 2.3(C)(4).

Per Section 2.3(C)(11), you had authority to refer all permit applications for 211-10-010 or 211-10-003 lots to the Planning Commission. The division of these parcels into 4 lots each rendered the properties unsuitable for building and not entitled to building permits per Section 6.3(A), yet you continue their unlawful use and continue to issue void permits. In violation of A.R.S. §9-500.12(C) and Section 2.3(C)(2) of the Zoning Ordinance, no takings report was ever generated as required.

Each and every day that you fail to enforce the Subdivision & Zoning Ordinances as required per Sections 1.5 & 2.3 of the Zoning Ordinance ***shall*** be a separate offense punishable per Section 1.7 of the Zoning Ordinance. Per Section 1.7(A) of the Zoning Ordinance effective when you approved my lot split and began issuing me permits to my property in 2001, if you or the Town (i.e. any person) violates any provision of the Town's Ordinances, you (and Cave Creek) ***shall*** be guilty of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law for ***each day*** of continued violation. ***Knowing*** that you and other town officials could be liable for violating the Town Ordinances, in bad faith, you and the Prosecuting Attorney requested that this language be changed to a Civil Code Infraction in 2005. All of the above are continuing violations of Cave Creek's Ordinances, caused or created by you as Zoning Administrator on behalf of the Town, requiring the use of parcels 211-10-003 & 211-10-010 discontinued and the parcels vacated to Quiet Title in conformance with the Subdivision Ordinance and A.R.S. §9-463.03. See *Zrihan v. Wells Fargo Bank*, NA, Dist. Court, D. Arizona 2014: ""[A] cause of action to quiet title for the removal of the cloud on title is a continuous one and never barred by limitations while the cloud exists." *Cook v. Town of Pinetop-Lakeside*, 303 P.3d 67, 70 (Ariz. Ct. App. 2013) (quoting *City of Tucson v. Morgan,* 475 P.2d 285, 287 (Ariz. Ct. App. 1970))."

Since it is well established law[2] that you and Cave Creek can correct mistakes of law at any time, the purpose of this letter is to establish a clear line, a date certain, as to whether you and Cave Creek intend to resolve these matters. Per Section 2.3(D) of the Zoning Ordinance, you may not make any changes in the uses permitted in any zoning classification or zoning district

[2] See *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), and *Rivera v. City of Phoenix*, 925 P. 2d 741 - Ariz: Court of Appeals, lst Div., Dept. D 1996."

or make any changes in the terms of the Zoning Ordinance. As such, you have no discretion to change “SHALL” provisions of the Zoning Ordinance.

My family and I have been substantially aggrieved by your decisions that violate your duty to enforce the Zoning and Subdivision Ordinance as outlined above. Each and every day that you fail to correct your mistakes becomes a separate violation punishable as outlined in Section 1.7 of the Zoning Ordinance. As such, per Zoning Ordinance Section 2.3(E)(1), this letter is our request for your decision to correct your dereliction of duties as outlined above.

Per Zoning Ordinance Section 2.3(E)(2), I hereby request your decision in writing, via certified mail, return receipt requested as to your intention to correct the continuing violations of the zoning and subdivision ordinances that you and other Cave Creek officials or employees knowingly concealed from me since 2001 as outlined above.

Cordially,

Arek R. Fressadi

Arek R. Fressadi

Cc: Town Council, Town Manager, Jeff Murray, Esq.

EXHIBIT B

Actual Damages

Actual Costs 2000- 2016

211-10-010 land/ home / office	$378,628.58
Utilities	$123,576.88
Driveway	$123,844.40
Encroachment	$13,797.92
Permits	$12,860.94
Land planning	$76,994.87
Attorney Fees	$293,036.53
	$1,022,740.12

Investment Backed Expectations

Schoolhouse project- Tierra Fressadi

Acreage		5.73	acres
	square footage	249,598.80	
R1-18 min lot size sq. ft.		18,000.00	
	# of lots	13.87	
	w/ environmental plus	15.25	say 14 lots

Build 14 adobe/stone homes ~3,000 square feet @ $100 a foot

Item / Description		Cost per unit	/ ft.	Sub / Supplier	Total Cost
Land cost		$20,714.29			$290,000.00
	Office TIs	$1,785.71			$25,000.00
	preliminary plan	$1,785.71			$25,000.00
	final map	$892.86			$12,500.00
subtotal Land costs		$25,178.57			$352,500.00
Indirect Costs					
	Accounting	$214.29			$3,000.00
	Appraisal	$214.29			$3,000.00
	Insurance	$357.14			$5,000.00
	Interest	$2,517.86			$35,250.00
	Legal	$4,285.71			$60,000.00
subtotal Indirect costs		$7,589.29			$106,250.00

Offsites				
	Grading	$1,285.71		$18,000.00
	Landscape vegetation	$1,285.71		$18,000.00
	Cobblestone	$2,142.86		$30,000.00
	Civil engineering	$1,071.43		$15,000.00
	Sewer	$5,714.29		$80,000.00
	Water	$2,857.14		$40,000.00
	APS	$642.86		$9,000.00
	Black Mountain Gas	$71.43		$1,000.00
	Cable Telephone	$178.57		$2,500.00
subtotal Offsites		$15,250.00		$213,500.00
Total land costs		$48,017.86		$672,250.00
SFR per unit costs				
Architecture		$3,000.00		$36,000.00
Engineering		$2,000.00		$24,000.00
Zoning / Permits / Entitlements		$6,000.00	Cave creek	$72,000.00
Utilities / Service		$250.00		$3,000.00
Sewer hookup		$250.00	Steve- Red Mtn.	$3,000.00
Water meter		$200.00	Cave Creek Water	$2,400.00
Foundation / concrete		$22,000.00	Beckon Homes	$264,000.00
	Soil Treatment	$1,000.00	Don's Termite	$12,000.00
Carpentry Rough		$12,000.00	Scenic Vistas LLC	$144,000.00
	Lumber	$6,000.00	Miller Wholesale	$72,000.00
	Trusses	$5,000.00	Arizona Arches	$60,000.00
	Hardware Rough	$750.00	Home Depot	$9,000.00
Glazing/ Mirrors		$3,600.00	4 Peaks	$43,200.00
Plumbing		$8,000.00	JD Moyer	$96,000.00
	plumbing fixtures	$4,000.00	Home Depot	$48,000.00
	sprinklers	$2,000.00	Dew's Fire sprinklers	$24,000.00
Electric		$8,000.00		$96,000.00
Electric Fixtures		$1,500.00	Edson	$18,000.00
HVAC		$12,000.00	Economy	$144,000.00
Masonry Labor		$10,000.00	Tres Amigos	$120,000.00
	Adobe block & materials	$8,000.00	Old Pueblo	$96,000.00
	mortar	$2,000.00	Tres Amigos	$24,000.00
	transportation	$2,600.00	Tres Amigos	$31,200.00
	Prefab fireplaces	$1,000.00	Arizona Wholesale Supply	$12,000.00

Roofing system		$10,000.00	Paul's foam	$120,000.00
Insulation		$2,500.00	Mesa Insulation	$30,000.00
Stucco		$1,500.00	Arizona Wall Systems	$18,000.00
Drywall		$5,500.00	Arizona Wall Systems	$66,000.00
Finish Lumber/ Doors/ Jambs		$6,500.00	Home Depot	$78,000.00
Cabinets		$8,900.00	Gene	$106,800.00
Counter Tops		$4,000.00	Tres Amigos	$48,000.00
Travertine		$2,500.00	Tres Amigos	$30,000.00
Carpentry Finish		$1,500.00	Scenic Vistas LLC	$18,000.00
Hardware Finish		$500.00	Scenic Vistas LLC	$6,000.00
Garage Doors		$1,500.00	Lodi	$18,000.00
Painting		$5,000.00	Desert Canyon Painting, Inc.	$60,000.00
Appliances		$8,000.00	Arizona Wholesale Supply	$96,000.00
Tile / Stone labor		$4,500.00	Arizona Tile	$54,000.00
Tract Labor		$1,500.00	Tres Amigos	$18,000.00
Carpeting - Finish Floors		$2,500.00	Carpet One	$30,000.00
Grading Finish - Remove Debris		$2,500.00	Deen Phillips	$30,000.00
Driveway		$2,500.00	Tres Amigos	$30,000.00
House and Window Cleaning		$1,500.00	Tres Amigos	$18,000.00
Landscape - Sprinklers		$5,000.00	Tres Amigos	$60,000.00
Adobe privacy walls		$4,500.00	Tres Amigos	$54,000.00
Pool		$25,000.00		$300,000.00
General Conditions		$2,500.00	Scenic Vistas LLC	$30,000.00
Contingencies		$2,500.00	Scenic Vistas LLC	$30,000.00
Total Hard Cost		$273,978.57		$3,368,600.00
Sales Price		$1,250,000.00		$15,000,000.00
	commissions	-$50,000.00		-$600,000.00
	title & closing	-$12,500.00		-$150,000.00
Net Profit		**$913,521.43**		**$10,881,400.00**
Initial investment				**$1,022,740.12**
Compound Interest on Net profit and initial investment since 2006				**$5,852,414.99**

TOTAL ACTUAL DAMAGES	**$17,756,555.11**

Metric for Delay damages- Zoning Code Violation Fine structure, Section 1.7 of the Zoning Ordinance

A.R.S. 9-500.12(H) / Section 1.7 Zoning violation penalties per 2003 Zoning Code from 2001 to 12/21/2005

Violation Permit Variance	Issued / Approved	Description	Change Ordinance	Count days	AMRRP Cave Creek
unlawful subdivision	12/31/01	211-10-010 A, B, C, & D	12/21/05	1431	$28,620,000
#02-057	3/12/02	211-10-010 driveway	12/21/05	1359	$27,180,000
#02-058	3/12/02	211-10-010 driveway	12/21/05	1359	$27,180,000
#02-256	7/3/02	sewer lot 211-10-010 A	12/21/05	1248	$24,960,000
#02-260	7/3/02	sewer lot 211-10-010 B	12/21/05	1248	$24,960,000
#02-263	7/3/02	sewer lot 211-10-010 C	12/21/05	1248	$24,960,000
2002-031	7/3/02	ROW sewer	12/21/05	1248	$24,960,000
unlawful subdivision	9/18/03	211-10-003A, B, C, & D	12/21/05	813	$16,260,000
false recording	9/18/03	211-10-003A, B, C, & D ARS 33-420 treble damages	12/21/05	813	$48,780,000
#03-475	11/25/03	sewer lot 211-10-003 A	12/21/05	746	$14,920,000
#05-095	3/2/05	sewer lot 211-10-003 B	12/21/05	289	$5,780,000
#03-497	11/25/03	sewer lot 211-10-003 C	12/21/05	746	$14,920,000
#04-269	3/26/04	SFR lot 211-10-003 B	12/21/05	625	$12,500,000
#04-655	8/17/05	SFR lot 211-10-003 C	12/21/05	124	$2,480,000
Failure to follow ARS 9-500.12/13	10/1/01		12/21/05	1520	$30,400,000

A.R.S. 9-500.12(H) / Section 1.7 Zoning violation penalties per revised 2005 Zoning Code

Violation Permit Variance	Issued / Approved	Description	Today's Date	Count days	AMRRP Cave Creek
unlawful subdivision	12/22/05	211-10-010 A, B, C, & D	6/21/18	4499	$2,249,500
#02-057	12/22/05	211-10-010 driveway	6/21/18	4499	$2,249,500
#02-058	12/22/05	211-10-010 driveway	6/21/18	4499	$2,249,500
#02-256	12/22/05	sewer lot 211-10-010 A	6/21/18	4499	$2,249,500
#02-260	12/22/05	sewer lot 211-10-010 B	6/21/18	4499	$2,249,500
#02-263	12/22/05	sewer lot 211-10-010 C	6/21/18	4499	$2,249,500
2002-031	12/22/05	ROW sewer	6/21/18	4499	$2,249,500
unlawful subdivision	12/22/05	211-10-003 A, B, C, & D	6/21/18	4499	$2,249,500
false recording	9/18/03	211-10-003A, B, C, & D ARS 33-420 treble damages	6/21/18	5313	$7,969,500
#03-475	12/22/05	sewer lot 211-10-003 A	6/21/18	4499	$2,249,500
#05-095	12/22/05	sewer lot 211-10-003 B	6/21/18	4499	$2,249,500
#03-497	12/22/05	sewer lot 211-10-003 C	6/21/18	4499	$2,249,500
#04-269	12/22/05	SFR lot 211-10-003 B	6/21/18	4499	$2,249,500
#04-655	12/22/05	SFR lot 211-10-003 C	6/21/18	4499	$2,249,500
#04-655	12/22/05	003C transfer to REEL	6/21/18	4499	$2,249,500
#06-225	12/22/05	SFR lot 211-10-003 A	6/21/18	4499	$2,249,500

B-09-03	12/22/05	variance 211-10-003 C	6/21/18	4499	$2,249,500
B-10-01	12/22/05	variance 211-10-003 B	6/21/18	4499	$2,249,500
010A lot split	11/22/14	lot split of a non-conforming subdivided parcel	6/21/18	1289	$644,500
010L permit	6/3/15	void permit per zoning Ordinance	6/21/18	1098	$549,000
010N permit	6/3/15	void permit per zoning Ordinance	6/21/18	1098	$549,000
Failure to follow ARS 9-500.12 /13	12/22/05		6/21/18	4499	$2,249,500
Total Delay Damages					**$379,063,000**

Total Actual and Delay Damages pursuant to ARS 9-500.12	**$17,756,555.11**
Total Delay Damages per section 1.7 Zoning Ord and ARS 9-500.12(H)	**$379,063,000.00**
Total Actual and Delay Damages per Section 1.7 Zoning Ord. and ARS 9-500.12(H)	**$396,819,555.11**
Treble Damages pursuant to ARS 13-2314.04	**$1,190,458,665.33**

EXHIBIT F

13-2301. Definitions

A. For the purposes of sections 13-2302, 13-2303 and 13-2304:

1. "Collect an extension of credit" means to induce in any way any person to make repayment of that extension.

2. "Creditor" means any person making an extension of credit or any person claiming by, under or through any person making an extension of credit.

3. "Debtor" means any person to whom an extension of credit is made or any person who guarantees the repayment of an extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom an extension is made to repay the extension.

4. "Extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

5. "Extortionate extension of credit" means any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person or the reputation or property of any person.

6. "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person or the reputation or property of any person.

7. "Repayment of any extension of credit" means the repayment, satisfaction or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

B. For the purposes of section 13-2305, 13-2306 or 13-2307:

1. "Dealer in property" means a person who buys and sells property as a business.

2. "Stolen property" means property of another as defined in section 13-1801 that has been the subject of any unlawful taking.

3. "Traffic" means to sell, transfer, distribute, dispense or otherwise dispose of stolen property to another person, or to buy, receive, possess or obtain control of stolen property, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the property to another person.

C. For the purposes of this chapter:

1. "Animal activity" means a commercial enterprise that uses animals for food, clothing or fiber production, agriculture or biotechnology.

2. "Animal facility" means a building or premises where a commercial activity in which the use of animals is essential takes place, including a zoo, rodeo, circus, amusement park, hunting preserve and horse and dog event.

3. "Animal or ecological terrorism" means any felony in violation of section 13-2312, subsection B that

involves at least three persons acting in concert, that involves the intentional or knowing infliction of property damage in an amount of more than ten thousand dollars to the property that is used by a person for the operation of a lawfully conducted animal activity or to a commercial enterprise that is engaged in a lawfully operated animal facility or research facility and that involves either:

(a) The use of a deadly weapon or dangerous instrument.

(b) The intentional or knowing infliction of serious physical injury on a person engaged in a lawfully conducted animal activity or participating in a lawfully conducted animal facility or research facility.

4. "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered through biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product and that is capable of causing any of the following:

(a) Death, disease or physical injury in a human, animal, plant or other living organism.

(b) The deterioration or contamination of air, food, water, equipment, supplies or material of any kind.

5. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity, membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

6. "Communication service provider" has the same meaning prescribed in section 13-3001.

7. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct that violates any one or more provisions of any felony statute of this state.

8. "Explosive agent" means an explosive as defined in section 13-3101 and flammable fuels or fire accelerants in amounts over fifty gallons but excludes:

(a) Fireworks as defined in section 36-1601.

(b) Firearms.

(c) A propellant actuated device or propellant actuated industrial tool.

(d) A device that is commercially manufactured primarily for the purpose of illumination.

(e) A rocket having a propellant charge of less than four ounces.

9. "Material support or resources" includes money or other financial securities, financial services, lodging, sustenance, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, disguises and other physical assets but does not include medical assistance, legal assistance or religious materials.

10. "Public establishment" means a structure, vehicle or craft that is owned, leased or operated by any of the following:

(a) This state or a political subdivision as defined in section 38-502.

(b) A public agency as defined in section 38-502.

(c) The federal government.

(d) A health care institution as defined in section 36-401.

11. "Research facility" means a laboratory, institution, medical care facility, government facility, public or private educational institution or nature preserve at which a scientific test, experiment or investigation involving the use of animals is lawfully carried out, conducted or attempted.

12. "Terrorism" means any felony, including any completed or preparatory offense, that involves the use of a deadly weapon or a weapon of mass destruction or the intentional or knowing infliction of serious physical injury with the intent to do any of the following:

(a) Influence the policy or affect the conduct of this state or any of the political subdivisions, agencies or instrumentalities of this state.

(b) Cause substantial damage to or substantial interruption of public communications, communication service providers, public transportation, common carriers, public utilities, public establishments or other public services.

(c) Intimidate or coerce a civilian population and further the goals, desires, aims, public pronouncements, manifestos or political objectives of any terrorist organization.

13. "Terrorist organization" means any organization that is designated by the United States department of state as a foreign terrorist organization under section 219 of the immigration and nationality act (8 United States Code section 1189).

14. "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including:

(a) Any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism.

(b) Any poisonous isomer or biological product, homolog or derivative of such a substance.

15. "Vector" means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, that is capable of carrying a biological agent or toxin to a host.

16. "Weapon of mass destruction" means:

(a) Any device or object that is designed or that the person intends to use to cause multiple deaths or serious physical injuries through the use of an explosive agent or the release, dissemination or impact of a toxin, biological agent or poisonous chemical, or its precursor, or any vector.

(b) Except as authorized and used in accordance with a license, registration or exemption by the department of health services pursuant to section 30-672, any device or object that is designed or that the person intends to use to release radiation or radioactivity at a level that is dangerous to human life.

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

1. "Control", in relation to an enterprise, means the possession of sufficient means to permit substantial direction over the affairs of an enterprise and, in relation to property, means to acquire or possess.

2. "Enterprise" means any corporation, partnership, association, labor union or other legal entity or any group of persons associated in fact although not a legal entity.

3. "Financial institution" means any business under the jurisdiction of the department of financial institutions or a banking or securities regulatory agency of the United States, a business coming within the definition of a bank, financial agency or financial institution as prescribed by 31 United States Code section 5312 or 31 Code of Federal Regulations section 1010.100 or a business under the jurisdiction of the securities division of the corporation commission, the state real estate department or the department of insurance.

4. "Racketeering" means any act, including any preparatory or completed offense, that is chargeable or indictable under the laws of the state or country in which the act occurred and, if the act occurred in a state or country other than this state, that would be chargeable or indictable under the laws of this state if the act had occurred in this state, and that would be punishable by imprisonment for more than one year under the laws of this state and, if the act occurred in a state or country other than this state, under the laws of the state or country in which the act occurred, regardless of whether the act is charged or indicted, and the act involves either:

(a) Terrorism, animal terrorism or ecological terrorism that results or is intended to result in a risk of serious physical injury or death.

(b) Any of the following acts if committed for financial gain:

(i) Homicide.

(ii) Robbery.

(iii) Kidnapping.

(iv) Forgery.

(v) Theft.

(vi) Bribery.

(vii) Gambling.

(viii) Usury.

(ix) Extortion.

(x) Extortionate extensions of credit.

(xi) Prohibited drugs, marijuana or other prohibited chemicals or substances.

(xii) Trafficking in explosives, weapons or stolen property.

(xiii) Participating in a criminal syndicate.

(xiv) Obstructing or hindering criminal investigations or prosecutions.

(xv) Asserting false claims, including false claims asserted through fraud or arson.

(xvi) Intentional or reckless false statements or publications concerning land for sale or lease or sale of subdivided lands or sale and mortgaging of unsubdivided lands.

(xvii) Resale of realty with intent to defraud.

(xviii) Intentional or reckless fraud in the purchase or sale of securities.

(xix) Intentional or reckless sale of unregistered securities or real property securities.

(xx) A scheme or artifice to defraud.

(xxi) Obscenity.

(xxii) Sexual exploitation of a minor.

(xxiii) Prostitution.

(xxiv) Restraint of trade or commerce in violation of section 34-252.

(xxv) Terrorism.

(xxvi) Money laundering.

(xxvii) Obscene or indecent telephone communications to minors for commercial purposes.

(xxviii) Counterfeiting marks as proscribed in section 44-1453.

(xxix) Animal terrorism or ecological terrorism.

(xxx) Smuggling of human beings.

(xxxi) Child sex trafficking.

(xxxii) Sex trafficking.

(xxxiii) Trafficking of persons for forced labor or services.

(xxxiv) Manufacturing, selling or distributing misbranded drugs in violation of section 13-3406, subsection A, paragraph 9.

5. "Records" means any book, paper, writing, computer program, data, image or information that is collected, recorded, preserved or maintained in any form of storage medium.

6. "Remedy racketeering" means to enter a civil judgment pursuant to this chapter or chapter 39 of this

title against property or a person who is subject to liability, including liability for injury to the state that is caused by racketeering or by actions in concert with racketeering.

E. For the purposes of sections 13-2316, 13-2316.01 and 13-2316.02:

1. "Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or network.

2. "Access device" means any card, token, code, account number, electronic serial number, mobile or personal identification number, password, encryption key, biometric identifier or other means of account access, including a canceled or revoked access device, that can be used alone or in conjunction with another access device to obtain money, goods, services, computer or network access or any other thing of value or that can be used to initiate a transfer of any thing of value.

3. "Computer" means an electronic device that performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

4. "Computer contaminant" means any set of computer instructions that is designed to modify, damage, destroy, record or transmit information within a computer, computer system or network without the intent or permission of the owner of the information, computer system or network. Computer contaminant includes a group of computer instructions, such as viruses or worms, that is self-replicating or self-propagating and that is designed to contaminate other computer programs or computer data, to consume computer resources, to modify, destroy, record or transmit data or in some other fashion to usurp the normal operation of the computer, computer system or network.

5. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, that permits the functioning of a computer system in a manner designed to provide appropriate products from the computer system.

6. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

7. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software, including storage, media and peripheral devices.

8. "Critical infrastructure resource" means any computer or communications system or network that is involved in providing services necessary to ensure or protect the public health, safety or welfare, including services that are provided by any of the following:

(a) Medical personnel and institutions.

(b) Emergency services agencies.

(c) Public and private utilities, including water, power, communications and transportation services.

(d) Fire departments, districts or volunteer organizations.

(e) Law enforcement agencies.

(f) Financial institutions.

(g) Public educational institutions.

(h) Government agencies.

9. "False or fraudulent pretense" means the unauthorized use of an access device or the use of an access device to exceed authorized access.

10. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security or any other written instrument as defined in section 13-2001 that is transferable for value.

11. "Network" includes a complex of interconnected computer or communication systems of any type.

12. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

13. "Proprietary or confidential computer security information" means information about a particular computer, computer system or network that relates to its access devices, security practices, methods and systems, architecture, communications facilities, encryption methods and system vulnerabilities and that is not made available to the public by its owner or operator.

14. "Services" includes computer time, data processing, storage functions and all types of communication functions.

EXHIBIT G

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AREK R. FRESSADI, an unmarried man, Plaintiff/Counter-Defendant v. GV GROUP, LLC, an Arizona Limited Liability Company: MG DWELLINGS, INC., an Arizona Corporation; BUILDING GROUP, INC., an Arizona Corporation; MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES and KAY VERTES, husband and wife; REAL ESTATE EQUITY LENDING, INC., an Arizona corporation; and SALVATORE DEVINCENZO and SUSAN DEVINCENZO, husband and wife, Defendants GV GROUP, LLC, an Arizona Limited Liability Company: MG DWELLINGS, INC., an Arizona Corporation; BUILDING GROUP, INC., an Arizona Corporation; MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES, a married man; and SALVATORE DEVINCENZO and SUSAN DEVINCENZO, husband and wife, DESERT'S EDGE DEVELOPMENT, LLC, an Arizona Limited Liability Company, Counterclaimants.	No. CV2006-014822 **PLAINTIFF/COUNTER-DEFENDANT AREK R. FRESSADI'S OBJECTIONS PER RULE 46; AND MOTIONS TO** **AMEND OR MAKE ADDITIONAL FACTUAL FINDINGS PER RULE 52(b),** **ALTER OR AMEND THE JUDGMENT PER RULE 59(d), AND FOR** **NEW TRIAL PER RULE 59(a)** (Assigned to the Hon. Connie Contes)

Plaintiff/Counter-Defendant Arek R. Fressadi ("Fressadi") moves the court to provide necessary remedies per Ariz.R.Civ.P. 46, 52(b), 59(a)&(d). See supporting Affidavit, **Exhibit 1**. At trial on May 15, 2018, the Driveway Easement and Maintenance Agreement ("DEMA")[1] was declared void *ab initio*, MCRD #2018-0372838, **Exhibit 2**. All rulings based on the DEMA being valid must be amended or vacated, and Fressadi's Complaint must be amended per Rules 15 & 19. When a judgment is void, "the court has no discretion, but must vacate the judgment." *Springfield Credit Union v. Johnson,* 123 Ariz. 319, 323 n.5, 599 P.2d 772, 776 n.5 (1979). Title 37, American Jurisprudence 2d §8 states in part: "Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments." This court committed error by relying upon violations of disclosure and Ethical Rules by Defendants and their attorneys to cause fraud upon the court.

[1] Maricopa County Recorded Document ("MCRD") 2003-1472588.

This court must correct its rulings, to remedy continuing violations of federal and state law and its own ordinances by the Town of Cave Creek, causing in part, the DEMA to be void *ab initio*: By violating due process as required in A.R.S. §§ 9-500.12 & 9-500.13, Cave Creek's exacted land to be 4th lots, causing the subject properties to be unlawful subdivisions. Per the Supremacy Clause[2] and *Coleman v. City of Mesa*, 284 P.3d 863 - Ariz: Supreme Court 2012, ¶38:

> The Fourteenth Amendment provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;... nor deny to any person within its jurisdiction the equal protection of the laws." Article 2, Section 13 of Arizona's Constitution provides "[n]o law shall be enacted granting to any citizen ... privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Both the Fourteenth Amendment and Article 2, Section 4 of Arizona's Constitution provide that no person may be deprived of life, liberty, or property "without due process of law."

At ¶43:

> Moreover, independent of any free speech issues, the Equal Protection and Due Process Clauses protect against government action that is arbitrary, irrational, or not reasonably related to furthering a legitimate state purpose. *See, e.g., City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 446-50, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985)(rejecting special use permit requirement as lacking a rational basis and thus violating equal protection); *N. Pacifica LLC v. City of Pacifica,* 526 F.3d 478, 484 (9th Cir.2008) (explaining that substantive due process challenge to land use regulation requires allegation that it does not advance any legitimate government purpose); *Big D Constr. Corp.,* 163 Ariz. at 565-66, 789 P.2d at 1066-67 (applying rational basis standard to equal protection claim under Arizona Constitution); *Valley Nat. Bank of Phx. v. Glover,* 62 Ariz. 538, 553, 159 P.2d 292, 298-99 (1945) (discussing due process under Arizona Constitution).

"[T]he 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, Inc. v. Florida Dept. of Envtl. Protection,* 560 U.S. 702, 714 (2010). Justice Scalia continues, "if…a court declares that what was once an established right of private property no longer exists, it has taken that property." *Id.*at 715. Clearly the numerous divisions of this court misunderstood the scope and severity of the issues. Fressadi requests that the Court amend its findings and rulings to comply with the Supremacy Clause and Fressadi's rights to property, due process, and equal protection of the laws.

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[2] If this court fails to abide by its sworn duty, then it is not immune from claims of conspiracy for facilitation of fraud. A preponderance of evidence suggests that divisions of this Court knowingly facilitated a takings of Fressadi's property without compensation by dismissing his complaint and denying amendment of his complaint to add necessary parties and new claims based on evidence uncovered in the course of the litigation.

MOTION PER RULE 52(b)

Per Ariz.R.Civ.P. Rule 52(b), Fressadi requests that the court amend its findings, or make additional findings, to amend its judgments caused by the fraud that has been perpetrated upon Fressadi and this Court by Defendants/Counterclaimants, indispensible parties, and their attorneys regarding parcels 211-10-003 ("003") and 211-10-010 ("010") as follows:

Minute Entry January 31, 2008: GV[3] concealed from the Court and Fressadi that they contracted to sell lot 003A on **9/10/03** based on a condition that the 003 easement access would never be used. GV and Cave Creek then recorded the metes and bounds survey on **9/18/03** that falsely stated Vertes had dedicated "Parcel A" to Cave Creek when he had not to cause lots 003 A, B, & C to be landlocked unlawful subdivision, and the DEMA void ***ab initio***.

Minute Entry filed September 17, 2009: There is no res judicata per grant of Fressadi's Motion in Limine, April 29, 2014. GV's 2nd Supplemental Disclosure Statement is contrived fraud as the Executors of the DEMA declared the DEMA void *ab initio*.

Minute Entry filed June 10, 2010: The Court never ruled on Fressadi's Motion to add Cave Creek as a necessary party, e-filed March 15, 2010. Exhibit 3. Instead, the Court denied consolidation of CV2009-050821, CV2009-050924, LC2010-000109, and CV2010-013401. All these cases were related to the DEMA and Cave Creek's continuous violations of federal and state law and its own ordinances in illegally subdividing parcels 211-10-003 and 211-10-010 which was not disclosed by Cave Creek or Defendants in 2010.

Minute Entry filed December 22, 2010: IBID.

All other rulings from 2010-2012 were overturned on appeal in 1 CA-CV 11-0728, 1 CA-CV 12-0435, 1 CA-CV 12-0601 as the law of the case. *See* Memorandum Decision of 1 CA-CV11-0728 at ¶1 page 2 and ¶37 page 17 [emphasis added]:

> **Fressadi's claims for declaratory judgment, rescission, and reformation relate to a dispute over the continued viability of a recorded driveway easement. Because issues of genuine fact exist, summary judgment is not proper.**
>
> Fressadi's complaint raises various claims in the alternative, including a request for a determination of the validity of the DMA. REEL admits that questions of fact exist as to whether the DMA was void, voidable or rescinded. Consequently, summary judgment was inappropriate.

[3] GV Group, LLC; MG Dwellings, Inc.; Building Group, Inc.; Michael T. Golec; Keith/Kay Vertes.

Minute Entry filed April 26, 2013: Fressadi challenged the Court's jurisdiction to address Defendant's counterclaims absent Cave Creek as an indispensible party. Jurisdiction was based on Arizona's Constitution. Article 2, Section 3(A) states that: "The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject." The Court did not consider how Cave Creek's continuous violation of federal law as codified in A.R.S. §§ 9-500.12 and 9-500.13 affected the DEMA and the lots bound by the DEMA—the subject matter of this case. As such, the Court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol,* 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

Minute Entry filed January 21, 2014: A motion to add Cave Creek had been before the court since March 15, 2010, **Exhibit 3**, *supra*. Fressadi filed a Motion to vacate judgments on January 6, 2014. Cave Creek's continuous violations of federal and state law and its ordinances affected the subject matter of this case and there is no statute of limitation for quiet title. "A cause of action to quiet title for the removal of the cloud on title is a continuous one and never barred by limitations while the cloud exists." *Cook v. Town of Pinetop-Lakeside,* 303 P.3d 67, 70 (App.2013) (quoting *City of Tucson v. Morgan,* 475 P.2d 285, 287 (Ariz. Ct. App. 1970)). *See also* Ariz. R. Civ. P. 60(b)(5).

Minute Entries filed January 31, 2014, and February 20, 2014: On January 26, 2014, Fressadi asked the court to reconsider its rulings that violated Fressadi's constitutional rights. **Exhibit 4**. The court refused to uphold Fressadi's constitutional rights to due process and property in its minute entries of January 31, 2014 and February 20, 2014. The court must amend its rulings (and findings) based on the DEMA being void *ab initio*; that Cave Creek is continuously violating A.R.S. §§ 9-500.12 & 9-500.13 without required notice or hearing to cause a takings of Fressadi's property and a series of other continuing violations in the following manner:

1. Series of lot splits and down-zoning. See *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837 (1987).

2. Requirement for exaction of a sliver of land to create a non-conforming subdivision without notice or hearing per A.R.S. § 9-500.12 where lots are unsuitable for building, not entitled to permits, and unlawful to sell until a final plat map is recorded per A.R.S. § 9-463.03. See *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992).

3. Permanent physical invasion of taking land, easements, and sewer for use on lots 003 A, B & C and 010 C, L, M & N by indispensible parties Cave Creek and its actors issuing permits based on the void *ab initio* DEMA without compensation. See *Loretto v. Teleprompter Manhatten CATV Corp*., 458 U.S. 419, 441 (1982).

4. Permanent physical invasion of taking land, easements, and sewer for the public without just compensation. See *Loretto v. Teleprompter Manhatten CATV Corp*., 458 U.S. 419, 441 (1982). "Fifth Amendment's guarantee . . . [is] designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States,* 364 U.S. 40, 49 (1960).

5. Cave Creek has the duty to correct its continuous violations of law such that Cave Creek must compensate Fressadi for its temporary takings per §1.7 of its Zoning Ordinance, A.R.S. § 9-500.12(H), and *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

Minute Entry filed March 5, 2014: Fressadi requests that the Court amend its findings and ruling as a scheduling order does not trump the Supremacy Clause, especially given that the DEMA is void *ab initio* such that any reliance upon the DEMA by Defendants or third parties is a violation of Fressadi's property rights.

Minute Entries filed March 11 (issued 2/28/14) & March 14, 2014 (issued 3/13/14): Fressadi respectfully requests that the Court amend its findings based on the DEMA being void *ab initio,* and that the subdivision of parcels 003 and 010 are illegal as defined by A.R.S. §9-463 *et seq*. and Cave Creek's Subdivision Ordinance §1.1, and in violation of due process per U.S. and Arizona Constitutions and A.R.S. §§ 9-500.12 & 9-500.13.

Minute Entry filed March 13, 2014: Fressadi requests that the Court amend its findings and ruling to address Cave Creek's violations of federal law and state law that affect the subject matter of this case. If the Court did not consider Cave Creek's violations of federal and state law, then court the court did not have jurisdiction to address the void *ab initio* DEMA.

Minute Entry filed March 14, 2014 (issued 3/11/14): Fressadi files his Proposed Findings of Fact and conclusions of law herewith.

Minute Entry filed March 17, 2014: Fressadi respectfully requests that the Court amend its findings based on the DEMA being void *ab initio* and, further, Fressadi has a due process right to challenge the veracity of the DeVincenzo claims in person.

Minute Entry filed April 14, 2014: Fressadi received a deferral from the Court of Appeals but Maricopa County Superior Court did not refund his appellate fees, Exhibit 5.

Minute Entry filed April 30, 2014: Fressadi respectfully requests the Court to amend its findings and ruling based on the DEMA being void *ab initio,* and that the subdivision of parcels 003 and 010 are illegal, *supra*. As such, Fressadi's claims for declaratory relief, rescission of the DEMA, and rescission of sale of DeVincenzos' property are proper. Further, Fressadi is entitled to an award of damages per A.R.S. §§ 9-500.12(H) & 33-420 based on Zoning Ordinance §1.7 for Cave Creek causing the recording of metes and bounds surveys to contain material misstatements on which the DEMA and permits rely, and for takings of Fressadi's property to cause a wipe out of his investment-backed expectations. Fressadi requests the Court amend its findings and rulings as to dispositive motions to align with the law of the Case as stated in 1 CA-CV 11-0728.

Minute Entry filed June 10, 2014: By failing to add Cave Creek as an indispensible party and failing to consolidate CV2009-050821, CV 2009-050924, LC 2010-000109, and CV 2010-013401, Fressadi has been severely prejudiced and does not have an adequate remedy if the matter is dismissed for nonjoinder as evidenced in the bizarre rulings resulting from the Court's conduct.

Minute Entry filed June 25, 2014: Rather than dismiss the matter in its entirety, the court continued with the counterclaims based on the void *ab initio* DEMA that relied on Cave Creek's illegal conduct, and refused to consider Fressadi's motion for reconsideration. Pathetic.

Minute Entry filed August 19, 2014: In violation of the law of the case, 1 CA-CV 11-

0728 at ¶1—"summary judgment is not proper."

Minute Entry filed February 2, 2015: Fressadi requests that the Court amends its findings and ruling to align with the law of the case, 1 CA-CV 11-0728 at ¶1 ("summary judgment is not proper"); and the DEMA is void *ab initio*. Further, the sale of lot 211-10-010C is unlawful per A.R.S. § 9-463.03 to require the DEMA's rescission, as the lots must be reassembled. The DeVincenzos can collect damages from Cave Creek for causing the non-conforming subdivision of parcel 211-10-010.

Minute Entry filed March 6, 2015: Although Motions for Reconsideration are generally disfavored, they can be granted where "the moving party makes a convincing showing that the Court **failed to consider material facts** that were presented to the Court at the time of its initial decision." See, e.g., *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.,* 215 F.R.D. 581, 586 (D. Ariz. 2003) [emphasis added]. The Court failed to consider the law of the case per 1 CA-CV 11-0728, that "summary judgment is not proper;" that the sale of parcel 211-10-010C was unlawful, and that the DEMA was "void, voidable or rescinded," now declared void *ab initio*.

Minute Entry filed June 16, 2015: For reasons stated in his 3/30/15 Motion (**Exhibit 6)** and 5/13/15 Reply (**Exhibit 7)**, Fressadi is entitled to Rule 37(d) sanctions against DeVincenzos, Cave Creek, and their attorneys.

Both Minute Entries filed September 14, 2015: As the DEMA is declared void *ab initio*, and for reasons stated in his Motion to Vacate filed June 29, 2015, and in his reply filed July 29, 2015, Fressadi requests that the Court amend its findings and ruling to vacate judgments.

Minute Entry filed December 24, 2015: Ibid.

Ruling filed December 24, 2015, REEL award of attorney fees: As the DEMA is void *ab initio*, REEL had no right to apply or transfer permits based on access and utilities from Fressadi's property provided via the DEMA. Fressadi is entitled to damages for REEL's trespass and takings. Fressadi requests that the Court amend its findings and ruling accordingly.

Minute Entry filed February 9, 2016: In order for discovery to be closed, parties must disclose per Rules 26.1 and 37. Per Rule 37(d): "If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 26.1, the court may

impose serious sanctions, up to and including dismissal of the action--or rendering of a default judgment--in whole or in part." Cave Creek failed to disclose that it continuously violated federal law as codified in A.R.S. §§ 9-500.12 & 9-500.13, 33-420, 9-463 *et seq*., and its Subdivision and Zoning Ordinances to affect the subject matter of this case, and GV and Cave Creek failed to disclose that lot 003D was never dedicated to the Cave Creek to block access to the 003 portion of the DEMA driveway *ab initio*, requiring the Court to amend its findings and rulings.

Minute Entries filed 1/30/17, 2/13/17, 3/2/17, 3/7/17, 3/20/17, 4/13/17, and 6/20/17: It seems that if a party demands due process in Maricopa County Superior Court, he is deemed vexatious. Each day of Cave Creek's continuing violations is a separate violation per Zoning Ordinance §1.7. Fressadi respectfully requests the Court to amend its findings and rulings based on the DEMA being void *ab initio,* and that the subdivision of parcels 003 and 010 are illegal.

Minute Entries filed 3/20/18, 4/26/18, 5/14/18, 5/15/18, 5/16/18, 5/21/18: Fressadi respectfully requests that the Court amend its findings and rulings based on the DEMA being void *ab initio,* and that the subdivision of parcels 211-10-003 and 211-10-010 are illegal; that Maricopa County must be added as party to this lawsuit, such that venue is not proper in Maricopa County per A.R.S. § 12-408. In plain language:

1. Why the Court did not consider Cave Creek to be an indispensible party in 2010 and again from 2013 to present, given its continuous violations of Federal and State law, and Town Zoning and Subdivision Ordinances, to affect the subject matter of this case.

2. Why the Court considered Cave Creek's violations of law to be "irrelevant," why the Court did not dismiss counterclaims based on illegality[4] or failure to add indispensible

[4] **See *Bank One, Arizona v. Rouse,* 181 Ariz. 36, 887 P.2d 566, 569-70 (1994)**:
"We find not only that the issue of illegality appears in the record, but also that we can address the wrong and dispose of this case without having to return it to the trial court. Additionally, we refuse to allow the courts to be used to enforce a contract that is contrary to law and common sense. As our supreme court stated in *National Union Indem. Co. v. Bruce Bros., Inc.,* 44 Ariz. 454, 38 P.2d 648 (1934):

> "... In such cases there can be no waiver. The defense [of illegality] is allowed, not for the sake of the defendant, but of the law itself. The principle is indispensable to the purity of its administration. It will not enforce what it has forbidden and denounced. The maxim, *ex dolo malo non oritur actio,* is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent

parties (see Minute Entry 1/27/15).

3. Why the Court denied on Fressadi's 5/11/18 Motion to Amend his complaint with his 3rd Amended Complaint to include indispensible parties and discoveries made while this case was on appeal, and then dismissed his 2nd Amended Complaint on 4/29/14, all for no reason.

4. Why this Court had Judge Warner decide Fressadi's 5/9/18 Motion to Disqualify Judge Contes when Fressadi clearly stated that Judge Warner, in conflict of interest, is a Defendant in related case at the 9th Circuit (#15-15566) as explained in Fressadi's motion and Affidavit attached to said motion.

5. Why the Court denied Fressadi's request for change of venue per A.R.S. §12-408 within the said Motion to Disqualify, when Maricopa County is an indispensible party and named in Fressadi's 3rd Amended Complaint that should have been granted ***but for***[5] Defendants' disclosure violations and fraud on the court with the court's reliance on a pre-appellate 2010 scheduling order.

