> > APPENDIX A < <

NOT FOR PUBLICATION

FILED

OCT 26 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AREK FRESSADI; FRESSADI DOES I-III, Plaintiffs-Appellants, v. ARIZONA MUNICIPAL RISK RETENTION POOL, (AMRRP); et al., Defendants-Appellees.	No. 15-15566 D.C. No. 2:14-cv-01231-DJH MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Diane J. Humetewa, District Judge, Presiding

Submitted October 23, 2017**

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

Arek Fressadi appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal on statute of limitations grounds. *Lukovsky v. City & County of San*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

> > APPENDIX A < <

Francisco, 535 F.3d 1044, 1047 (9th Cir. 2008). We affirm.

The district court properly dismissed Fressadi's § 1983 claims because Fressadi failed to file his action within the applicable two-year statute of limitations. *See id.* at 1048 (in § 1983 suits, federal courts use the forum state's statute of limitations for personal injury actions; § 1983 claims accrue when the plaintiff knows or has reason to know of the injury which is the basis of the action); *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 974 (9th Cir. 2004) (Arizona provides two-year statute of limitations for personal injury claims).

The district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Fressadi's state law claims after dismissing Fressadi's federal claims. *See* 28 U.S.C. § 1367(c)(3) (permitting district court to decline supplemental jurisdiction if it has "dismissed all claims over which it has original jurisdiction"); *Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1107 (9th Cir. 2010) (standard of review).

The district court did not abuse its discretion in declining to grant Fressadi leave to file an amended complaint. *See Chappel v. Lab. Corp.*, 232 F.3d 719, 725 (9th Cir. 2000) ("A district court acts within its discretion to deny leave to amend when amendment would be futile . . . .").

> > APPENDIX A < <

In light of our disposition, we do not consider Fressadi's contentions regarding the merits of his claims.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

State defendant-appellees' request for judicial notice (Docket Entry No. 66) is granted.

Fressadi's motion seeking waiver of the requirement to submit hard copies of his opening brief and reply brief (Docket Entry No. 100) is granted.

Fressadi's motion to file an enlarged reply brief (Docket Entry No. 102) is granted. The Clerk shall file Fressadi's reply brief submitted at Docket Entry No. 103.

All other pending motions and requests (Docket Entry Nos. 38, 53, 54, 55, 56, 86, 101, 111, 119, and 120) are denied.

AFFIRMED.

>> APPENDIX B <<

FILED

MAY 17 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AREK FRESSADI; FRESSADI DOES I-III, Plaintiffs-Appellants, v. ARIZONA MUNICIPAL RISK RETENTION POOL, (AMRRP); et al., Defendants-Appellees.	No. 15-15566 D.C. No. 2:14-cv-01231-DJH District of Arizona, Phoenix ORDER

Before: McKEOWN, WATFORD, and FRIEDLAND, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Fressadi's motion to file oversized petitions (Docket Entry No. 137) is granted.

Fressadi's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 138) are denied.

No further filings will be entertained in this closed case.

>> APPENDIX C <<

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Arek Fressadi, et al., Plaintiffs, v. Arizona Municipal Risk Retention Pool, et al., Defendants.	No. CV-14-01231-PHX-DJH **ORDER**

This matter is before the Court on the Motions to Dismiss filed by Defendants Berk & Moskowitz, P.C. (Doc. 1-5), Cheifetz, Iannitelli Marcolini, P.C. (Doc. 19), Righi Law Group (Doc. 26), Salvatore and Susan DeVincenzo (Doc. 30), State of Arizona (Doc. 35), Michele O. Scott (Doc. 38), BMO Harris Bank (Doc. 40), Maricopa County (Doc. 42), Dickinson Wright PLLC and Mariscal Weeks McIntyre & Friedlander, P.A. (Doc. 47), Arizona Municipal Risk Retention Pool ("AMRRP") (Doc. 54), Town of Cave Creek (Doc. 56) and Linda Bentley (Doc. 59). Plaintiff has filed responses to seven of the motions to dismiss (Docs. 12, 32, 83, 84, 90, 93, and 102). Seven corresponding replies were filed. (Docs. 13, 41, 88, 89, 104, 106, and 108). A Motion for Summary Disposition (Doc. 110), Motion to Remand to Superior Court (Doc. 115) and Motion for Extension of Time to Reply (Doc. 128) are also pending.

. . .

. . .

. . .

>> APPENDIX C <<

I. Background

Plaintiff Arek Fressadi[1] initiated this action by filing a Verified Complaint in Maricopa County Superior Court on April 24, 2014. (Doc. 1-1). Plaintiff alleges in the Complaint that he "constructively acquired" two adjoining parcels of land in the Town of Cave Creek, identified as parcels 211-10-010 and 211-10-003, which he intended to develop into several smaller lots. (Doc. 1-1 at 5). Plaintiff does not state when he acquired the parcels. He alleges that the Town of Cave Creek's Director of Planning "instigated a fraudulent scheme to cause injury to [his] property and business by telling [him] to develop the parcels by a series [of] lot splits in lieu of platting a 14-20 unit subdivision." (*Id.*). Plaintiff claims the Director's scheme provided an advantage to the Town in that it "avoided the cost and red tape associated with platting a subdivision." (*Id.*).