6. How Attorney Kyle Israel could request the court to discontinue cross-examination

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of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches, it destroys. The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation...." 44 Ariz. at 466-67, 38 P.2d at 653, quoting *Coppell v. Hall,* 74 U.S. (7 Wall.) 542, 558, 19 L.Ed. 244 (1868) (citations omitted). *See also Clark v. Tinnin,* 81 Ariz. 259, 263, 304 P.2d 947, 950 (1956) (waiver and estoppel cannot be invoked against void contract); *cf. Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83, 102 S.Ct. 851, 70 L.Ed.2d 833 (1982) (courts have duty to determine whether contract violates federal law before enforcing it)."

[5] *Standard Chartered PLC v. Price Waterhouse*, 945 P. 2d 317, 344 - Ariz: Court of Appeals, 1st Div., Dept. A 1996: "The dual and independent requirements of transaction causation and loss causation, as we noted in [*Securities Investor Protection Corp. v.*] *Vigman,* [908 F.2d 1461 (9th Cir. 1990), *rev'd,* 503 U.S. 258, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992)], are analogous to the basic tort principle that a plaintiff must demonstrate both "but for" and proximate causation. *Id.* at 1467-68. As the Fifth Circuit stated in [*Huddleston v. Herman & MacLean,* 640 F.2d 534, 549 (5th Cir. 1981), *aff'd in part, rev'd in part,* 459 U.S. 375, 103 S.Ct. 683, 74 L.Ed.2d 548 (1983)], "[t]he plaintiff must prove not only that, had he known the truth, he would not have acted, but in addition that the untruth was in some reasonably direct, or proximate, way responsible for his loss. The causation requirement is satisfied in a Rule 10b-5 case only if the misrepresentation touches upon the reasons for the investment's decline in value." *See also Bastian v. Petren Resources Corp.,* 892 F.2d 680, 685-86 (7th Cir.), *cert. denied,* 496 U.S. 906, 110 S.Ct. 2590, 110 L.Ed.2d 270 (1990) (plaintiffs must demonstrate that misrepresentation caused loss in order to establish liability under Rule 10b-5)."

of his client, Michael Golec, during a bench conference at trial on May 15, 2018, such that Fressadi was pressured into settlement with GV Defendants even though Golec apparently perjured himself as evidence of GV's fraud. See Fressadi's Affidavit, **Exhibit 1**.

7. Why this Court relied on a pre-appellate 2008 ruling, which was reversed by the Court of Appeals, to bar Fressadi from arguing fraud and validity of the DEMA even though this court ruled that there is no res judicata on 4/29/14, and even though Fressadi had the burden to expose Counterclaimants' false testimony and prove the DEMA was void pursuant to the Court's jury instructions. See Fressadi's Affidavit, **Exhibit 1**.

8. Why this Court denied Fressadi's 5/8/18 Motion for Injunction/Stay for Finding of Fact and Conclusions of Law per Rule 52(a) as required per "shall" provisions.[6]

9. Why this Court denied Fressadi's 5/11/18 Motion to Amend his Answer to Counterclaims.

10. What are the findings of fact and conclusions of law for each of this Court's rulings from 2007 to present that contain no explanation.

Rule 52(a) expressly requires that "[i]n an action tried on the facts without a jury or with an advisory jury, if requested before trial, the court ***MUST*** find the facts specially and state its conclusions of law separately…Judgment must be entered under Rule 58." [emphasis added] All

[6] Well-settled Arizona case law supports the findings of fact requirement. See *Amfac Elec. Supply Co. v. Rainer Constr. Co.,* 123 Ariz. 413, 414, 600 P.2d 26, 27 (1979); *Keystone Copper Min. Co. v. Miller,* 63 Ariz. 544, 553, 164 P.2d 603, 608 (1945); *Elliott v. Elliott,* 165 Ariz. 128, 134, 796 P.2d 930, 936 (Ct.App. 1990). Requiring a trial court to state separately findings of fact and conclusions of law allows a defeated party may more easily determine whether the case presents issues for appellate review. See *Rogge v. Weaver,* 368 P.2d 810, 814 n. 7 (Alaska 1962). Findings and conclusions clarify what has been decided and thus provide guidance in applying the doctrines of estoppel and res judicata. *Wattleton v. International Bhd. of Boiler Makers,* 686 F.2d 586, 591 (7th Cir.1982), *cert. denied,* 459 U.S. 1208, 103 S.Ct. 1199-1200, 75 L.Ed.2d 442 (1983). The requirement prompts judges to consider issues more carefully because "they are required to state not only the end result of their inquiry, but the process by which they reached it." *United States v. Merz,* 376 U.S. 192, 199, 84 S.Ct. 639, 643, 11 L.Ed.2d 629 (1964). Findings and conclusions permit an appellate court to examine more closely the basis on which the trial court relied in reaching the ultimate judgment. *City of Phoenix v. Consolidated Water Co.,* 101 Ariz. 43, 45, 415 P.2d 866, 868 (1966); *Bastian v. King,* 661 P.2d 953, 957 (Utah 1983) ("Proper findings are essential to enable [the appellate court] to perform its function of assuring that the findings support the judgment and that the evidence supports the findings."). *See generally* 5A James W. Moore & Jo D. Lucas, MOORE'S FEDERAL PRACTICE ¶ 52.06[1] (2d ed. 1992).

rulings made prior to trial, including summary judgment to the DeVincenzos and REEL's attorneys fees, were tried without a jury. Fressadi's previous Rule 52(a) requests on 3/26/14 (**Exhibit 8**) and 5/8/18 (**Exhibit 9**) were denied for no cause. Now that the parties who executed the DEMA have declared it is void *ab initio* based on Fressadi's allegation of illegality[7] and final judgment has been entered, Fressadi requests the Court to revisit its rulings from 2007 to present, all of which were tried without a jury, to align with MCRD 2018-0372838 per Rule 52(b).

MOTIONS PER 59(a)&(d)

Fressadi ***incorporates herein*** the above Rule 52(b) Motion and his supporting Affidavit per Rule 59(b) (**Exhibit 1**) describing pre-trial and trial abuses more fully to request the court to amend findings of fact and conclusions of law or make new ones, amend/vacate judgment that is based on all previous *non-jury*[8] trials and rulings, and to order a new trial per Rules 59(a)&(d).

Per Rule 59(a)(2), "the court may, on motion for a new trial, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment." Per Rule 59(d): "A motion to alter or amend a judgment must be filed no later than 15 days after the entry of judgment." Per Rule 59(a)(1), "[t]he court may, on motion, grant a new trial on all or some of the issues--and to any party--on any of the following grounds materially affecting that party's rights:

> (A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
> (B) misconduct of the jury or prevailing party;
> (C) accident or surprise that could not reasonably have been prevented;
> (D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
> (E) excessive or insufficient damages;
> (F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action;

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[7] Fressadi pled rescission in his claims to argue illegality. Defendant/Counter-Claimant Keith Vertes took no position regarding issues of illegality. AZCOA has held, however, "that the illegality of a contract may be raised for the first time on appeal by the court on its own initiative. If the court can do this, presumably so can the parties." *Koenen v. Royal Buick Co.,* 162 Ariz. 376, 783 P.2d 822, 824 (App.1989), quoting *Mitchell v. American Savings & Loan Ass'n*, 122 Ariz. 138, 140, 593 P.2d 692, 694 (App.1979), quoting *Nutter v. Bechtel,* 6 Ariz.App. 501, 433 P.2d 993 (1967). See also *Landi v. Arkules,* 172 Ariz. 126, 136, 835 P.2d 458, 468 (App.1992).

[8] **Fressadi never waived his Seventh Amendment right to a jury.**

(G) the verdict is the result of passion or prejudice; or
(H) the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law."

Rules 59(a)(1)&(2) and 59(d) apply to the Rule 54(c) final judgment issued on May 15, 2018 (filed May 21, 2018), which are based on and incorporates non-jury trials/rulings for summary judgment and award to the DeVincenzos and REEL involving: (A) irregularity in the proceedings and abuses of discretion against Fressadi regarding his claims and defenses; (B) misconduct of Defendants' and indispensible parties' fraud on the court and disclosure violations; (C)&(D) surprise and newly discovered material evidence of Vertes' declaration that the DEMA is void *ab initio* per settlement that was not produced until May 15, 2018; (E) the judgment and trial affirms excessive damages for Defendants DeVincenzos and REEL and insufficient damages for Fressadi such that his constitutional rights to compensation for temporary takings of his property has be violated; (F) error by denying Fressadi presentation of evidence and arguments at trial before the jury and numerous errors of law at trial and throughout this action (see court record of Fressadi's filings); (G) prejudice against *pro se* Fressadi, most recently using *Defendant* Judge Warner (related case at 9th Circuit #15-15566) to deny Judge Contes' disqualification despite Fressadi's Affidavit; and (H) the judgment is not supported by the evidence (i.e. the void *ab initio* DEMA; fraud and disclosure violations committed by Defendants, indispensible parties, and their attorneys) and is contrary to law or illegal (i.e. A.R.S. §§ 9-463 *et seq*., 9-500.12, 9-500.13, 12-408, 12-409, 12-1101 *et seq*., 13-1003, 13-1004, 13-2314.04, 33-420; see court record of Fressadi's filings, especially Notices submitted to this court on 9/24/16, 2/26/18, and 5/18/18). As Fressadi's valid claims were dismissed for no reason out of a severe abuse of discretion and contrary to the mandate issued by Arizona Court of Appeals to permit Fressadi to amend his complaint, 1 CA-CV 12-0435 at ¶¶ 27-29 on pages 14-16, judgment should be vacated, Fressadi's claims should be reinstated and amended to add indispensible parties per Rules 15 & 19, and a new trial should be ordered to address his claims and correct previous rulings that are void[9] because the DEMA is void *ab initio*.

[9] "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286, 291 (1980) (emphasis added), citing *Pennoyer v. Neff,* 95 U. S. 714, 732-733 (1878).

The court's findings of fact and conclusions of law, and altering/amending judgment or vacating judgment to grant a new trial, must be based on the following:

The DEMA (**Exhibit 10**) was to provide access to **six (6)** residential lots by means of a driveway to violate Section 5.1(c)(8) of Cave Creek's Zoning Ordinance: "**NO** non-public way [easement] or driveway **shall** provide access to **more than three (3)** residential lots." [emphasis added]. The six (6) residential lots to be bound by the DEMA were subdivided from parcels 211-10-010[10] and 211-10-003[11] by "metes & bounds" surveys. Subdividing parcels into four (4) lots by "metes & bounds" surveys does not comply with A.R.S. §9-463.02 or Cave Creek's Subdivision Ordinance §§ 1.1(A)(2),(4)&(6). As such, the lots to be bound by the DEMA did not comply with the Town's Subdivision Ordinance per §6.3(A) to render the lots unsuitable for building and not entitled to permits. As such, Cave Creek continuously violated Subdivision Ordinance §1.1(B), and Zoning Ordinance §§ 1.1(B), 1.1(C), 1.3(B), 1.4, 1.5, 1.7, 2.3, 5.1(C)(1), 5.1(C)(3) through its Zoning Administrator, where each and every day of continued violation "**shall**" be a separate offense punishable as a Class One misdemeanor per State law and Cave Creek town code per Zoning Ordinance §1.7(A). The formation of the subject lots by Cave Creek violate §§1.1, 6.1(A), 6.3(A) of Cave Creek's Subdivision Ordinance and §§1.4 & 1.7 of its Zoning Ordinance, which incorporate state law and "contains mandatory language that restricts the discretion" of Cave Creek, its actors, and the court. *Jacobson v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980).

Per Section 1.7(C) of Cave Creek's Zoning Ordinance, the Zoning Administrator has no discretion but to order the use of the DEMA lots, driveway, and sewer discontinued and the land and structures vacated because the mandatory ordinances and state law, including mandatory federal due process inversecondemnation laws A.R.S. §§ 9-500.12 & 9-500.13 of which Cave Creek failed to comply to cause the continuing violations, use "language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must" be employed." *Hewitt v. Helms*, 459 US 460, 471 (1983). Further, non-conforming uses are disfavored[12] because

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[10] Survey of unlawful lots of parcel 211-10-010: MCRD 2003-0488178 (**EXHIBIT 11**).

[11] Survey of unlawful lots of parcel 211-10-003: MCRD 2003-1312578 (**EXHIBIT 12**).

[12] Nonconforming uses are not favored by the law and "should be eliminated or reduced to conformity as quickly as possible." *Rotter,* 169 Ariz. at 272, 275, 818 P.2d at 707, 710; *accord*

of the "presumption of validity[13]" of Cave Creek's Zoning and Subdivision Ordinances.

The DEMA is void *ab initio* due in part to Cave Creek violating A.R.S. §§ 9-500.12 and 9-500.13 from 2001 to present. Cave Creek violated federal and state law to require little strips of land to split parcels 010 and 003. In doing so, the Town blocked access to the lots bound by the DEMA, and converted the surveys of parcels 010 and 003 into a non-conforming subdivisions of four (4) lots each without final recorded plat map, making the lots unsuitable for building, not entitled to permits, and unlawful to sell per A.R.S. § 9-463.03[14] such that the sale of lot 010C to the DeVincenzos is void and must be returned to Fressadi per A.R.S. §§12-1101 to 12-1104.

Per Ariz. R. Evid. 301[15], in an apparent racketeering scheme per A.R.S. §13-2314.04, Cave Creek caused the survey of parcel 003 to be recorded containing a material misstatement in violation of A.R.S. §33-420. The survey was incorporated in the DEMA to render it void. All Parties relied on this survey and the DEMA for their claims, and Cave Creek used this survey and DEMA to issue *void* permits. Cave Creek officials attest on the survey that Vertes had dedicated "Parcel A" to the Town when, in fact, no dedication ever took place. "Parcel A" became lot 211-10-003D, a 4th lot, causing the 003 lots to be a non-conforming subdivision of 4 lots in violation of A.R.S. §9-463.02 such that they were unlawful to sell per A.R.S. §9-463.03 until a final plat map is recorded, and not entitled to permits. A metes and bounds survey is not a final plat map. See *mandatory* state laws and *mandatory* Cave Creek ordinances mentioned herein, **Exhibit 13**.

CONCLUSION

For reasons stated, Fressadi respectfully requests that the Court vacate void rulings and correct Cave Creek's continuing violations of federal / state law and ordinances, to rid of non-

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Outdoor Sys., Inc. v. City of Mesa, 169 Ariz. 301, 307, 819 P.2d 44, 50 (1991); *Gannett Outdoor Co. of Ariz. v. City of Mesa,* 159 Ariz. 459, 461, 768 P.2d 191, 193 (App. 1989).

[13] "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." *Village of Euclid v. Ambler Realty Co*., 272 U.S. 365, 388 (1926).

[14] Per A.R.S. §9-463.03**,** it is unlawful to sell or lease any part of a subdivision until a final plat "in full compliance with provisions of this article" is recorded. No final plat could be recorded that would comply with state law and Cave Creek's Subdivision and Zoning Ordinances.

[15] Per Arizona Rule of Evidence 301, "the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption."

conforming uses, and Quiet Title to the subject properties per *Cook v. Pinetop-Lakeside* supra.

For reasons stated and per Ariz.R.Civ.P. 46, 52(b), 59(a)&(d) with Affidavit (**Exhibit 1**), Fressadi requests this court to amend findings of fact and conclusions of law, amend or vacate final judgment, reinstate Fressadi's claims with grant to amend per Rules 15 & 19, and order new trial based on the fact that the DEMA is void *ab initio* to affect previous rulings issued in favor of remaining Defendants REEL and DeVincenzos, and that indispensible "non-parties" can be held liable per Rule 71 [i.e. Cave Creek, its state actors, Tom Van Dyke, Jocelyn Kramer, Maricopa County, its Assessor's Office, its Recorder's Office, its Sheriff's Office]; that Defendants and indispensible parties engaged in willful deception (*e.g.*, *In re Napster, Inc. Copyright Litigation*, 479 F.3d 1078,1097 (9th Cir.2007)), a "trail of fraud" (*Hazel-Atlas v. Hartford Co.,* 322 US 238, 250 (1944)), to cause rulings in violation of due process and therefore void. *World-Wide*, *supra*. Fressadi will be irreparably[16] harmed if the Court does not provide findings of fact and conclusions of law to its myriad of arbitrary and capricious rulings, and vacate void judgments.

Fressadi has argued and continues to argue that many of the Court's rulings were obtained by counsel for Defendants or necessary parties violating disclosure requirements per Rules 26.1 & 37(d) as a constructive fraud[17] in violation of ER 3.3(a),(b),(c),(d) & 8.4(a),(b),(c),(d),(f) to cause

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[16] Irreparable harm is that which cannot be compensated adequately or conditions cannot be put back the way they were. Plaintiff must show a possibility of irreparable injury "not remediable by damages." *Shoen v. Shoen* 167 Ariz. at 63, 804 P.2d at 792 (App.1990). Monetary damages may provide an adequate remedy at law. *See Cracchiolo v. State,* 135 Ariz. 243, 247, 660 P.2d 494, 498 (App.1983). However, where a loss is uncertain, monetary damages may be inadequate. *See Phoenix Orthopaedic Surgeons, Ltd. v. Peairs,* 164 Ariz. 54, 59, 790 P.2d 752, 757 (App.1989), *overruled on other grounds by Farber,* 194 Ariz. 363, 982 P.2d 1277. To determine whether damages would be an adequate remedy at law, the court should consider "the difficulty of proving damages with reasonable certainty." Restatement (Second) of Contracts § 360 (1981); *see also* Restatement § 352 (damages not recoverable for loss beyond amount established with reasonable certainty); Restatement § 360 cmt. b (damages inadequate remedy if injured party can prove some but not all loss); *Haralson v. Fisher Surveying, Inc.,* 201 Ariz. 1, ¶ 35, 31 P.3d 114, 121 (2001) (McGregor, J., concurring in part and dissenting in part) (Arizona courts generally apply law of the Restatement absent Arizona law to contrary).

[17] See *Dawson v. Withycombe*, 163 P.3d 1034, 1057-58 (Ariz. Ct. App. 2007): "Constructive fraud is "a breach of legal or equitable duty which, without regard to moral guilt or intent of the person charged, the law declares fraudulent because the breach tends to deceive others, violates public or private confidences, or injures public interests." *Lasley v. Helms,* 179 Ariz. 589, 591, 880 P.2d 1135, 1137 (App. 1994). While it does not require a showing of intent to deceive or dishonesty of purpose, it does require a fiduciary or confidential relationship. *Id.* at 592, 880 P.2d

a malfunction of judicial proceedings.[18] "Waiver is either the express, voluntary, intentional relinquishment of a known right or such conduct as warrants an inference of such an intentional relinquishment." *Russo v. Barger*, 366 P. 3d 577 - Ariz: Court of Appeals, 1st Div. 2016, quoting *Am. Continental Life Ins. Co. v. Ranier Constr. Co.,* 125 Ariz. 53, 55, 607 P.2d 372, 374 (1980). REEL waived its reliance on the void DEMA when they knew upon purchase of 003C that 003D blocked access to their lot *ab initio*, and that it was unlawful to sell 003C per A.R.S. §9-463.03.

At trial, Judge Contes noted Cave Creek has numerous real estate related lawsuits, as in this case. Evidence is irrefutable that Cave Creek has continuously violated A.R.S. §§9-500.12 & 9-500.13 since 2001.[19] By continuously violating A.R.S. §§ 9-500.12 and 9-500.13 since 2001, Cave Creek unlawfully subdivided parcels 010 and 003 into non-conforming subdivisions that are unsuitable for building and unlawful to sell without a final recorded plat as defined per A.R.S. § 9-463(6), in violation of A.R.S. §§ 9-463.02 & 9-463.03. ***But for*** Cave Creek's violations of federal and state law and its own ordinances, this lawsuit would never have existed. ***But for*** indispensible parties Cave Creek's Mayor, Zoning Administrator, and Town Clerk attesting that Vertes had dedicated "Parcel A" to the Town of Cave Creek, Fressadi never would have executed the DEMA. *See* n.8 herein.

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at 1138. Most importantly for our purposes, the breach of duty by the person in the confidential or fiduciary relationship must induce justifiable reliance by the other to his detriment. 37 Am.Jur.2d *Fraud and Deceit* § 9 (2001); *Assilzadeh v. Cal. Fed. Bank,* 82 Cal.App.4th 399, 98 Cal.Rptr.2d 176, 187 (2000). *See also In re McDonnell's Estate,* *** 65 Ariz. 248, 252, 179 P.2d 238, 241 (1947) (difference between actual and constructive fraud is that former requires actual intent to deceive while other is characterized as breach of a duty actionable irrespective of moral guilt and arising out of a confidential relationship); *Walk v. Ring,* 202 Ariz. 310, 319, ¶ 35 and n. 6, 44 P.3d 990, 999 and n. 6 (2002) (breach of fiduciary duty by fraudulently concealing treatment errors tolls statute of limitations until concealment is discovered or reasonably should be discovered or presumably until plaintiff had actual knowledge of underlying mistreatment)."

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

[19] Maricopa County Assessor's Office knows the property is an unlawful split/subdivision. Per Lisa J. Bowey, Director of Litigation for Maricopa County Assessor's Office in 2014: "If the Court enters a Judgment striking the split(s), please forward a copy of the Judgment to us and we will make the necessary changes." *See also* Fressadi's 9/24/16 Notice before this court containing evidence acquired via the Freedom of Information Act, accompanied by Cave Creek's admission on 8/29/16 that the Town violated A.R.S. §§9-500.12 & 9-500.13 as an Official Policy since 2001.

Public policy requires a court to compel Cave Creek to comply with Federal & State law and its own ordinances to remedy continuing violations and prevent further harm to others.

Due process requires trial court to comply with mandatory procedures, and Fressadi's requests per Rules 52 and 59. Due process requires that Fressadi's claims, which were dismissed without explanation, be reinstated. Due process requires that Fressadi be allowed to amend his Complaint per Rules 15 and 19 to allege added claims arising from Defendants' and indispensible parties' disclosure violations, predicate acts, and fraud on the court.

As such, Fressadi requests that this Court grant his requests per Rules 52(b) and 59(a)&(d)[20] as required by due process to provide Fressadi a meaningful right to be heard; to apply AZCOA rulings and to consider the illegality of the DEMA based on evidence on its face.

Pursuant to Rule 80(a)(3), under penalty of perjury, Fressadi declares that the foregoing is true and correct.

EXECUTED AND RESPECTFULLY SUBMITTED this 30th day of May, 2018.

/s/ Arek R. Fressadi
AREK R. FRESSADI, Plaintiff *Pro Se*

ORIGINAL E-filed, copies to:

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[20] In discussing the rule concerning extrinsic fraud, it appears that most all the courts have adopted the statement made by the Supreme Court of the United States in the case of *United States v. Throckmorton et al*, 98 U.S. 61, 65-66 (1878) where it is stated: "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side, —these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing."

EXHIBIT 1

Arek R. Fressadi, ***pro se***
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

AREK R. FRESSADI, an unmarried man, Plaintiff/Counter-Defendant v. GV GROUP, LLC, *et al*, Defendants/Counter-Claimants	No. CV2006-014822 **AFFIDAVIT OF AREK R. FRESSADI IN RE: TRIAL PROCEDURE AND RULE 59** (Assigned to the Honorable Connie Contes)

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

AREK R. FRESSADI, being of full age and duly sworn upon his oath, hereby affirms as follows:

1. I am the Plaintiff/Counter-Defendant in the above-captioned action, and I make this Affidavit based on my personal knowledge of the facts stated herein and my career experience.

2. I attended law school in California between 1978 and 1981.

3. I am familiar with Arizona's Rules of Professional Conduct and Rules of Civil Procedure.

4. While I cross-examined Defendant/Counterclaimant Michael Golec on 5/15/18, Attorney for GV Group LLC *et al* Defendants/Counterclaimants ("GV"), KYLE A. ISRAEL, BAR NO. 015822 ("Kyle") repeatedly objected to my line of questioning based on a summary judgment ruling from 1/31/08 in violation of my Seventh Amendment rights.

5. My cross-examination of Golec was intended to expose Golec's and his attorneys' conspiracy of disclosure violations to affect a fraud on the court, which can be raised at any time, Ariz.R.Civ.P. Rule 60(d)(3).

6. I raised Ariz.R.Civ.P. Rule 60(d)(3) during trial, but the court ignored it.

7. Further, said summary judgment had been overturned by the Court of Appeals, 1 CA-CV 11-0728 at ¶1: **"Fressadi's claims for declaratory judgment, rescission, and reformation relate to a dispute over the continued viability of a recorded driveway easement. Because issues of genuine fact exist, summary judgment is not proper."**

8. During trial, I raised questions regarding the execution of Declaration of Easement and Maintenance Agreement ("DEMA") based on the Court's Jury Instructions for "Claims Made and Issues To Be Proved": "a) the parties entered into the DEMA; b) Mr. Fressadi breached the DEMA; and c) Mr. Fressadi's breach caused GV Group's damages."

9. My line of questioning easily exposed that the parties who executed the DEMA were Keith Vertes and myself; that the DEMA was void *ab initio* because the DEMA was illegal illusory, and unenforceable due to Cave Creek improperly splitting both parcels; that Defendants / Counter-Claimants Keith Vertes and Michael Golec failed to perform conditions precedent to the DEMA such that there was no mutual assent and therefore, I had no duty to perform.[1]

10. Golec had perjured himself by claiming "Parcel A" of 211-10-003 ("003") was dedicated to the Town of Cave Creek and stating he knew nothing about "Parcel A" becoming 4th lot 003D until 2012. I provided evidence that Golec sold lot 003D in 2010 to Jocelyn Kremer and therefore knew of its existence as a 4th lot prior to 2012.

11. I had additional evidence from Golec's deposition in 2008 that Golec knew of lot 003D prior to 2012, but I was unable to present this evidence during trial due to the conduct of Judge Contes preventing me from arguing my line of questions.

12. Further, it was my intention to expose the fraud on the court by providing the disavowal of the DEMA by subsequent owner of 003A Jocelyn Kremer and notes to the 9/5/05 DEMA rescission meeting drafted by Michael Golec who indicated that "GV Group" would use

[1] See *Yeazell v. Copins,* 402 P.2d 541, 544 (Ariz. 1965) (no duty to perform where a condition precedent has not been fulfilled). *See also* Restatement (Second) of Contracts § 237 (1969) (if a condition precedent to the promisor's duty to perform has not occurred, he is under no duty to perform, whether or not he knows the condition has not occurred); *College Point Boat Corp. v. United States,* 267 U.S. 12, 15 (1925); *Western Auto Supply Co. v. Sullivan,* 210 F.2d 36 (9th Cir.1954); 3A *Corbin on Contracts* § 762 (1951).

the Kremer property for construction access for its spec homes, not Fressadi's part of the DEMA driveway within parcel 211-10-010 ("010").

13. I was then going to show aerial photographs of the 003 lots from 2006 and 2007 to indicate that GV always had access via their 003 properties such that GV's claims were fabricated.

14. Golec's notes also admitted that GV encroached on Fressadi's property to cause damage, and that GV promised to pay $10,000 for the encroachment but never did.

15. I also had evidence I was unable to show that GV dumped tons of dirt and rock on my property, which cost me thousands of dollars to remediate—the "rock" that GV fraudulently alleged that I stole from their property.

16. I also had evidence I was unable to show that GV never reimbursed me for DEMA utilities, for dumping the rock and damaging my driveway; that GV's ~$15,000 contribution to the DEMA did not cover damages and expenses per the DEMA; that GV and/or its successors owed me over $800,000 in damages and equitable contribution.

17. At trial and throughout several motions before Judge Contes and prior divisions, I raised that this court ordered on April 29, 2014 that there was no *res judicata* on ALL rulings, but Judge Contes ignored this ruling to allow Kyle to rely on a 2008 summary judgment ruling and other rulings obtained by constructive fraud and fraud on the court.

18. According to the Court's chess clock, after my opening statement and some cross-examination of Golec, I had 7 hours out of the allotted 9 hours left to cross-examine Golec and Vertes, testify on my behalf, and conclude with a final statement to the jury.

19. However, at a bench conference away from the jury's ears, Attorney Israel moved the court to terminate my cross-examination of Golec, stating that it was the first time he ever evoked such a motion in his career. I was not aware of any such rule of civil procedure or jury trial process where the Court could terminate of my cross-examination of Golec.

20. However, the Court had denied all of my motions without cause, overruled most of my objections, sustained most of Attorney Israel's objections, Judge Contes whispered in a way that I could not hear her but appeared to be granting Israel's request to rule a default judgment as Israel claimed I was barred from raising issues that had allegedly been ruled upon in 2008 which

would violate my Seventh Amendment rights as I requested a jury trial.

21. In other words, I was prevented from arguing my case in conformance with the Court's Jury instructions, and the law of the case as determined by the Court of Appeals.

22. As a consequence, I settled with GV Defendants/Counter-Claimants based on their declaration that the DEMA was void *ab initio*.

23. As such, for Judge Contes to issue a final judgment per Rule 54(c) without findings of fact and amending judgments is manifest error because the parties declared the DEMA void *ab initio* to render rulings in this case, void. [2]

24. Further, in response to my Motion to Disqualify Judge Contes per Ariz.R.Civ.P. Rule 42.2 and A.R.S. § 12-409, on May 11, 2018, filed on the 2nd day of trial May 15, 2018, Judge Warner decided that there is no bias and prejudice on behalf of Contes, when my affidavit that supported my motion named Judge Warner as a Defendant in a related case; that Warner and Contes shared the 9th floor of the East Wing and would be cause for removing the case.

25. In violation of Arizona Code of Judicial Conduct ("CJC") Rule 2.11, Judge Warner needed to recuse himself to avoid mistrial.

26. As of April 27, 2018, Warner's chambers were across the hall from Judge Contes on the 9th floor at Maricopa County Superior Court.

27. Judge Contes denied my Motion for Change of Venue per A.R.S. § 12-408 that was filed with my Motion to Disqualify, even though my 3rd Amended Complaint named Maricopa County and its State Actor Does as parties and the evidence is clear that Maricopa County, its Assessor's Office, its Recorder's Office, its Sheriff's Office, and judicial members of Maricopa County Superior Court are indispensible parties, such that immediate change of venue was warranted to prevent further prejudice.

28. Judge Contes also denied addressing Kyle's numerous ER violations that I raised to violate the CJC.

29. During a pretrial conference on May 10, 2018, Judge Contes admitted that she did

[2] When a judgment is void, "the court has no discretion, but must vacate the judgment." *Springfield Credit Union v. Johnson,* 123 Ariz. 319, 323 n.5, 599 P.2d 772, 776 n.5 (1979).

not read my motions yet denied them.

30. It is well established that judges are prejudiced against *pro se* litigants as notably exposed by former Judge Richard Posner of the 7th Circuit.[3]

31. In violation of CJC Rule 2.6, and in an abuse of discretion, my motion to file a Third Amended Complaint was denied by ***Judge Warner*** based on an obsolete scheduling order issued before I uncovered Cave Creek's continuous violations that connected to GV's fraud.

32. In violation of CJC Rule 2.6, and in an abuse of discretion, my 2nd Amended Complaint was dismissed because I challenged the court's authority to adjudicate Defendants' counterclaims without addressing Cave Creek's continuing violations of federal and state law that were embedded into the DEMA.[4]

33. Although this situation is manifestly unjust and in opposition to the law of the case from the court of appeals, superior court judges have not reported their fellow judges for violating their code of ethics, nor have they corrected the matter by horizontal appeal.

34. Prior to and at the start of trial, I explicitly told Judge Contes that I was not prepared to proceed with trial for good cause—i.e. Kyle committed numerous ER violations that required immediate attention to include sanctions, there were several outstanding motions including Limine that required adjudication to determine trial arguments (my Motion for Limine was not addressed prior to trial), Kyle prejudiced me by sending me late pretrial documents to edit for joint filing and trial evidence that was never previously submitted to court to require more time for me to cull through thousands of documents to counter them and compile evidence per court requirements, I needed more time to learn procedures for my first jury trial, I had urgent deadlines

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[3] https://abovethelaw.com/2018/03/judge-posner-files-first-brief-since-leaving-the-bench-lights-into-federal-judiciary/?rf=1

[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)); *see also Smith v. Superior Equip. Co.,* 102 Ariz. 320, 324, 428 P.2d 998, 1002 (1967) ("[I]t is a general rule of law that when the Legislature adopts a statute governing contracts of any nature, that statute ipso facto becomes a part of the contract, and the latter will be construed as though the statute were written into it." (citation omitted)).

on other litigation as a *pro se* with no legal staff support, and I have physical disabilities.

35. I am a 67-year old pro se litigant who was run over by a truck in 2014. The incident exacerbated my glaucoma to cause handicap. My eyesight is compromised such that it takes me a long time to review documents and prepare filings. In addition, I must engage in physical therapy in order to improve my ability to walk, and reduce my hypertension.

36. Although I have glaucoma and needed assistance from my assistant Jodi R. Netzer to be my "eyes" and coordinate exhibits with the court's clerks, Judge Contes threatened to have Netzer removed during trial for telling me the exhibit numbers according to the court's index and how to adjust the court's projection machine so that the jury can see the evidence I was presenting.

37. Judge Contes required Netzer to not speak to me. As a result, most of my exhibits presented at trial were not visible to the jury on the projection screen, in whole or in part, to cause mistrial.

38. Despite requests to postpone trial to allow me more preparation time for good cause and my need for assistance, in violation of CJC Rule 2.2, comment 4, the Honorable Connie Contes did not make reasonable accommodation to ensure that I have the opportunity to have my matter fairly heard as a self-represented, handicapped litigant by summarily denying continuance of trial and limiting my assistance at trial.

39. During the pretrial conference on May 10, 2018, Judge Contes stated she will not address issues of illegality. Although she stated that I could argue Cave Creek's misconduct at trial, she greatly limited my key arguments during trial, including illegality caused by Cave Creek and GV's fraud.

40. Judge Contes has expressed that the case has been ongoing since 2006 in such a manner that it appeared she would do anything to proceed with trial regardless of justice and despite that I raised issues and reasons why the case is not ready for trial or should not proceed because Counterclaimants' claims are based on illegality.

41. Although there is indisputable evidence on the face of the contract, in state law, and in court rules that would require the counterclaims to be dismissed due to illegality, Judge Contes, without reason or good cause in further bias and prejudice, denied my 4/4/18 motion to vacate trial

and dismiss the counterclaims per Motion in Limine in violation of CJC Rules 1.2, 2.2, 2.3, 2.5, & 2.6 because to grant the motions would validate my allegations of judicial takings by her Maricopa County Superior Court colleagues in LC2014-000206 arising out of this action.

42. As such, Judge Contes violated her duty to uphold the law per CJC Rule 2.2 and denied me a chance to be heard in violation of CJC Rule 2.6. As described in motions to this court since discovery while this case was on appeal in 2012/2013 and by a clear and plain reading of state law and Town ordinances, it is indisputable that Cave Creek's continuing violations of its zoning ordinance impose mandatory criminal penalties per state law and §1.7 of its Zoning Ordinances; that Cave Creek has violated state and federal law upon which the formation of the DEMA rely, yet refused to allow evidence of these foundational matters to be raised at trial.

43. In violation of CJC Rules 1.1, 1.2, 2.3, 2.5, Judge Contes did not consider the Memorandum Decisions of the Court of Appeals in 1 CA-CV 11-0728, 1 CA-CV 12-0435, and 1 CA-CV 12-0601 as the law of the case.

44. Although Memorandum Decisions of the Court of Appeals specifically stated that summary judgment is not proper, Judge Contes has accepted rulings by other divisions of this court as the law of the case in opposition to the rulings by the Court of Appeals. As such, she has failed to comply with CJC Rule 2.15(A) & (C).

45. For the last five years, divisions of this Court have not complied with the rulings of the Court of Appeals in this case, nor upheld my right to be heard to violate CJC Rule 2.6.

46. State Courts are required to uphold the Supremacy Clause. Fifth, Seventh, & Fourteenth Amendment rights require due process, equal protection, a jury trial, and just compensation. Summary judgment in 2015 ignored all these requirements in violation of rulings by the Court of Appeals in this case.

47. It is well established that Cave Creek must strictly comply with Federal and state laws, but on August 29, 2016, Cave Creek provided irrefutable evidence and admitted that the Town has continuously violated federal and state law in A.R.S. §§9-500.12 & 9-500.13 ("§§9-500.12/13") as its Official Policy since 2001 to cause parcels 211-10-003 and 211-10-010 to be unlawful subdivisions.

48. Unlawful subdivisions are unsuitable for building, not entitled to permits, and no portion of the subdivision can be sold until a final subdivision plat map is recorded that conforms to Cave Creek's Zoning and Subdivision Ordinances per A.R.S. §9-463.03. These are continuing violations per the Town's Zoning Ordinance, and the Zoning Administrator has a mandatory duty per Zoning Ordinance §2.3 to enforce Cave Creek's Zoning and Subdivision ordinances.

49. Cave Creek's continuing illegality and failure to follow federal and state law creates quiet title issues that have no statute of limitation.[5]

50. As such, attorneys for Cave Creek knowingly made false statements of fact and law to the tribunal in violation of ER 3.3(a)(1), and 8.4. Attorney Jeffrey Murray for Cave Creek falsely stated that any claim against Cave Creek was time-barred in 2009/2010. This is false. There is no statute of limitation on quiet title actions when I remain in title and possession of the property that is unlawful to sell per A.R.S. §9-463.03 due to Cave Creek's continuing violation of A.R.S. §§9-500.12 and 9-550.13 to continuously violate its Zoning and Subdivision Ordinances as in this instance. Per Zoning Ordinance §1.7, as "each day of continued violation" of Cave Creek's Ordinances "is a separate offense" caused by the Town, relating back to the initial violation, Cave Creek's continuing violations on parcels 211-10-003 and 211-10-010 must be corrected as a matter of law and public policy.

51. Attorneys for Defendants knowingly made false statement of fact and law in violation of ER 3.3(a)(1) and 8.4 that Cave Creek's violations of federal and state law and its own ordinances have nothing to do with the subject matter of this lawsuit. This is so patently false as to elevate their ethical misconduct to fraud on the court[6].

52. The foundation of the case relies on mandatory state law and town ordinances that

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[5] See *Zrihan v. Wells Fargo Bank*, NA, Dist. Court, D. Arizona 2014: "'[A] cause of action to quiet title for the removal of the cloud on title is a continuous one and never barred by limitations while the cloud exists." *Cook v. Town of Pinetop-Lakeside*, 303 P.3d 67, 70 (Ariz. Ct. App. 2013) (quoting *City of Tucson v. Morgan,* 475 P.2d 285, 287 (Ariz. Ct. App. 1970))."

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

contain "shall" provisions[7]. There first must be a determination to compel Cave Creek to comply with Federal and state law, and its own ordinances, pertaining to the properties.

53. "A judgment rendered in violation of due process is **VOID** in the rendering State and is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286, 291 (1980) (emphasis added), citing *Pennoyer v. Neff,* 95 U. S. 714, 732-733 (1878).

54. I believe the misconduct of this court caused a mistrial (i.e. violating Supremacy Clause, violating state law, violating court procedures, violating Code of Judicial Conduct).

55. I believe the misconduct of all defendants, indispensible parties, and their attorneys caused a mistrial (i.e. disclosure violations, constructive fraud, fraud on the court, civil conspiracy, racketeering, violations of Rules of Professional Conduct).

56. I argue that all previous rulings be vacated (including dismissal of my claims) and a new trial be ordered because the DEMA is void *ab initio*.

57. I have requested and continue to request that I amend my complaint to conform to new evidence, discoveries made while this case was on appeal, and now that the DEMA is void *ab initio*. It was a severe abuse of discretion that this court denied my amended complaint based on a pre-appellate scheduling order after the appellate court granted me opportunity to amend.

58. By evidence and reasons stated herein, during trial, and/or throughout my court filings, I declare that a new trial is warranted per Ariz. R. Civ. P. Rule 59(a) as there has been irregularity in the proceedings, abuse of discretion depriving me of a fair trial, misconduct of this court, misconduct of Defendants and indispensible parties and their attorneys, excessive damages to DeVincenzos and Real Estate Equity Lending based on void rulings that GV/Kyle relied upon, insufficient damages to me such that my constitutional rights to compensation for the takings has be violated, this court erred by denying me presentation of evidence and arguments at trial before the jury, I have been prejudiced at trial and throughout litigation, and the judgment is not supported by evidence (i.e. fraud committed by opposing parties/nonparties and their attorneys,

[7] The relevant state law and town ordinances use "language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must" be employed." *Hewitt v. Helms*, 459 US 460, 471 (1983).

the void *ab initio* DEMA) and is contrary to law or illegal (i.e. A.R.S. §§ 9-463 *et seq*., 9-500.12, 9-500.13, 12-408, 12-409, 12-1101 *et seq*., 13-1003, 13-1004, 13-2314.04, 33-420).

Pursuant to Ariz.R.Civ.P Rule 80(c), under penalty of perjury, Fressadi declares that the foregoing is true and correct.

Further Affiant sayeth naught.

Arek R. Fressadi

Arek R. Fressadi

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me this 30th day of May, 2018, by Arek R. Fressadi.

Laura Gardner

Notary Public

Laura Gardner
Notary Public - Arizona
Pima County
My Commission Expires
May 21, 2020

My Commission Expires: May 21, 2020

EXHIBIT 2

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
ADRIAN FONTES
2018-0372838 05/16/18 08:25
PAPER RECORDING

0475897-1-1-1
ramirezj

When Recorded Mail To:
Arek Fressadi, Trustee
10780 S. Fullerton Rd.
Tucson, AZ 85736

DECLARATION OF THE EXECUTORS OF THE DECLARATION OF EASEMENT AND MAINTENANCE AGREEMENT MCRD # 2003-1472588

Date: May 15, 2018

On April 17, 2003, the Town of Cave Creek subdivided parcel #211-10-010 into four lots (Lots 1, 2, 3, and Parcel A), by metes and bounds survey. MCRD #2003-0488178.

On September 16, 2003, the Town of Cave Creek subdivided parcel 211-10-003 into four lots, (Lots 1, 2, 3, and Parcel A), by metes and bounds survey. MCRD #2003-1312578.

Because no lots were dedicated in the above, neither subdivision of parcel 211-10-010 or 211-10-003 may conform to the Town's Subdivision Ordinance.

Regarding the Declaration of Easement and Maintenance Agreement ("DEMA"), MCRD 2003-1472588, Arek R. Fressadi hereby declares that due to the conduct of Cave Creek, the DEMA was illegal. Keith Vertes takes no position regarding the illegality of the DEMA.

The Town of Cave Creek required that the lots subdivided from parcel 211-10-003 connect to the sewer that was constructed to serve lots 211-10-010 A, B, & C. The DEMA was executed to provide access and related utilities (sewer) to the lots to be bound by the DEMA. MCRD #2003-1472588.

As parcels 211-10-003 and 211-10-010 were apparently subdivided into non-conforming subdivisions, Arek R Fressadi declares that the purpose of the DEMA failed for frustration of purpose and impracticability. Arek R. Fressadi and Keith Vertes declare the DEMA void *ab initio*.

By: _____
Arek R. Fressadi

By: _____
Keith Vertes

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 15th day of May 2018, 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.

MICHAEL BONNO
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
May 4, 2021

_____
Notary Public for Arizona
Residing at: 630 E Rowell Rd

EXHIBIT 3

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

AREK FRESSADI, an unmarried man,
Plaintiff,
-vs-
GV GROUP, L.L.C., an Arizona limited liability company; MG DWELLINGS, INC., an Arizona corporation; BUILDING GROUP, INC., an Arizona corporation; MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES and KAY VERTES, husband and wife; REAL ESTATE EQUITY LENDING, INC., an Arizona corporation; and SALVATORE DEVINCENZO and SUSAN DEVINCENZO, husband and wife,
Defendants.
GV GROUP, LLC, an Arizona limited liability company; DESERT EDGE DEVELOPMENT, LLC, An Arizona limited liability company, MG DWELLINGS, INC., and Arizona corporation; BUILDING GROUP INC., an Arizona Corporation; MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES AND KAY VERTES, husband and wife,
Counterclaimants,
-vs-
AREK FRESSADI, an unmarried man,
Counterdefendant,

SALVATORE DEVINCENZO and SUSAN DEVINCENZO, husband and wife,
Counterclaimants,
-vs-
AREK FRESSADI, an unmarried man.
Counterdefendant.

Case No.: CV2006-014822

MOTION TO ADD THE TOWN OF CAVE CREEK AS A NECESSARY PARTY

(Assigned to the Honorable Eileen Willett)

Plaintiff Arek Fressadi, ("Plaintiff" or "Fressadi") hereby submits his Motion to join the Town of Cave Creek as a necessary party to this litigation, pursuant to 16 A.R.S. Rules of Civil Procedure, Rule 19(a), and in the interests of equity.

I. Memorandum of Fact and Law in Support of Plaintiff's Motion to Add Cave Creek as a Necessary Party

ARCP, Rule 19(a) states that "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede the person's ability to protect that interest (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party."

The test of indispensability of parties in Arizona is whether the absent person's interest in the controversy is such that no final judgment or decree could be entered, doing justice between the parties actually before the court and without injuriously affecting the rights of others not brought into the action. *Copper Hills Enterprises, Ltd. v. Arizona Dept. of Revenue* (App. Div.1 2007) 214 Ariz. 386, 153 P.3d 407, review denied. Further, one of the policies of Arizona law is to determine the rights of all parties to controversy in one suit, if possible. *U. S. Fidelity & Guar. Co. v. Alfalfa Seed & Lumber Co.* (1931) 38 Ariz. 48, 297 P. 862

In the case at bar, Plaintiff and Defendants are involved in litigation to determine rights and obligations with regard to the Driveway Maintenance Agreement, either by the express terms of the agreement or by declaration of this court.

II. The Town of Cave Creek is a Necessary Party to this Litigation

One of the most contentious aspects of this litigation has been the Defendants' claim for $4.3 Million in damages arising from the construction of two spec homes and the permanent driveway constructed by Defendants GV Group to access these two houses. Although the Court has ruled on this matter three times, Defendants still believe and intend to raise damage claims at trial. See attached email, Exhibit A).

While Plaintiff believes that the Defendants' claim is totally without merit, in order for the Defendants to have any claim at all requires the complicit acts of the Town of Cave Creek.

CONCLUSION

Any attempts to resolve the current party's rights and obligations will be impaired by the absence of the above named, who, for their part, need to be parties to this action in order that their respective rights are protected. Therefore, for the above reasons and in the interest of equity, Plaintiff asks that this court declare M&I Bank; Jocelyn Kremer, Security Title, and Kay Vertes, in her capacity as Trustee of the Vertes Family Trust, necessary parties to this action.

Arek Fressadi,
Plaintiff/Counter Defendant *Pro Se*

ORIGINAL E-filed this
15th day of March, 2010
And copy delivered to:

Honorable Eileen Willett
Maricopa County Superior Court

And copies emailed and mailed to:

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EXHIBIT 4

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

AREK FRESSADI, an unmarried man, Plaintiff/Counterdefendant, vs. GV GROUP, L.L.C., ET AL., Defendants/Counterclaimants.	NO. CV2006-014822 **MOTION TO RECONSIDER RULINGS THAT VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS TO PROPERTY AND DUE PROCESS** (Assigned to the Hon. Lisa Flores)

Pursuant to A.R.S. §§ 13-2314.04, 13-1004, and A.R.C.P. Rule 60(C)(4),(5),(6), Plaintiff moves the Court to reconsider Judge Flores rulings in the Minute Entry filed January 24, 2014.

Arizona's Constitution is quite clear: The Constitution of the United States is the supreme law of the land. Article 2, Section 3. State statutes are also clear: Municipalities must abide by due process and property rights rulings of the US Supreme Court. Cave Creek did not do so. Contrary to Judge Flores' conclusion, the index of record indicates that Plaintiff filed a motion to add Cave Creek as an indispensible party twice before the appeal. Plaintiff asked to add Cave Creek on March 15, 2010 (IR 115). Cave Creek opposed March 25, 2010 (IR 121), fraudulently scheming that any claim against the Town was barred by A.R.S. § 12-821. Plaintiff filed another motion to add Cave Creek and consolidate all related litigation on May 7, 2010 (IR 142). Cave Creek opposed again on April 22, 2010 (IR 138). Judge Willett facilitated Cave Creek's fraudulent scheme to control and convert Plaintiff's property in violation of A.R.S. §§ 13-2310 and 13-1802 on June 10, 2010 (IR 143). Judge Willett had no jurisdiction and violated her oath of office to

support the constitution. Article 6, Section 26. She just assumed that Cave Creek's argument was correct. Plaintiff has filed countless motions in this case to vacate judgments based on fraud on the court. Judges have an independent obligation to establish jurisdiction. Not one Maricopa County Superior Court Judge ever questioned whether Cave Creek complied with A.R.S. §§ 9-500.12 and 9-500.13 prior to granting Cave Creek a favorable ruling. There is no question that counsel for Cave Creek made false statements of law and fact to the tribunal in violation of ER 3.3(a). Cave Creek counsel failed to disclose legal authority that indicated Cave Creek first had to comply with A.R.S. §§ 9-500.12 and 9-500.13 and there had to be an administrative hearing before the statute of limitations could run pursuant to A.R.S. 12-821.01(C). Cave Creek offered false evidence.

Judges have a duty to report professional misconduct. ER 8.3. Judges who don't report professional misconduct are facilitating misconduct per ER 8.4. Plaintiff argues that if the judicial branch of the State of Arizona cannot police itself to comply with its own rules such that the Courts violate Plaintiff's constitutional rights, then there has been a judicial takings. Plaintiff further argues that the action is criminal and can be prosecuted pursuant to A.R.S. 13-2314.04 as there are a pattern of predicate acts and the taking and conversion of Plaintiff's property is continuous and ongoing.

In other words, Judge Willett and Flores *knew*[1] they were facilitating Cave Creek's fraudulent scheme. Plaintiff filed his Motion to Amend and file his Third Verified Amended Complaint on January 24, 2014. Judge Flores has now been sued, JB Does XXXI-L. "When a judge knows that [s]he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving [her] him of jurisdiction, judicial immunity is lost." *Rankin v. Howard,* (1980) 633 F.2d 844, cert den. *Zeller v. Rankin,* 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

Plaintiff has now filed his motion to amend the complaint to rectify these wrongdoings and add indispensible parties, to include judges who facilitated Cave Creek's criminal conduct. The law is quite clear: the Constitution of the United States is the Supreme Law of the Land. Plaintiff's

[1] See ER 1.0(d)(f) "fraudulent" has a purpose to deceive and knowing can be inferred from the circumstances.

constitutional rights trump state law and court rules. Plaintiff has a right to due process. Plaintiff has a right to try this case against the appropriate parties for the wrongs committed to his person, his property and his business. The law is quite clear that Judges have no discretion to allow a continuing violation of statutory law. Plaintiff's amended complaint affords the court the opportunity to correct continuing violations of statutory law, specifically, A.R.S. 9-463 et seq., §§ 9-500.12 and 9-500.13. "Leave to amend shall be freely given when justice requires." Rule 15(a). Amending the complaint is mandatory. The court has no discretion to allow continuing violations of statutory law.

To be clear, Plaintiff's position is not that Judge Flores rulings in the Minute Entry need reconsideration, Plaintiff alleges the Judge Flores has no discretion because she has no jurisdiction to rule in opposition to the Constitution of the United States as codified in the State Constitution and state statutes, A.R.S. 9-463 et seq., §§ 9-500.12 and 9-500.13.

To remove all doubt, "… the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law [or judicial ruling] repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument." *Marbury v. Madison*, 1 Cranch 137 (1803).

Plaintiff alleges that Judge Flores is facilitating Cave Creek's fraudulent scheme to control and convert Plaintiff's property in violation of A.R.S. §§ 13-1004, 13-1802, 13-2310 which Plaintiff can prosecute pursuant to A.R.S. § 13-2314.04.

Based on the biography of Judge Flores (and Willett), neither judge has the experience to adjudicate this case which is why Plaintiff filed a confirmation for complex case status as part of his motion to amend. Pursuant to Article 6, Section 3 of Arizona's Constitution, the Supreme Court of the State of Arizona has administrative supervision over all Arizona courts. Supervision does not mean converting them into Kangaroo Courts that violate Plaintiff's constitutional rights. To do so, is to lose the consent of the governed. Article 2, Section 2.

As part of Plaintiff's motion to amend, Plaintiff is seeking a ruling that Cave Creek's

failure to comply with US Supreme Court rulings and due process as codified in A.R.S. §§ 9-500.12 and 9-500.13 caused all the judgments in any case involving the subject lots (211-10-010 A, B, & C and 211-10-003 A, B, & C) or dependant upon the Covenant in any way shape or form, to be void. Void judgments can be over turned at any time. Plaintiff not only has good cause to move to vacate all judgments, but to rule in opposition is to facilitate Cave Creek's fraudulent scheme to control and convert Plaintiff's property in violation of A.R.S. §§ 13-1004, 13-1802, and 13-2310. It's black and white. It doesn't take a membership card in Arizona's Bar to figure it out.

Under Federal law which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828). Vacating all judgments is mandatory.

As stated in Plaintiff's motion to amend, Maricopa County is an indispensible party. A preponderance of the evidence suggests that Maricopa County facilitated Cave Creek's fraudulent scheme to control and convert Plaintiff's property in violation of A.R.S. §§ 13-1004, 13-1802 and 13-2310. The County assessed and taxed Plaintiff's property as if Plaintiff's property was lawfully split knowing it was an undefined subdivision in violation of A.R.S. § 9-463 *et seq*.

Change of venue is mandatory, A.R.S. § 13-408.

To be clear, Defendants DeVincenzos and GV Group request to dismiss the case acts as a waiver of their counter-claims. To request to dismiss the case is to request to dismiss their claims, not just Plaintiff's. Defendants did not object to the Court's order to dismiss this complaint and thereby waived their answers and counter-claims. *See Phoenix Newspapers, Inc. v. Molera,* 200 Ariz. 457, 462, ¶ 26, 27 P.3d 814, 819 (App. 2001). Plaintiff further argues that BMO Harris Bank and Cave Creek had the duty to raise any compulsory counter-claims in this case and chose not to do so. As such they waived any right to answer or counter claim Plaintiff's amended complaint.

For reasons stated in this motion, and in Plaintiff's Motion to Amend filed January 24, 2014; his Motion to Vacate all Judgments filed January 6, 2014; his Motion for Change of Venue filed December 26, 2014; Plaintiff requests that this reconsider its rulings to comply with their oath of office. In addition, A.R.S. § 12-1832 authorizes any person whose rights, status, or other legal relations are affected by a statute to have determined any question of construction arising under the statute and to obtain a declaration of rights thereunder. Plaintiff moves to stay this proceeding until Cave Creek complies with A.R.S. §§ 9-500.12 and 9-500.13. By concealing the unlawful subdivision status of the lots, the Town created a government-authorized physical occupation and invasion of private property in violation of the Fifth Amendment, Article 2, Section 17 of Arizona's Constitution and A.R.S. §§ 13-2310, 13-2311 and 13-1802. Equity authorizes an injunction when a governmental entity is poised to take an illegal act.

Plaintiff reserves all rights and claims.

RESPECTFULLY SUBMITTED this 26th day of January, 2014.

s/s Arek Fressadi
Arek Fressadi, *pro se*

ORIGINAL E-filed, copies mailed/emailed to:

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EXHIBIT 5

IN THE

Court of Appeals

STATE OF ARIZONA
DIVISION ONE

AREK FRESSADI, an unmarried man,	)	Court of Appeals
	)	Division One
Plaintiff/Appellant,	)	No. 1 CA-CV 14-0203
	)	
v.	)	Maricopa County
	)	Superior Court
SALVATORE and SUSAN DEVINCENZO,	)	No. CV2006-014822
	)	
Defendants/Appellees.	)	
	)	
	)	

O R D E R

The record contains a superior court order finding that Appellant is eligible for a deferral of fees. Pursuant to A.R.S. 12-302(I),

IT IS ORDERED the deferral remains in effect unless there is a change in Appellant's financial circumstances.

/s/ Ruth A. Willingham
CLERK OF THE COURT

To:

Arek Fressadi
Elizabeth Savoini Fitch
Michelle Ronan
Michael K Jeanes, Clerk

EXHIBIT 6

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

AREK FRESSADI, an unmarried man, Plaintiff/Counterdefendant -vs- GV GROUP, L.L.C., et al., Defendants/ Counterclaimants	No. CV2006-014822 **FRESSADI'S MOTION FOR SANCTIONS AGAINST THE TOWN OF CAVE CREEK, DEFENDANTS AND THEIR RESPECTIVE COUNSEL –and- RESPONSE TO DEVINCENZO MOTION FOR SUMMARY JUDGMENT** (Assigned the Hon. Patricia Starr) **(Expedited Hearing Requested)**

Pursuant to the Court's inherent power to sanction bad faith conduct during litigation, Plaintiff Arek Fressadi responds to DeVincenzo's Motion for Summary Judgment and moves this Court to hold Defendants[1] and indispensible party, the Town of Cave Creek along with their respective counsel[2] in contempt and impose sanctions as follows:

[1] Michael Golec, Keith Vertes, Michael Coffman d/b/a REEL, Inc., Salvatore and Susan DeVincenzo.

[2] John Craiger and Kyle Israel for Michael Golec and Keith Vertes, Scott Humble and Sean McElenny for Michael Coffman/REEL, Elizabeth Fitch and Richard Righi for the DeVincenzos.

Under advisement, this Court ruled that: "(1) the parties entered into an agreement for the sale of the property;"[3] The Court did not define parties, or property, or rule as to the lawfulness of the agreement(s) for the sale of the property(ies).

As President of the Cybernetics Group Ltd., Plaintiff entered an agreement with Keith Vertes for the sale of parcel #211-10-003 where Vertes was to quit claim the property back to Cybernetics if the Town did not approve a lot split. Exhibit A. There is no dispute that Cave Creek failed to follow A.R.S. §§ 9-500.12 & 9-500.13[4] when it required a fourth lot, 211-10-003D, to create an undefined subdivision per A.R.S. § 9-463.02. Exhibit B.[5] MCRD #2003-1312578 is a meets and bounds survey. It is not a recorded final plat map. Until a final plat map is recorded, it is unlawful to sell any portion of parcel 211-10-003. A.R.S. § 9-463.03. Dividing a parcel of land into four lots by survey does not comply with the Town's Ordinances or the land contract, *supra*. The lots are unsuitable for building and not entitled to building permits per Section 6.3 of the Town's Subdivision Ordinance, Exhibit C. Permits issued in violation of Town Ordinances are void. Exhibit D. Property or improvements in violation of the Town's Zoning Ordinance must be vacated. Exhibit D. The Town has no discretion in this instance and must strictly enforce these Ordinances, *supra*.

It is undisputed that Cave Creek did not comply with A.R.S. §§ 9-500.12, 9-500.13, 9-463 *et seq*., and its own Ordinances when it required a fourth lot to "split" parcel 211-10-010.[6] Exhibit E is a survey, not a recorded final plat map. Until a final plat map is recorded, it is unlawful to sell any portion of parcel 211-10-010. A.R.S. § 9-463.03. Parcel 211-10-010

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[3] Under Advisement Ruling filed February 2, 2015.

[4] This evidence was newly discovered by Plaintiff in the winter of 2012/2013.

[5] Exhibit B identifies all the exactions, requirements, dedications, and easements made by the Town of Cave Creek to issue or approve entitlements to the DMA properties.

[6] Also newly discovered by Plaintiff in the winter of 2012/2013. The burden of notice is the duty of Cave Creek which they concealed.

was subdivided by survey into four lots. MCRD #2002-0576103, 2002-0576104, 2002-057105, 2002-681164, 2003-1472588. There is no recorded final plat map, such that the sale of any portion of parcel 211-10-010 is unlawful. A.R.S. § 9-463.03. "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)); *see also Smith v. Superior Equip. Co.,* 102 Ariz. 320, 324, 428 P.2d 998, 1002 (1967) ("[I]t is a general rule of law that when the Legislature adopts a statute governing contracts of any nature, that statute ipso facto becomes a part of the contract, and the latter will be construed as though the statute were written into it." (citation omitted)). **The lots must be reassembled requiring the rescission of the sale of lot 211-10-010C because it is not possible to record a final plat map in compliance with the Town's subdivision ordinance in the parcel's current configuration of the lots.** A Court in equity has no discretion to allow violations of statutory law to continue.[7]

Since the "split" of parcel 211-10-010 into four lots does not comply with the Town's Ordinance, lots 010A, B, & C are unsuitable for building and not entitled to building permits per Section 6.3 of the Town's Subdivision Ordinance, Exhibit C. As such, the permits issued for sewer and driveways, the improvements governed by the Declaration of Easement and Maintenance Agreement[8] ("DMA"), are in violation of the Subdivision Ordinance and void. As such, the use of the driveways and sewer must be vacated per Exhibit D.

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[7] See Footnote 7, *City of Tucson v. Clear Channel Outdoor, Inc*., 181 P. 3d 219-Ariz: Court of Appeals, 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).

[8] IR 1, Exhibit A.

Cave Creek concealed from this Court that Cave Creek had failed to comply with A.R.S. §§ 9-500.12, 9-500.13, 9-463 *et seq*., and its own Ordinances because Plaintiff's claims do not accrue per A.R.S. §12-821.01(C)[9] until administrative remedies are exhausted per A.R.S. § 9-500.12. By concealing material fact and law in IR 121 and IR 135, the Town obtained favorable rulings in IR 123 and IR 143.

Plaintiff noticed this Court on September 24, 2013 to adjudicate the matter per A.R.S. § 9-500.12(H) based on newly discovered evidence that Cave Creek concealed their failure to follow A.R.S. § 9-500.12 and establish the essential nexus on requirements, dedications, exactions and easements involving the lots that run with the DMA, Exhibit F; that the Town apparently waived their rights per A.R.S. § 9-500.12(E) and the Administrative Hearing process in A.R.S. § 9-500.12 takes jurisdictional precedence in order to adjudicate the matters in this case. Until due process and takings issues of the DMA lots are adjudicated per A.R.S. §§ 9-500.12, 9-500.13 and 9-463 *et seq*., this Court has no subject matter jurisdiction over DMA claims or counter-claims. "Judgments which are rendered by a court lacking subject matter or personal jurisdiction are void." *Cockerham v. Zikratch,* 127 Ariz. 230, 619 P.2d 739 (1980).

Plaintiff raised a Motion to amend the pleadings to conform to the newly discovered evidence in conformance with Rules 12(b)1,2,6,7, 13(h), 14(b), 15(b),(c), and (d). As to Rule 12(b)7, the test of indispensability of parties in Arizona is whether the absent person's interest in the controversy is such that no final judgment or decree could be entered, doing justice between the parties actually before the court and without injuriously affecting the rights of others not brought into the action. *Copper Hills Enterprises, Ltd. v. Arizona Dept.*

[9] "If the party's claim for quiet title relief can be granted only if the party succeeds on another claim, then the statute of limitations applicable to the other claim will also apply to the quiet title claim." *In re Hoopiiaina Trust,* 144 P.3d 1129, 1137 (Utah 2006).

of Revenue (App. Div.1 2007) 214 Ariz. 386, 153 P.3d 407, review denied. There can be no final judgment or decree entered doing justice between the parties until the Town of Cave Creek is joined to the lawsuit. In addition, parties not before the Court will be injured and their rights affected. The Town of Cave Creek and the owners of lots 211-10-010A(now 010M,N, & O), and 211-10-003 A, B, & C are indispensible parties per Ariz.R.Civ.P 19(a); Cave Creek and the owners of lots 211-10-010M, N & O, 211-10-003 A, B, & C, and the DeVincenzos have been unjustly enriched. See e.g. *Freeman v. Sorchych,* 245 P.3d 927, 936 (Ariz. App. 2011) (citing *City of Sierra Vista v. Cochise Enters., Inc.,* 697 P.2d 1125, 131-32 (Ariz. App. 1984)).

It is undisputed that the DMA was recorded; MCRD #2003-1472588; that Fressadi executed the DMA as the owner of lots 211-10-010A, B, & C; that Keith Vertes executed the DMA on behalf of GV Group LLC as owner of lots 211-10-003 A, B, & C; that GV Group LLC did not exist when the DMA was executed and never owned any of the 003 lots. In fact, lot 211-10-003A was sold to Jocelyn Kremer prior to Vertes executing the DMA, MCRD #2003-1438387, causing confusion as to the viability of the DMA. IR 1, 18, 23, 24, 34, 90.

Kremer clarified the void, illusory promise status of the DMA on August 26, 2005, Exhibit G. “An illusory promise lacks mutuality of obligation, a nudum pactum, which is merely another way of stating that the particular promise is void because of lack of consideration.” *Allen D. Shadron, Inc. v. Cole*, 416 P. 2d 555 at 123- Ariz: Supreme Court 1966, quoting *Spooner v. Reserve Life Insurance Co.*, 47 Wash.2d 454, 287 P.2d 735. In addition, the Defendants and their counsel concealed that Vertes never dedicated lot 211-10-003D to the Town of Cave Creek per MCRD #2003-1312578. Exhibit O. Lot 211-10-003D blocks access to the 003 easement rendering reciprocity of DMA easements an illusory promise. "Parties are, within reason, free to contract as they please [within the constructs of

State and Federal law], and to make bargains which place one party at a disadvantage; but a contract must have mutuality of obligation, and an agreement which permits one party to withdraw at his pleasure is void." *Shattuck v. Precision Toyota, Inc.,* 115 Ariz. 586, 588, 566 P.2d 1332, 1334 (Az.Ct.App. 1977) (citation omitted). Golec admits to reciprocity being a consideration of the DMA. ¶1, Exhibit J.

The carefully choreographed closing of lot 211-10-003A the day before executing the DMA on behalf of GV Group, an LLC that does not exist; the fraudulent "gift"[10] of 003D to Cave Creek Exhibit O; using DMA access and utilities without tendering the agreed upon consideration; to know Fressadi was making a mistake; to know the sale of lot 010C was subject to the DMA but wait eight days to confirm that the DMA was void *ab initio* "demonstrates the Defendant's [Golec and Vertes] 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 Arizona, a "contract is void for lack of mutual consent, consideration, or capacity, or voidable for fraud, duress, lack of capacity, mistake, or violation of a public purpose.") (citing omitted); *Castle v. Imagine Audio Video, L.L.C.,* 2011 WL 2176150, * 5 (Az.Ct.App. May 24, 2011) (citation omitted). Golec and Vertes knew there was failure of consideration; that there was no meeting of the minds but induced Fressadi to tender his consideration as agreed. "Reformation is the remedy designed to correct a written instrument which fails to express the terms agreed upon by the parties; it is not intended to enforce the terms of an agreement the parties never made." *See*, *A & A Sign Co. v. Maughan,* 419 F.2d 1152 (9th

[10] Vertes as Manager of GV Group, gifted lot 211-10-003D to the Town of Cave Creek which was recorded in 2005 but GV Group did not own 211-10-003D. 211-10-003D was sold to

Cir.1969). It is well-settled that, "the remedy for unilateral mistake, under the proper circumstances, is rescission, not reformation." *Lehnardt v. City of Phoenix,* 105 Ariz. 142, 460 P.2d 637 (1969); *Hubbs v. Costello,* 22 Ariz. App. 498, 528 P.2d 1257 (1974).

Cave Creek and Defendants, and their respective counsel had obligations to disclose per Ariz.R.Civ.P. 11(a), 26.1(b). Defendants' and Cave Creek's counsel had additional obligations to disclose under ER 3.3(a)(1-3), (b), (c), and ER 3.4 (a).

Pursuant to Ariz. R. Civ. P. 37(d), for fourteen years the Town of Cave Creek and their counsel concealed that the Town did not comply A.R.S. §§ 9-500.12, 9-500.13 and 9-463 *et seq*.; for nine years, Defendants Golec and Vertes and their counsel failed to disclose that GV Group LLC had no standing in this lawsuit; that lot 211-10-003D blocked access to the 003 easement rendering the DMA a void illusory promise. They also failed to disclose that the permits issued to their lots were void. IBID as for the Town of Cave Creek and their counsel and for REEL and their counsel who had the audacity to tell the Court that obtaining a building permit based on access and utilities from the DMA was "***immaterial***." IR 145, 150. Golec, Vertes and their attorneys trumped up fraudulent claims of damages for houses that can't be used or sold per Town Ordinance and state statutes.

GV Group, REEL, Golec, and Vertes no longer have standing in this litigation, given that the DMA runs with the lots. *See A.R.S. §12-1832; Land Dept. v. O'Toole, 154 Ariz. 43, 739 P.2d 1360 (App. 1987).* Any ruling made by this Court would not be binding upon the new owners of lots 003 A, B, & C and 211-10-010 M, N, & O as they are not parties to the lawsuit unless the Court invokes Rule 71.

Based on the void, illusory promise status of the DMA, and the unlawful status of the sale of 211-10-010C, the DeVincenzos' counter-claims and motions for summary judgment

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Kremer in 2010.

are in bad faith. They fraudulently complain that they were ***required*** to execute the DMA at the closing of the purchase of Lot 211-10-010C. IR 109, pg. 13, lls. 1-3. The DeVincenzos took title to lot 211-10-010C "***subject to***" the DMA. Their signatures are nowhere to be found on the DMA. IR109, Exhibit C. The DeVincenzos refused to accept reimbursement to rescind the sale of lot 211-10-010C (Exhibit H[11]), forcing Plaintiff to seek assistance from the Court to quiet title to lot 211-10-010C, IR 90, ¶¶ 123-130, pg. 16, lls. 10-16.

Assuming arguendo that the sale of lot 211-10-010C is enforceable and the DMA is operational as to lots 211-10-010 A, B, & C, then the DeVincenzos cannot opt out of the DMA because the DMA runs with the lots. The DeVincenzos must comply with ¶9 of the DMA and demand specific performance. If their demand is not met, they file a restraining order. Instead, they unilaterally decided to buy a lot from Golec and Vertes and claim they did so to access lot 010C. At oral argument on December 17, 2014, Attorney Righi admitted that the DeVincenzos breached the Covenant that runs with the lots.[12] *See* Notice of Default, Exhibit H.

The DeVincenzos fraudulently complained that "Fressadi ***repeatedly*** blocked the driveway providing …access to the property." IR 109, pg. 14, lls. 6-8. Quite the contrary

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[11] Attached as a chain of correspondence commencing in 8.12.06, offering to join the DeVincenzos as Plaintiff, and discussing further improvements. Email ensued on 1.5.07 evidencing the misunderstanding. A Notice of Default was mailed on 3.21.07, followed by a letter on 3.26.07 addressing capital improvements, GV Group fraud, and an offer to purchase back lot 211-10-010C. Through counsel, the DeVincenzos responded 4.17.07, prompting further correspondence from Plaintiff's counsel on 8.1.07 to offer and outright buyback of lot 211-10-010C which was rejected 8-6.07, and again on 1.14.09 requiring numerous clarifications to be addressed on 1.28.09 and ultimately resulting in the Verified Second Amended Complaint.

[12] IR 1, Exh. A, pg. 1. "Declarants hereby declare that the Lots shall be subject to the following easements and covenants, which shall run with each lot or subsequent lots thereof, and shall be binding upon all parties having or acquiring any right title or interest therein, and shall inure to the benefit of any successor to Declarant in the ownership thereof." The Court of Appeals, Division One, 1 CA-CV 11-0728 acknowledged that the Covenant runs with the lots. ¶3, page 2.

Exhibit I.[13] If the driveway is accessible to Golec and Vertes, it's accessible to DeVincenzo; even though Golec indicated that they would access their property via the 003 lots during construction, ¶5, Exhibit J, Fressadi had to protect the 010 driveway from damages caused by Golec, Kremer/Van Dyke, REEL, and Vertes. Golec admits in Exhibit J to damaging the driveway and encroaching on Fressadi's property. Exhibit K.

The DeVincenzos fraudulently claim in their statement of facts ("DeV SOF") that Lot 211-10-010C "is landlocked and only accessible through the driveway provided for in the DMA." DeV SOF #1.

Lot 010C is not landlocked. It does not obtain access via the DMA driveway. Access to 010 lots is via easements which are identified on Maricopa County Recorded Documents ("MCRD") #2002-0576103, 2002-0576104, 2002-057105, 2002-681164, 2003-1472588—not the DMA. Exhibit L. *See also* IR 24, Exhibit A. The DeVincenzo evidence is fraud in violation of ER 3.3(a). Easements are not shown or identified on Maricopa County Assessor Maps. Fressadi lived on lot 010A until 2006 when he moved to Tucson and rented out the house on 010A. Access to lot 010C is the same access that serves lots 010 A & B. To block access to lot 010C would block access to Fressadi's tenant. Lot 010A was judicially foreclosed upon by BMO Harris Bank and sold[14] by MCSO. CV2010-013401. Lot 010A has been split[15] into three lots, 211-10-010 M, N, & O. No one bitches about access except the DeVincenzos.

The DeVincenzos acquired lot 211-10-006F from Golec and Vertes a/k/a Desert Edge Development. Cave Creek required a horse trail to align with Mark way in order to split 211-

[13] Tom Van Dyke is Jocelyn Kremer's father.

[14] Until there is a final recorded plat map, Plaintiff contends that the sale of 2111-10-010A or any part thereof is unlawful per A.R.S. § 9-463.03.

[15] It strains credulity how a parcel of land in an unlawful subdivision can be split.

10-006. The Town's requirement for a horse trail created a worthless piece of dirt adjacent to lot 211-10-010C. A boundary adjustment between 010C and 006F converts 006F into an R1-18 sized lot. But access to 006F is landlocked unless access is acquired to the 010 easements. If the horse trail is a new road as the DeVincenzos suggest, then the creation of 211-10-006F is a subdivision per A.R.S. § 9-463.02 and unlawful to sell until a final map is recorded per A.R.S. §9-463.03. The DeVincenzos' claim that they were forced to buy 006F to access lot 010C is a fraudulent scam to commit theft of Fressadi's money by using a public agency, i.e. this Court, in violation of A.R.S. §§ 13-1802, 13-2310, and 13-2311.

The DeVincenzos fraudulently claim that on October 27, 2005, they attempted to visit lot 010C but Plaintiff had placed on locked chain across the driveway entrance. DeVSOF #2.

On October 27, 2005, Mr. Fressadi was in his office issuing emails concerning the status of the DMA; that the DMA was not in force as to the 003 lots and that what remained was an agreement between himself and the DeVincenzos. Exhibit M. Mr. Fressadi's office was adjacent to his home on lot 211-10-010A. It strains credulity that the DeVincenzos came all the way from New York and took pictures of "blocked access" but did not call or knock on Fressadi's door so that they could drive up to lot 010C. The DeVincenzos "manufactured" an incident. The chain was not to block access to the DeVincenzos, but to prevent damage to the 010 driveways from trespass / construction access, Exhibits J & K.

The DeVincenzos and their attorneys fraudulently claim in violation of ER 3.3(a) that the DeVincenzo's sought to gain access numerous times over the next several years but Fressadi refused to provide the DeVincenzos with a ***gate key***, DeV SOF #3. DeV SOF, Exhibit C is a picture of a chain fastened to stone rampart, not a gate. Golec/Vertes destroyed the chain ramparts precluding any blocked access. Exhibit M. The DeVincenzos provide no log or timeline of the days that access to access their property was blocked over the last 12

years. They were never on site but whined in letters or email to manufacture an incident. Exhibit H.

In September, 2005 the parties agreed to proceed with the development of the six lots as a gated community. Exhibit J. Gates were installed with a padlock to prevent theft from Golec / Vertes construction, and then partially removed when REEL built their own access in the 003 easement. Plaintiff gave a padlock key to his attorney to send to the DeVincenzos' lawyer in New York.

The DeVincenzos offer no evidence that "E. Mark Way" north of 211-10-006F is a right of way. DeV SOF #4. If it is a right of way, then lot 211-10-006F was subdivided per A.R.S. § 9-463.02 without a final recorded plat map, rendering the sale of 211-10-006F unlawful per A.R.S. § 9-463.03. Upon information and belief, the easement north of 211-10-006F was dedicated to the Town of Cave Creek as a horse trail. "E. Mark Way" does not access Schoolhouse Rd. DeV SOF, Exhibit A, pg 2, *see also* Exhibit P. Lot 211-10-006E blocks access to Schoolhouse Rd. The E. Mark Way horse trail connects into the 010 easements as recorded in MCRD #2002-0576103, 2002-0576104, 2002-057105, 2002-681164, 2003-1472588. The issue of access involves Cave Creek, not the DMA. Cave Creek land locked lots 010 A, B, & C with the requirement to create lot 010D. The creation of 010D converted the 010 lots into an unlawful subdivision that is unsuitable for building and not entitled to permits and cannot be sold. Title to the lots must be quieted and the parcel reassembled due to Cave Creek's bad faith, A.R.S. 9-500.12(H).

Finally, the estimated master settlement statement executed by the buyers but not by the sellers is meaningless. DeV SOF #5, Exhibit D. An unexecuted estimate of settlement is no indication that they paid anything for the property, nor have the DeVincenzos proven that the purchase of 006F was to resolve their trumped up accusation of blocked access. As stated

above, Fressadi moved to Tucson, and leased out lot 211-10-010A. Plaintiff declares under penalty of perjury that there was no blocked access to the 010 lots. There was no blocked access to lot 211-10-010C on May 27, 2009 when the DeVincenzos fraudulently claim they acquired 211-10-006F to gain access to lot 010C.

Conclusion:

The Court's rulings of January 27, 2015 were obtained by the DeVincenzos' attorneys making false statements of fact and law, ER 3.3(a). In awarding compensation to Fressadi as a sanction against the Defendants, the Town of Cave Creek and their respective counsel, the Court should rely upon its inherent power to sanction bad faith conduct during litigation. *Chambers v. NASCO, Inc., 501 U.S. 32, 43, 49 (1991); Precision Components v. Harrison, Harper, 179 Ariz. 552, 555, 880 P. 2d 1098(App. 1994).* Defendants, the Town of Cave Creek and their respective attorneys have obligations to disclose pursuant to Ariz.R.Civ.P. 11(a) and 26.1(b).

Defendants' and Cave Creek's counsel owe duties of candor to this tribunal, the responsibility to correct incorrect inaccurate evidence, and a host of other ethical considerations under ER 3.3(a)(1-3), (b), (c), and ER 3.4 (a). "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." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 299, ¶ 42, 257 P.3d 1168, 1179 (App. 2011).

Due to the fraud perpetuated on the Court by the Defendants and indispensible parties prior to and during this case, there is sufficient reason to warrant a mistrial pursuant to Rules 59(a) 6, 7, & 8; and for the Court to quash its rulings of January 31, 2008, April 29, 2014 and January 27, 2015 pursuant to Rule 60(c)1,2,3,4, or 60(c)6. Based on the foregoing, Plaintiff

seeks the following:

1. DeVincenzo's Motion for Summary Judgment be denied;
2. Joinder of the Town of Cave Creek as a Defendant;
3. Joinder of the property owners of lots 211-10-003 A, B, C, & D and lots 211-10-010 M, N, & O as Defendants;
4. Sanctions against Michael Golec, Keith Vertes and their counsel, Quarles & Brady, LLP (John Craiger) and Israel & Gerity, PLLC (Kyle Israel) at a minimum, in the form of payment for their pro-rata share of Fressadi's actual and delay damages including reasonable attorneys' fees in amounts to be determined and any other equitable relief deemed appropriate by the Court;
5. Sanctions against Michael Coffman d/b/a REEL,Inc. and his counsel, Turley Swan, Childers & Torrens, P.C. (Scott Humble) and Bryan Cave (Sean K. McElenney) at a minimum, in the form of payment for their pro-rata share of Fressadi's actual and delay damages including reasonable attorneys' fees in amounts to be determined and any other equitable relief deemed appropriate by the Court;
6. Sanctions against Salvatore and Susan DeVincenzo and their counsel, Righi Fitch (Richard Righi, Elizabeth Fitch) at a minimum, in the form of payment for their pro-rata share of Fressadi's actual and delay damages including reasonable attorneys' fees in amounts to be determined and any other equitable relief deemed appropriate by the Court;
7. For acting in bad faith for over fourteen years, and sanctions against the Town of Cave Creek and its counsel, Sims Murray (Jeffrey Murray) in the form of payment for their pro-rata share of Fressadi's actual and delay damages

including reasonable attorneys' fees in amounts to be determined and any other equitable relief deemed appropriate by the Court;

8. That the Court quiet title as to parcels 211-10-010 and 211-10-003 in keeping with A.R.S. §§ 9-500.12, 9-500.13, and 9-463 *et seq*.

9. That the court determine unjust enrichment per *Freeman v. Sorchych,* 245 P.3d 927, 936 (Ariz. App. 2011) as applicable;

10. That a culprit/contempt hearing be immediately set on these issues and per A.R.S. §§ 12-349, 9-500.12(H), and 12-821.01(G) prior to any ruling or determination of the merits of DeVincenzo's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED this 31st day of March, 2015.

/s/ Arek Fressadi
AREK FRESSADI
Plaintiff *Pro Se*

ORIGINAL E-filed, copies to:

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Attorneys for Defendants REEL

EXHIBIT A

THE CYBERNETICS GROUP LTD.

Letter of Understanding
February 17, 2003.

To: Keith Vertes
From: Arek Fressadi, President

Re: Acquisition of #211-10-003.

The purpose of this letter is to outline the acquisition of the above-mentioned property.
Acreage: 1.5 acres +/- Zoning: R1-18.
Price: $300,000.

Personal
Property: Consisting of lot split documentation, civil engineering, topo, soil report, and geological study at cost, say $12,000.

Overview: You are currently concerned that existing zoning regulations may prohibit the ability for you to split this property. Accordingly, I am willing to quit claim this land to you inconsideration for a Promissory Note in the amount of $312,000 (land purchase price and personal property) on the following terms and conditions:

1. You immediately apply for a lot split using the existing lot split data for a two way lot split. (i.e. Quit Claim on Monday February 17, 2002, lot split on application on Tuesday, February 18th).
2. In consideration for the Quit Claim, you hereby agree to endorse a Promissory Note in the amount of $312,000, terms below.
3. Once you have achieved you lot split, you can do a boundary adjustment to create an additional lot for a total of three lots. This will cost an additional fee but it saves an enormous amount of time.
4. IF THE LOT SPLIT IS NOT APPROVED, THEN QUIT CLAIM THE LAND BACK TO THE CYBERNETICS GROUP LTD. AND THE PROMISSORY NOTE IS CANCELLED.
5. The Promissory Note is drafted such that $170,000 is due and payable on or before June 1, 2003.If the property is split into three pieces, then $120,000 shall be due on June 1st.
6. Balance of the Promissory Note shall accrue interest at 8% and interest only payments shall be paid monthly until loan is paid in full.
7. Partial releases as necessary.
8. Promissory Note due and payable on or before February 14, 2005.

Respectfully submitted, The Cybernetics Group Ltd.

Agreed this day written above.

Keith Vertes

Registered Office: 711 South Carson, Suite 4, Carson City NV 89701
Arizona: PO Box 5708, Carefree, AZ 85377
Voice 480 . 437.9008 **Fax** 480 . 437.9007

EXHIBIT B

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

EXHIBIT C

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.

EXHIBIT D

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.

EXHIBIT E

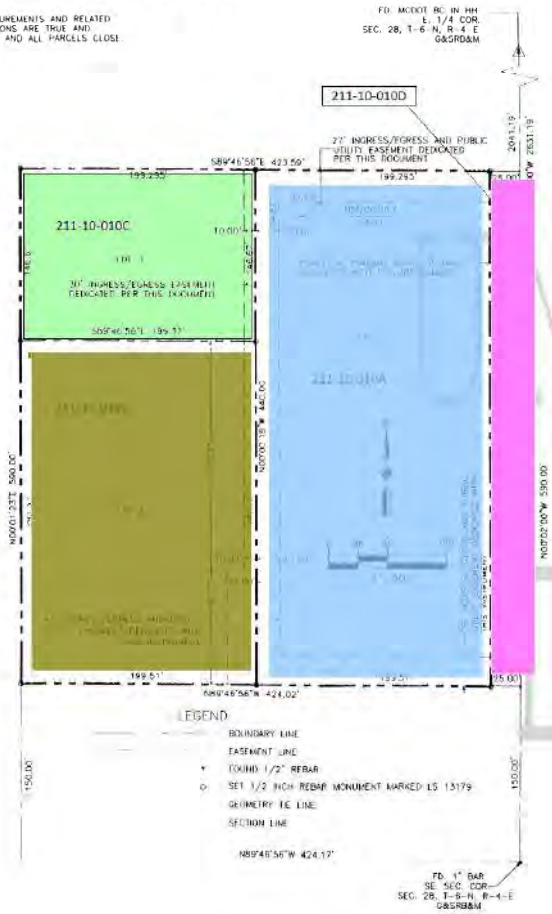
MINOR LAND DIVISION

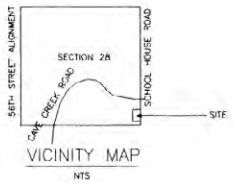
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

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
67,732 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





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 35.27' 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 148.67' 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 148.67' 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 17 TH DAY OF APRIL OF 2003 (12/01/01)

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

EXHIBIT F

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

EXHIBIT G

Arek Fressadi
Caretaker
PO Box 4791
Cave Creek, AZ 85327

August 26, 2005

Dear Arek,

Pursuant to the Schoolhouse Road Driveway and Maintenance Agreement as described in Maricopa County Recorder instrument #2003-0488178 and #2003-1312578, it is my understanding that since GV Group, LLC signed the Agreement after I purchased the lot from them it is my option as to join the Agreement or forego any and all rights to the Driveway. Thus stated, I do not wish to nor attend to join the Agreement forgoing all rights, privileges and associated costs to thus Driveway. Please consider this my formal response to this issue.

Sincerely,

Jocelyn Kremer

Jocelyn Kremer

CC: GV Group, LLC
Sue De Vincenzo

EXHIBIT H

Arek Fressadi
PO Box 4791
Cave Creek, AZ 85327

Dr. Salvatore and Susan DeVincenzo
43 Sterling Pines Road
Tuxedo Park, NY 10987

August 12, 2006

Re: Driveway Maintenance Agreement Update

Dear Sal and Sue:

As you know, Keith Vertes and Mike Golec entered into the driveway maintenance agreement a week after they sold their easternmost lot to the Kremers. Although Golec and Vertes claimed mistake, and although the Kremers routinely used the driveway and parked their cars (and left their trash) on my property, Jocelyn Kremer sued me to remove the lien on her lot for non-payment of maintenance costs associated with her portion of driveway maintenance expenses.

I have asked the Court to dismiss her lawsuit. Her concern was the lien. I removed the lien and now intend to address the cause of all our consternation—the false pretenses and fraud under which the driveway maintenance agreement was entered into by Keith Vertes and Mike Golec. Accordingly, I was wondering if you would like to join me in the lawsuit against Mike and Keith. My attorneys are willing to draft a joint representation agreement. You may contact John Marcolini at:

Cheifetz Iannitelli Marcolini, P.C.
1850 North Central Avenue, 19th Floor
Phoenix, Arizona 85004
Telephone: (602) 952-6000
Facsimile: (602) 952-7020
Email: jcm@cimlaw.com

Current property status:

My construction company, Scenic Vistas recently completed a $2 Million stone and adobe home for a client in Queen Creek and we are now poised to direct our attention to the Cave Creek property.

We envision making the following improvements to the property:

1. We have submitted plans to the Town of Cave Creek to gate both entrances of the driveway. We feel the gates have become something of a necessity because of the growth in Cave Creek. We routinely get people driving onto our property thinking they can cross over the mountain or get across Cave Creek by using our driveway. This Fourth of July, the driveway was lined with cars and people were parking on your land. I had to politely request that they leave to avoid liability even though our driveway and your lot in particular was probably the best site in the Town for the fireworks.

   It was our intention to make the driveway one way where traffic entered at the north entrance and exited at the south. This would simplify the design and construction of the gated entrances.

We anticipate the cost of the gates to be $15,000 each. The gates would be operated by remote control much like a garage door opener. A sign at the driveway would allow visitors to call using their cell phones and they could be given an access code to enter. The gates could either be operated by solar power or conventional electric with a house meter. We are intending to run conduit to the gates for electric and telephone in the event we wish to install full security capability where you could buzz in a visitor when they call your house.

2. We also wish to install landscape irrigation and lighting to give the property more of a unified look. We have also built a rock retaining wall around the perimeter of my property with the intention of closing in the entire compound. If you wish, we can continue with the stacked rock wall around the west and south property line of your land as well. The rock is free and the labor cost would be around $3,000 to rock in your property. Upon completion of the stacked rock walls, we intend to fence with property with a wrought iron fence to look something like this: Our fence would have stacked rock in lieu of cement block for the posts and foundation. Our fence contractor gave us a bid of $90,000 to build a fence like around the perimeter of my lots and yours. We are currently working to value engineer the cost of this fence to make it more affordable.

3. Once we gated and fenced in the property, we intend to cobblestone the driveway using the native rock. The cost of the cobblestone was estimated to be $40-$60,000.

I feel that these improvements would benefit the property value of our lots, and they need to be completed prior to the placement of cobblestones to repair the driveway.

Please contact me at 480.510.8993 at your earliest convenience to discuss these matters.

Respectfully submitted,

Arek Fressadi

Cc: John Marcolini, Esq.

Arek Fressadi

From: bude55 [bude55@prodigy.net]
Sent: Friday, January 05, 2007 1:30 PM
To: Arek Fressadi
Cc: joneal@quarles.com; JCM@cimlaw.com; gaired@fressadi.com; kv2288@aol.com; tomvandyke@cox.net; Michael Golec
Subject: Re: offer of settlement

Arek,
Here are the basics:
1) You keep making assumptions that we agree with everything you write or say but many of the notes we get contradict the previous ones. It's impossible to know what is current.
2) Neither Sal nor I imagined your locking us out of our property on Oct. 26, 2005. Nor did we imagine your refusing to give us a key. Enough, you did lock us out and it is over. It is the past.
3) Buried in your e-mail notes is a note from you to mike@mgdwellings.com giving him your permission to "use the DeVincenzo lot as a staging area today to deliver your material". You have no right to grant anyone access to our land. Please do not do that again.

We appreciate that you all have some serious issues and we are attempting to stay out of it. We hope that you can work them out. We appreciate some clarification on the 25' easement. I think you are saying that this is the land that has already been used as the driveway/road? Is this correct?
We do not know what a ROW is and therefore what is involved. Is the town willing to take over the road with no 'additional' loss of property (beyond the easement) on our part and no additional cost? Is the road up to town specs or does it need to be wider, etc.?

The home phone number is 845-351-3451. I would have thought it was on the original sale documents but who knows.

Sue De Vincenzo

----- Original Message -----

From: Arek Fressadi
To: 'bude55'
Cc: 'Michael Golec' ; joneal@quarles.com ; JCM@cimlaw.com ; gaired@fressadi.com ; kv2288@aol.com ; tomvandyke@cox.net
Sent: Friday, January 05, 2007 1:56 PM
Subject: RE: offer of settlement

Susan,
[Arek Fressadi] Thank you for email.
My comments will be interspersed with yours.

Sal told me of your call to him during his patient office hours yesterday. Obviously he did not have time to focus on your issues or talk while patients were waiting. You have our home phone number, please use that instead of his medical practice cell phone number in the future.
[Arek Fressadi] ?
I only have one phone number for you, the one that I called. If you have another number that you wish me to call you, please share it.
It may also be good for you to share your schedule so that we know when you are in the communication loop and when you are not responding because you are not available.

I read the document you mailed to us indicating that all was well between you and Mike Golec and I have now looked at subsequent e-mails which indicate that it is not.
I realize that the issues which affect both of you are bigger than our participation in your driveway maintenance

agreement; however, I remind you that the agreement specifically states that you will submit a description of work, a budget and get member approval before undertaking any work.
[Arek Fressadi]
Everyone in this process seems to have a different interpretation of what the Driveway Agreement says and does not say. It is as though the blind men are touching an elephant and explaining what is an elephant. You have continually made out the Driveway Agreement as some sort of democratic process. I intentionally wrote the agreement in the fashion I did in order to avoid management by committee.

Additionally, the improvements to be made to the driveway this go around were going to be gratis to you. Why? Because I felt that your angst with all of this is part of the damages sustained by the fraud. Keith and Mike feel that you should pay your fair share but I'm responsible to collect from you.

We have a very small lot in the midst of each of yours. I see words about condo's and sub-divisions which we have never spoken about. Your one idea, buried in many others, that we simply give up 25' to 30' of our property (which is very small to start with) for a sub-division which we know nothing about and have never spoken about is nonsense.
[Arek Fressadi] And this is how it starts. I spoke with Sal yesterday about the easement on your land. You already gave up 25' for purposes of ingress, egress and utilities. My thought was to change the easement into a ROW and have the town take over the driveway agreement because we can't seem to make this work. The process whereby this would take place would be a subdivision. The subdivision could include all properties to the driveway maintenance agreement. Sal indicated yesterday that he supported this concept if it would lend itself to resolution.

When you and Sal bought your lot from me, I explained to you that I was in the midst of acquiring the land directly to the north of your property. Keith at one point, indicated that he might have an investor interested in participating with me on this land purchase and asked for a copy of my development plan. In good faith, I gave him a copy of my plan.

In October of 2005, I brought a classmate of mine from Williams College, class of 72 out from Boston to participate with me in the acquisition of this property. My classmate worked for Trammel Crow in Boston and had just completed his Masters in Real Estate Development at MIT.
Bob came to my house and met Keith, Mike and Tom Van Dyke. You were supposed to be at this meeting but did not attend.
Bob told everyone at the meeting that he was there to assist in closing the deal on the land to the north. That although I originally intended a boutique hotel or timeshare, we felt that residential development (condos or town houses) made more sense.

Instead, Mike and Keith bought the land and specifically asked the seller that the seller not disclose the buyer.
Illegal- no.
Unethical- yes.

Mike and Keith are currently planning to build 10-12 town houses on the north side of the wash.
The south side of the wash is fraught with issues. The town wants to put a road through from Mark Way to Military and were asking Mike and Keith to dedicate this road as part of their condo plat map.

Mike offered to sell my son and I this land in part to block the town from putting in a road and in part to settle our lawsuit.

So the condos are the condos Mike and Keith are building north of the wash. My recollection is that I showed you and Sal a copy of my development plan for this property when you bought your lot but you may not remember as your acquisition was fast and things were a blur.

When we were out in Arizona and in Cave Creek in Oct. 2005, we offered to meet and/or to mediate your dispute with Mike Golec and suggested a meeting date well in advance. You refused and did not even inform Mike Golec of this offer/meeting.
[Arek Fressadi] Not true—see above. First, there is nothing for you to mediate. You are a participant and a collaborator, not a mediator. There was a conflict of schedules. A meeting took place in your absence and

Golec, Vertes and Van Dyke did not want to meet again with you. Part of my most recent settlement agreement is that Golec et al compensate you for your time and travel to come out to AZ and have to see a lawyer about this. This whole mess starts with Van Dyke buying a piece of land from Golec and Vertes BEFORE GV Group signs the driveway maintenance agreement. It remains my opinion that this was intentional especially given that Golec designed Van Dyke's house and the house is built within 5' of their easement. They never intended to honor the agreement and we at loggerheads and you have bad feelings about this.

Your distrust is part of the damages.

We obviously have a legal easement to our property with the town of Cave Creek and yet you barricaded us from our property on Oct. 26, 2005 and refused to give us the key to the gate. This is the only time we have visited our property since we purchased it and you illegally locked a gate even though you knew we were there.
[Arek Fressadi] No I didn't. I waited on site for you and you never showed up.

We look at all of this as past although it is difficult to forget.
[Arek Fressadi] Yes it is. As the old saying goes, you can forgive, but you can never forget.
But I didn't commit fraud--I didn't sign an agreement binding three parcels of land when I only owned two. Everything else is fall out from this "original sin."

We wish you luck with your dispute - all of you - but we remind you not to assume anything when it comes to us.
[Arek Fressadi] I wasn't assuming Susan. I was relying upon your husband's verbal agreement. It appears as though we now need to get everything in writing.

These are large legal issues, we are a part of them and your requests for any approvals need to be clear and formal and our response to you will be the same. So far there have been no formal requests and we have given no approvals.
[Arek Fressadi]
Time out Susan. We have been sending emails and letters to you for months and never received any response until now?
There has been an air of informality associated with our relationship—all of us.
There have been meetings, phone calls, emails, and agreements have been made, understandings and some of them have been acted upon. Others not.
It has been my understanding that all of us were in agreement to cobblestone the driveway because it would be stronger than asphalt and defer the headache of paying for maintenance on a bi-yearly basis.
You agreed to this.
We discussed installing irrigation and low voltage lighting to improve the value of our respective properties, and you agreed to this as well.

There was some dispute as to whether landscape maintenance was part of the driveway maintenance agreement. I argued that we need to weed the easement and that the landscape services would only adhere to the easement proper—not to my land, or yours. Weeds were growing into the asphalt and the asphalt edges were deteriorating.

There has been discussion of gating the property. I have sent you emails on this.
It was my understanding that you were in agreement on gating the property and we are currently obtaining bids on this work.

There has been discussions of fencing the property. I have sent you emails on this. It is my understanding that you are not interested in fencing the property?

Some of these improvements are not maintenance items but capital improvements. Capital improvements require consensus pursuant to your second paragraph above. This is why I wrote to you, wrote emails to you and called you. So that you could partake in the discussion. This process is very management intensive. It is my vision of the land. I am the caretaker and everyone—yourselves included, have benefited handsomely from my vision.

We do not know who the individuals are that you are copying on this note, but we are copying the same individuals since they seem to be part of your disputes. I'm sure they know a great deal more about this than we do.

Arek Fressadi
37934 North Schoolhouse Rd.
Cave Creek, AZ 85331
480.437.9008
Fax 480.437.9007
arek@fressadi.com

Dr. and Mrs. DeVincenzo
43 Sterling Pines Road
Tuxedo Park, NY 10987
c/o
Peter G. Botti, Attorney at Law
Court Plaza
1A Scotchtown Avenue
PO Box 388
Goshen, NY 10924-0388

March 21, 2007.

NOTICE OF DEFAULT

Dear Sir & Madam:

Pursuant to the Driveway Maintenance Agreement, an invoice was submitted to you for maintenance costs on or about February 28 through March 5th via certified mail.

Pursuant to the Driveway Maintenance Agreement, you have not made payment and are now in default.

Demand is hereby made to pay all outstanding sums immediately or appropriate actions will be commenced.

Respectfully submitted,

/s/

Arek Fressadi, Caretaker

Cc: Glenn Hotchkiss, Esq.

CHEIFETZ
IANNITELLI
MARCOLINI P.C.

Attorneys
www.cimlaw.com

STEVEN W. CHEIFETZ
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* ALSO ADMITTED IN NEW YORK AND NEW JERSEY
** ALSO ADMITTED IN NEW YORK AND WASHINGTON
*** ALSO ADMITTED IN CALIFORNIA
‡ ALSO ADMITTED IN PENNSYLVANIA
‡‡ ALSO ADMITTED IN NEW YORK
‡‡‡ ALSO ADMITTED IN NEW YORK, CALIFORNIA AND HAWAII
‡* ALSO ADMITTED IN CALIFORNIA AND OHIO
*‡ ADMITTED IN NEW YORK AND NEW JERSEY
‡‡* ADMITTED IN CALIFORNIA

March 26, 2007

VIA FACSIMILE - (845) 294-2088
(Original by U.S. Mail)

Peter G. Botti, Esq.
14 Scotchtown Avenue
P.O. Box 388
Goshen, New York 10924-0388

Re: Driveway Maintenance Agreement

Dear Mr. Botti:

This firm represents Mr. Arek Fressadi in his capacity as Caretaker under that certain Driveway Maintenance Agreement dated October 16, 2003 (the "DMA"), as well as in his capacity as the plaintiff in certain litigation against third parties involving the DMA. We have received your letter of March 9, 2007 to Mr. Fressadi and understand that you represent Salvatore and Susan DeVincenzo (the "DeVincenzos") with respect to their ownership of Lot 211-10-010C (the "Lot"), which is subject to the DMA.

In your March 9, 2007 letter, you state that the DeVincenzos will not assume any further responsibility for capital improvements under the DMA. Mr. Fressadi has a distinct recollection of your clients stating during negotiations regarding their purchase of the Lot that they would be willing to pay capital improvements regarding the common driveway that would benefit the Lot, and in fact, they did pay for capital improvements at the time of purchase of the Lot. Additionally, every time Mr. Fressadi discussed capital improvements with your clients, the DeVincenzos indicated that they were interested in improving the value and quality of the driveway for the betterment of all stakeholders. Thus, from Mr. Fressadi's perspective, your clients are now refusing to do what they previously have done and have agreed to do. However, the point of this letter is not to respond point by point to yours of March 9, 2007, or to take an adversarial position with you or your clients. In fact, it is Mr. Fressadi's belief that the disputes between him and your clients are the unfortunate result of the fraud committed by GV Group, L.L.C. and its principals in purporting to bind a lot to the DMA which they had sold to a third party a week before the DMA was signed.

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Nonetheless, the fact remains that there are significant issues between our clients regarding their respective obligations under the DMA. One option for resolving those issues would be for Mr. Fressadi to sue to rescind your client's purchase of the Lot based on a mutual mistake regarding the terms of the DMA. However, Mr. Fressadi would prefer to avoid litigation, and to that end, he is willing to agree to rescind the DeVincenzos' purchase of the Lot by paying your clients their initial investment, all expenses incurred to date, plus interest at the prime rate plus 2%. It seems to us that this type of rescission remedy would be the best for all concerned, as it would avoid litigation and place the parties in the same position they were in prior to GV Group's fraudulent inducement of the DMA.

Assuming that your clients share Mr. Fressadi's interest in avoiding litigation, please have them itemize their expenses associated with the Lot and send that itemization to our firm. We will then prepare the appropriate documentation regarding Mr. Fressadi's repurchase of the Lot.

If you have any questions regarding this proposal, please feel free to contact me directly.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By:_____
Glenn B. Hotchkiss
For the Firm

GBH/kas
cc: Mr. Arek Fressadi

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CHEIFETZ
IANNITELLI
MARCOLINI P.C.

Mr. Arek Fressadi
AREK FRESSADI L.L.C.
37934 N. Schoolhouse Rd.
Cave Creek, Arizona 85331

PETER G. BOTTI
ATTORNEY AT LAW
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FAX (845) 294-2088

PETER G. BOTTI
TERRENCE P. SEELEY

April 17, 2007

Via Fax #602-952-7020
and U.S. Mail

Glenn B. Hotchkiss, Esq.
Cheifetz Iannitelli Marcolini PC
1850 North Central Avenue, 19th Floor
Phoenix, Arizona 85004

Re: Fressadi- Driveway Maintenance Agreement with DeVincenzo

Dear Mr. Hotchkiss:

Kindly consider this letter as a response to your letter dated March 23, 2007, as well as Mr. Fressadi's letter dated March 21, 2007, copy enclosed.

Would you be kind enough to advise Mr. Fressadi that all of his correspondence as a caretaker should be sent directly to the DeVincenzos via Certified Mail, Return Receipt and as he is obviously represented, he refrain from corresponding with me.

Further, please advise Mr. Fressadi that heretofore he has not followed the correct notice procedures as spelled out in the driveway maintenance agreement, for providing the DeVincenzos with a proposed budget of driveway improvements and as such, he may not now attempt to place them in default for expenditures improperly made by him. Any attempt by Mr. Fressadi to now pursue a default claim would be erroneous and any liens improperly placed on the DeVincenzos' property will be dealt with accordingly.

With respect to your correspondence, please be advised the only item the DeVincenzos agreed to pay for was the paving of the driveway, which was done by the one time payment previously made in the amount of $3,494.63. Mr. Fressadi is clearly mistaken in his understanding that my clients agreed to pay for improvements he has unilaterally made.

We appreciate Mr. Fressadi's proposal to buy back the DeVincenzo parcel, however, his proposed buy back purchase price is inadequate. The only circumstances under which the DeVincenzos would consider a sale back to Fressadi would be on the basis of a current certified appraisal.

If Mr. Fressadi is truly interested in pursuing a buy back, without prejudice to our rights and without any commitment, my clients would agree to consider reviewing a current independent certified appraisal ordered by the DeVincenzos with the cost of same paid for by Mr. Fressadi. If acceptable, I will arrange to obtain some cost estimates for the appraisal for Mr. Fressadi's approval.

In the meantime, would you be kind enough to make arrangements with Mr. Fressadi to provide my clients with a key to the gate and/or the code number to the access pad to the gate, such that my clients can access and enjoy their property at any time they chose, without any restrictions.

Should you have any questions with respect to this matter, please feel free to contact me.

Very truly yours,

Peter G. Botti

PGB/clb
Enclosure
cc: Dr. and Mrs. Salvatore DeVincenzo

CHEIFETZ
IANNITELLI
MARCOLINI P.C.

Attorneys
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ROMAN A. KOSTENKO†*
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CHASE E. HALSEY
DANIEL P. VELOCCI***

OF COUNSEL
WALTER CHEIFETZ
BRAD K. KEOGH
ILENE H. COHEN††

August 1, 2007

VIA FACSIMILE - (845) 294-2088
(Original by U.S. Mail)

Peter G. Botti, Esq.
14 Scotchtown Avenue
P.O. Box 388
Goshen, New York 10924-0388

Re: Driveway Maintenance Agreement

Dear Mr. Botti:

In my letter to you dated March 26, 2007, I conveyed an offer on behalf of my client, Mr. Arek Fressadi, to purchase the real property owned by your clients, Mr. and Mrs. Salvatore DeVincenzo, situated in Cave Creek, Arizona (the "Property"), for the DeVincenzos' initial investment, all expenses incurred to date, plus interest at the prime rate plus 2%. As you know, the Property is subject to a Driveway Maintenance Agreement dated October 16, 2003 (the "DMA"). In your letter of April 17, 2007, you indicated that Mr. Fressadi's proposed purchase price was inadequate, but that your clients would consider a sale of the Property to Mr. Fressadi on the basis of a current certified appraisal. On that basis, Mr. Fressadi obtained a list of appraisers approved by Parkway Bank, the only financial institution in Carefree, and I sent you my letter dated June 27, 2007 listing those approved appraisers for your clients' review and approval. I have not received any response to my letter of June 27, 2007, nor have I received a return phone call in response to the messages I have left for you over the past 30 days. Mr. Fressadi would like to amicably resolve this matter, but obviously that cannot occur if you and your clients refuse to communicate with us.

At this point, Mr. Fressadi has authorized me to extend an offer whereby he would purchase the Property for One Hundred and Fifty Thousand Dollars ($150,000.00), net of all amounts due from your clients under the DMA. In other words, Mr. Fressadi would pay your clients $150,000.00 for the Property and waive all claims he has against them regarding their

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MARCOLINI P.C.

failure to make the payments required by the DMA. This offer shall remain open until 5:00 p.m. Arizona time on Monday, August 6, 2007.

As you know, the disputes regarding the parties' respective obligations under the DMA are the result of the fraud committed by GV Group, L.L.C. and its principals in purporting to bind a lot to the DMA which they had sold to a third party a week before the DMA was signed. As you also know, this dispute between Mr. Fressadi on the one hand and GV Group, L.L.C. and its principals on the other hand currently is the subject of pending litigation in Maricopa County Superior Court. It is Mr. Fressadi's intention to repurchase the Property and unwind the DMA, thereby terminating the obligations of the parties under the DMA. However, if Mr. Fressadi's purchase offer set forth above is not accepted by August 6, 2007, Mr. Fressadi intends to initiate litigation against the DeVincenzos for their failure to fulfill their obligations under the DMA and any other available causes of action. In that regard, I point out that your clients repeatedly agreed to pay their pro rata share of the cost of improvements that mutually benefit the parcels bound by the DMA, which was a representation on which Mr. Fressadi relied in selling the Property to the DeVincenzos and in making the various improvements. Those improvements obviously benefited the Property, but your clients are now refusing to pay their fair share. In any event, Mr. Fressadi intends to bring all disputes regarding the DMA to closure once and for all, either through a private settlement or through litigation.

I look forward to your prompt response to this letter and the purchase offer contained herein.

Very truly yours,

CHEIFETZ IANNITELLI MARCOLINI, P.C.

By: _____
Glenn B. Hotchkiss
For the Firm

GBH/cr
cc: Mr. Arek Fressadi

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PETER G. BOTTI
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PETER G. BOTTI
TERRENCE P. SEELEY

August 6, 2007

Via Fax #602-952-7020

Cheifetz, Iannitelli,Marcolini PC
Glenn B. Hotchkiss, Esq.
1850 North Central Avenue, 19th Floor
Phoenix, Arizona 85004

Re: Driveway Maintenance Agreement

Dear Mr. Hotchkiss:

While I acknowledge receipt of yours dated June 27th, 2007 and your two follow up phone calls during the month of July, 2007, I apologize for failing to provide you with a courtesy return phone call due to my hectic pace. However, quite frankly, my clients do not at this juncture, have a sense of urgency in the resolve of the numerous problems Mr. Fressadi has brought upon himself. Please be advised that my clients hereby reject your client's August 1st, 2007 purchase offer.

I must point out to you that it is Mr. Fressadi who from the very beginning, never followed the procedures as set forth in the driveway maintenance agreement and further, since October 25, 2005, has wrongfully denied my client's access to their property.

As such, any threat of litigation by Mr. Fressadi will certainly bring significant counterclaims and damages which he would be held accountable for.

Notwithstanding that, and without prejudice to my clients rights, and without any commitment whatsoever, my clients would authorize Mr. Fressadi to obtain at his sole cost and expense a current certified appraisal of their property through the Norris Property Consultants for their review. In completing the appraisal we would require the appraiser disregard the fact that Mr. Fressadi has blocked off the access to my clients property and has torn up the driveway, and that the appraisal be based upon today's fair market value of a lot fronting upon a maintained driveway without obstruction and without title issues.

Assuming you are in agreement with this process, kindly favor me with a copy of your cover letter directed to Norris Property Consultants requesting the appraisal and which sets forth the above parameters.

Very truly yours,

Peter G. Botti

PGB/clb
cc: Dr. & Mrs. Salvatore DeVincenzo

Received Time Aug. 6. 1:45PM

TER G. BOTTI
TERRENCE P. SEELEY

PETER G. BOTTI
ATTORNEY AT LAW
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GOSHEN, NEW YORK 10924-0388
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FAX (845) 294-2088

January 14, 2009

Via Certified Mail, Return Receipt Requested

Mr. Arek Fressadi
37934 North Schoolhouse Road
Cave Creek, AZ 85327

Re: DRIVEWAY MAINTENANCE AGREEMENT UPDATE DATED 12/3/08

Dear Mr. Fressadi:

As you know, I represent Sal and Sue DeVincenzo and advise to you that this letter is in response to yours dated December 3rd, 2008.

I have reviewed the Declaration of Driveway Easement and Maintenance Agreement and advise you as follows:

1. I find no authority in the Driveway Maintenance Agreement that allows you to rescind same as to the GV Group LLC and then unilaterally re-adjust the percentages owed by lot owners.

2. The Agreement is clear in that, prior to your commencing work on the driveway, you were to have provided the lot owners with a written budget for the next succeeding year, with written estimates, bids and/or contracts for the required maintenance and repair work, which you failed to do. As such, the DeVincenzos reject in total your demand for payment of $59,403.68.

3. Solely as a result of your unilateral actions of installing a gate and locking same, the DeVincenzos have been denied access to their premises since October 25th, 2005. Contrary to your assumption of what you believe to be my clients' intent with respect to use of the driveway and access over same, on March 9th, 2007 I corresponded with you (a copy enclosed) and at that time made a demand for a key to the gate, which said demand you have totally ignored. As a result of your unilateral actions, my clients have been denied access and the ability to use their property and, therefore not only are they **not** obligated to reimburse you for alleged improvements you have made to the driveway, you have subjected yourself to significant damages as a result of the DeVincenzos being unable to gain access and enjoy their property.

4. As I previously advised you, the DeVincenzos assume no responsibility either for your past expenditures or your future expenditures concerning capital improvements, including, but not

limited to, irrigation, plants, trees, lighting, fencing, stone or sand blasting, solar systems, re-paving the driveway and any and all other improvements, other than the normal course of care and maintenance of the existing driveway. Further, my clients will assume no responsibility whatsoever for the legal fees and/or administrative and interest fees which you are assessing to this project.

5. Please take notice that the DeVincenzos will assume no responsibility whatsoever and advise you in advance that they will not agree to reimburse you for any future expenses incurred by you to, including, but not limited to, (1) bring the driveway back to "showroom" condition; (2) clean-up Mike and Keith's mess and damages; (3) continue maintenance along the southern border of your property and the defendants' lots; (4) remove dead trees, debris and/or correct sub-standard plumbing to the water meters ; and (5) straighten out the driveway adjacent to VanDyke's property so that it no longer meanders, nor will they consent to any further landscaping to improve the appearance of the defendants' wall that allegedly elevates their driveway.

6. Your suggestion to rescind the sale of the DeVincenzos' parcel is ludicrous and rejected outright.

Please be guided accordingly.

Very truly yours,

PETER G. BOTTI

PGB/jld
Enc.
cc: Dr. and Mrs. Salvatore DeVincenzo

Arek Fressadi
37934 North Schoolhouse Rd.
480.437.9008
Fax 480.437.9007
arek@fressadi.com

Peter C. Botti, Esq.
14 Scotchtown Avenue
PO Box 388
Goshen, New York 10924-0388

January 28, 2009

Re: Your registered letter of January 14, 2009

Dear Mr. Botti:

Without prejudice to any of my existing rights and or claims against GV Group et al, I am responding to your letter of January 14, 2009. There is no dispute that GV Group failed to provide the 003A lot, as a result of which the DMA failed for lack of consideration and/or misrepresentation, or, at a minimum, that GV Group breached the DMA at inception. There is no dispute that all this brouhaha is the direct and proximate result of said misconduct/breaches. Initially your clients wished to remain 'neutral,' but clearly they have not. For whatever reason, they have chosen to align themselves with the individuals that caused this problem.

My failure to submit the budget under the DMA by December 1st is/was immaterial and provides no basis for your clients to avoid their obligations thereunder. As for your items:

Item #1: The DMA did not take into consideration GV Group committing fraud or failing to subject the 003A lot, and adding to their misrepresentations for years to come. Nor did the DMA consider that GV Group would elevate their driveway 6 to 10 feet in violation of the town's building and zoning ordinances rendering reciprocity impossible. Your issue of whether I have the authority to rescind the DMA as to GV Group based on the language of the DMA is unfounded. My authority is inherent in law. The basis of the DMA is mutual promises and reciprocity. GV Group breached the agreement at formation but claimed mistake. Once it was impossible for them to fix their mistake, I rescinded the agreement. If you object which it seems you are doing, then your clients and I never came to a meeting of the minds on the land sale transaction and this transaction should be undone and the parties returned to their prospective positions prior to October 22, 2003.

Item #2: The DMA provides specific language for dispute resolution. Your clients have received a budget for improvements and maintenance but did not comply with the terms of the DMA.

> "Lot owners may, within ten days of receipt of each year's budget, object thereto by giving written notice thereof to the Caretaker, which said notice shall state with reasonable particularity the reasons for the objection. Within five days of the delivery of such objection to the Caretaker, Lot owners shall meet in order to discuss and attempt to reach agreement on the objection. In the event the parties are unable to reach such an agreement, the parties shall submit the matter to dispute resolution as set forth below."

The Caretaker's makes all decisions and his decisions are final. Your clients agreed to the language of the DMA prior to closing. Since the DMA was breached etc.at inception by GV Group and since the sale of lot 211-10-010C was conditional upon the formation of the DMA which is now rescinded, and since your clients do not wish to perform, it would seem logical to simply rescind the sale of 211-10-010C as well.

Had GV Group been honest and forthright and complied with its obligations under the DMA, there never would have been a DMA as to the 211-10-003 properties. If the DMA is rescinded then what is the position between your clients and me? We either agree to a 1/3 to 2/3 split on the cost of the driveway or we rescind the purchase agreement. The path of least resistance is to return the parties to their original positions.

Item #3: Your comments are disingenuous. The DMA was rescinded on October 25, 2005 because Kremer and Van Dyke, after two years of charade with GV Group's initial fraud and claim of recording mistake, finally indicated that they were not going to participate in the DMA. Van Dyke told me that he did not join the DMA because GV Group could not come up with the money to acquire additional easement (GV Group was attempting to access their 003C lot by trespass on my land NOT part of the DMA). The meeting that your clients called at this time—the intent being for all concerned parties to meet and hash out a solution was thwarted by GV Group and Van Dyke. GV Group and Van Dyke refused to meet with your clients at the time prescribed by your clients' travel plans.

The Driveway was locked to keep GV Group (and ultimately Kremer/ Van Dyke) from using the driveway. When your clients asked for entry, I was in Prescott—it was not possible to return to the Valley within your clients' timeframe. They choose instead to seek an attorney in Phoenix and then returned to New York.

As for your correspondence of March 9th—there was no key or gate code as there was no gate. Your request was thus ignored as you apparently had not bothered to inspect the property or worse, were attempting to conspire with GV Group to provide GV Group access to my land and my driveway contravening the wishes of the Caretaker. On one hand, your clients severely admonish me for solving a GV Group logistics problem caused by the negligence and defective project management of GV Group and then your clients turn around and offer GV Group the use of their land as a staging area and parking lot for GV Group workers without notifying me of their intentions.

Additionally, your clients' behavior has thwarted settlement solutions where GV Group is no longer interested in resolving their breach through transference of lot 211-10-006C to me; that this option is "off the table." Further, the town engineer for Cave Creek told me that the town is looking for a dedication of 211-10-006C land to connect Mark Way with Military Rd. and for this road to run directly adjacent to your client's property, permanently resolving any access issue.

Item #4 & 5:
Thank you for indicating in no uncertain terms that your clients are breaching the Driveway Maintenance Agreement.

Item #6:
Given the state of the economy, and as stated through the items above, it would appear that the simplest solution to resolving our differences is simply to rescind the land sale

transaction between me and your clients. It is not ludicrous but judicial economy. I would strongly urge you to reconsider that we may avoid any additional litigation.

Per your closing, I am guided accordingly and will continue to traverse the minefield of mendacity with sagacity. I believe that I have responded to each of your points. If not, it should not be taken as agreement with you or your clients. I reserve all rights.

Signed,

/s/

Arek Fressadi

Cc: Kent Berk, Esq.

EXHIBIT I

From: Arek Fressadi [mailto:arek@fressadi.com]
Sent: Saturday, January 06, 2007 4:24 PM
To: 'Michael Golec'; 'bude55'
Cc: O'Neal, John M.; jcm@cimlaw.com; gaired@fressadi.com; kv2288@aol.com; tomvandyke@cox.net
Subject: driveway access

Mike,

Yesterday when Gaired and I returned from Phoenix, the driveway chain was up. I'm not sure who did this but I left it there last night as I did not stay on site last night. The chain was not locked. We have both lost equipment from our respective properties and it is one of the reasons why I think it is a good idea to safeguard the property and eventually gate the property—to deter theft and vandalism. Your guys apparently had no problem getting in this morning. My crew did not show up.

Further, I wish to acknowledge that you do have access to the driveway during our dispute unless the agreement is rescinded.
If the agreement is rescinded, your access would be your easement across Van Dyke's property.

As you know, we are working on site and there will be times when access is limited or cut off due to excavation, materials, etc.
Since you do have alternate access via your legal easement, this shouldn't pose a problem. My crew is commencing with trenching on the south drive for driveway utilities.

Arek Fressadi
480.437.9008 Office
480.437.9007 Fax
480.510.8993 Mobile
www.fressadi.com
www.scenic-vistas.net

From: arek@fressadi.com
To: tomvandyke@cox.net; mike@mgdwellings.com
CC: gbh@cimlaw.com
Subject: trespass - driveway access
Date: Mon, 2 Apr 2007 19:42:32 -0700

Tom-
This is to memorialize our conversation of Sunday.
Your workers are using the DMA driveway to access your site.
You had a choice to be a part of the driveway and you decided not to.
This is the second or third time I've had to remind you that you don't have the privilege to access your lot across my property.
Under different circumstances it might not be a big deal. But your behavior is exacerbating the litigation between myself and Golec et al.

If what you want is to keep the driveway agreement in tact, then act accordingly.
If it takes shutting down the driveway entirely to stop your trespassing, then it will happen.
I told you I'm not going to escalate so consider this a stern warning. But there will be no more warnings.
If someone uses the driveway to access your house, all bets are off.

Mike-
You are attempting to trump up a defense that you can't get to your jobsite.
Not only can you get to your jobsite, but you are letting your neighbor—the whole focus of this fraud litigation-- use the DMA and your land to mobilize his jobsite. You even parked your porta potty in the driveway. I moved it onto your land. Keep it there. If it's ever on the driveway again, I'll remove it.
Secondly- damages.
You intentionally decided NOT to use the driveway but instead built a road across Van Dyke's property to AVOID any assessment of damages.
Van Dyke's use of the driveway is your damages.

To both of you-
I've got garbage all over my land from your jobsites.

EXHIBIT J

GV GROUP, LLC

4955 W. TONTO RD
GLENDALE, AZ
85308

TELEPHONE
(858) 699-7023
FACSIMILE
(858) 225-0819

MEETING MINUTES

DATE:	September 16, 2005
LOCATION:	*"Tierra Fressadi"* Cave Creek, AZ
ATTENDEES:	Arek Fressadi, Keith Vertes & Mike Golec (GV Group, LLC), Tom VanDyke (Agent for Jocelyn Kremer)
ABSENTEES:	Sal & Sue DeVincezo, Jocelyn Kremer
PROJECT:	The Lots collectively known as "Tierra Fressadi"
SUBJECT:	**Driveway Maintenance Agreement (DMA)**

1. EASEMENT:
In congruence with the DMA, all parties are in agreement to preserve mutual and reciprocal easement rights pertaining to the southern egress and ingress in order to preserve the aesthetic nature of the existing drive without the necessity of a second parallel drive; furthermore, providing legal access for three lots from each easement so as to allow for any future lot splits.

2. LIEN:
Arek Fressadi has agreed to remove any and all liens on the Lots pertaining to the DMA so long as Jocelyn Kremer join the DMA and make maintenance payments pursuant to the DMA. The purpose of his lien was foremost to synergize a meeting amongst the lot owners. Each liened party should prepare their own lien release to Mr. Fressadi for his signature, release and recordation.

3. ASPHALT TOPPING:
Arek Fressadi made known the driveway topping was a necessary measure to conform to the Town's requirements to finalize the driveway and sewer permits. However, all parties are in agreement not to repair nor improve the current paving, but to cobblestone the driveway using native rock in similar fashion to the entranceway as permanent solution to the driveway maintenance. DMA members (a/k/a the Brotherhood ☺) agreed to start this process from the south driveway prior to the completion of construction of GV Group's two houses. GV Group in association with Scenic Vistas will perform this work at cost. GV Group, Jocelyn Kremer and Arek Fressadi have already stockpiled material for the construction of the stone drive.

4. DRIVEWAY MAINTENANCE AGREEMENT:
Jocelyn Kremer will be joining the DMA and Arek Fressadi is anticipating one final lot split. Thus stated the six Lots associated to the DMA agreement are as follows:

- Arek Fressadi: 211-10-010E (and future F)
- Keith Vertes & Mike Golec: 211-10-003B & C
- Jocelyn Kremer: 211-10-003A
- Sal & Sue DeVincezo: 211-10-010C

All parties have agreed to draft a new DMA that is acceptable to all parties. This will eliminate the cloud from Kremer's title and any uncertainty as to with whom maintenance costs are divided. Costs are to be divided equally by the total number of lots. GV Group, LLC will bear the burden of any legal cost of drafting the DMA. The landscape subject may require further discussion.

5. CONSTRUCTION:
GV Group began construction to Lot 211-10-003B on 09Aug05 and Lot -003C on 19Aug05. Construction access is via Lot 211-10-003A, as agreed by Jocelyn Kremer, leaving little to no damage to the driveway topping and adjacent stone walls to date. GV Group damaged a sewer clean-out with intentions to repair the damage on or before 9/21. Substantial completion of excavating and grading activities ended 09Sep05. Jocelyn Kremer is expected to begin architectural drawings in the near future with construction to follow. She may option to access her lot from both School House Road as well as the driveway.

6. ENCROACHMENT:
GV Group has encroached Arek Fressadi's property with the driveway entry to Lot -003C in order to preserve the natural characteristics of the existing topography. In lieu of sacrificing these natural features, GV Group has agreed to purchase the right of easement for the area of encroachment from Mr. Fressadi for a sum of $10,000.00 (Ten Thousand Dollars). The exact area of encroachment is to be determined by a licensed surveyor. All parties agreed to the physical routing of the driveway entry with final landscape detailing at a later date.

7. IMPROVEMENTS:
As stated in Item 3, all parties have agreed to surface the entire driveway with random stone pavers similar to the existing aprons. The preliminary estimate to this cost is $40,000.00 - $60,000.00. This action would greatly reduce any future roadway maintenance as well as increase the overall appearance and value of the area. All parties have also agreed to the idea of a gated private enclave with an estimated cost of $30,000 per gate, for a total improvement cost of $70,000.00 to $120,000.00 or $11,666 to $20,000 per lot. Both measures of improvement will increase value greater than the associated cost. All future costs of agreed driveway improvements shall be made just prior to commencement of improvements in accordance to an agreed budget for each improvement. There was also discussion on widening the south easement at the location of the imposing palo verde tree at the time of the driveway paving.

EXHIBIT K

11/1/18

File Name: Picture 004

EXHIBIT L

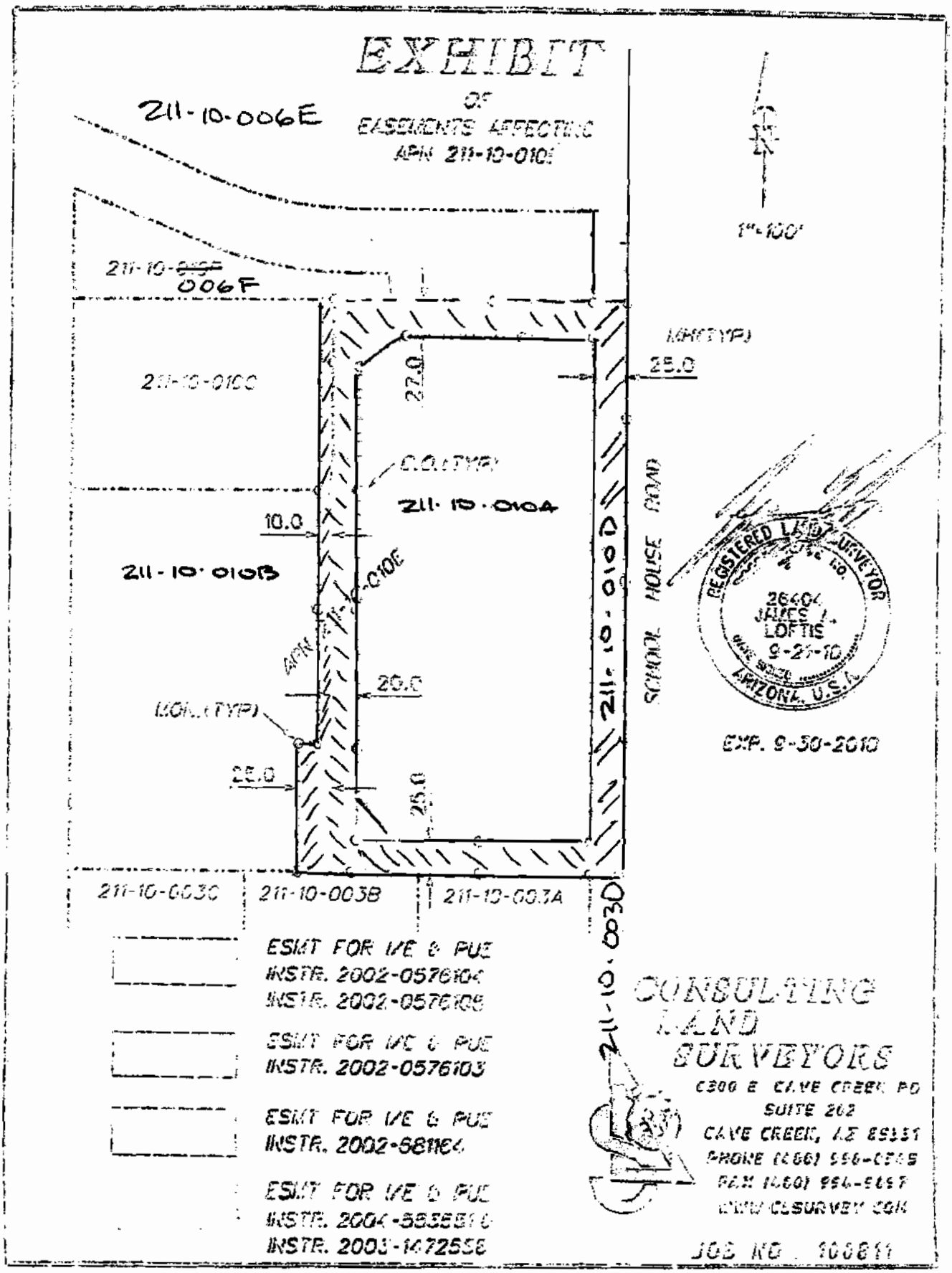
EXHIBIT
OF
EASEMENTS AFFECTING
APN 211-10-010E
211-10-006E
211-10-006F
211-10-010C
211-10-010B
211-10-010A
211-10-010D
211-10-010E
211-10-003D
211-10-003C
211-10-003B
211-10-003A
SCHOOL HOUSE ROAD
1"=100'
27.0
25.0
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25.0
25.0
(MIN.TYP.)
C.O.(TYP.)
(MIN.TYP.)
REGISTERED LAND SURVEYOR
26404
JAMES L.
LOFTIS
9-21-10
ARIZONA, U.S.A.
EXP. 9-30-2010
ESMT FOR I/E & PUE
INSTR. 2002-0576104
INSTR. 2002-0576105
ESMT FOR I/E & PUE
INSTR. 2002-0576103
ESMT FOR I/E & PUE
INSTR. 2002-681164
ESMT FOR I/E & PUE
INSTR. 2004-583581
INSTR. 2003-1472558
CONSULTING
LAND
SURVEYORS
6300 E CAVE CREEK RD
SUITE 202
CAVE CREEK, AZ 85331
PHONE (480) 998-0565
FAX (480) 998-0567
WWW.CLSURVEY.COM
JOB NO. 100811

EXHIBIT M

Windows Live™

Status

From: Arek Fressadi (arek@fressadi.com)
Sent: Thu 10/27/05 12:10 PM
To: 'Michael Golec' (mike@mgdwellings.com); tomvandyke@cox.net; kv2288@aol.com; jtv7@cox.net
Cc: 'bude55' (bude55@prodigy.net)
Attachments: Arek Fressadi (arek@fressadi.com).vcf (0.5 KB)

Mike,

There has been a number of phone calls and cryptic emails floating over the past month.

Accordingly, I thought I'd memorialize in writing, our current status:

1. Kremer/Van Dyke is not a party to the driveway maintenance agreement.

2. The driveway maintenance agreement is clouded in and of itself because Keith signed on behalf of a non-existent LLC, and obligated a piece of property that you no longer owned. Part of the consideration of entering the driveway agreement was the reciprocity. Since reciprocity no longer exists, it would seem that the agreement fails for breach of promise (reciprocity).

3. therefore, what remains is an agreement between the DeVincenzos and myself.

Although you and Keith made representations that you were not going to use the driveway, tradesmen, material suppliers and other contractors have been using what I'll now refer to the DeVincenzo / Fressadi driveway. In addition, there was damage to the driveway when you installed the sewer, and most obnoxious is that I have repeatedly told you to fix the broken sewer cap. This breach causes sewer gas to waft down the hill—a most annoying odor which you seem to blatantly disregard. I've gone to the trouble of repairing it. In addition, I'm cleaning the driveway, and putting a chain up to avoid additional traffic.

I remain open to resolving this matter with some level of logic and intelligence.

For the moment however, you and Keith are not party to the Agreement as the DMA is flawed at its inception and without reciprocal access to Schoolhouse from your land, there is a breach of promise.

I presume you will make some arrangements with Van Dyke / Kremer to access your property. Perhaps you intend to redraw the easement and enter your land from Kremer's southern boundary, or perhaps you intend to grade a new entrance adjacent to the existing drive—that's your business.

1-121

EXHIBIT N

File Name: DSCF4201

EXHIBIT O

Recording requested by:

The Town of Cave Creek
37622 North Cave Creek Road
Cave Creek, AZ 85331

When recorded mail to the above.

SPACE ABOVE THIS LINE FOR R

Exempt ARS 42-1614 (A) (3)

2005-11

DEED OF GIFT

Effective Date:	County and State where property is located: Maricopa County, Arizona			
GRANTOR (NAME, ADDRESS and ZIP CODE) GV Group, LLC Keith Vertes, Manager P.O. Box 7845 Cave Creek, AZ 85327	GRANTEE (NAME, ADDRESS, and ZIP CODE) Town of Cave Creek 37622 North Cave Creek Road Cave Creek, AZ 85331			
Subject Property (Address or Location) Military Rd and Skyline Drive Assessor's Parcel : 216-06-029P	Legal Description Proofed by Persons Whose Initials appear to the Right	1.	2.	3.

Subject Property (Legal Description)

South 25' right of way along the south boundary of said property as described in Exhibit "A", Incorporated hereon by this reference:

For consideration of community spirit and civic pride Grantor bears for the Town of Cave Creek, Grantor give and grant to the Town of Cave Creek and its successors and assigns forever, all right, title and interest of Grantor in the subject property.

EXCEPT all oil, gas and other mineral deposits as reserved unto the United States in Patent of said land.

X _____

Signatures of Grantor(s)

STATE OF ARIZONA COUNTY OF MARICOPA Date of Acknowledgment May 9, 2005	Acknowledgment. On this date, before me, a Notary Public, personally appeared: Keith V. Vertes Keith Vertes, Manager known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.	Signature of Notary Public Notary Expiration Date: JANE G. LAYNE Notary Public - Arizona Maricopa County Expires 01/09/09

TOCC: Town Clerk\deed of gift

EXHIBIT A

A parcel of land located in the Southwest quarter of Section 27, Township 6 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and more particularly described as follows:

COMMENCING at the South quarter corner of said Section 27;

Thence South 88 degrees 05 minutes 39 seconds West along the South line of said Section 27 a distance of 421.61 feet to the true Point of Beginning;

Thence continuing along said South line a distance of 166.12 feet to the corner of this parcel;

Thence North, a distance of 618.68 feet to a corner of this parcel, said point also being on the Southerly line of Tract A of Pleasantview Unit I, a subdivision recorded in Book 107 of Maps, Page 26. records of Maricopa County, Arizona;

Thence South 39 degrees 46 minutes 20 seconds East along said Southerly line a distance of 227.87 feet to a corner of this parcel, and a corner of said subdivision;

Thence South 08 degrees 35 minutes 56 seconds East a distance of 248.89 feet to a corner of this parcel;

Thence South 05 degrees 02 minutes 57 seconds West a distance of 192.69 feet to the true Point of Beginning.

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CAVE CREEK TOWN OF GV GROUP LLC		DEED
Recording Date/Time	**Recording Number**	**Pages**
6/8/2005 10:04:11 AM	20050766547	2
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Fountain Hills

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Anthem

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Hours: 9:00 A.M. - 5:00 P.M. Monday - Friday

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RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

JOCELYN L. KREMER
26432 N. 43RD PLACE
PHOENIX, AZ 85050

21

GARCIAC

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we,

BUILDING GROUP, INC. AN ARIZONA CORPORATION AND MIKE GOLIC DBA MG RESIDENTIAL

do/does hereby convey to

JOCELYN L. KREMER, AN UNMARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY

the following real property situated in Maricopa County, ARIZONA:

See Exhibit A attached hereto and made a part hereof.

EXEMPT PER ARS 11-1134 J.K

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

And I or we do warrant the title against all persons whomsoever, subject to the matters set forth above.

Dated 01/07/2010

SELLERS:
BUILDING GROUP, INC AN ARIZONA CORPORATION
MIKE GOLIC DBA MG RESIDENTIAL

BY _____
KEITH V. VERTES, PRESIDENT/CEO

_____
MIKE GOLIC DBA MG RESIDENTIAL

SEE NOTARIZATION OF THE PARTIES ATTACHED HERETO AND MADE A PART HEREOF.

THIS DOCUMENT MAY BE EXECUTED IN COUNTERPART, EACH OF WHICH WHEN AGGREGATED, SHALL BE DEEMED ONE AND THE SAME ORIGINAL DOCUMENTS.

NOTARIZATION OF GRANTORS ATTACHED TO WARRANTY DEED DATED JANUARY 7, 2010

State of **ARIZONA** }ss:
County of **Maricopa**

On JAN. 14, 2010, before me, The Undersigned, a Notary Public in and for said County and State, personally appeared KEITH V. VERTES, AS PRESIDENT/CEO OF BUILDING GROUP, INC., AN ARIZONA CORPORATION personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Signature Laura Morrone

FOR NOTARY SEAL OR STAMP

LAURA MORRONE
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
October 29, 2012

State of **ARIZONA** }ss:
County of **Maricopa**

On JAN. 14, 2010, before me, The Undersigned, a Notary Public in and for said County and State, personally appeared MIKE GOLIC DBA MG RESIDENTIAL personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Signature Laura Morrone

FOR NOTARY SEAL OR STAMP

LAURA MORRONE
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
October 29, 2012

THE EAST 25 FEET OF THE SOUTH 150 FT. OF THE FOLLOWING DESCRIBED PROPERTY:

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, MARICOPA COUNTY, ARIZONA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 28, MONUMENTED BY A 1" IRON BAR, THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 46 MINUTES 56 SECONDS WEST ALONG THE SOUTH LINE OF SAID SECTION 28, 424.17 FEET TO THE SOUTHEAST CORNER OF VILLAGE VISTA SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE NORTH 00 DEGREES 01 MINUTES 23 SECONDS EAST ALONG SAID EAST SUBDIVISION LINE, 590.00 FEET TO A CORNER OF THIS PARCEL;

THENCE SOUTH 89 DEGREES 46 MINUTES 56 SECONDS EAST, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, 423.59 FEET TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;

THENCE SOUTH 00 DEGREES 02 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, 590.00 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 28 AND TRUE POINT OF BEGINNING;

EXCEPT THE EAST 25 FEET THEREOF ; AND

EXCEPT THE WEST 266 FEET OF THE SOUTH 150 FEET THEREOF

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Recording Information

Name(s)	Document Code(s)
BUILDING GROUP INC GOLIC MIKE KREMER JOCELYN L MG RESIDENTIAL	WAR DEED

Recording Date/Time	Recording Number	Pages
1/27/2010 10:55:38 AM	20100067254	3
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EXHIBIT P

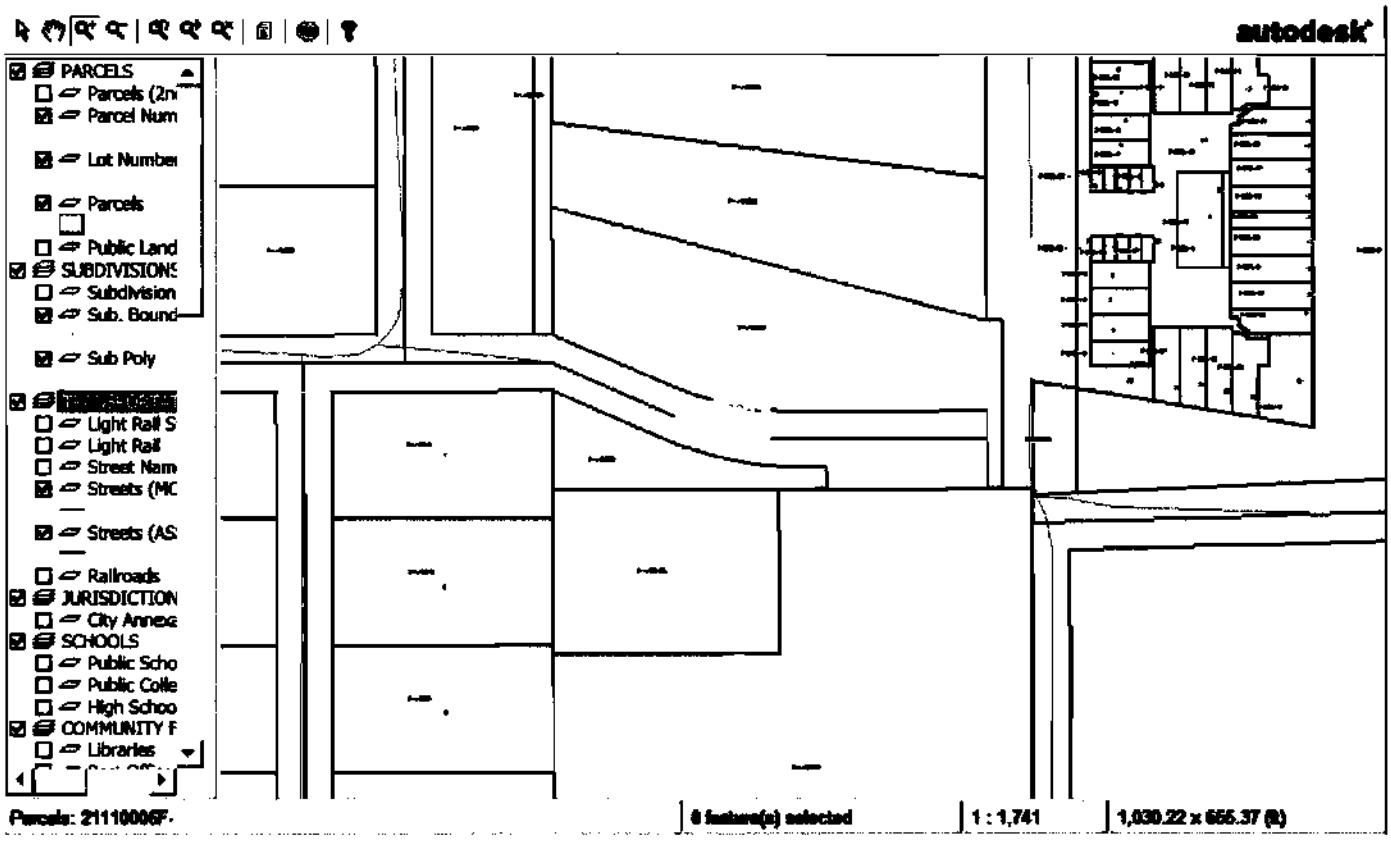
autodesk
PARCELS
Parcels (2n
Parcel Num
Lot Numbe
Parcels
Public Land
SUBDIVISIONS
Subdivision
Sub. Bound
Sub Poly
Light Rail S
Light Rail
Street Nam
Streets (MC
Streets (AS
Railroads
JURISDICTION
City Annex
SCHOOLS
Public Scho
Public Colle
High Schoo
COMMUNITY F
Libraries
Parcels: 21110006F
0 feature(s) selected
1 : 1,741
1,030.22 x 655.37 (ft)

EXHIBIT 7

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.822.1013
520.822.1029 Fax
arek@fressadi.com

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

AREK FRESSADI, an unmarried man, Plaintiff/Counterdefendant -vs- GV GROUP, L.L.C., et al., Defendants/ Counterclaimants	No. CV2006-014822 **FRESSADI'S REPLY IN SUPPORT OF SANCTIONS AGAINST THE TOWN OF CAVE CREEK, DEFENDANTS AND THEIR RESPECTIVE COUNSEL** (Assigned the Hon. Patricia Starr) **(Expedited Hearing Requested)**

The DeVincenzos contend that the only issue currently before the Court is whether the DeVincenzos acquired lot # 211-10-006F to access lot 211-10-010C. **On the contrary**: (1) A ruling that Fressadi and the DeVincenzos entered into an agreement for the sale of Lot 211-10-010C does not make the sale valid—it must comply with A.R.S. § 9-463.03. "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)); *see also Smith v. Superior Equip. Co.,* 102 Ariz. 320, 324, 428 P.2d 998, 1002 (1967) ("[I]t is a general rule of law that

when the Legislature adopts a statute governing contracts of any nature, that statute ipso facto becomes a part of the contract, and the latter will be construed as though the statute were written into it." (citation omitted)). The Court has no discretion in this matter.[1]

(2) The sale of 211-10-010C was also contingent upon the Declaration of Easement and Maintenance Agreement ("DMA") binding all of the lots signatory to the DMA. Fressadi and Vertes (i.e. the parties) executed and recorded the Declaration of Easement and Maintenance Agreement ("DMA"). But Vertes executed the DMA as manager of GV Group LLC which did not exist; nor did Vertes own any of the lots that he was allegedly binding to the DMA. There is no dispute that the Defendants concealed the ongoing existence of lot 211-10-003D which blocked access to the 003 easement portion of the DMA driveway *ab initio* such that the DMA was illusory; that the owner of lot 211-10-003A did not feel like being bound by the DMA after receiving the benefit of DMA related utilities; that lots 211-10-003B and 211-10-003C were sold ***after*** the execution of the DMA, but the owners did not feel like being bound by the DMA even though their lots were enriched with the benefit of DMA access and related utilities. As such, the Court's January 27, 2015 ruling is vague, ambiguous and must be vacated pursuant to Rules 59(a)(8), 60(c)(3), (4), or in the alternative 60(c)(6). Recording the DMA does not make it valid or enforceable. What parties are bound by the DMA? If by parties, the Court means Fressadi and DeVincenzo then the Court's ruling reforms the DMA to bind lots 211-10-010 A, B, & C such that the DeVincenzos are in default and breach for not paying their share of DMA expenses assuming arguendo, the sale of lot 010C is lawful.

(3) Evidence provided in public records in Plaintiff's motion indicates that access to the 010 lots is provided by easements that underlie the DMA, ¶1,2 DMA, DeV SSOF, Exh. D. If

[1] See Footnote 7, *City of Tucson v. Clear Channel Outdoor, Inc*., 181 P. 3d 219-Ariz: Court of Appeals, 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.")

the Court's ruling is that the ***only*** access to lot 211-10-010C is via the DMA, and the DMA easements were blocked *ab initio* by Defendant Vertes, then the sale of lot 211-10-010C fails for lack of a condition precedent such that the Court's ruling of January 27, 2015 must be vacated pursuant to Rules 59(a), 60(c)(3), (4), or in the alternative 60(c)(6).

(4) It strains credulity how the Court can claim that Fressadi blocked "***that***" access, when DMA access was blocked *ab initio* by Defendants Vertes and Golec by failing to gift lot 211-10-003D to the Town of Cave Creek and selling lot 211-10-003A the day before executing the DMA. As such, the Court's ruling (#3) must be vacated pursuant to Rules 59(a), 60(c)(3), (4), or in the alternative 60(c)(6). There is no evidence that Fressadi blocked access to the DMA from its inception in October 2003 to present per the Court's ruling. The easements that serve the lots split from lot 211-10-010A and B serve lot 211-10-010C. None of the other 010 lots have issue with access. Assuming arguendo that briefly securing the driveway from construction damage as the Caretaker of the DMA "blocked access," and assuming arguendo that the Court's ruling reformed the DMA to only bind lots 211-10-010A, B, & C, and that the sale of lot 211-10-010C is lawful in stark contrast to the plain and clear language of A.R.S. §9-463.03, then the DeVincenzos are bound by the DMA and must resolve their dispute in conformance with the terms and conditions of the DMA—they cannot acquire another unlawful lot for access in order to circumvent their financial obligations for improving and maintaining the DMA driveway.

Rule 37(d) states without equivocation that failure to timely disclose damaging or unfavorable information ***shall be grounds for the imposition of serious sanctions.*** Plaintiff provided sworn testimony and supporting documentation in his Motion filed March 31, 2015, proving the following facts:

---

quoting Zygmunt J.B. Plater, *Statutory Violations & Equitable Discretion,* 70 Cal. L.Rev. 524, 527 (1982).

1. The sale of lot 211-10-010C is unlawful. A.R.S. § 9-463.03.

2. Recording the DMA did not bind any of the lots because the DMA was flawed *ab initio* and illusory. The sale of lot 211-10-010C was contingent upon a fully functioning DMA. Since the DMA is illusory, not only is the sale of lot 010C unlawful per A.R.S. § 9-463.03 but the contract for sale of lot 211-10-010C fails for lack of a condition precedent.

3. Access to lots 211-10-010 A, B, & C was by surveyed easements that were recorded as part of the lot split in violation of A.R.S. §§ 9-500.12, 9-500.13, 9-463 *et seq*., and the Town's Subdivision Ordinance. The DMA provides legal and physical access via the underlying easements that constitute the driveway. The DeVincenzos do not deny that the 003 easement was blocked *ab initio* nor do they deny that that the Administrative Hearing process in A.R.S. § 9-500.12 takes jurisdictional precedence. Due process requires compliance with A.R.S. §§ 9-500.12, 9-500.13 and 9-463 *et seq*. for this Court to have subject matter jurisdiction over DMA claims or counter-claims. "Judgments which are rendered by a court lacking subject matter or personal jurisdiction are void." *Cockerham v. Zikratch,* 127 Ariz. 230, 619 P.2d 739 (1980).

4. Plaintiff required the Court's intervention to rescind the sale of lot 211-10-010C as the DeVincenzos refused to quit claim and quiet title to the lot. The DeVincenzos do not deny that GV Group destroyed the chain ramparts in 2005 rendering a key to the lock on the chain moot. Instead they claim that Fressadi blocked access to lot 211-10-010C for two years and after the DeVincenzos bought lot 006F in June 2009. But GV Group had access as memorialized in an email in January, 2007 per Exhibit I in Fressadi's Motion. If GV Group had

access, then so did the DeVincenzos. Fressadi leased his home on lot 211-10-010A in January 2009 precluding any blockage of access of the 010 easement six months prior the DeVincenzos acquiring lot 211-10-006F. DeVincenzos' allegation that access to lot 211-10-010C was blocked after they acquired 211-10-006F is false, such that their claim of blocked access is moot.

5. The DeVincenzos and their counsel did not disclose damaging and unfavorable information in violation of Rule 37(d) that lot 211-10-006F was created by dividing lot 211-10-006C into two lots involving a new street, a subdivision per A.R.S. § 9-463.02 and the Town's Subdivision Ordinance. Until lot 211-10-006F is platted and recorded, the sale of lot 211-10-006F is unlawful per A.R.S. § 9-463.03.[2] The Development Agreement (Exhibit A) explicitly states that the purpose of lot 211-10-006F is to be part of a boundary adjustment with lot 211-10-010C to create two residential lots in conformance with the Town's R1-18 zoning. The DeVincenzos provided no cancelled check or final closing documents evidencing that they purchased lot 006F for any consideration. The estimated master settlement statement, DeV SOF #5, Exh. D, does not prove that the DeVincenzos paid anything for lot 211-10-006F, the purpose of which was to create two lots by boundary adjustment with lot 211-10-010C—not to resolve a trumped up accusation of blocked access.

The DeVincenzos offer nothing in opposition to Plaintiff's factual argument or his Affidavit which controverts the DeVincenzos claim of title to lot 211-10-010C; controverts the validity of the DMA; controverts the DeVincenzos claim of blocked access, and exposes the real

[2] The legal description of lot 211-10-006F is a meets and bounds survey. A legal description of a lot platted as part of a properly vetted subdivision would be "lot 'X' of the Scenic Vistas Subdivision, map, etc."

reason why the DeVincenzos acquired lot 211-10-006F—to create two lots that would conform with the square footage requirements of R1-18 lots by boundary adjustment.

Neither the DeVincenzos nor any of the other Defendants or indispensible parties to this litigation proffer any opposition to Plaintiff's factual pleading requesting sanctions against the Defendants and their counsel, nor do they deny that the Court's rulings are void due to fraud upon the Court.

None of the Defendants or their respective counsel deny that they concealed material facts and suppressed the truth with the intent to mislead the court sufficient to vacate the Court's rulings of January 31, 2008, April 29, 2014 and January 27, 2015 per Plaintiff's motion of March 31, 2015; to impose sanctions per Rule 37(d), and grant a new trial per Rules 59(g), 59(a) 6, 7, & 8. 60(c)(3), (4), or in the alternative, 60(c)(6). None of the Defendants or their respective counsel deny that they obtained "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." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 299, ¶ 42, 257 P.3d 1168, 1179 (App. 2011).

The DeVincenzos do not deny that the Town of Cave Creek and the owners of lots 211-10-010A (now 010M,N, & O), and 211-10-003 A, B, & C are indispensible parties per Ariz.R.Civ.P 19(a); that Cave Creek and the owners of lots 211-10-010M, N & O, 211-10-003 A, B, & C, and the DeVincenzos have been unjustly enriched. See e.g. *Freeman v. Sorchych,* 245 P.3d 927, 936 (Ariz. App. 2011) (citing *City of Sierra Vista v. Cochise Enters., Inc.,* 697 P.2d 1125, 131-32 (Ariz. App. 1984)).

Cave Creek and Defendants, and their respective counsel had obligations to disclose per Ariz.R.Civ.P. 11(a), 26.1(b). Defendants' and Cave Creek's counsel had additional

obligations to disclose under ER 3.3(a)(1-3), (b), (c), and ER 3.4 (a). Pursuant to Ariz. R. Civ. P. 37(d), for fourteen years the Town of Cave Creek and their counsel concealed that the Town did not comply A.R.S. §§ 9-500.12, 9-500.13 and 9-463 *et seq*.; for nine years, Defendants Golec and Vertes and their counsel failed to disclose that GV Group LLC had no standing in this lawsuit; that lot 211-10-003D blocked access to the 003 easement rendering the DMA a void, illusory promise.

Conclusion:

For reasons stated in Plaintiff's Motion and this reply, Plaintiff respectfully requests that the Court determine as a matter of law that:

1. The DeVincenzos and their counsel concealed damaging and unfavorable information in bad faith sufficient to dismiss their counter claim and defense per rule 37(d);
2. that the sale of lot 211-10-010C to the DeVincenzos be rescinded and quiet title to lot 211-10-010C be awarded to Plaintiff and /or his assigns or nominees as an imposition of serious sanctions per Rule 37(d);
3. that the DeVincenzos are not entitled to an award of any damages for their acquisition of lot 211-10-006F because the stated purpose of lot 006F that was concealed by the DeVincenzos in bad faith was to create two buildable lots by boundary adjustment with lot 211-10-010C;
4. that the sale of lot 211-10-006F be rescinded and quiet title to lot 211-10-010C be awarded to Plaintiff and /or his assigns or nominees as an imposition of serious sanctions per Rule 37(d);
5. that the January 31, 2008, April 29, 2014 and January 27, 2015 rulings in this case be vacated;
6. that a new trial be granted on Plaintiff's motion to include the Town of Cave Creek

and the property owners of lots 211-10-003 A, B, C, & D and lots 211-10-010 M, N, & O as Defendants;

7. that Defendants REEL, Golec and Vertes (GV Group LLC) and their respective counsel concealed damaging and unfavorable information in bad faith sufficient to dismiss their counter claims and defenses and that Plaintiff is entitled to an award of his attorney fees and costs from 2006 to present as a sanction per Rule 37(d);

8. that the court immediately set a culprit /contempt hearing to impose serious sanctions against the Town of Cave Creek and its counsel Dickinson & Wright and Sims Murray for concealing damaging and unfavorable information per Rule 37(d) sufficient to dismiss their defense, and to impose serious sanctions for acting in bad faith over the last fourteen years pursuant to the Town's Subdivision and Zoning Ordinances, A.R.S. §§ 12-349, 12-821.01(G), 9-500.12, 9-500.13, and 9-463 *et seq*.

9. that the Court quiet title as to parcels 211-10-010 and 211-10-003 and determine unjust enrichment per *Freeman v. Sorchych,* 245 P.3d 927, 936 (Ariz. App. 2011) as applicable;

RESPECTFULLY SUBMITTED this 13th day of May, 2015.

/s/ Arek Fressadi
AREK FRESSADI
Plaintiff *Pro Se*

ORIGINAL E-filed, copies to:

Kyle Israel, Esq.
ISRAEL & GERITY, PLLC
3300 Central Ave, Ste. 2000
Phoenix, AZ 85012
Attorneys for GV Group Defendants

Beth Fitch, Esq.
RIGHI HERNANDEZ, PLLC
2111 E Highland Ave., Suite B440
Phoenix, AZ 85016
Attorneys for Defendants DeVincenzos

Sean K. McElenney, Esq.
BRYAN CAVE LLP.
Two N. Central Ave., Suite 2200
Phoenix, AZ 85004-4406
Attorneys for Defendants REEL

EXHIBIT A

2009-03

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When recorded return to:
Clerk
Town of Cave Creek
37622 N. Cave Creek Rd
Cave Creek, AZ 85331

RESOLUTION NO. R2009-02

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA AUTHORIZING THE TOWN OF CAVE CREEK ("TOWN") TO ENTER INTO A DEVELOPMENT AGREEMENT WITH DESERT'S EDGE DEVELOPMENT L.L.C. ("OWNER")

RECITALS

A. Owner is developing a project known as Desert's Edge (-MCAP 211-10-006A and B & C collectively 3.56 acres known as the "Property"), which is generally located at the southwest corner of the intersection of Cave Creek Road and School House Road. Owner has proposed a Lot Line Adjustment.

B. During the Lot Line Adjustment process for Desert's Edge the Town's Planning Department included a stipulation of their approval requiring that Owner donate the Town a 50' wide right-of-way from Lots B & C across the southern portion of the site extending Mark Way to School House Road ("Mark Way Extension").

C. The land being sought by the Town for public right-of-way is collectively nineteen thousand seven hundred sixty nine (19,769sf) square feet, legally described in Exhibit A (the "Legal Description"); in addition, Owner will donate a strip 20' x 181.65' three thousand six hundred thirty three (3,633sf) square feet of land ("Parking Strip") to the Town for mutual parking assignments between the Town and Lot A. In total, the twenty three thousand four hundred and two (23,402sf) square feet of land know as the "Donated Property".

D. Owner's original plan for the Donated Property zoned R-18 was for the residential development of two lots. Donating the described property to the Town imposes hardship to the Owner with the result of no conforming residential lots.

E. Owner is willing to dedicate the Donated Property to the Town; however, Lot A will retain all parking space rights planned for the Parking Strip and that Lot A and B are relieved of all/any improvement and development burdens and costs to the Mark Way extension as well as to School House Road, that the Parking Strip be used as Black Mountain trailhead parking for the people of Cave Creek as well as Lot A overflow parking, and the Town improve Mark Way extension prior to or in unison with the development of either Lot A or B (whichever comes first). However, the Project remains subject to the Cave Creek Town Code (the "Town

Code").

F. The Town is authorized to enter into this Agreement with Owner pursuant to the provisions of A.R.S. § 9-500.05.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAVE CREEK, ARIZONA, AS FOLLOWS:

Section 1. That the Development Agreement between the Town of Cave Creek and Desert's Edge Development LLC, attached hereto as Exhibit 1 and incorporated herein by reference, is hereby adopted.

Section 2. That the Mayor is authorized to execute the Development Agreement.

PASSED AND ADOPTED this 2nd day of March, 2009, by the Town Council of Cave Creek.

Vincent Francia, Mayor

ATTEST:

Carrie A. Dyrek, Town Clerk

APPROVED AS TO FORM:

Clifford H. Mattice
Mariscal, Weeks, McIntyre & Friedlander P.A.
Town Attorney

20090294173

After recording, return to:
The Town, The Owner
The Participants, and
The Title Company

DEVELOPMENT AGREEMENT

(Desert's Edge Development, LLC)

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Cave Creek, an Arizona municipal corporation (the "Town"), and Desert's Edge Development, L.L.C., an Arizona limited liability company ("Owner"). The Town and Owner are collectively referred to herein as "Parties," or individually as "Party."

RECITALS:

A. Owner is developing a project known as Desert's Edge (Parcels 211-10-006A, B, & C collectively 3.56 acres known as the "Property"), which is generally located at the southwest corner of the intersection of Cave Creek Road and School House Road. Lots A, B, & C are owned by Desert's Edge Development, LLC. Owner has proposed a Lot Line Adjustment resulting in two lots referred to herein as "Lot A" (120,615sf, APN: 211-10-006A) and "Lot B" (39,172sf, APN: 211-10-010C) owned by Susan and Salvatore DeVincenzo.

B. During the Lot Line Adjustment process for Desert's Edge the Town's Planning Department included a stipulation of their approval requiring that Owner donate the Town a 50' wide right-of-way from Lots B & C across the southern portion of the site extending Mark Way to School House Road ("Mark Way Extension").

C. The land being sought by the Town for public right-of-way is collectively nineteen thousand seven hundred sixty-nine (19,769sf) square feet, legally described in Exhibit A (the "Legal Description"); in addition, Owner will donate a strip 20' x 181.65' three thousand six hundred thirty-three (3,633sf) square feet of land ("Parking Strip") to the Town for mutual parking assignments between the Town and Lot A. In total, the twenty-three thousand four hundred and two (23,402sf) square feet of land know as the "Donated Property". Owner will also consider the portion of land within the Floodway boundaries of Andora Wash as Non-Motorized Trail Easement to the Town of Cave Creek.

D. Owner's original plan for the Donated Property zoned R-18 was for the residential development of two lots. Donating the described property to the Town imposes hardship to the Owner with the result of no conforming residential lots.

E. Owner is willing to dedicate the Donated Property to the Town; however, Lot A will retain all parking space rights planned for the Parking Strip and that Lot A and B are relieved of all/any improvement and development burdens and costs to the Mark Way extension as well as to School House Road, that the Parking Strip be used as Black Mountain trailhead parking for the people of Cave Creek as well as Lot A overflow parking, and the Town improve Mark Way extension prior to or in unison with the development of either Lot A or B (whichever comes first). However, the Project remains subject to the Cave Creek Town Code (the "Town Code").

F. The Town is authorized to enter into this Agreement with Owner pursuant to the provisions of A.R.S. § 9-500.05.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth in this Agreement, the Town and Owner state, confirm and agree as follows:

1. Purpose. The purpose of this Agreement is to address Owner's dedication of the Donated Property for public right-of-way in consideration for: (i) mutually beneficial parking rights for the Town and Lot A over the Parking Strip, (ii) Commercial Buffer zoning to remain for the northern portion of Lot A measured from the centerline of Andora Wash totaling eighty-nine thousand six hundred and twenty-three (89,623sf) square feet; whereas, the remaining southern portion of Lot A measured from the centerline of Andora Wash to the northern boundary of the Mark Way Extension to convert from R-18 down to Open Space Recreation including thirty thousand nine hundred and ninety-two (30,992sf) square feet, (iii) the Open Space Recreation area will credit towards the Commercial Buffer area to meet the landscape and open space ordinance requirements, as well as, the overall combined density allowance allowing for up to 20 dwelling units, (iv) the relief from all/any improvements to the donated right-of-ways to both Lot A and B, (v) the Town is to improve the Mark Way extension prior to or in unison with the development of Lot A or B (whichever comes first), and (vi) the portion of Andora Wash within the Floodway boundaries to be considered as a Non-Motorized Trail Easement maintained and ensued liability by the Town of Cave Creek. For all other purposes the Property shall be developed in accordance with the Town Code.

2. Dedication of the Donated Property. Owner agrees to dedicate to the Town fee simple title to the Donated Property without any restrictions, free and clear of all liens and encumbrances. Owner shall dedicate the Donated Property by special warranty deed, using the form attached hereto as Exhibit B, and such dedication shall occur after the approval of this Agreement and within five (5) days following the end of the referendum period, if any, imposed on this Agreement from the date executed. Disapproval of this Agreement would terminate the deed of gift of the Donated Property.

3. General Provisions.

3.1. Term. This Agreement shall become effective on the date the last Party executes this Agreement and shall automatically terminate on the tenth (10^{th}) anniversary of such date. The Agreement will run with the land until terminated.

3.2. Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after its full execution.

3.3. Notices and Filings. All notices, filings, consents, approvals, recordings and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States Mail, postage pre-paid, return receipt requested if to:

The Town:	Town of Cave Creek Attn: Town Manager 37622 N. Cave Creek Rd. Cave Creek, AZ 85331
The Owner:	Desert's Edge Development, LLC Attn: Michael Golec P.O. Box 7645 Cave Creek, AZ 85327
Participant:	Susan & Salvatore DeVincenzo 43 Sterling Pines Road Tuxedo Park, NY 10987

or to such other address or addresses as may hereafter be specified by notice given by any of the above for itself to the others. Any notice or other communication directed to either Party shall become effective upon the earliest of the following: (a) actual receipt by that Party; or (b) thirty-six (36) hours after deposit with the United States Postal Service, addressed to the Party.

3.4. Default. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. Any breach not cured within thirty (30) days after written notice is received from the other Party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. The thirty (30) day period shall not apply where an ordinance or statute requires the Town to perform or otherwise act in a period in excess of thirty (30) days. Notwithstanding the foregoing, the failure of Owner to dedicate the Donated Property to the Town within the time limit prescribed in Section 2 above shall automatically terminate this Agreement, and neither Party shall have any further rights or obligations hereunder.

3.5. Dispute Resolution. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbonding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the Parties. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the Town and Owner shall request the presiding judge of the Superior Court in and for Maricopa County, Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to development. The cost of any such mediation shall be divided equally between the Town and Owner. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate litigation subsequent to the moratorium.

3.6. Choice of Law, Venue and Attorneys' Fees. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by State law. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason.

3.7. Good Standing and Authority. The Parties represent and warrant that each is duly formed and validly existing under State laws with respect to Owner, or a municipal corporation within the State with respect to the Town and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

3.8. Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit of the Parties, and all of their successors in interest and assigns; provided; however, that Owner's rights and obligations hereunder may be assigned, in whole or in part, only to a person or entity that has acquired title to the Property or a portion thereof and only by a written instrument recorded in the Official Records of Maricopa County, Arizona, expressly assigning such rights and obligations.

3.9. Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

3.10. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof; and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

3.11. Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

3.12. Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

3.13. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

3.14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

3.15. Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or Legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Arizona time) on the last day of the applicable time period provided herein.

3.16. Conflict of Interest. This Agreement is subject to the terms of Arizona Revised Statutes § 38-511.

3.17. Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitutes the entire agreement between the Parties.

(a) Exhibit A: Legal Description of the Property
(b) Exhibit B: Special Warranty Deed Form

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written are superseded by and merged in this Agreement.

3.18. Time. Time is of the essence of this Agreement and with respect to the performance required by each Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

TOWN:

TOWN OF CAVE CREEK, an Arizona municipal corporation

By: _____
TOCC Mayor

Date: 03/03/09

APPROVED AS TO FORM:

By: _____
TOCC Attorney

ATTESTED:

By: _____
TOCC Clerk

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this 3 day of March, 2009, by Vincent Francia, the Mayor of the TOWN OF CAVE CREEK, an Arizona municipal corporation.

_____
Notary Public

My commission expires:
01/04/2013

Notary Public State of Arizona
Maricopa County
Barbara Royer
My Commission Expires
01/04/2013

OWNER:
DESERT'S EDGE DEVELOPMENT, L.L.C., an Arizona limited liability company

By: _____
DED Manager

Date: 3.10.09

STATE OF ARIZONA)
) ss.
County of Maricopa)

Subscribed and sworn to before me this 10th day of March, 2009, by Michael T. Golec, the Manager of DESERT'S EDGE DEVELOPMENT, L.L.C., an Arizona limited liability company.

_____
Notary Public

My commission expires:
5/27/2011

"OFFICIAL SEAL"
Teresa Vine
Notary Public-Arizona
Maricopa County
My Commission Expires 5/27/2011

EXHIBIT A

Legal Description of the Property

LOT LINE ADJUSTMENT

OF

A PORTION OF 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, MARICOPA COUNTY, ARIZONA.

PARENT LEGAL

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; THENCE N.89°02'W. ALONG THE SECTION LINE 990 FEET TO A STAKE IN THE MIDDLE OF A WASH WHICH IS THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN CONVEYED; THENCE NORTH ALONG THE SECTION LINE 400 FEET; THENCE WEST 440 FEET; THENCE SOUTH 400 FEET; THENCE EAST 440 FEET TO THE POINT OF BEGINNING;

EXCEPT ANY PART THEREOF LYING WITHIN THE WEST 660 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28.

AND EXCEPT THE EAST 25 FEET OF THE FOLLOWING LEGAL:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER 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, SAID PARCEL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28; THENCE N.89°02'00"W. ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, A DISTANCE OF 990.00 FEET TO THE TRUE POINT OF BEGINNING AND A CORNER OF THIS PARCEL; THENCE CONTINUING ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, A DISTANCE OF 400.00 FEET TO A CORNER OF THIS PARCEL; THENCE N.89°48'00"W., A DISTANCE OF 423.30 FEET TO A CORNER OF THIS PARCEL; THENCE S.0°01'23"W., ALONG A PROLONGATION OF THE EAST LINE OF VILLAGE VISTA SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 400.00 FEET TO A CORNER OF THIS PARCEL; THENCE S.89°48'00"E., A DISTANCE OF 421.50 FEET TO A CORNER OF THIS PARCEL AND THE TRUE POINT OF BEGINNING;

EXCEPT FROM SAID EAST 25 FEET THAT PART LYING WITHIN THE FOLLOWING:

A STRIP OF LAND 80 FEET WIDE BEING 40 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT IN THE CENTER OF CAVE CREEK ROAD AT THE INTERSECTION OF THE SECTION LINE COMMON TO SECTIONS 27 AND 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, SAID POINT BEING S.0°02'E., 1,313 FEET FROM THE NORTHWEST CORNER OF THE SOUTH HALF OF SAID SECTION 27; THENCE S.0°02'E. ALONG THE SECTION LINE COMMON TO SAID SECTIONS 27 AND 28 FOR A DISTANCE OF 660 FEET.

LOT A

THAT PORTION OF THE SOUTHEAST QUARTER OF 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, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28; THENCE N.89°02'33"W. ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 990.00 FEET; THENCE S.89°30'43"W. PARALLEL WITH AND 508.00 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 40.00 FEET; THENCE N.00°02'33"W. PARALLEL WITH AND 40.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 70.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE S.89°30'43"W. A DISTANCE OF 167.21 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 375.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°24'25" AN ARC LENGTH OF 153.19 FEET; THENCE N.66°45'53"W. A DISTANCE OF 146.40 FEET TO THE NORTHEAST CORNER OF VILLAGE VISTA SUBDIVISION AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF SAID COUNTY; THENCE N.89°10'24"W. PARALLEL WITH AND 15.00 FEET EAST OF THE WEST LINE OF THE EAST 440.00 FEET OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 260.39 FEET TO A POINT ON THE NORTH LINE OF THAT CERTAIN PARCEL DESCRIBED IN INSTRUMENT 92-488870 RECORDS OF SAID COUNTY; THENCE N.89°44'38"E. A DISTANCE OF 383.83 FEET; THENCE S.89°02'33"E. PARALLEL WITH AND 40.00 FEET WEST OF SAID EAST LINE A DISTANCE OF 328.93 FEET TO THE TRUE POINT OF BEGINNING.

LOT B

THAT PORTION OF THE SOUTHEAST QUARTER OF 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, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

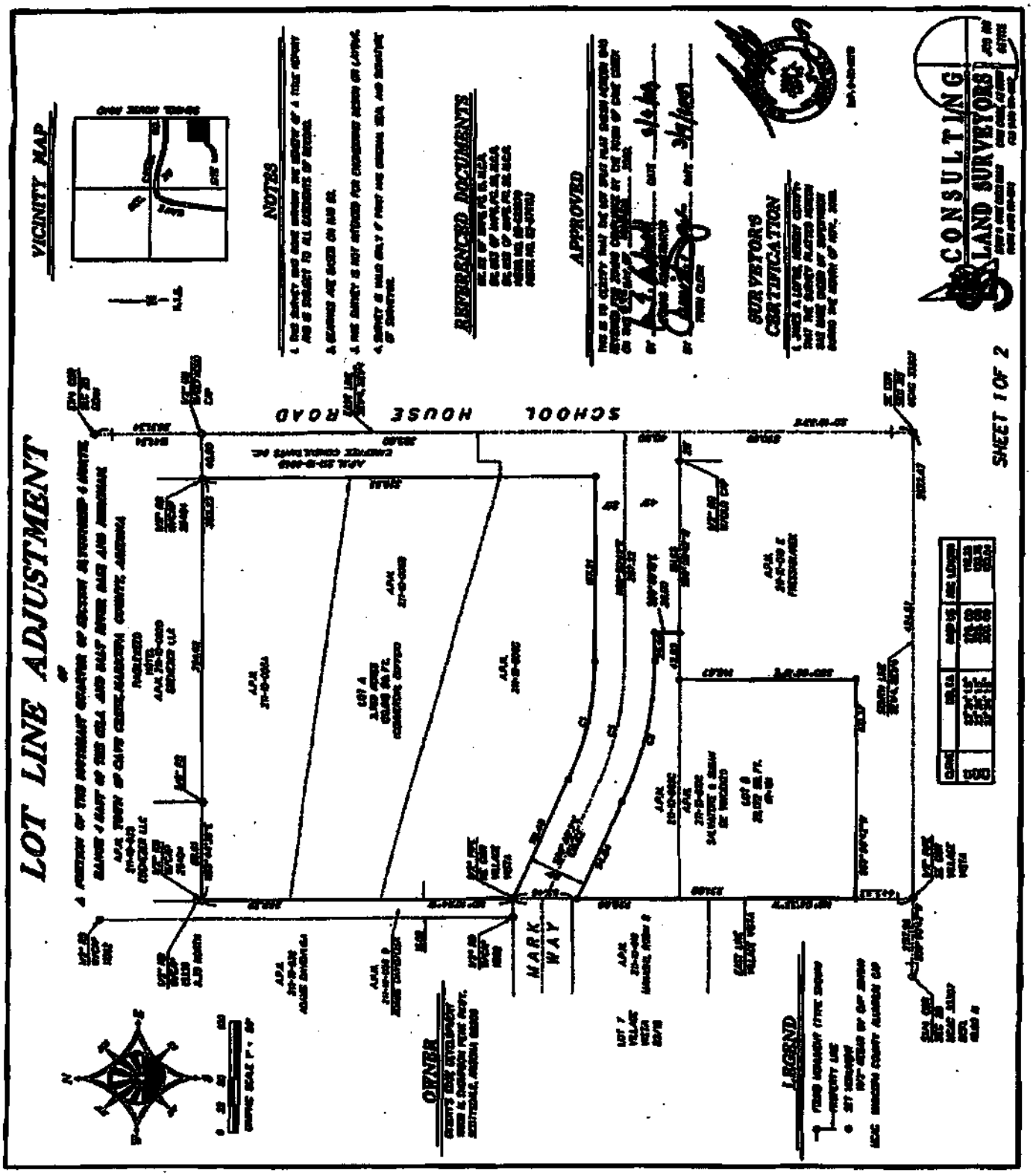
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28; THENCE N.89°02'33"W. ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 990.00 FEET; THENCE S.89°30'43"W. PARALLEL WITH AND 660.00 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 424.26 FEET (MEASURED 424.02 FEET RECORD) TO A POINT ON THE EAST LINE OF VILLAGE VISTA SUBDIVISION, ACCORDING TO BOOK 82 OF MAPS, PAGE 15 RECORDS OF SAID COUNTY; THENCE N.00°01'33"W. ALONG SAID EAST LINE OF VILLAGE VISTA SUBDIVISION, A DISTANCE OF 266.35 FEET TO THE SOUTHWEST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN AFFIDAVIT 2003-1472208, RECORDS OF SAID COUNTY, SAID SOUTHWEST CORNER ALSO BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING N.00°01'33"W. ALONG SAID EAST LINE OF VILLAGE VISTA SUBDIVISION A DISTANCE OF 231.03 FEET; THENCE S.89°45'53"E. A DISTANCE OF 94.04 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 325.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°24'25" AN ARC LENGTH OF 132.76 FEET; THENCE N.89°30'43"E. A DISTANCE OF 25.58 FEET; THENCE S.00°29'08"E. A DISTANCE OF 28.00 FEET; THENCE S.89°30'43"W. A DISTANCE OF 42.53 FEET TO THE NORTHEAST CORNER OF SAID CERTAIN PARCEL; THENCE S.00°02'33"E. ALONG THE EAST LINE OF SAID CERTAIN PARCEL A DISTANCE OF 146.87 FEET; THENCE S.89°30'43"W. PARALLEL WITH AND 443.33 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER A DISTANCE OF 108.37 FEET TO THE TRUE POINT OF BEGINNING.

CONSULTING LAND SURVEYORS

SHEET 2 OF 2

TCC00756

20090294173



20090294173

EXHIBIT B

Deed of Gift Form
(as Provided by the Town of Cave Creek)

20090294173

Recording requested by:

The Town of Cave Creek
37622 North Cave Creek Road
Cave Creek, AZ 85331

When recorded mail to the above.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

2009-03

Exempt ARS 42-1614 (A) (3)

DEED OF GIFT

Effective Date: 3/18/09		County and State where property is located: Maricopa County, Arizona		
GRANTOR (NAME, ADDRESS and ZIP CODE) Desert's Edge Development, L.L.C. PO Box 7845 Cave Creek, Arizona 85327		GRANTEE (NAME, ADDRESS, and ZIP CODE) Town of Cave Creek 37622 North Cave Creek Road Cave Creek, AZ 85331		
Subject Property (Address or Location) Assessor's Parcel : 211-10-006C	Legal Description Proofed by Persons Whose Initials appear to the Right	1.	2.	3.

Subject Property (Legal Description)

SEE ATTACHED EXHIBIT "A" and "B"

For consideration of community spirit and civic pride Grantor bears for the Town of Cave Creek, Grantor give and grant to the Town of Cave Creek and its successors and assigns forever, a Roadway Dedication in the subject property.

EXCEPT all oil, gas and other mineral deposits as reserved unto the United States in Patent of said land.

Signatures of Grantor(s)

STATE OF ARIZONA COUNTY OF MARICOPA Date of Acknowledgment	Acknowledgment. On this date, before me, a Notary Public, personally appeared: Michael T. Golec known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that he executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.	Signature of Notary Public Teresa Vine Notary Expiration Date: 5/27/2011 "OFFICIAL SEAL" Teresa Vine Notary Public-Arizona Maricopa County My Commission Expires 5/27/2011

TOCC: Town Clerk\deed of gift

20090294173

EXHIBIT "A"

CONSULTING LAND SURVEYORS

37617 North Cave Creek Road
Cave Creek, Arizona 85331

Phone (480) 990-0545
Fax (480) 994-9097

Job No. 090301

LEGAL DESCRIPTION

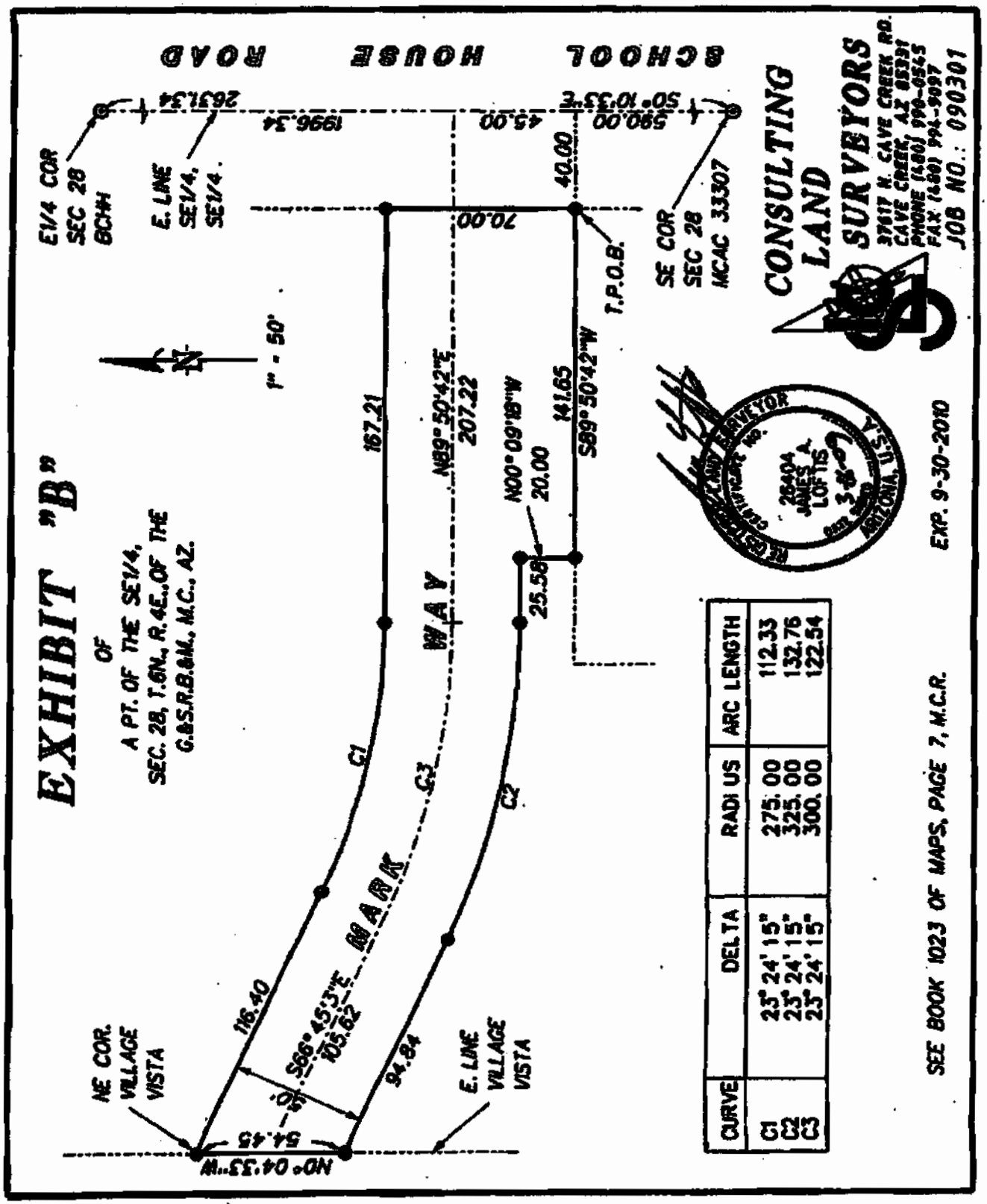
That portion of the Southeast quarter of the Southeast quarter of Section 28, Township 6 North, Range 4 East of the Gila and Salt River Base and Meridian, Town of Cave Creek, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Southeast corner of said Section 28; thence N. 00°10'33" W. along the East line of said Southeast quarter of the Southeast quarter a distance of 590.00 feet; thence S. 89°50'42" W. parallel with and 590.00 feet North of the South line of said Southeast quarter of the Southeast quarter a distance of 40.00 feet to the TRUE POINT OF BEGINNING; thence continuing S. 89°50'42" W. parallel with and 590.00 feet North of said South line a distance of 141.65 feet; thence N. 00°09'18" W. a distance of 20.00 feet; thence S. 89°50'42" W. parallel with and 610.00 feet North of said South line a distance of 25.58 feet to the beginning of a curve to the right having a radius of 325.00 feet; thence Northwesterly along said curve through a central angle of 23°24'15" an arc length of 132.76 feet; thence N. 66°45'03" W. a distance of 94.84 feet to a point on the East line of Village Vista Subdivision as recorded in Book 82 of Maps, Page 15, Records of said County; thence N. 00°04'33" W. along last said East line a distance of 54.45 feet to the Northeast corner of said Village Vista Subdivision; thence S. 66°45'03" E. a distance of 116.40 feet to the beginning of a curve to the left having a radius of 275.00 feet; thence Southeasterly along said curve through a central angle of 23°24'15" an arc length of 112.33 feet; thence N. 89°50'42" E. parallel with and 660.00 feet North of said South line a distance of 167.21 feet; thence S. 00°10'33" E. parallel with and 40.00 feet West of said East line of the Southeast quarter of the Southeast quarter a distance of 70.00 feet to the TRUE POINT OF BEGINNING.

See Exhibit "B"

As a reference see Book 1023 of Maps, Page 7, Maricopa County Recorder.

20090294173



CURVE	DELTA	RADIUS	ARC LENGTH
C1	25°24'15"	275.00	112.33
C2	25°24'15"	325.00	132.76
C3	25°24'15"	300.00	122.54

EXHIBIT 8

Arek Fressadi, *pro se*
10780 S. Fullerton Rd.
Tucson, AZ 85736
520.822.1013
520.822.1029 Fax
arek@fressadi.com

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

AREK FRESSADI, an unmarried man,
Plaintiff,
-vs-

GV GROUP, L.L.C., an Arizona limited liability company; MG DWELLINGS, INC., an Arizona corporation; BUILDING GROUP, INC., an Arizona corporation; MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES and KAY VERTES, husband and wife;
Defendants.
GV GROUP, LLC, an Arizona limited liability company; DESERT EDGE DEVELOPMENT, LLC, An Arizona limited liability company, MG DWELLINGS, INC., and Arizona corporation; BUILDING GROUP INC., an Arizona Corporation; MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES AND KAY VERTES, husband and wife,
Counterclaimants,
-vs-
AREK FRESSADI, an unmarried man,
Counterdefendant,

No. CV2006-014822

MOTION FOR RECONSIDERATION FOR NOTICE OF SIGNED ORDER, AND FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW BY THE COURT.

(Assigned the Hon. Lisa Daniel Flores)

Although the rules of civil procedure are intended to promote justice, Plaintiff argues that Judge Flores is using the rules to facilitate a fraud upon the court. "Because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 15 Fed. R. Serv. 3d 482 (1st Cir. 1989).

Plaintiff argued in his Motion to Amend and Verified Third Complaint that Defendants and indispensible parties used the legal system to perpetuate a fraudulent scheme to control and convert Plaintiff's property in violation of A.R.S. §§ 13-1802 and 13-2310 where members of the Judicial Branch of the State of Arizona facilitated the above criminal conduct in violation of A.R.S. § 13-1004. The Town of Cave Creek, the County of Maricopa, and the State of Arizona are indispensible parties. Per A.R.S. § 12-408, this case must be moved to another county.

Plaintiff also alleged that the collective actions of the Judicial Branch of the State of Arizona amounts to a judicial taking. Justice Scalia opines in *Stop the Beach*[1] that the remedy for a judicial taking is not "just compensation" but rather an invalidation of the judicial decision depriving an owner of property (see pages 18-19 of the slip opinion). Scalia's opinion dovetails with case law that Court decisions rendered in excess of jurisdiction are void.

The court ruled that Plaintiff's appeal of this court's ruling to hold a trial and deny his Motion to Amend the Complaint is untimely; that Plaintiff's request for a Notice for Signed Order was flawed, and that Plaintiff's request for findings by the Court is premature. Whether Plaintiff's form of appeal or special action is proper or whether Plaintiff is following civil procedure is irrelevant because the Court's rulings violate the US Constitution and A.R.S. §§ 9-500.12 & 9-500.13. The Constitution of the United States and Arizona Revised Statutes takes precedence over rules of civil procedure. Any ruling that violates the Constitution of the United States is invalid on its face and can be appealed at any time as the ruling is a nullity.

By issuing pre-trial rulings that preclude Plaintiff from arguing his case to a jury, the Court is violating due process.

Plaintiff argues that forcing a pro per litigant to follow a minefield of rules where it is reasonably foreseeable that the litigant will sustain injury to his person, business or property can

[1] *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 130 S. Ct. 2592 (2010)

be classified as a pattern of racketeering activity in violation of A.R.S. § 13-2314.01.

"When plunder becomes a way of life for a group of men living together in society, they create for themselves in the course of time a legal system that authorizes it and a moral code that glorifies it." --Frederic Bastia, 1850.[2] Judge Flores is a runaway train following the tracks of Judge Willett. Plaintiff respectfully requests that the Court reconsider its rulings from September 24, 2013. Plaintiff reserves all rights and claims.

RESPECTFULLY SUBMITTED this 26th day of March, 2014.

/s/ Arek Fressadi
AREK FRESSADI
Plaintiff *Pro Se*

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[2] See also *Civil Disobedience* by Henry David Thoreau, 1849.

EXHIBIT 9

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AREK R. FRESSADI, an unmarried man, Plaintiff/Counter-Defendant v. GV GROUP, L.L.C., an Arizona Limited Liability Company: MG DWELLINGS, INC., an Arizona Corporation; BUILDING GROUP, INC., an Arizona Corporation, MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES and KAY VERTES, husband and wife; REAL ESTATE EQUITY LENDING, INC., an Arizona corporation; and SALVATORE DEVINCENZO and SUSAN DEVINCENZO, husband and wife, Defendants GV GROUP, L.L.C., an Arizona Limited Liability Company: MG DWELLINGS, INC., an Arizona Corporation; BUILDING GROUP, INC., an Arizona Corporation, MICHAEL T. GOLEC, an unmarried man; and KEITH VERTES, a married man; and SALVATORE DEVINCENZO and SUSAN DEVINCENZO, husband and wife, DESERT'S EDGE DEVELOPMENT, LLC, an Arizona Limited Liability Company, Counterclaimants.	No. CV2006-014822 **PLAINTIFF AREK R. FRESSADI'S MOTION FOR INJUNCTION PER RULE 65 AND STAY OF TRIAL PENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO ARIZ. R. CIV. P. RULE 52(a)** **AND** **MOTION FOR INJUNCTION TO STAY TRIAL PENDING SPECIAL ACTION REVIEW BY ARIZONA'S COURT OF APPEALS** (Assigned to the Hon. Connie Contes)

Pursuant to Ariz. R. Civ. P. Rules 65 and 52(a), Plaintiff/Counter-Defendant Arek R. Fressadi ("Fressadi") respectfully requests that this Court stay Trial set for May 14-17 and 21-22, 2018, pending a findings of fact and conclusion of law of ALL rulings in this case from 2007 to present based on the sufficiency requirements established in *Anderson v. Contes*, Ariz: Ct. App, 1st Div., Dept. D, 2006, 1 CA-SA 05-0266 at ¶¶ 11 & 12[1], and pending Special Action review.

[1] See also *Anderson v. Contes* at n.4: "We are cognizant that the reason for Rule 42(f)(1)(E) is to avoid the possibility of judicial bias when a case has been reversed on appeal and remanded for a new trial. *See King v. Superior Court,* 108 Ariz. 492, 493, 502 P.2d 529, 530 (1972). Judge Flores was the last division prior to the Court of Appeals overturning all decision in this case in favor of Fressadi. On remand, Judge Flores dismissed Fressadi's complaint.

The Memorandum Decision in 1 CA-CV 11-0728 at ¶1 ruled: **"Fressadi's claims for declaratory judgment, rescission, and reformation relate to a dispute over the continued viability of a recorded driveway easement. Because issues of genuine fact exist, summary judgment is not proper."** As such, any award of summary judgment by a prior division of this Court is improper to warrant Horizontal Appeal[2]. GV Group LLC *et al* ("GV") argues in its Answer and Counterclaims that the Declaration of Easement and Maintenance Agreement ("DEMA") is based on the improper splitting of Fressadi's lots, an illegality[3] to warrant dismissal. The Town of Cave Creek has continuously violated federal and state law to criminally violate its own zoning and subdivision ordinances to render the DEMA a contract based on illegality.

If GV's counterclaims are not dismissed due to illegality, then Fressadi moves to stay the trial currently scheduled to begin on May 14, 2018 until the Court of Appeals compels Cave

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[2] ***SEE* Fressadi's 4/19/18 Objection to GV's Motion in Limine / Request for Horizontal Appeal, *incorporated by reference herein*.** "A horizontal appeal is a request that `a second trial judge [ ] reconsider the decision of the first trial judge in the same matter, even though no new circumstances have arisen in the interim and no other reason justifies reconsideration.'" *Donlann v. Macgurn,* 203 Ariz. 380, 385-86, ¶ 29 (App. 2002) (alteration in original) (quoting *Powell-Cerkoney v. TCR-Mont. Ranch Joint Venture, II,* 176 Ariz. 275, 278-79 (App. 1993)). Judges are to avoid horizontal appeals unless new circumstances have developed. *Dunlap v. City of Phoenix,* 169 Ariz. 63, 66 (App. 1990) (quoting *Lemons v. Superior Court,* 141 Ariz. 502, 504 (1984)). A court may consider a horizontal appeal "when an error in the first decision renders it manifestly erroneous or unjust" or the applicable law has changed. *Powell-Cerkoney,* 176 Ariz. at 279 (citations omitted).

[3] **See *Bank One, Arizona v. Rouse,* 181 Ariz. 36, 887 P.2d 566, 569-70 (1994)**:
"We find not only that the issue of illegality appears in the record, but also that we can address the wrong and dispose of this case without having to return it to the trial court. Additionally, we refuse to allow the courts to be used to enforce a contract that is contrary to law and common sense. As our supreme court stated in *National Union Indem. Co. v. Bruce Bros., Inc.,* 44 Ariz. 454, 38 P.2d 648 (1934):

> "... In such cases there can be no waiver. The defense [of illegality] is allowed, not for the sake of the defendant, but of the law itself. The principle is indispensable to the purity of its administration. It will not enforce what it has forbidden and denounced. The maxim, *ex dolo malo non oritur actio,* is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches, it destroys. The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation...."

44 Ariz. at 466-67, 38 P.2d at 653, quoting *Coppell v. Hall,* 74 U.S. (7 Wall.) 542, 558, 19 L.Ed. 244 (1868) (citations omitted). *See also Clark v. Tinnin,* 81 Ariz. 259, 263, 304 P.2d 947, 950 (1956) (waiver and estoppel cannot be invoked against void contract); *cf. Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83, 102 S.Ct. 851, 70 L.Ed.2d 833 (1982) (courts have duty to determine whether contract violates federal law before enforcing it)."

Creek to comply with federal and state law and its own ordinances regarding DEMA lots, permits and improvements, and for this Court to fully comply with the requirements of Rule 52(a) prior to trial. Ariz. R. Civ. P. Rule 52(a) expressly requires that "[i]n all actions tried upon the facts without a jury..., the court, if requested before trial, ***shall*** find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." If the Court pleases, Fressadi will itemize all rulings, disclosure and ER violations, and judicial code violations over the last 12 years for the court to accurately comply with Rule 52(a).

Well-settled Arizona case law supports the findings of fact requirement. See *Amfac Elec. Supply Co. v. Rainer Constr. Co.,* 123 Ariz. 413, 414, 600 P.2d 26, 27 (1979); *Keystone Copper Min. Co. v. Miller,* 63 Ariz. 544, 553, 164 P.2d 603, 608 (1945); *Elliott v. Elliott,* 165 Ariz. 128, 134, 796 P.2d 930, 936 (Ct.App. 1990). Requiring a trial court to state separately findings of fact and conclusions of law allows a defeated party may more easily determine whether the case presents issues for appellate review. See *Rogge v. Weaver,* 368 P.2d 810, 814 n. 7 (Alaska 1962). Findings and conclusions clarify what has been decided and thus provide guidance in applying the doctrines of estoppel and res judicata. *Wattleton v. International Bhd. of Boiler Makers,* 686 F.2d 586, 591 (7th Cir.1982), *cert. denied,* 459 U.S. 1208, 103 S.Ct. 1199-1200, 75 L.Ed.2d 442 (1983). The requirement prompts judges to consider issues more carefully because "they are required to state not only the end result of their inquiry, but the process by which they reached it." *United States v. Merz,* 376 U.S. 192, 199, 84 S.Ct. 639, 643, 11 L.Ed.2d 629 (1964). Findings and conclusions permit an appellate court to examine more closely the basis on which the trial court relied in reaching the ultimate judgment. *City of Phoenix v. Consolidated Water Co.,* 101 Ariz. 43, 45, 415 P.2d 866, 868 (1966); *Bastian v. King,* 661 P.2d 953, 957 (Utah 1983) ("Proper findings are essential to enable [the appellate court] to perform its function of assuring that the findings support the judgment and that the evidence supports the findings."). *See generally* 5A James W. Moore & Jo D. Lucas, MOORE'S FEDERAL PRACTICE ¶ 52.06[1] (2d ed. 1992).

There is no finding of fact or conclusion of law that Fressadi's claims should be dismissed, nor has there been any lawful determination regarding the illegality of the DEMA.

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ARGUMENT

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also Stone v. Immigration and Naturalization Service*, 514 U.S. 386, 411 (1995) ("[W]e have long recognized that courts have inherent power to stay proceedings."). "An injunction may serve to undo accomplished wrongs, or to prevent future wrongs that are likely to occur." *TP Racing, L.L.L.P. v. Simms,* 232 Ariz. 489, 495, ¶ 21, 307 P.3d 56, 62 (App. 2013); *see* A.R.S. § 12-1801 (West 2014). A stay of proceedings and injunction rely on the same metrics.

Fressadi must establish the following elements for this Court to issue a stay or an injunction: 1) a strong likelihood of success on the merits; 2) irreparable harm if the stay is not granted; 3) that harm to Fressadi outweighs the harm to the Defendants/Counter-Claimants; and 4) that public policy favors the granting of the stay. See *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 132 P.3d 1187 (2006). The scale for applying these criteria is not absolute but sliding and should not turn on counting factors that weigh on each side of the balance. "[T]he moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and [that] 'the balance of hardships tip[s] sharply'" in favor of the moving party. *Id.* at 411, 132 P.3d at 1191 (internal citations omitted).

1. Fressadi has a Strong Likelihood of Success on the Merits.

GV's counterclaims #1-4, DeVincenzos' counterclaims, and Fressadi's Breach of Contract (Claim #2)[4] are based on illegality such that the contract cannot be enforced. *See* n.3 herein. Equitable relief to Defendants/Counterclaimants is not permitted when the contract is unenforceable because of illegality. See *Landi v. Arkules,* 172 Ariz. 126, 136, 835 P.2d 458, 468 (App.1992). The DEMA[5] was to provide access to six (6) residential lots by means of a driveway

[4] Fressadi pled rescission in his claims to argue illegality. AZCOA has held, however, "that the illegality of a contract may be raised for the first time on appeal by the court on its own initiative. If the court can do this, presumably so can the parties." *Koenen v. Royal Buick Co.,* 162 Ariz. 376, 783 P.2d 822, 824 (App.1989), quoting *Mitchell v. American Savings & Loan Ass'n*, 122 Ariz. 138, 140, 593 P.2d 692, 694 (App.1979), quoting *Nutter v. Bechtel,* 6 Ariz.App. 501, 433 P.2d 993 (1967).

[5] MCRD #2003-1472588 (**EXHIBIT A**, final/recorded version)

in violation of Section 5.1(c)(8)[6] of the Town of Cave Creek's Zoning Ordinance which states: "No non-public way [easement] or driveway **shall** provide access to more than three (3) residential lots." [emphasis added]. The six (6) residential lots to be bound by the DEMA were subdivided from parcels 211-10-010[7] ("010") and 211-10-003[8] ("003") by "metes & bounds" surveys. Subdividing parcels into four (4) lots by "metes & bounds" surveys does not comply with A.R.S. §9-463.02 and Cave Creek's Subdivision Ordinance, Sections 1.1(A)(2), 1.1(A)(4), 1.1(A)(6). As such, they do not comply with the Town's Subdivision Ordinance per Section 6.3(A) to render the lots unsuitable for building and not entitled to permits. On its face, Cave Creek has continuously violated Subdivision Ordinance Section 1.1(B), and Sections 1.1(B), 1.1(C), 1.3(B), 1.4, 1.5, 1.7, 2.3, 5.1(C)(1), 5.1(C)(3) of the Zoning Ordinance through its Zoning Administrator, where each and every day of continued violation "**shall**" be a separate Class One misdemeanor punishable by State law and Cave Creek town code per Section 1.7(A).

Per Section 1.7(C), the Zoning Administrator has no discretion but to order the use of the DEMA lots, driveway, and sewer discontinued and the land and structures vacated because A.R.S. §§9-500.12, 9-500.13 and Town Ordinances use "language of an unmistakably mandatory character, requiring that certain procedures "shall," "will," or "must" be employed." *Hewitt v. Helms*, 459 US 460, 471 (1983). Further, non-conforming uses are disfavored.[9]

Fressadi rescinded the DEMA in 2005 based on illegality, unenforceability, frustration of purpose, illusory contract, and breach of conditions precedent. He also requested rescission of the sale of lot 010C to the DeVincenzos based on A.R.S. § 9-463.03[10], caused by Cave Creek violating A.R.S. §§ 9-500.12 and 9-500.13 from 2001 to present. Cave Creek violated federal and

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[6] Section 5.1(c)(8): "No non-public way or driveway ***shall*** provide access to more than three (3) residential lots." [emphasis added]

[7] Survey of unlawful lots of parcel 211-10-010: MCRD 2003-0488178 (**EXHIBIT B**).

[8] Survey of unlawful lots of parcel 211-10-003: MCRD 2003-1312578 (**EXHIBIT C**).

[9] Nonconforming uses are not favored by the law and "should be eliminated or reduced to conformity as quickly as possible." *Rotter,* 169 Ariz. at 272, 275, 818 P.2d at 707, 710; *accord Outdoor Sys., Inc. v. City of Mesa,* 169 Ariz. 301, 307, 819 P.2d 44, 50 (1991); *Gannett Outdoor Co. of Ariz. v. City of Mesa,* 159 Ariz. 459, 461, 768 P.2d 191, 193 (App. 1989).

[10] Per A.R.S. §9-463.03**,** it is unlawful to sell or lease any part of a subdivision until a final plat "in full compliance with provisions of this article" is recorded. No final plat could be recorded that would comply with Cave Creek's Subdivision and Zoning Ordinances.

state law to require a little strip of land to split parcel 010. In doing so, the Town converted the survey of parcel 010 into a non-conforming subdivision of four (4) lots without final recorded plat map, making the lots unsuitable for building, not entitled to permits, and unlawful to sell per A.R.S. § 9-463.03.

Defendants admit that Cave Creek violated A.R.S. §§ 9-500.12 and 9-500.13. GV argues in their Counterclaim, ¶¶19 & 60, that Fressadi's lots are improperly split, and know that Cave Creek caused it. GV did not object to adding Cave Creek as an indispensible party in their Response to Fressadi's Motion to Amend his Complaint in January 2014. GV's Attorney Kyle Israel ("Kyle") acknowledges Cave Creek's misconduct at the 4/27/18 Pretrial Conference at 46 minutes: "Go after Cave Creek. That's been our position all along."

"Waiver is either the express, voluntary, intentional relinquishment of a known right or such conduct as warrants an inference of such an intentional relinquishment." *Russo v. Barger*, 366 P. 3d 577 - Ariz: Court of Appeals, 1st Div. 2016, quoting *Am. Continental Life Ins. Co. v. Ranier Constr. Co.,* 125 Ariz. 53, 55, 607 P.2d 372, 374 (1980). GV never denied (thus waived defenses) that indispensible party Tom Van Dyke, father of indispensible party Jocelyn Kramer as the subsequent owner of lot 003A, told Fressadi in 2012 that Jocelyn acquired the 4th lot, 003D, in 2010. GV never denied (thus waived defenses) that Cave Creek has continuously violated A.R.S. §§ 9-500.12 & 9-500.13 since 2001. GV/Kyle never denied (thus waived defenses) that they committed disclosure violations by failing to disclose the existence of lot 003D in conspiracy with Cave Creek.

Per Arizona Rule of Evidence 301[11], GV/Kyle knew their right (and burden) to address Fressadi's presumptions—disclosure violations, constructive fraud, civil conspiracy, violations of Rules of Professional Conduct, fraud on the court, failure to add indispensible parties, the existence of 4th lot 003D that blocks access and converted the property into an illegal subdivision such that GV breached the DEMA *ab initio* and rendered the DEMA illegal, and so on—but GV/Kyle intentionally never exercised their rights and thus waived them.

[11] Per Ariz.R.Evid. 301, "the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption."

Not only is the DEMA based on illegality, but GV breached the DEMA *ab initio* by never binding lot 003A to the DEMA, and never dedicating the 25' strip of land between Schoolhouse Road and lot 211-10-003A known as "Parcel A" (later 211-10-003D) as required by Cave Creek to approve their "lot split," and as required by the DEMA to provide mutual access to the easement over lots 003 A & B. Cave Creek attested that "Parcel A" was dedicated to the Town, a material misstatement on the 003 land survey upon which the DEMA relies, in violation of A.R.S. §33-420. As such, parcel 003 was subdivided into four (4) non-conforming lots that are unsuitable for building, not entitled to permits, and unlawful to sell per ARS 9-463.03 as the survey is not a final recorded plat map.

By violating federal and state law, Cave Creek surreptitiously violated its own ordinances to cause continuing zoning and subdivision ordinance violations on the lots bound by the DEMA such that to enforce the DEMA is contrary to law and common sense. See *Bank One, supra.* As there is no good cause for Fressadi's claims to be dismissed, REEL's award of attorney fees and DeVincenzos' award of summary judgment must be reversed.

Defendants and indispensible parties engaged in willful deception (*e.g.*,*In re Napster, Inc. Copyright Litigation*, 479 F.3d 1078,1097 (9th Cir.2007)) and a "trail of fraud" (*Hazel-Atlas v. Hartford Co.,* 322 US 238, 250 (1944)) to cause rulings to be rendered in violation of due process and therefore void. *World-Wide Volkswagen Corp. v. Woodson*, 444 US 286, 291 (1980), citing *Pennoyer v. Neff,* 95 US 714, 732-733 (1878).

Fressadi is entitled to damages as argued in his Briefs in 1 CA-CV 11-0728, 1 CA-CV 12-0435 and 1 CA-CV 12-0601 and per A.R.S. §§ 9-500.12(H), 33-420, and 13-2314.04 as argued in his 3rd amended complaint. *See* mentioned mandatory statutes and Cave Creek Ordinances, **Exhibit D**. Cave Creek, its actors, and other indispensible parties that are currently "non-parties," including GV's Attorney Kyle A. Israel for a decade of disclosure violations per Ariz.R.Civ.P. 26.1 & 37, can be held liable per Ariz.R.Civ.P. 71.

Fressadi argues that the DEMA cannot be enforced due to illegality *ab initio*. *Assuming arguendo* that the DEMA could be enforced, GV cannot win on the merits because they breached the DEMA *ab initio* such that Fressadi rescinded the DEMA, and Fressadi had no duty to perform

once GV breached the DEMA *ab initio*.[12] GV's counterclaims 1-4 are based on alleged obstruction to Fressadi's driveway on his property AFTER the DEMA was rescinded in 2005. GV's counterclaim 5 of alleged taking of "valuable rocks and materials" involves unclean hands, and is worth less than $65,000 to require transfer to Arbitration. GV counterclaims 6-8 were dropped as meritless. As such, Fressadi has a strong likelihood of success on the merits.

2. **Irreparable harm.**[13]

Fressadi will be irreparably harmed if this case proceeds to trial in its current state.

In violation of 1 CA-CV 11-0728 at ¶1, *supra*, Kyle wants to rely on a summary judgment ruling from 2008, obtained by violating disclosure requirements per Rules 26.1 and 37(d) as a constructive fraud[14] in violation of ER 3.3(a),(b),(c),(d)[15] and 8.4(a),(b),(c),(d),(f) [16]. In violation

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[12] See *Yeazell v. Copins,* 402 P.2d 541, 544 (Ariz. 1965) (no duty to perform where a condition precedent has not been fulfilled). *See also* Restatement (Second) of Contracts § 237 (1969) (if a condition precedent to the promisor's duty to perform has not occurred, he is under no duty to perform, whether or not he knows the condition has not occurred); *College Point Boat Corp. v. United States,* 267 U.S. 12, 15 (1925); *Western Auto Supply Co. v. Sullivan,* 210 F.2d 36 (9th Cir.1954); 3A *Corbin on Contracts* § 762 (1951).

[13] Irreparable harm is that which cannot be compensated adequately or conditions cannot be put back the way they were. Plaintiff must show a possibility of irreparable injury "not remediable by damages." *Shoen v. Shoen* 167 Ariz. at 63, 804 P.2d at 792 (App.1990). Monetary damages may provide an adequate remedy at law. *See Cracchiolo v. State,* 135 Ariz. 243, 247, 660 P.2d 494, 498 (App.1983). However, where a loss is uncertain, monetary damages may be inadequate. *See Phoenix Orthopaedic Surgeons, Ltd. v. Peairs,* 164 Ariz. 54, 59, 790 P.2d 752, 757 (App.1989), *overruled on other grounds by Farber,* 194 Ariz. 363, 982 P.2d 1277. To determine whether damages would be an adequate remedy at law, the court should consider "the difficulty of proving damages with reasonable certainty." Restatement (Second) of Contracts § 360 (1981); *see also* Restatement § 352 (damages not recoverable for loss beyond amount established with reasonable certainty); Restatement § 360 cmt. b (damages inadequate remedy if injured party can prove some but not all loss); *Haralson v. Fisher Surveying, Inc.,* 201 Ariz. 1, ¶ 35, 31 P.3d 114, 121 (2001) (McGregor, J., concurring in part and dissenting in part) (Arizona courts generally apply law of the Restatement absent Arizona law to contrary).

[14] See *Dawson v. Withycombe*, 163 P.3d 1034, 1057-58 (Ariz. Ct. App. 2007): "Constructive fraud is "a breach of legal or equitable duty which, without regard to moral guilt or intent of the person charged, the law declares fraudulent because the breach tends to deceive others, violates public or private confidences, or injures public interests." *Lasley v. Helms,* 179 Ariz. 589, 591, 880 P.2d 1135, 1137 (App. 1994). While it does not require a showing of intent to deceive or dishonesty of purpose, it does require a fiduciary or confidential relationship. *Id.* at 592, 880 P.2d at 1138. Most importantly for our purposes, the breach of duty by the person in the confidential or fiduciary relationship must induce justifiable reliance by the other to his detriment. 37 Am.Jur.2d *Fraud and Deceit* § 9 (2001); *Assilzadeh v. Cal. Fed. Bank,* 82 Cal.App.4th 399, 98 Cal.Rptr.2d 176, 187 (2000). *See also In re McDonnell's Estate,* *** 65 Ariz. 248, 252, 179 P.2d 238, 241 (1947) (difference between actual and constructive fraud is that former requires actual intent to

of ER 3.3 and 8.4, Kyle also wants the court to rely on the summary judgment ruling on January 27, 2015 Minute Entry, in opposition to the law of the case in 1 CA-CV 11-0728 and 1 CA-CV 12-0435.[17]

The court wishes to rely on non-final rulings that Fressadi's motion to amend his complaint to add Cave Creek and others as necessary parties was denied and his complaint dismissed, in violation of Arizona Code of Judicial Conduct ("CJC") Rules 1.2, 2.2, 2.3, 2.5 & 2.6.

By staying the trial, Fressadi will be afforded due process to contest the denial of his motion to amend by Special Action, Court of Appeals, 1 CA-SA 18-0009.

"[I]t is well settled that denial of leave to amend a complaint is a proper subject for special action review." *Osuna v. Wal-Mart Stores, Inc.,* 214 Ariz. 286, ¶ 17, 151 P.3d 1267, 1270 (App.

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deceive while other is characterized as breach of a duty actionable irrespective of moral guilt and arising out of a confidential relationship); *Walk v. Ring,* 202 Ariz. 310, 319, ¶ 35 and n. 6, 44 P.3d 990, 999 and n. 6 (2002) (breach of fiduciary duty by fraudulently concealing treatment errors tolls statute of limitations until concealment is discovered or reasonably should be discovered or presumably until plaintiff had actual knowledge of underlying mistreatment)."

[15] **ER 3.3. Candor Toward the Tribunal.**
(a) A lawyer shall not knowingly:
(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false.
(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by ER 1.6. **[NB—information is not protected. *See* Fressadi's 4/19/18 Objection to GV's Limine, pages 3-4.]**
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

[16] **ER 8.4. Misconduct.** It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Code of Judicial Conduct or other law.

[17] Judge Starr's Minute Entries of 6/12/15 and 9/3/15 are also legal error that rise to the level of judicial misconduct.

2007), quoting *Dollar A Day Rent A Car Sys., Inc. v. Superior Court,* 107 Ariz. 87, 89, 482 P.2d 454, 456 (1971).[18]

Dismissing Fressadi's complaint to proceed with counterclaims regarding the same subject matter is a determination that was "arbitrary and capricious or an abuse of discretion." Ariz. R. Proc. Spec. Act., Rule 3(c). Special action review is discretionary but appropriate when there is no "equally plain, speedy, and adequate remedy by appeal," Ariz. R.P. Spec. Act. 1(a), or "[w]here the issue is a purely legal question of first impression, is of statewide importance, and will arise again," *Sanchez v. Gama*, 233 Ariz. 125, 127, ¶ 4 (App. 2013).

Cave Creek's continuing violation of A.R.S. §§ 9-500.12 and 9-500.13 created continuing ***criminal*** violations of mandatory state law and its mandatory zoning and subdivision ordinances to cause the DEMA to be contrary to law and common sense that the Court of Appeals can adjudicate by *sua sponte*.

This issue is purely a legal question of first impression and statewide importance that will likely rise again[19] as illegality dismisses claims, nonconformity is disfavored, and disclosure violations are disfavored, especially those that cause a malfunction of judicial proceedings.[20]

Although the Court's special action jurisdiction is highly discretionary, this case is most appropriate for the exercise of that discretion. *League of Arizona's Cities and Towns v. Martin*, 219 Ariz. 556, 558, ¶4, 201 P.3d 517, 519 (2009).

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[18] Further, in *Ableman v. Booth*, 62 U.S. 506 (1859), the Supreme Court held that state courts cannot issue rulings that contradict the decisions of federal courts, citing the Supremacy Clause. In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the Supreme Court ruled: ""A state statute is void to the extent that it actually conflicts with a valid Federal statute". In effect, this means that a State law will be found to violate the Supremacy Clause when either of the following two conditions (or both) exist: (1) Compliance with both the Federal and State laws is impossible and/or (2) "State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."”

[19] On August 29, 2016, Cave Creek provided evidence of *hundreds* of property owners that have been affected by their admitted Official Policy to violate A.R.S. §§ 9-500.12 & 9-500.13 to cause continuing violations of state law and town ordinances since 2001.

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

GV counterclaims are incongruous to its admission that Fressadi's lots are improper ("illegal") caused by Cave Creek's continuing violation of A.R.S. §§ 9-500.12 and 9-500.13. GV believes its unlawfully subdivided lots and void permits are vested, in opposition to the "presumption of validity" of Cave Creek's Zoning and Subdivision Ordinances. "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." *Village of Euclid v. Ambler Realty Co*., 272 U.S. 365, 388 (1926).

If there is to be a trial on GV's counterclaims, then there must be mandamus to compel Cave Creek to comply with federal and state law and the shall provisions of its own zoning and subdivision ordinances to affirm the illegality of DEMA lots, permits, and improvements. If not, Fressadi could be irreparably harmed because he would have no "equally plain, speedy, and adequate remedy by appeal," Ariz. R. P. Spec. Act. 1(a). If CV2006-014822 is not amended to add claims and indispensible parties based on the Relations Back Doctrine, then his claims may be time barred to cause irreparable harm.

Additionally, due process and equal protection ensures Fressadi's right to be heard and to have a fair trial. Fressadi needs more time to prepare for his first ever jury trial, especially due to his other litigation as a *pro se* without the staff of a law firm and his disadvantage of glaucoma that got worse after he almost died by being hit and run over by a truck—and even worse due to the stress of getting run over by ER, disclosure, and due process violations. Fressadi requires time to cull over ten years and tens of thousands of pages of evidence. Trial court has not yet ruled on Motions in Limine to identify what evidence will be permitted at trial, and has not reviewed Fressadi's list of potential witnesses, leaving him no time to file subpoenas (his right to be heard through witnesses), plus outstanding motions to determine the case status. As such, Fressadi is flying blind to be irreparably harmed if trial were to proceed on May 14, 2018.

3. The balance of hardships favors Fressadi.

Fressadi has been damaged by Cave Creek since 2001 and by GV since 2003. GV failed to provide reciprocal access to the 003 easement *ab initio* in violation of Section 5.1(C)(8) of the Zoning Ordinance to render the DEMA an illegality. GV's alleged blockage claims took place AFTER Fressadi rescinded the DEMA as GV failed to provide *condition precedent* consideration

of binding lots 003 A, B, & C to the DEMA *ab initio*. GV has no standing; none of the GV parties currently own any of the subject property. Fressadi does. GV Group LLC, the executing party of the DEMA, *did not exist nor own any of the 003 lots* when the DEMA was executed. GV and Cave Creek's court misconduct has prolonged this case for 12 years. Public policy favors a trial on the merits, to address ***all*** disputed issues to include Fressadi's claims, not piecemeal litigation.

Due to Cave Creek's and GV's constructive fraud, Fressadi suffered $17.5 Million in actual damages, plus delay damages per A.R.S. §9-500.12(H) due to Cave Creek acting in bad faith totaling **$300+ million** using the Town's metrics per §1.7 of Cave Creek's Zoning Ordinance where each day of continued violation is a separate punishable offense. Fressadi is entitled to treble per A.R.S. §33-420, and treble damages per A.R.S. §13-2314.04 against Cave Creek, its actors, GV, and their attorneys, plus punitive and delay damages from GV and said attorneys to be determined at trial. *See* **EXHIBIT E**, calculated to 5/8/18 and increasing daily.

GV posed as experienced developers, but they were amateurs. This was their first development deal. Golec was not licensed, and used illegal aliens and unlicensed contractors. Their alleged damages were self-inflicted. GV's summary of damages is fraudulent, bloated beyond recognition, and thrown out three (3) times. These damages were struck in 3/16/09 & 5/19/09 Minute Entries, but used by GV at an evidentiary hearing where Fressadi was not permitted to present any evidence in violation of due process. GV's award of damages was reversed in 1 CA-CV 12-0601, ¶30 (Exhibit 11 of 4/19/18 Objection to GV's Limine). In violation of ER 3.3 & 8.4, Kyle continues to raise the struck damages obtained by fraud and violations of due process. GV admitted its alleged damages were "wholly unrelated" and "irrelevant" to the construction and sale of homes on 003 lots. *See* GV's answers to Fressadi's Non-Uniform Interrogatories and Request for Production attached to his GRANTED Motion to Strike GV's damages, Exhibit 1 of 4/17/18 Reply to Motion to Vacate Trial.

GV admits that they began building spec homes on lots 003 B & C only a few weeks prior to Fressadi's rescission of the DEMA due to Kremer's disavowal (*see* page 2 §5, of Exhibit E in 5/2/18 ER Violation Report Request, BATES# FRE00028). GV admitted that the DEMA was not enforceable (see Exhibit 8 of 4/30/18 ER Violation Report Request). GV also admitted that the

DEMA is **VOID** (see GV's Answer to Fressadi's Non-Uniform Interrogatory #13 "DMA... rendered void," Exhibit 8 of 4/17/18 Reply).

As such, Fressadi's amount of damages, and his hardship of having to unravel over a decade of disclosure violations and ER violations, far outweighs any alleged hardship GV may whine about for delay of trial. Any of GV's alleged suffering is self-imposed as this matter would have not existed, or dragged on this long, ***but for***[21] their fraud, misrepresentations, concealments, conspiracy with indispensible parties and attorneys, and their breach of the DEMA *ab initio*. Counter-Claimant Vertes now lives in Florida because he was found guilty of misrepresentation by Arizona's Department of Real Estate to revoke his license on the outcome of this case if he was still here. As such, the "balance of hardships tip[s] sharply" in favor of Fressadi. *Shoen,* 167 Ariz. at 63, 804 P.2d at 792 (quoting *Justice v. Nat'l Collegiate Athletic Ass'n,* 577 F.Supp. 356, 363 (D.Ariz.1983)).

4. Public Policy requires that GV counterclaims be dismissed due to illegality or the Trial be Stayed until Cave Creek strictly complies with Federal and State law and its ordinances to end non-conforming uses, and Fressadi's Complaint be reinstated and amended.

Evidence is irrefutable that Cave Creek has continuously violated A.R.S. §§9-500.12 and 9-500.13 since 2001.[22] By continuously violating A.R.S. §§ 9-500.12 and 9-500.13 since 2001,

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[21] *Standard Chartered PLC v. Price Waterhouse*, 945 P. 2d 317, 344 - Ariz: Court of Appeals, 1st Div., Dept. A 1996: "The dual and independent requirements of transaction causation and loss causation, as we noted in [*Securities Investor Protection Corp. v.*] *Vigman,* [908 F.2d 1461 (9th Cir. 1990), *rev'd,* 503 U.S. 258, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992)], are analogous to the basic tort principle that a plaintiff must demonstrate both "but for" and proximate causation. *Id.* at 1467-68. As the Fifth Circuit stated in [*Huddleston v. Herman & MacLean,* 640 F.2d 534, 549 (5th Cir. 1981), *aff'd in part, rev'd in part,* 459 U.S. 375, 103 S.Ct. 683, 74 L.Ed.2d 548 (1983)], "[t]he plaintiff must prove not only that, had he known the truth, he would not have acted, but in addition that the untruth was in some reasonably direct, or proximate, way responsible for his loss. The causation requirement is satisfied in a Rule 10b-5 case only if the misrepresentation touches upon the reasons for the investment's decline in value." *See also Bastian v. Petren Resources Corp.,* 892 F.2d 680, 685-86 (7th Cir.), *cert. denied,* 496 U.S. 906, 110 S.Ct. 2590, 110 L.Ed.2d 270 (1990) (plaintiffs must demonstrate that misrepresentation caused loss in order to establish liability under Rule 10b-5)."

[22] Maricopa County Assessor's Office knows the property is an unlawful split/subdivision. Per Lisa J. Bowey, Director of Litigation for Maricopa County Assessor's Office in 2014: "If the Court enters a Judgment striking the split(s), please forward a copy of the Judgment to us and we will make the necessary changes." *See also* Fressadi's 9/24/16 Notice before this court containing evidence acquired via the Freedom of Information Act, accompanied by Cave Creek's admission on 8/29/16 that the Town violated §§9-500.12/13 as an Official Policy since 2001.

Cave Creek unlawfully subdivided parcels 010 and 003 into non-conforming subdivisions that are unsuitable for building and unlawful to sell without a final recorded plat as defined per A.R.S. § 9-463(6)[23], in violation of A.R.S. §§ 9-463.02[24] & 9-463.03[25]. Attorneys for the Defendants admit that Cave Creek violated A.R.S. §§9-500.12 and 9-500.13, but **knowingly made false statements of fact and law** to the tribunal that Cave Creek's federal and state law violations and violations of its town ordinances did not affect the subject matter of this lawsuit. ER 3.3(a),(b),(c),(d) & 8.4(a),(b),(c),(d),(f). Further, Defendants and their attorneys committed constructive fraud through disclosure violations, to argue that a Scheduling Order prohibits the introduction of evidence or the filing of dispositive motions after 2010.

At 8 minutes into the pretrial conference on April 27, 2018, Attorney Kyle A. Israel for GV Defendants admitted that Cave Creek required a "little strip" of land to split parcel 003 to then blatantly lie to the court that it was not a lot, when public record indicates its assessor parcel number is 211-10-003D and Kyle's client sold it in 2010. *See* 4/30/18 Request to Report Kyle's ER Violations. Fressadi relied on the material misstatements made by Counterclaimant Keith Vertes and Cave Creek to enter into the DEMA. ***But for*** indispensible parties Cave Creek's Mayor, Zoning Administrator, and Town Clerk attesting that Vertes had dedicated "Parcel A" to the Town of Cave Creek, Fressadi never would have executed the DEMA. *See* n.38 herein.

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[23] **A.R.S. §9-463(6):** "(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."

[24] **A.R.S. §9-463.02(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." [emphasis added]

[25] **A.R.S. §9-463.03:** "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" [emphasis added]. **Vertes sold lot 003A in violation of A.R.S. §9-463.03 as there is no final plat of the four (4) lots in parcel 003.**

Per §1.7(A) of Cave Creek's Zoning Ordinance: "**EVERY DAY of continued violation ***SHALL*** be a separate offence**, punishable as described." (emphasis added) The formation of the subject lots by Cave Creek violate mandatory language of §§1.1, 6.1(A), 6.3(A) of Cave Creek's Subdivision Ordinance and §§1.4 & 1.7 of its Zoning Ordinance that significantly constrains the decision-maker's discretion. *Jacobson v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980).

Public policy requires a court to compel Cave Creek to comply with Federal & State law and its own ordinances to remedy continuing violations and prevent further harm to others. See, e.g., *Scott Rose v. Stephens Inst*., 2016 WL 6393513, at *4 (N.D. Cal. Oct. 28, 2016) ("[a] stay will promote judicial economy by delaying trial—the next step in this case—until these novel legal questions [of liability] . . . are resolved;" *Su v. Siemens Indus., Inc*., 2014 WL 2600539, at *3 (N.D. Cal. June 10, 2014) (staying proceedings where "the potential benefits to resolving the disputed legal questions now outweigh the potential benefits of proceeding to trial now and allowing [having to] appeal later").

Due process requires trial court to comply with mandatory procedures of Rule 52(a) per Fressadi's request herein. Due process requires that Fressadi's claims, which were dismissed without explanation, be reinstated. Due process requires that Fressadi be allowed to amend his Complaint per Rules 15 and 19 to allege added claims arising from Defendants' disclosure violations, predicate acts, and fraud on the court.

CONCLUSION

Fressadi incorporates herein all of his filings since Judge Contes was assigned this case.

"'[T]he balance of hardships tip[s] sharply'" in favor of Fressadi. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. at 411, 132 P.3d at 1191 (internal citations omitted).

Public policy favors trial on the merits that includes Fressadi's claims that were dismissed in manifest error.

Due process requires the Court to provide a finding of fact and conclusion of law per Rule 52(a); to provide Fressadi a meaningful right to be heard; to apply Court of Appeals rulings, and to consider the illegality of the DEMA based on evidence on its face.

Fressadi was harmed by Kyle/GV claiming to cooperate in the pre-trial process, but Kyle

railroaded the process by submitting to Fressadi five (5) *first* drafts only one week prior, four days prior, or on the *same day* the pretrial documents were due, containing *numerous* false statements to address on short notice, intending to file separately *ab initio* in violation of the Court's orders. Fressadi needs more time to amend his partially completed separate pretrial documents, but has been delayed by having to address GV's untimely Motion in Limine, untimely Response to Fressadi's Limine, Bench Memo, pretrial conference, Kyle's response to Fressadi's 4/30/18 Request to Report his ER Violations—all in which Kyle continues to make numerous false statements of fact and law to require the Court's reporting to proper authorities. Fressadi also had conflict because of deadlines at the 9th Circuit to file Petitions on or before April 23, 2018 regarding matters pertaining to this case. These also impacted Fressadi's ability to prepare for trial to cause irreparable harm.

In violation of CJC Rules 1.2, 2.2 comment 4, and 2.6, Fressadi has brought to the court's attention the numerous and prolific transgressions of Rules of Professional Conduct by GV's attorney, and furtherance of GV's constructive fraud by disclosure violations.

To comply with the Supremacy Clause and for reasons stated herein, Fressadi respectfully requests that the trial be stayed until September 14, 2018, or until the Arizona Court of Appeals has reviewed Fressadi's Special Action, if this court does not dismiss GV's counterclaims due to illegality. A stay of trial will allow required time to assess the trial court's previous rulings per Rule 52(a); and to consider the denial of Fressadi's motion to amend and dismissal of his claims for declaratory relief and rescission.

Pursuant to Rule 80(a)(3), under penalty of perjury, Fressadi declares that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 8th day of May, 2018.

/s/ Arek R. Fressadi
AREK R. FRESSADI, Plaintiff *Pro Se*

ORIGINAL E-filed, copies to:

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EXHIBIT A

Recorded Document Search Detail

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Recording Information

Name(s)	Document Code(s)
FRESSADI AREK GV GROUP LLC	EASEMENT AGREEMENT

Recording Date/Time	Recording Number	Pages
10/22/2003 2:44:09 PM	20031472588	5

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SECURITY TITLE AGENCY

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Arek Fressadi
P.O. Box 4791
Cave Creek, AZ 85327

OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL
20031472588 10/22/2003 14:44
ELECTRONIC RECORDING
Other 320308248-5-5-2--

32-32-08248-ST

214

CAPTION HEADING: **DECLARATION OF EASEMENT AND MAINTENANCE AGREEMENT**

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When Recorded Mail To:
Arek Fressadi
PO Box 4791
Cave Creek, AZ 85327

DECLARATION OF DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

Declarants Arek Fressadi and GV Group LLC make this Declaration of Driveway Easement and Maintenance Agreement this 16th day of October 2003. Arek Fressadi is the Owner of Parcels #211-10-010 A, B, & C, and GV Group, LLC is the Owner of Parcels #211-10-003 A, B, C, [collectively known as "the lots"].

Declarants wish to establish a mutual easement for their use and an agreement to improve and maintain the driveway.

NOW, THEREFORE, Declarants hereby declare that the Lots shall be subject to the following easements and covenants, which shall run with each lot or subsequent lots thereof, and shall be binding upon all parties having or acquiring any right, title or interest therein, and shall inure to the benefit of any successor to Declarant in the ownership thereof:

1. Easement. The Lots shall have a perpetual, nonexclusive easement over and upon the Driveway for the purpose of access, maintenance, repair and reconstruction of the Driveway and attendant rock retaining walls, and related utilities. No permanent structure shall be erected or maintained and no party shall obstruct free passage through the Driveway. No party shall use the Driveway for storage of vehicles, boats or any other property.

2. Recording. The easements for ingress and egress are more fully described on the Minor Land Division, Book 631, Page 35, Official Records of Maricopa County Recorder, recorded instrument # 2003-0488178, and Minor Land Division, Book 652, page 28, Official Records of Maricopa County Recorder, recorded instrument #2003-1312578.

3. Caretaker. For so long as Arek Fressadi is a resident and / or owner of one of these properties, Arek Fressadi shall be responsible for the care and maintenance of said Driveway. In the event that Arek Fressadi, is no longer a resident and / or owner, then the Owner(s) of said Lots shall elect a Caretaker by a simple majority vote. Each Lot shall be entitled to one vote. The Caretaker shall provide the Lot Owners an itemized accounting of all maintenance expenses to the easement and the Caretaker shall provide the lot owners a written budget for the next succeeding calendar year on or before December 1st, itemizing the anticipated costs and expenses for maintenance and repair of the driveway and attendant common areas, including any anticipated non recurring costs and expenses. This budget shall be supported, to the extent available, by written estimates, bids and/or contracts for the required maintenance and repair work. Lot owners may, within ten days of receipt of each year's budget, object thereto by giving

written notice thereof to the Caretaker, which said notice shall state with reasonable particularity the reasons for the objection. Within five days of the delivery of such objection to the Caretaker, Lot owners shall meet in order to discuss and attempt to reach agreement on the objection. In the event the parties are unable to reach such an agreement, the parties shall submit the matter to dispute resolution as set forth below.

4. Assessments. A one time driveway improvement fee will be assessed GV Group, LLC, the Owner of Parcels #211-10-003 A, B, C in the amount of $10,483.90, Parcel #211-10-010A in the amount of $10,483.90, Parcel #211-10-010B in the amount of $6,989.27, and parcel #211-10-010C in the amount of $3,494.63.

5. Maintenance. The Owners of the Lots shall be responsible for maintenance of the Driveway, with the cost of such maintenance to be borne by the Owner of each such lot in equal proportions based upon the total number of Lots. The cost of such maintenance shall be assessed to each Lot and a budget itemizing anticipated costs for maintenance and repair shall be furnished to each of the Lot Owners. Such budget shall be supported, to the extent available, by written estimates, bids, and/or contracts for the required maintenance and repair work. Maintenance and repairs of the Driveway shall be undertaken upon obtaining approval of from the majority of the Owners of the Lots. Notwithstanding the foregoing, in the event of an emergency, any Owner may cause the emergency repairs to be undertaken. Each of the Lot Owners shall contribute such Owner's share of the maintenance costs within ten (10) days after written notice from any other Owner. If any Owner shall fail to pay such Owner's share within thirty (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.

6. Damage to Driveway. In the event of damage to the Driveway because of the negligence of any Owner, or such Owner's agents, invitees or contractors, or due to construction or repair work performed on behalf of any owner, such owner shall be solely responsible for repairing the damage.

7. Indemnification. The Owner of each Lot shall forever defend, indemnify and hold the other Owners harmless from any claim, loss or liability arising out of or in any way connected with that Owner's use of the easements created by this Declaration.

8. Benefits and Burdens. The benefits and burdens of the easements and covenants contained in this Declaration shall run with the Lot so benefited or burdened. Such easements are also for the benefit of any present or future mortgagees or holders of trust deeds on any portion of the Lots and may not be amended, repealed or modified without the written consent of each such mortgagee or beneficiary.

9. Disputes. In the event of any dispute among the parties regarding their obligations under this Declaration, such matter shall be presented to the Caretaker for resolution. The determination of the Caretaker shall be binding upon the parties.

10. Remedies. In the event of any breach of the provisions of this Declaration, the aggrieved party or parties shall be entitled to exercise any remedy provided by law or equity, including the remedies of injunction and/or specific performance. In the event litigation is commenced to enforce the provisions of this Declaration, the prevailing party shall recover from the other party, in addition to all other costs and damages, reasonable attorneys' fees at trial, in arbitration or upon any appeal or petition for review thereof.

11. Notices. Any notice under tbis Declaration shall be in writing and shall be effective when actually delivered, or if mailed, posted as certified mail, return receipt requested, postage prepaid. Mail shall be directed to the mail address of the lot in question, if a dwelling has been constructed on such Lot, or if no dwelling has been constructed on such Lot, to the address of the record owner at the address for tax statements as shown on the real property tax records of Maricopa County, Arizona, or to such other address as the owner may specify by notice to the other owners.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first set forth above.

Arek Fressadi

Keith Vertes
GV Group, LLC

Acknowledgment of Arek Fressadi

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16TH day of October 2003, 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.

CAROL R. THOMSON
Notary Public – Arizona
Maricopa County
Expires 02/15/07

Carol R. Thomson
Notary Public for Arizona
Residing at: 6300 E. Cave Creek Rd *
My commission expires: 2/15/07
* Cave Creek, AZ

Acknowledgment of Keith Vertes

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16TH day of October 2003, before me, a notary public for said state, personally appeared Keith Vertes, GV Group, LLC, known or identified to me to be the person who executed the within instrument on behalf of the said entity.

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

CAROL R. THOMSON
Notary Public – Arizona
Maricopa County
Expires 02/15/07

Carol R. Thomson
Notary Public for Arizona
Residing at: 6300 E. Cave Creek Rd. *
My commission expires: 2/15/07
* Cave Creek, AZ

EXHIBIT B

L-01-10

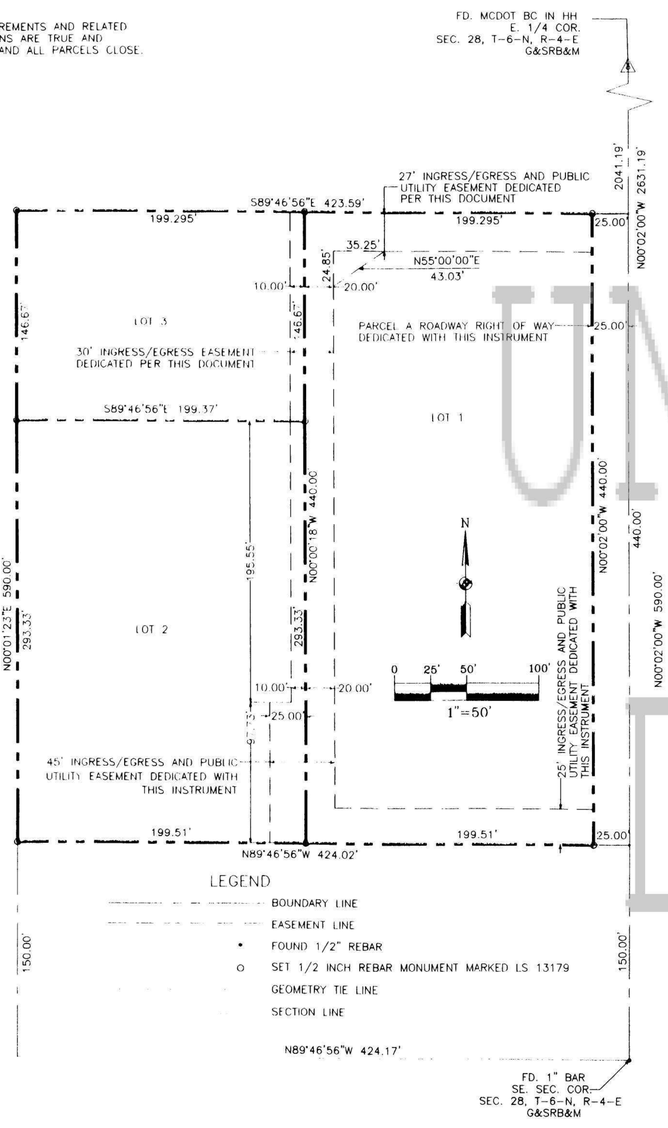
MINOR LAND DIVISION

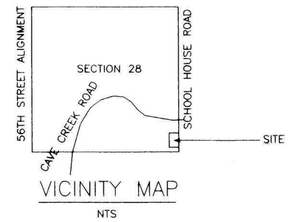
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

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.





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 — 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

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@millerlls.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
Date Signed
ARIZONA U.S.A.

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

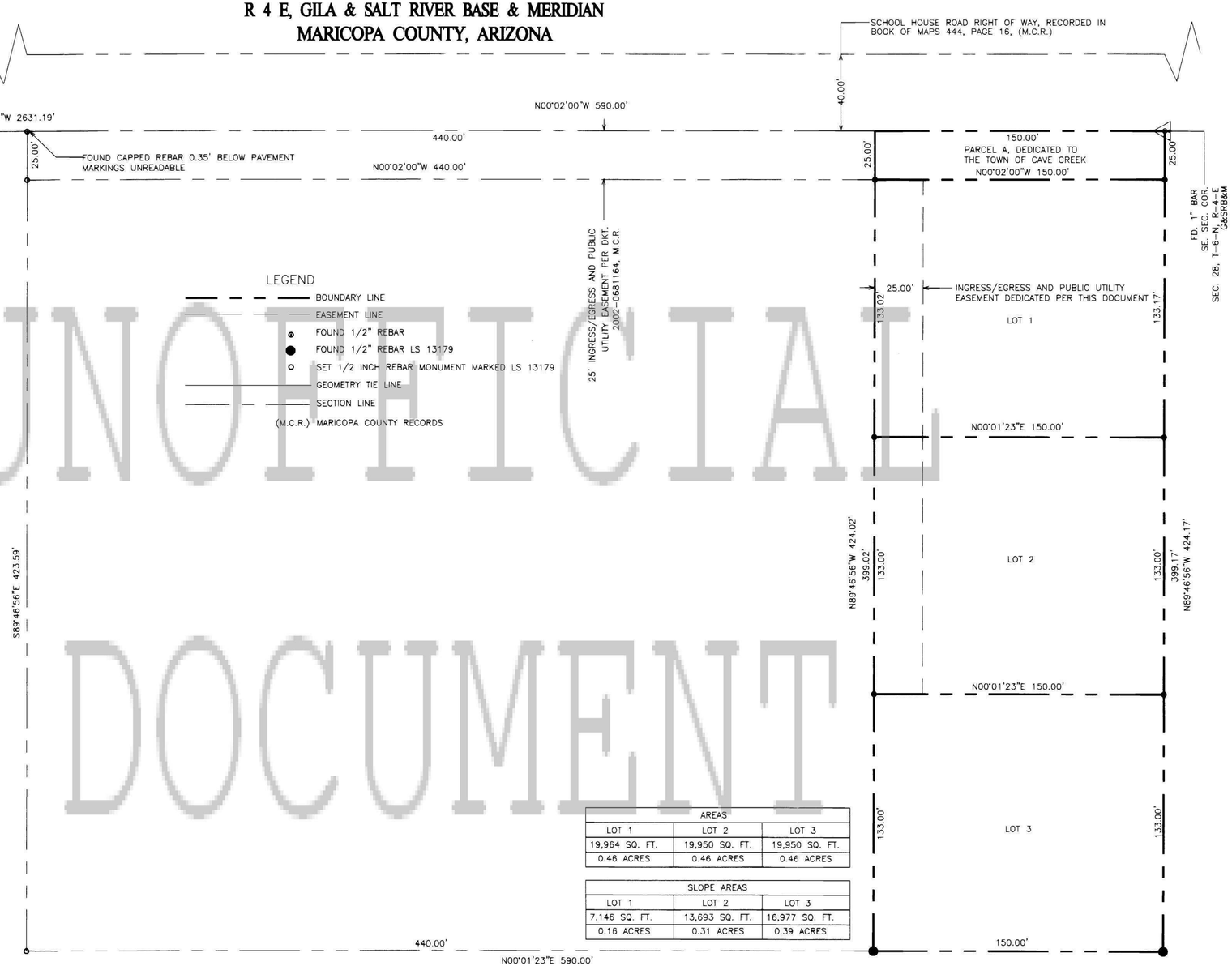
EXHIBIT C

L-03-03

652-28

BOOK 652 PAGE 28
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2003 – 1312578
09/18/2003 02:38 PM

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



AREAS		
LOT 1	LOT 2	LOT 3
19,964 SQ. FT.	19,950 SQ. FT.	19,950 SQ. FT.
0.46 ACRES	0.46 ACRES	0.46 ACRES

SLOPE AREAS		
LOT 1	LOT 2	LOT 3
7,146 SQ. FT.	13,693 SQ. FT.	16,977 SQ. FT.
0.16 ACRES	0.31 ACRES	0.39 ACRES

N

0 15' 30' 60'

SCALE: 1"=30'

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°46'56"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.

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;
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.

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°46'56"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 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°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.

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 KEITH VERTES 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 VERTES — DATE

Vincent Francia, MAYOR, Town of Cave Creek — 9/18/03 Date

DIRECTOR OF PLANNING — 9/16/03 DATE

TOWN CLERK, 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

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.

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

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.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 16TH DAY OF ~~September~~ OF 2003.

ATTESTED:

DIRECTOR OF PLANNING — 9/16/03 DATE

Vincent Francia, Mayor, Town of Cave Creek — 9/18/03 Date

TOWN CLERK, TOWN OF CAVE CREEK — 9/16/03 DATE

CIVIL ENGINEERING
LAND SURVEYING
CBR CONSULTANTS

ARVEL R. JONES, P.L.S.
PRINCIPAL
RALPH D. NISENBAUM, P.E.
PRINCIPAL

16021 N. 30TH STREET #101
PHOENIX, ARIZONA 85032
PHONE: 602.253.6464
FAX: 602.867.3368
e-mail: rdnisenbaum@cox.net

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

JOB NUMBER: M3-006
JOB NAME: Keith Vertes Lot Split

FILE LOCATION:
C:\Land Projects\M3-006 Cybernetics Lot Split\Cybernetics Keith Vertes.dwg

EXHIBIT D

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Taxonomy upgrade extras

constitution

‹ Article V up Article VII ›

Supremacy Clause

See Preemption; constitutional clauses.

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.

Last updated in June of 2017 by Stephanie Jurkowski.
Keywords: U.S. CONSTITUTION
Supremacy Clause
federal preemption
wex: CIVICS
government
the Constitution
wex definitions

Fifth Amendment

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids "double jeopardy," and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property for public use.

Learn more...

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Wex Resources

Fifth Amendment

Criminal Law / Criminal Procedure

Due Process

Substantive Due Process

Miranda Warning

Indictment

Privilege Against Self-Incrimination

Self-Incrimination

Grand Jury

Jury

Double Jeopardy

14th Amendment

The Fourteenth Amendment addresses many aspects of citizenship and the rights of citizens. The most commonly used -- and frequently litigated -- phrase in the amendment is "equal protection of the laws", which figures prominently in a wide variety of landmark cases, including Brown v. Board of Education (racial discrimination), Roe v. Wade (reproductive rights), Bush v. Gore (election recounts), Reed v. Reed (gender discrimination), and University of California v. Bakke (racial quotas in education). See more...

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each

House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

wex resources

Section 1.

Privileges and Immunities Clause

Civil Rights

Slaughterhouse Cases

Due Process

Substantive Due Process

Right of Privacy: Personal Autonomy

Territorial Jurisdiction

Equal Protection

Plessy v. Ferguson (1896)

Plyer v. Doe (1982)

Section 4.

Debt

Section 5.

Enforcement Power

Commerce Clause

‹ 13th Amendment up 15th Amendment ›

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VIEW DOCUMENT

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

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.

VIEW DOCUMENT

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.

VIEW DOCUMENT

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.

VIEW DOCUMENT

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, 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 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.

C. The appeal shall be in writing and filed with or mailed to a hearing officer designated by the city or town within thirty days after the final 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 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 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.

F. The hearing officer shall decide the appeal within five working days after the appeal is heard. If 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, 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, 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 but that will not render moot any decision upholding the dedication, 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.

VIEW DOCUMENT

9-500.13. Compliance with court decisions

A city or town or an agency or instrumentality of a city or town shall comply with the United States supreme court cases of Dolan v. City of Tigard, ____ U.S. ____ (1994), Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, ____ U.S. ____ (1992), and First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987), and Arizona and federal appellate court decisions that are binding on Arizona cities and towns interpreting or applying those cases.

VIEW DOCUMENT

12-1101. Parties; claim; service on attorney general

A. An action to determine and quiet title to real property may be brought by any one having or claiming an interest therein, whether in or out of possession, against any person or the state when such person or the state claims an estate or interest in the real property which is adverse to the party bringing the action.

B. When the state is made defendant a copy of the summons and complaint shall be served upon the attorney general.

VIEW DOCUMENT

12-1102. Complaint

The complaint shall:

1. Be under oath.

2. Set forth generally the nature and extent of plaintiff's estate.

3. Describe the premises.

4. State that plaintiff is credibly informed and believes defendant makes some claim adverse to plaintiff. When the state is made defendant, the complaint shall set forth with particularity or on information or belief the claim of the state adverse to plaintiff.

5. Pray for establishment of plaintiff's estate and that defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to plaintiff.

VIEW DOCUMENT

12-1103. Disclaimer of interest and recovery of costs; request for quit claim deed; disclaimer of interest by state

A. If defendant, other than the state, appears and disclaims all right and title adverse to plaintiff, he shall recover his costs.

B. If a party, twenty days prior to bringing the action to quiet title to real property, requests the person, other than the state, holding an apparent adverse interest or right therein to execute a quit claim deed thereto, and also tenders to him five dollars for execution and delivery of the deed, and if such person refuses or neglects to comply, the filing of a disclaimer of interest or right shall not avoid the costs and the court may allow plaintiff, in addition to the ordinary costs, an attorney's fee to be fixed by the court.

C. If, after appropriate investigation, it appears to the attorney general that the state claims no right or title to the property adverse to plaintiff, he may file a disclaimer of right and title.

VIEW DOCUMENT

12-1104. Allegation of lien or interest claimed by adverse party; jurisdiction of court to enter decree

A. In an action to quiet title to real property, if the complaint sets forth that any person or the state has or claims an interest in or a lien upon the property, and that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall hear evidence thereon.

B. If it is proved that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall have jurisdiction to enter judgment and plaintiff shall be entitled to judgment barring and forever estopping assertion of the interest or lien in or to or upon the real property adverse to plaintiff.

VIEW DOCUMENT

13-2314.04. Racketeering; unlawful activity; civil remedies by private cause of action; definitions

A. A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity, or by a violation of section 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation. If the person against whom a racketeering claim has been asserted, including a lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim. No person may rely on any conduct that would have been actionable as fraud in the purchase or sale of securities to establish an action under this section except an action against a person who is convicted of a crime in connection with the fraud, in which case the period to initiate a civil action starts to run on the date on which the conviction becomes final.

B. The superior court has jurisdiction to prevent, restrain and remedy a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity, after making provision for the rights of all innocent persons affected by the violation and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Before a determination of liability these orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to damage or other remedies or restraints pursuant to this section as the court deems proper.

D. After a determination of liability these orders may include, but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.

2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

3. Ordering dissolution or reorganization of any enterprise.

4. Ordering the payment of up to treble damages to those persons injured by a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity.

5. Prejudgment interest on damages, except that prejudgment interest may not be awarded on any increase in the damages authorized under paragraph 4 of this subsection.

6. A person or enterprise that acquires any property through an offense included in the definition of racketeering in section 13-2301, subsection D or a violation of section 13-2312 is an involuntary trustee. The involuntary trustee and any other person or enterprise, except a bona fide purchaser for value who is reasonably without notice of the unlawful conduct and who is not knowingly taking part in an illegal transaction, hold the property, its proceeds and its fruits in constructive trust for the benefit of persons entitled to remedies under this section.

E. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any civil proceedings. For the purpose of this subsection, a conviction may result from a verdict or plea including a no contest plea.

F. Notwithstanding any law prescribing a lesser period but subject to subsection A of this section, the initiation of civil proceedings pursuant to this section shall be commenced within 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.

G. The standard of proof in actions brought pursuant to this section is the preponderance of evidence test.

H. A person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. This requirement is jurisdictional. The notice shall identify the action, the person and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under section 13-2314 or to intervene in a pending action nor does it authorize the person to name this state or the attorney general as a party to the action.

I. On timely application, the attorney general may intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. On intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general has instituted a separate action.

J. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting section 13-2301, 13-2312, 13-2313, 13-2314.01, 13-2314.02 or 13-2315 or this section.

K. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other previous or subsequent civil or criminal action under this title or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive, except that a person may not recover, for an action brought pursuant to this section, punitive damages or emotional injury damages in the absence of bodily injury.

L. A natural person shall not be held liable in damages or for other relief pursuant to this section based on the conduct of another unless the fact finder finds by a preponderance of the evidence that the natural person authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the other. An enterprise shall not be held liable in damages or for other relief pursuant to this section based on the conduct of an agent, unless the fact finder finds by a preponderance of the evidence that a director or high managerial agent performed, authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the agent. A bank or savings and loan association insured by the federal deposit insurance corporation or a credit union insured by the national credit union administration shall not be held liable in damages or for other relief pursuant to this section for conduct proscribed by section 13-2317, subsection B, paragraph 1, based on acquiring or maintaining an interest in or transporting, transacting, transferring or receiving funds belonging to a person other than the person presenting the funds, unless the fact finder finds by a preponderance of the

M. Notwithstanding subsection A of this section, a court shall not award costs, including attorney fees, if the award would be unjust because of special circumstances, including the relevant disparate economic position of the parties or the disproportionate amount of the costs, including attorney fees, to the nature of the damage or other relief obtained.

N. If the court determines that the filing of any pleading, motion or other paper under this section was frivolous or that any civil action or proceeding was brought or continued under this section in bad faith, vexatiously, wantonly or for an improper or oppressive reason, it shall award a proper sanction to deter this conduct in the future that may include the costs of the civil action or proceeding, including the costs of investigation and reasonable attorney fees in the trial and appellate courts.

O. Notwithstanding any other law, a complaint, counterclaim, answer or response filed by a person in connection with a civil action or proceeding under this section shall be verified by at least one party or the party's attorney. If the person is represented by an attorney, at least one attorney of record shall sign any pleading, motion or other paper in the attorney's individual name and shall state the attorney's address.

P. The verification by a person or the person's attorney and the signature by an attorney required by subsection O of this section constitute a certification by the person or the person's attorney that the person or the person's attorney has carefully read the pleading, motion or other paper and, based on a reasonable inquiry, believes all of the following:

1. It is well grounded in fact.

2. It is warranted by existing law or there is a good faith argument for the extension, modification or reversal of existing law.

3. It is not made for any bad faith, vexatious, wanton, improper or oppressive reason, including to harass, to cause unnecessary delay, to impose a needless increase in the cost of litigation or to force an unjust settlement through the serious character of the averment.

Q. If any pleading, motion or other paper is signed in violation of the certification provisions of subsection P of this section, the court, on its own motion or on the motion of the other party and after a hearing and appropriate findings of fact, shall impose on the person who verified it or the attorney who signed it, or both, a proper sanction to deter this conduct in the future, including the costs of the proceeding under subsection N of this section.

R. If any pleading, motion or other paper includes an averment of fraud or coercion, it shall state these circumstances with particularity with respect to each defendant.

S. In any civil action or proceeding under this section in which the pleading, motion or other paper does not allege a crime of violence as a racketeering act:

1. The term "racketeer" shall not be used in referring to any person.

2. The terms used to refer to acts of racketeering or a pattern of racketeering activity shall be "unlawful acts" or "a pattern of unlawful

T. In this section, unless the context otherwise requires:

1. "Acquire" means for a person to do any of the following:

(a) Possess.

(b) Act so as to exclude another person from using the person's property except on the person's own terms.

(c) Bring about or receive the transfer of any interest in property, whether to himself or to another person, or to secure performance of a service.

2. "Gain" means any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.

3. "Pattern of racketeering activity" means either:

(a) At least two acts of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii), (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv) or (xxvi) that meet the following requirements:

(i) The last act of racketeering activity that is alleged as the basis of the claim occurred within five years of a prior act of racketeering.

(ii) The acts of racketeering that are alleged as the basis of the claim were related to each other or to a common external organizing principle, including the affairs of an enterprise. Acts of racketeering are related if they have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.

(iii) The acts of racketeering that are alleged as the basis of the claim were continuous or exhibited the threat of being continuous.

(b) A single act of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi), (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

4. "Proceeds" means any interest in property of any kind acquired through or caused by an act or omission, or derived from the act or omission, directly or indirectly, and any fruits of this interest, in whatever form.

VIEW DOCUMENT

33-420. False documents; liability; special action; damages; violation; classification

A. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

B. The owner or beneficial title holder of the real property may bring an action pursuant to this section in the superior court in the county in which the real property is located for such relief as is required to immediately clear title to the real property as provided for in the rules of procedure for special actions. This special action may be brought based on the ground that the lien is forged, groundless, contains a material misstatement or false claim or is otherwise invalid. The owner or beneficial title holder may bring a separate special action to clear title to the real property or join such action with an action for damages as described in this section. In either case, the owner or beneficial title holder may recover reasonable attorney fees and costs of the action if he prevails.

C. A person who is named in a document which purports to create an interest in, or a lien or encumbrance against, real property and who knows that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid shall be liable to the owner or title holder for the sum of not less than one thousand dollars, or for treble actual damages, whichever is greater, and reasonable attorney fees and costs as provided in this section, if he wilfully refuses to release or correct such document of record within twenty days from the date of a written request from the owner or beneficial title holder of the real property.

D. A document purporting to create an interest in, or a lien or encumbrance against, real property not authorized by statute, judgment or other specific legal authority is presumed to be groundless and invalid.

E. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is guilty of a class 1 misdemeanor.

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.

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.

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. 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 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.

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.

EXHIBIT E

Actual Damages

Actual Costs 2000- 2016

211-10-010 land/ home / office	$378,628.58
Utilities	$123,576.88
Driveway	$123,844.40
Encroachment	$13,797.92
Permits	$12,860.94
Land planning	$76,994.87
Attorney Fees	$293,036.53
	$1,022,740.12

Investment Backed Expectations

Schoolhouse project- Tierra Fressadi

Acreage		5.73	acres
	square footage	249,598.80	
R1-18 min lot size sq. ft.		18,000.00	
	# of lots	13.87	
	w/ environmental plus	15.25	say 14 lots

Build 14 adobe/stone homes ~3,000 square feet @ $100 a foot

Item / Description		Cost per unit	/ ft.	Sub / Supplier	Total Cost
Land cost		$20,714.29			$290,000.00
	Office TIs	$1,785.71			$25,000.00
	preliminary plan	$1,785.71			$25,000.00
	final map	$892.86			$12,500.00
subtotal Land costs		$25,178.57			$352,500.00
Indirect Costs					
	Accounting	$214.29			$3,000.00
	Appraisal	$214.29			$3,000.00
	Insurance	$357.14			$5,000.00
	Interest	$2,517.86			$35,250.00
	Legal	$4,285.71			$60,000.00
subtotal Indirect costs		$7,589.29			$106,250.00

Offsites				
	Grading	$1,285.71		$18,000.00
	Landscape vegetation	$1,285.71		$18,000.00
	Cobblestone	$2,142.86		$30,000.00
	Civil engineering	$1,071.43		$15,000.00
	Sewer	$5,714.29		$80,000.00
	Water	$2,857.14		$40,000.00
	APS	$642.86		$9,000.00
	Black Mountain Gas	$71.43		$1,000.00
	Cable Telephone	$178.57		$2,500.00
subtotal Offsites		$15,250.00		$213,500.00
Total land costs		$48,017.86		$672,250.00
SFR per unit costs				
Architecture		$3,000.00		$36,000.00
Engineering		$2,000.00		$24,000.00
Zoning / Permits / Entitlements		$6,000.00	Cave creek	$72,000.00
Utilities / Service		$250.00		$3,000.00
Sewer hookup		$250.00	Steve- Red Mtn.	$3,000.00
Water meter		$200.00	Cave Creek Water	$2,400.00
Foundation / concrete		$22,000.00	Beckon Homes	$264,000.00
	Soil Treatment	$1,000.00	Don's Termite	$12,000.00
Carpentry Rough		$12,000.00	Scenic Vistas LLC	$144,000.00
	Lumber	$6,000.00	Miller Wholesale	$72,000.00
	Trusses	$5,000.00	Arizona Arches	$60,000.00
	Hardware Rough	$750.00	Home Depot	$9,000.00
Glazing/ Mirrors		$3,600.00	4 Peaks	$43,200.00
Plumbing		$8,000.00	JD Moyer	$96,000.00
	plumbing fixtures	$4,000.00	Home Depot	$48,000.00
	sprinklers	$2,000.00	Dew's Fire sprinklers	$24,000.00
Electric		$8,000.00		$96,000.00
Electric Fixtures		$1,500.00	Edson	$18,000.00
HVAC		$12,000.00	Economy	$144,000.00
Masonry Labor		$10,000.00	Tres Amigos	$120,000.00
	Adobe block & materials	$8,000.00	Old Pueblo	$96,000.00
	mortar	$2,000.00	Tres Amigos	$24,000.00
	transportation	$2,600.00	Tres Amigos	$31,200.00
	Prefab fireplaces	$1,000.00	Arizona Wholesale Supply	$12,000.00

Roofing system		$10,000.00	Paul's foam	$120,000.00
Insulation		$2,500.00	Mesa Insulation	$30,000.00
Stucco		$1,500.00	Arizona Wall Systems	$18,000.00
Drywall		$5,500.00	Arizona Wall Systems	$66,000.00
Finish Lumber/ Doors/ Jambs		$6,500.00	Home Depot	$78,000.00
Cabinets		$8,900.00	Gene	$106,800.00
Counter Tops		$4,000.00	Tres Amigos	$48,000.00
Travertine		$2,500.00	Tres Amigos	$30,000.00
Carpentry Finish		$1,500.00	Scenic Vistas LLC	$18,000.00
Hardware Finish		$500.00	Scenic Vistas LLC	$6,000.00
Garage Doors		$1,500.00	Lodi	$18,000.00
Painting		$5,000.00	Desert Canyon Painting, Inc.	$60,000.00
Appliances		$8,000.00	Arizona Wholesale Supply	$96,000.00
Tile / Stone labor		$4,500.00	Arizona Tile	$54,000.00
Tract Labor		$1,500.00	Tres Amigos	$18,000.00
Carpeting - Finish Floors		$2,500.00	Carpet One	$30,000.00
Grading Finish - Remove Debris		$2,500.00	Deen Phillips	$30,000.00
Driveway		$2,500.00	Tres Amigos	$30,000.00
House and Window Cleaning		$1,500.00	Tres Amigos	$18,000.00
Landscape - Sprinklers		$5,000.00	Tres Amigos	$60,000.00
Adobe privacy walls		$4,500.00	Tres Amigos	$54,000.00
Pool		$25,000.00		$300,000.00
General Conditions		$2,500.00	Scenic Vistas LLC	$30,000.00
Contingencies		$2,500.00	Scenic Vistas LLC	$30,000.00
Total Hard Cost		$273,978.57		$3,368,600.00
Sales Price		$1,250,000.00		$15,000,000.00
	commissions	-$50,000.00		-$600,000.00
	title & closing	-$12,500.00		-$150,000.00
Net Profit		**$913,521.43**		**$10,881,400.00**
Initial investment				**$1,022,740.12**
Compound Interest on Net profit and initial investment since 2006				**$5,852,414.99**
TOTAL ACTUAL DAMAGES				**$17,756,555.11**

Metric for Delay damages- Zoning Code Violation Fine structure, Section 1.7 of the Zoning Ordinance

A.R.S. 9-500.12(H) / Section 1.7 Zoning violation penalties per 2003 Zoning Code from 2001 to 12/21/2005

Violation Permit Variance	Issued / Approved	Description	Change Ordinance	Count days	AMRRP Cave Creek
unlawful subdivision	12/31/01	211-10-010 A, B, C, & D	12/21/05	1431	$28,620,000
#02-057	3/12/02	211-10-010 driveway	12/21/05	1359	$27,180,000
#02-058	3/12/02	211-10-010 driveway	12/21/05	1359	$27,180,000
#02-256	7/3/02	sewer lot 211-10-010 A	12/21/05	1248	$24,960,000
#02-260	7/3/02	sewer lot 211-10-010 B	12/21/05	1248	$24,960,000
#02-263	7/3/02	sewer lot 211-10-010 C	12/21/05	1248	$24,960,000
2002-031	7/3/02	ROW sewer	12/21/05	1248	$24,960,000
unlawful subdivision	9/18/03	211-10-003A, B, C, & D	12/21/05	813	$16,260,000
false recording	9/18/03	211-10-003A, B, C, & D ARS 33-420 treble damages	12/21/05	813	$48,780,000
#03-475	11/25/03	sewer lot 211-10-003 A	12/21/05	746	$14,920,000
#05-095	3/2/05	sewer lot 211-10-003 B	12/21/05	289	$5,780,000
#03-497	11/25/03	sewer lot 211-10-003 C	12/21/05	746	$14,920,000
#04-269	3/26/04	SFR lot 211-10-003 B	12/21/05	625	$12,500,000
#04-655	8/17/05	SFR lot 211-10-003 C	12/21/05	124	$2,480,000
Failure to follow ARS 9-500.12/13	10/1/01		12/21/05	1520	$30,400,000

A.R.S. 9-500.12(H) / Section 1.7 Zoning violation penalties per revised 2005 Zoning Code

Violation Permit Variance	Issued / Approved	Description	Today's Date	Count days	AMRRP Cave Creek
unlawful subdivision	12/22/05	211-10-010 A, B, C, & D	5/8/18	4456	$2,228,000
#02-057	12/22/05	211-10-010 driveway	5/8/18	4456	$2,228,000
#02-058	12/22/05	211-10-010 driveway	5/8/18	4456	$2,228,000
#02-256	12/22/05	sewer lot 211-10-010 A	5/8/18	4456	$2,228,000
#02-260	12/22/05	sewer lot 211-10-010 B	5/8/18	4456	$2,228,000
#02-263	12/22/05	sewer lot 211-10-010 C	5/8/18	4456	$2,228,000
2002-031	12/22/05	ROW sewer	5/8/18	4456	$2,228,000
unlawful subdivision	12/22/05	211-10-003 A, B, C, & D	5/8/18	4456	$2,228,000
false recording	9/18/03	211-10-003A, B, C, & D ARS 33-420 treble damages	5/8/18	5270	$7,905,000
#03-475	12/22/05	sewer lot 211-10-003 A	5/8/18	4456	$2,228,000
#05-095	12/22/05	sewer lot 211-10-003 B	5/8/18	4456	$2,228,000
#03-497	12/22/05	sewer lot 211-10-003 C	5/8/18	4456	$2,228,000
#04-269	12/22/05	SFR lot 211-10-003 B	5/8/18	4456	$2,228,000
#04-655	12/22/05	SFR lot 211-10-003 C	5/8/18	4456	$2,228,000
#04-655	12/22/05	003C transfer to REEL	5/8/18	4456	$2,228,000
#06-225	12/22/05	SFR lot 211-10-003 A	5/8/18	4456	$2,228,000

B-09-03	12/22/05	variance 211-10-003 C	5/8/18	4456	$2,228,000
B-10-01	12/22/05	variance 211-10-003 B	5/8/18	4456	$2,228,000
010A lot split	11/22/14	lot split of a non-conforming subdivided parcel	5/8/18	1246	$623,000
010L permit	6/3/15	void permit per zoning Ordinance	5/8/18	1055	$527,500
010N permit	6/3/15	void permit per zoning Ordinance	5/8/18	1055	$527,500
Failure to follow ARS 9-500.12 /13	12/22/05		5/8/18	4456	$2,228,000
Total Delay Damages					**$378,547,000**

Total Actual and Delay Damages pursuant to ARS 9-500.12	**$17,756,555.11**
Total Delay Damages per section 1.7 Zoning Ord and ARS 9-500.12(H)	**$378,547,000.00**
Total Actual and Delay Damages per Section 1.7 Zoning Ord. and ARS 9-500.12(H)	**$396,303,555.11**
Treble Damages pursuant to ARS 13-2314.04	**$1,188,910,665.33**

EXHIBIT 10

Recorded Document Search Detail

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Recording Information

Name(s)	Document Code(s)
FRESSADI AREK GV GROUP LLC	EASEMENT AGREEMENT

Recording Date/Time	Recording Number	Pages
10/22/2003 2:44:09 PM	20031472588	5

View Unofficial Documents by clicking the number above.

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SECURITY TITLE AGENCY

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Arek Fressadi
P.O. Box 4791
Cave Creek, AZ 85327

OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL
20031472588 10/22/2003 14:44
ELECTRONIC RECORDING
Other 320308248-5-5-2--

32-32-08248-ST

214

CAPTION HEADING: **DECLARATION OF EASEMENT AND MAINTENANCE AGREEMENT**

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Cave Creek, AZ 85327

DECLARATION OF DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

Declarants Arek Fressadi and GV Group LLC make this Declaration of Driveway Easement and Maintenance Agreement this 16th day of October 2003. Arek Fressadi is the Owner of Parcels #211-10-010 A, B, & C, and GV Group, LLC is the Owner of Parcels #211-10-003 A, B, C, [collectively known as "the lots"].

Declarants wish to establish a mutual easement for their use and an agreement to improve and maintain the driveway.

NOW, THEREFORE, Declarants hereby declare that the Lots shall be subject to the following easements and covenants, which shall run with each lot or subsequent lots thereof, and shall be binding upon all parties having or acquiring any right, title or interest therein, and shall inure to the benefit of any successor to Declarant in the ownership thereof:

1. Easement. The Lots shall have a perpetual, nonexclusive easement over and upon the Driveway for the purpose of access, maintenance, repair and reconstruction of the Driveway and attendant rock retaining walls, and related utilities. No permanent structure shall be erected or maintained and no party shall obstruct free passage through the Driveway. No party shall use the Driveway for storage of vehicles, boats or any other property.

2. Recording. The easements for ingress and egress are more fully described on the Minor Land Division, Book 631, Page 35, Official Records of Maricopa County Recorder, recorded instrument # 2003-0488178, and Minor Land Division, Book 652, page 28, Official Records of Maricopa County Recorder, recorded instrument #2003-1312578.

3. Caretaker. For so long as Arek Fressadi is a resident and / or owner of one of these properties, Arek Fressadi shall be responsible for the care and maintenance of said Driveway. In the event that Arek Fressadi, is no longer a resident and / or owner, then the Owner(s) of said Lots shall elect a Caretaker by a simple majority vote. Each Lot shall be entitled to one vote. The Caretaker shall provide the Lot Owners an itemized accounting of all maintenance expenses to the easement and the Caretaker shall provide the lot owners a written budget for the next succeeding calendar year on or before December 1st, itemizing the anticipated costs and expenses for maintenance and repair of the driveway and attendant common areas, including any anticipated non recurring costs and expenses. This budget shall be supported, to the extent available, by written estimates, bids and/or contracts for the required maintenance and repair work. Lot owners may, within ten days of receipt of each year's budget, object thereto by giving

written notice thereof to the Caretaker, which said notice shall state with reasonable particularity the reasons for the objection. Within five days of the delivery of such objection to the Caretaker, Lot owners shall meet in order to discuss and attempt to reach agreement on the objection. In the event the parties are unable to reach such an agreement, the parties shall submit the matter to dispute resolution as set forth below.

4. Assessments. A one time driveway improvement fee will be assessed GV Group, LLC, the Owner of Parcels #211-10-003 A, B, C in the amount of $10,483.90, Parcel #211-10-010A in the amount of $10,483.90, Parcel #211-10-010B in the amount of $6,989.27, and parcel #211-10-010C in the amount of $3,494.63.

5. Maintenance. The Owners of the Lots shall be responsible for maintenance of the Driveway, with the cost of such maintenance to be borne by the Owner of each such lot in equal proportions based upon the total number of Lots. The cost of such maintenance shall be assessed to each Lot and a budget itemizing anticipated costs for maintenance and repair shall be furnished to each of the Lot Owners. Such budget shall be supported, to the extent available, by written estimates, bids, and/or contracts for the required maintenance and repair work. Maintenance and repairs of the Driveway shall be undertaken upon obtaining approval of from the majority of the Owners of the Lots. Notwithstanding the foregoing, in the event of an emergency, any Owner may cause the emergency repairs to be undertaken. Each of the Lot Owners shall contribute such Owner's share of the maintenance costs within ten (10) days after written notice from any other Owner. If any Owner shall fail to pay such Owner's share within thirty (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.

6. Damage to Driveway. In the event of damage to the Driveway because of the negligence of any Owner, or such Owner's agents, invitees or contractors, or due to construction or repair work performed on behalf of any owner, such owner shall be solely responsible for repairing the damage.

7. Indemnification. The Owner of each Lot shall forever defend, indemnify and hold the other Owners harmless from any claim, loss or liability arising out of or in any way connected with that Owner's use of the easements created by this Declaration.

8. Benefits and Burdens. The benefits and burdens of the easements and covenants contained in this Declaration shall run with the Lot so benefited or burdened. Such easements are also for the benefit of any present or future mortgagees or holders of trust deeds on any portion of the Lots and may not be amended, repealed or modified without the written consent of each such mortgagee or beneficiary.

9. Disputes. In the event of any dispute among the parties regarding their obligations under this Declaration, such matter shall be presented to the Caretaker for resolution. The determination of the Caretaker shall be binding upon the parties.

10. Remedies. In the event of any breach of the provisions of this Declaration, the aggrieved party or parties shall be entitled to exercise any remedy provided by law or equity, including the remedies of injunction and/or specific performance. In the event litigation is commenced to enforce the provisions of this Declaration, the prevailing party shall recover from the other party, in addition to all other costs and damages, reasonable attorneys' fees at trial, in arbitration or upon any appeal or petition for review thereof.

11. Notices. Any notice under tbis Declaration shall be in writing and shall be effective when actually delivered, or if mailed, posted as certified mail, return receipt requested, postage prepaid. Mail shall be directed to the mail address of the lot in question, if a dwelling has been constructed on such Lot, or if no dwelling has been constructed on such Lot, to the address of the record owner at the address for tax statements as shown on the real property tax records of Maricopa County, Arizona, or to such other address as the owner may specify by notice to the other owners.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first set forth above.

Arek Fressadi

Keith Vertes
GV Group, LLC

Acknowledgment of Arek Fressadi

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16TH day of October 2003, 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.

CAROL R. THOMSON
Notary Public – Arizona
Maricopa County
Expires 02/15/07

Carol R. Thomson
Notary Public for Arizona
Residing at: 6300 E. Cave Creek Rd *
My commission expires: 2/15/07
* Cave Creek, AZ

Acknowledgment of Keith Vertes

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 16TH day of October 2003, before me, a notary public for said state, personally appeared Keith Vertes, GV Group, LLC, known or identified to me to be the person who executed the within instrument on behalf of the said entity.

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

CAROL R. THOMSON
Notary Public – Arizona
Maricopa County
Expires 02/15/07

Carol R. Thomson
Notary Public for Arizona
Residing at: 6300 E. Cave Creek Rd. *
My commission expires: 2/15/07
* Cave Creek, AZ

EXHIBIT 11

L-01-10

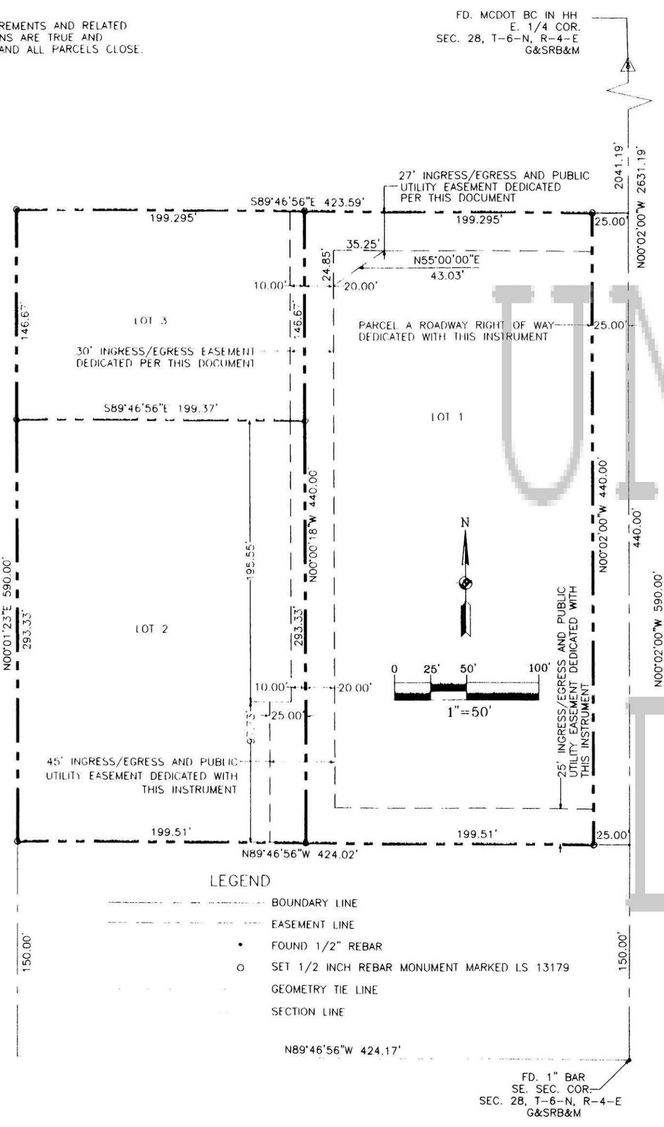
MINOR LAND DIVISION

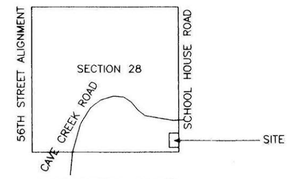
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

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.





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

BOOK 631 PAGE 35
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2003-0488178
04/17/2003 03:56 PM

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
13179
ARVEL R. JONES
Date Signed
ARIZONA U.S.A.

JOB NUMBER: M102 & M2-26
JOB NAME: School House Road
FILE LOCATION:
C:\Land Projects\M2-27 School House Survey Maps\lot-lotsplit-rev-5-26-02.dwg

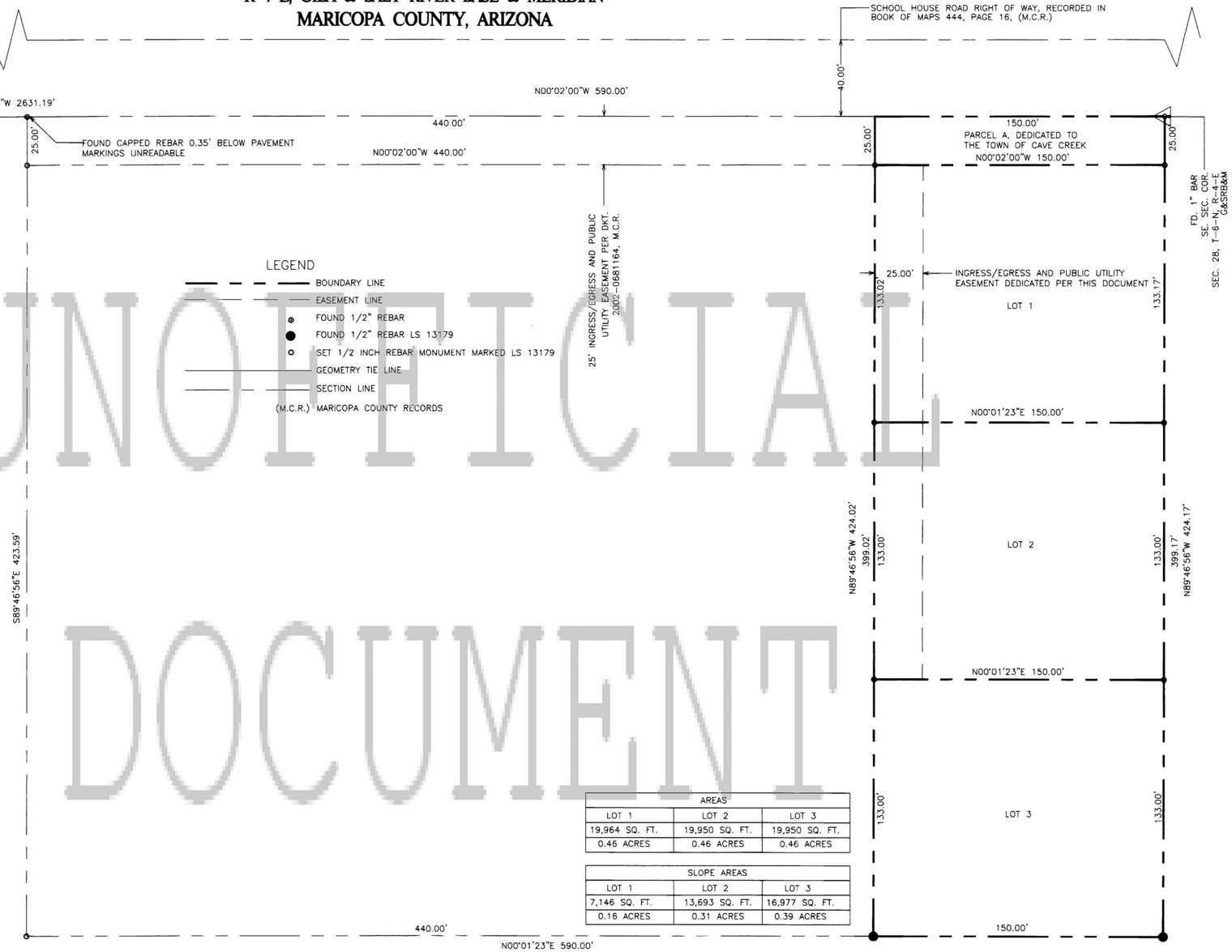
EXHIBIT 12

L-03-03

652-28

BOOK 652 PAGE 28
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2003 – 1312578
09/18/2003 02:38 PM

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



AREAS		
LOT 1	LOT 2	LOT 3
19,964 SQ. FT.	19,950 SQ. FT.	19,950 SQ. FT.
0.46 ACRES	0.46 ACRES	0.46 ACRES

SLOPE AREAS		
LOT 1	LOT 2	LOT 3
7,146 SQ. FT.	13,693 SQ. FT.	16,977 SQ. FT.
0.16 ACRES	0.31 ACRES	0.39 ACRES

N
0 15' 30' 60'
SCALE: 1"=30'

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°46'56"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.

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;
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.

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°46'56"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 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°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.

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 KEITH VERTES 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 VERTES — DATE

Vincent Francia, MAYOR, Town of Cave Creek — 9/18/03 Date

DIRECTOR OF PLANNING — 9/16/03 DATE

TOWN CLERK, 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

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.

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

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.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 16TH DAY OF SEPTEMBER OF 2003.

ATTESTED:

DIRECTOR OF PLANNING — 9/16/03 DATE

Vincent Francia, Mayor, Town of Cave Creek — 9/18/03 Date

TOWN CLERK, TOWN OF CAVE CREEK — 9/16/03 DATE

CIVIL ENGINEERING
LAND SURVEYING
CBR CONSULTANTS

ARVEL R. JONES, P.L.S.
PRINCIPAL
RALPH D. NISENBAUM, P.E.
PRINCIPAL

16021 N. 30TH STREET #101
PHOENIX, ARIZONA 85032
PHONE: 602.253.6464
FAX: 602.867.3368
e-mail: rdnisenbaum@cox.net

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

JOB NUMBER: M3-006
JOB NAME: Keith Vertes Lot Split

FILE LOCATION:
C:\Land Projects\M3-006 Cybernetics Lot Split\Cybernetics Keith Vertes.dwg

EXHIBIT 13

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Taxonomy upgrade extras

constitution

‹ Article V up Article VII ›

Supremacy Clause

See Preemption; constitutional clauses.

Article VI, Paragraph 2 of the U.S. Constitution is commonly referred to as the Supremacy Clause. It establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.

Last updated in June of 2017 by Stephanie Jurkowski.
Keywords: U.S. CONSTITUTION
Supremacy Clause
federal preemption
wex: CIVICS
government
the Constitution
wex definitions

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Fifth Amendment

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids "double jeopardy," and protects against self-incrimination. It also requires that "due process of law" be part of any proceeding that denies a citizen "life, liberty or property" and requires the government to compensate citizens when it takes private property for public use.

Learn more...

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Wex Resources

Fifth Amendment

Criminal Law / Criminal Procedure

Due Process

Substantive Due Process

Miranda Warning

Indictment

Privilege Against Self-Incrimination

Self-Incrimination

Grand Jury

Jury

Double Jeopardy

14th Amendment

The Fourteenth Amendment addresses many aspects of citizenship and the rights of citizens. The most commonly used -- and frequently litigated -- phrase in the amendment is "equal protection of the laws", which figures prominently in a wide variety of landmark cases, including Brown v. Board of Education (racial discrimination), Roe v. Wade (reproductive rights), Bush v. Gore (election recounts), Reed v. Reed (gender discrimination), and University of California v. Bakke (racial quotas in education). See more...

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each

House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

wex resources

Section 1.

Privileges and Immunities Clause

Civil Rights

Slaughterhouse Cases

Due Process

Substantive Due Process

Right of Privacy: Personal Autonomy

Territorial Jurisdiction

Equal Protection

Plessy v. Ferguson (1896)

Plyer v. Doe (1982)

Section 4.

Debt

Section 5.

Enforcement Power

Commerce Clause

‹ 13th Amendment up 15th Amendment ›

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VIEW DOCUMENT

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

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.

VIEW DOCUMENT

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.

VIEW DOCUMENT

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.

VIEW DOCUMENT

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, 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 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.

C. The appeal shall be in writing and filed with or mailed to a hearing officer designated by the city or town within thirty days after the final 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 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 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.

F. The hearing officer shall decide the appeal within five working days after the appeal is heard. If 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, 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, 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 but that will not render moot any decision upholding the dedication, 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.

VIEW DOCUMENT

9-500.13. Compliance with court decisions

A city or town or an agency or instrumentality of a city or town shall comply with the United States supreme court cases of Dolan v. City of Tigard, ____ U.S. ____ (1994), Nollan v. California Coastal Commission, 483 U.S. 825 (1987), Lucas v. South Carolina Coastal Council, ____ U.S. ____ (1992), and First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987), and Arizona and federal appellate court decisions that are binding on Arizona cities and towns interpreting or applying those cases.

VIEW DOCUMENT

12-408. Procedure for change of venue when county is a party

A. In a civil action pending in the superior court in a county where the county is a party, the opposite party is entitled to a change of venue to some other county without making an affidavit therefor.

B. The party applying for the change of venue shall pay the cost thereof and give a bond to the opposite party as in other cases.

VIEW DOCUMENT

12-409. Change of judge; grounds; affidavit

A. If either party to a civil action in a superior court files an affidavit alleging any of the grounds specified in subsection B, the judge shall at once transfer the action to another division of the court if there is more than one division, or shall request a judge of the superior court of another county to preside at the trial of the action.

B. Grounds which may be alleged as provided in subsection A for change of judge are:

1. That the judge has been engaged as counsel in the action prior to appointment or election as judge.

2. That the judge is otherwise interested in the action.

3. That the judge is of kin or related to either party to the action.

4. That the judge is a material witness in the action.

5. That the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial.

VIEW DOCUMENT

12-1101. Parties; claim; service on attorney general

A. An action to determine and quiet title to real property may be brought by any one having or claiming an interest therein, whether in or out of possession, against any person or the state when such person or the state claims an estate or interest in the real property which is adverse to the party bringing the action.

B. When the state is made defendant a copy of the summons and complaint shall be served upon the attorney general.

VIEW DOCUMENT

12-1102. Complaint

The complaint shall:

1. Be under oath.

2. Set forth generally the nature and extent of plaintiff's estate.

3. Describe the premises.

4. State that plaintiff is credibly informed and believes defendant makes some claim adverse to plaintiff. When the state is made defendant, the complaint shall set forth with particularity or on information or belief the claim of the state adverse to plaintiff.

5. Pray for establishment of plaintiff's estate and that defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to plaintiff.

VIEW DOCUMENT

12-1103. Disclaimer of interest and recovery of costs; request for quit claim deed; disclaimer of interest by state

A. If defendant, other than the state, appears and disclaims all right and title adverse to plaintiff, he shall recover his costs.

B. If a party, twenty days prior to bringing the action to quiet title to real property, requests the person, other than the state, holding an apparent adverse interest or right therein to execute a quit claim deed thereto, and also tenders to him five dollars for execution and delivery of the deed, and if such person refuses or neglects to comply, the filing of a disclaimer of interest or right shall not avoid the costs and the court may allow plaintiff, in addition to the ordinary costs, an attorney's fee to be fixed by the court.

C. If, after appropriate investigation, it appears to the attorney general that the state claims no right or title to the property adverse to plaintiff, he may file a disclaimer of right and title.

VIEW DOCUMENT

12-1104. Allegation of lien or interest claimed by adverse party; jurisdiction of court to enter decree

A. In an action to quiet title to real property, if the complaint sets forth that any person or the state has or claims an interest in or a lien upon the property, and that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall hear evidence thereon.

B. If it is proved that the interest or lien or the remedy for enforcement thereof is barred by limitation, or that plaintiff would have a defense by reason of limitation to an action to enforce the interest or lien against the real property, the court shall have jurisdiction to enter judgment and plaintiff shall be entitled to judgment barring and forever estopping assertion of the interest or lien in or to or upon the real property adverse to plaintiff.

VIEW DOCUMENT

13-1003. Conspiracy; classification

A. A person commits conspiracy if, with the intent to promote or aid the commission of an offense, such person agrees with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit any felony upon the person of another, or to commit an offense under section 13-1508 or 13-1704.

B. If a person guilty of conspiracy, as defined in subsection A of this section, knows or has reason to know that a person with whom such person conspires to commit an offense has conspired with another person or persons to commit the same offense, such person is guilty of conspiring to commit the offense with such other person or persons, whether or not such person knows their identity.

C. A person who conspires to commit a number of offenses is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or relationship and the degree of the conspiracy shall be determined by the most serious offense conspired to.

D. Conspiracy to commit a class 1 felony is punishable by a sentence of life imprisonment without possibility of release on any basis until the service of twenty-five years, otherwise, conspiracy is an offense of the same class as the most serious offense which is the object of or result of the conspiracy.

VIEW DOCUMENT

13-1004. Facilitation; classification

A. A person commits facilitation if, acting with knowledge that another person is committing or intends to commit an offense, the person knowingly provides the other person with means or opportunity for the commission of the offense.

B. This section does not apply to peace officers who act in their official capacity within the scope of their authority and in the line of duty.

C. Facilitation is a:

1. Class 5 felony if the offense facilitated is a class 1 felony.

2. Class 6 felony if the offense facilitated is a class 2 or class 3 felony.

3. Class 1 misdemeanor if the offense facilitated is a class 4 or class 5 felony.

4. Class 3 misdemeanor if the offense facilitated is a class 6 felony or a misdemeanor.

VIEW DOCUMENT

13-2314.04. Racketeering; unlawful activity; civil remedies by private cause of action; definitions

A. A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity, or by a violation of section 13-2312 involving a pattern of racketeering activity, may file an action in superior court for the recovery of up to treble damages and the costs of the suit, including reasonable attorney fees for trial and appellate representation. If the person against whom a racketeering claim has been asserted, including a lien, prevails on that claim, the person may be awarded costs and reasonable attorney fees incurred in defense of that claim. No person may rely on any conduct that would have been actionable as fraud in the purchase or sale of securities to establish an action under this section except an action against a person who is convicted of a crime in connection with the fraud, in which case the period to initiate a civil action starts to run on the date on which the conviction becomes final.

B. The superior court has jurisdiction to prevent, restrain and remedy a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity, after making provision for the rights of all innocent persons affected by the violation and after a hearing or trial, as appropriate, by issuing appropriate orders.

C. Before a determination of liability these orders may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the enforcement of constructive trusts, in connection with any property or other interest subject to damage or other remedies or restraints pursuant to this section as the court deems proper.

D. After a determination of liability these orders may include, but are not limited to:

1. Ordering any person to divest himself of any interest, direct or indirect, in any enterprise.

2. Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the constitutions of the United States and this state permit.

3. Ordering dissolution or reorganization of any enterprise.

4. Ordering the payment of up to treble damages to those persons injured by a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity.

5. Prejudgment interest on damages, except that prejudgment interest may not be awarded on any increase in the damages authorized under paragraph 4 of this subsection.

6. A person or enterprise that acquires any property through an offense included in the definition of racketeering in section 13-2301, subsection D or a violation of section 13-2312 is an involuntary trustee. The involuntary trustee and any other person or enterprise, except a bona fide purchaser for value who is reasonably without notice of the unlawful conduct and who is not knowingly taking part in an illegal transaction, hold the property, its proceeds and its fruits in constructive trust for the benefit of persons entitled to remedies under this section.

E. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any civil proceedings. For the purpose of this subsection, a conviction may result from a verdict or plea including a no contest plea.

F. Notwithstanding any law prescribing a lesser period but subject to subsection A of this section, the initiation of civil proceedings pursuant to this section shall be commenced within 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.

G. The standard of proof in actions brought pursuant to this section is the preponderance of evidence test.

H. A person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. This requirement is jurisdictional. The notice shall identify the action, the person and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under section 13-2314 or to intervene in a pending action nor does it authorize the person to name this state or the attorney general as a party to the action.

I. On timely application, the attorney general may intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. On intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general has instituted a separate action.

J. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting section 13-2301, 13-2312, 13-2313, 13-2314.01, 13-2314.02 or 13-2315 or this section.

K. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other previous or subsequent civil or criminal action under this title or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive, except that a person may not recover, for an action brought pursuant to this section, punitive damages or emotional injury damages in the absence of bodily injury.

L. A natural person shall not be held liable in damages or for other relief pursuant to this section based on the conduct of another unless the fact finder finds by a preponderance of the evidence that the natural person authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the other. An enterprise shall not be held liable in damages or for other relief pursuant to this section based on the conduct of an agent, unless the fact finder finds by a preponderance of the evidence that a director or high managerial agent performed, authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the agent. A bank or savings and loan association insured by the federal deposit insurance corporation or a credit union insured by the national credit union administration shall not be held liable in damages or for other relief pursuant to this section for conduct proscribed by section 13-2317, subsection B, paragraph 1, based on acquiring or maintaining an interest in or transporting, transacting, transferring or receiving funds belonging to a person other than the person presenting the funds, unless the fact finder finds by a preponderance of the

M. Notwithstanding subsection A of this section, a court shall not award costs, including attorney fees, if the award would be unjust because of special circumstances, including the relevant disparate economic position of the parties or the disproportionate amount of the costs, including attorney fees, to the nature of the damage or other relief obtained.

N. If the court determines that the filing of any pleading, motion or other paper under this section was frivolous or that any civil action or proceeding was brought or continued under this section in bad faith, vexatiously, wantonly or for an improper or oppressive reason, it shall award a proper sanction to deter this conduct in the future that may include the costs of the civil action or proceeding, including the costs of investigation and reasonable attorney fees in the trial and appellate courts.

O. Notwithstanding any other law, a complaint, counterclaim, answer or response filed by a person in connection with a civil action or proceeding under this section shall be verified by at least one party or the party's attorney. If the person is represented by an attorney, at least one attorney of record shall sign any pleading, motion or other paper in the attorney's individual name and shall state the attorney's address.

P. The verification by a person or the person's attorney and the signature by an attorney required by subsection O of this section constitute a certification by the person or the person's attorney that the person or the person's attorney has carefully read the pleading, motion or other paper and, based on a reasonable inquiry, believes all of the following:

1. It is well grounded in fact.

2. It is warranted by existing law or there is a good faith argument for the extension, modification or reversal of existing law.

3. It is not made for any bad faith, vexatious, wanton, improper or oppressive reason, including to harass, to cause unnecessary delay, to impose a needless increase in the cost of litigation or to force an unjust settlement through the serious character of the averment.

Q. If any pleading, motion or other paper is signed in violation of the certification provisions of subsection P of this section, the court, on its own motion or on the motion of the other party and after a hearing and appropriate findings of fact, shall impose on the person who verified it or the attorney who signed it, or both, a proper sanction to deter this conduct in the future, including the costs of the proceeding under subsection N of this section.

R. If any pleading, motion or other paper includes an averment of fraud or coercion, it shall state these circumstances with particularity with respect to each defendant.

S. In any civil action or proceeding under this section in which the pleading, motion or other paper does not allege a crime of violence as a racketeering act:

1. The term "racketeer" shall not be used in referring to any person.

2. The terms used to refer to acts of racketeering or a pattern of racketeering activity shall be "unlawful acts" or "a pattern of unlawful

T. In this section, unless the context otherwise requires:

1. "Acquire" means for a person to do any of the following:

(a) Possess.

(b) Act so as to exclude another person from using the person's property except on the person's own terms.

(c) Bring about or receive the transfer of any interest in property, whether to himself or to another person, or to secure performance of a service.

2. "Gain" means any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.

3. "Pattern of racketeering activity" means either:

(a) At least two acts of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii), (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv) or (xxvi) that meet the following requirements:

(i) The last act of racketeering activity that is alleged as the basis of the claim occurred within five years of a prior act of racketeering.

(ii) The acts of racketeering that are alleged as the basis of the claim were related to each other or to a common external organizing principle, including the affairs of an enterprise. Acts of racketeering are related if they have the same or similar purposes, results, participants, victims or methods of commission or are otherwise interrelated by distinguishing characteristics.

(iii) The acts of racketeering that are alleged as the basis of the claim were continuous or exhibited the threat of being continuous.

(b) A single act of racketeering as defined in section 13-2301, subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi), (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

4. "Proceeds" means any interest in property of any kind acquired through or caused by an act or omission, or derived from the act or omission, directly or indirectly, and any fruits of this interest, in whatever form.

VIEW DOCUMENT

33-420. False documents; liability; special action; damages; violation; classification

A. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

B. The owner or beneficial title holder of the real property may bring an action pursuant to this section in the superior court in the county in which the real property is located for such relief as is required to immediately clear title to the real property as provided for in the rules of procedure for special actions. This special action may be brought based on the ground that the lien is forged, groundless, contains a material misstatement or false claim or is otherwise invalid. The owner or beneficial title holder may bring a separate special action to clear title to the real property or join such action with an action for damages as described in this section. In either case, the owner or beneficial title holder may recover reasonable attorney fees and costs of the action if he prevails.

C. A person who is named in a document which purports to create an interest in, or a lien or encumbrance against, real property and who knows that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid shall be liable to the owner or title holder for the sum of not less than one thousand dollars, or for treble actual damages, whichever is greater, and reasonable attorney fees and costs as provided in this section, if he wilfully refuses to release or correct such document of record within twenty days from the date of a written request from the owner or beneficial title holder of the real property.

D. A document purporting to create an interest in, or a lien or encumbrance against, real property not authorized by statute, judgment or other specific legal authority is presumed to be groundless and invalid.

E. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is guilty of a class 1 misdemeanor.

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.

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.

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. 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 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.

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.