Plaintiff obtained approval from the Town for a lot split of parcel 211-10-010 into three smaller parcels but, as part of the approval process, the Town required that a twenty-five foot strip of land on the parcel be dedicated to it. (Doc. 1-5, Exh. A). The Town required dedication of an easement over the strip of land to allow for driveways to the subject lots and for sewer line extensions. (*Id.*). Plaintiff alleges the Town, as part of its fraudulent scheme, failed to comply with Arizona Revised Statutes (A.R.S.) §§ 9-500.12 and 9-500.13 in imposing these requirements. (Doc. 1-1 at 5). Those statutes pertain to appeals of municipal actions, including "[t]he 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." A.R.S. § 9-500.12(A). Plaintiff alleges the Town concealed its failure to comply with the statutes as part of the scheme to cause harm to Plaintiff's business, reputation and property. (*Id.* at 5-6). Plaintiff further alleges that in order "[t]o obtain favorable rulings and judgments in a variety of municipal, county, state

---

[1] "Fressadi Does I-III" are also listed as plaintiffs in this action, though none has been identified.

and federal courts (i.e. public agencies) in furtherance of the fraudulent schemes to control and convert Plaintiff's property, Defendants and their attorneys concealed material facts and/or law" in violation of legal ethics rules and Arizona criminal statutes. (Doc. 1-1 at 6).

Based on these general allegations, Plaintiff raises ten claims for relief. In his first claim for relief, Plaintiff requests "special action declaratory relief" and seeks, among other things, declarations that various acts taken by the Town with respect to the two parcels of land were in violation of Arizona law and are void, and that prior rulings in state court cases pertaining to these issues are void (Doc. 1-1 at 6-11).[2]

Plaintiff's second cause of action alleges a state law claim for breach of contract. (Doc. 1-1 at 11-12). Plaintiff claims the Town breached its agreement with him to split parcel 211-10-010 in to three lots and permit improvements to the lots.

In the third claim for relief, Plaintiff alleges federal and state constitutional violations. He alleges violations of the due process, equal protection and takings clauses of the United States Constitution pursuant to 42 U.S.C. § 1983, in addition to violations under the Arizona Constitution. He claims that actions taken by Defendants State of Arizona, Maricopa County, including several Maricopa County Superior Court judges, AMRRP, and the Town of Cave Creek were "under color of law." Among other allegations, he contends his property was taken without compensation and due process. (Doc. 1-1 at 12-14).

---

[2] Although it has not been raised by any defendants, and the Court has not relied on it as a basis for its ruling, the *Rooker-Feldman* doctrine likely deprives this Court of jurisdiction over several of Plaintiff's claims. "The *Rooker-Feldman* doctrine instructs that federal district courts are without jurisdiction to hear direct appeals from the judgments of state courts." *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012). The doctrine "forbids a losing party in state court from filing suit in federal district court complaining of an injury caused by a state court judgment, and seeking federal court review and rejection of that judgment." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013) (citing *Skinner v. Switzer*, 131 S.Ct. 1289, 1297 (2011)). In his first claim for relief, for example, Plaintiff seeks declarations from this Court that several state court actions in which he received unfavorable rulings are "void or unlawful." (Doc. 1-1 at 9-13. Similarly, Plaintiff challenges the actions of Arizona judicial officers involved in his prior state court cases in his third, fourth and fifth claims for relief. (Doc. 1-1 at 15-16, 21, and 24).

>> APPENDIX C <<

In the fourth claim for relief, Plaintiff alleges violations of several Arizona criminal statutes. He claims the Town of Cave Creek engaged in a fraudulent scheme in how it handled his lot split. This claim for relief contains numerous other allegations against several other defendants pertaining to the Town's alleged concealment of its actions and others' alleged efforts to facilitate the Town's fraudulent scheme. (Doc. 1-1 at 14-22).

In the fifth claim for relief, Plaintiff alleges standard negligence. He contends the Town owed him a duty to comply with state statutes, town codes and ordinances, but breached its duty by violating them. (Doc. 1-1 at 22-23).

In the sixth claim for relief, Plaintiff alleges a breach of the covenant of good faith and fair dealing implicit in the contracts he had with various defendants. (Doc. 1-1 at 23-24).

In the seventh claim for relief, Plaintiff alleges fraud against several defendants. He claims they knowingly made material, false representations and failed to disclose material information. (Doc. 1-1 at 24-26).

In the eighth claim for relief, Plaintiff alleges negligent misrepresentation. Plaintiff alleges that several defendants acted negligently and unreasonably toward him in their representations to him and in failing to disclose material information to him. (Doc. 1-1 at 26-27).

In the ninth claim for relief, Plaintiff seeks rescission and quiet title with respect to the two referenced parcels of land. He claims that he is the rightful owner and that any sales of the parcels were based on fraud and misrepresentation. (Doc. 1-1 at 27-30).

Lastly, in the tenth claim for relief, Plaintiff alleges that certain defendants intentionally published articles that portrayed him in a false light. He claims these actions were taken to damage his business and deprive him of his property. (Doc. 1-1 at 31-32).

On June 4, 2014, Defendant BMO Harris Bank filed a Notice of Removal (Doc. 1) pursuant to 28 U.S.C. §§ 1441 and 1446. According to the Notice of Removal, "this

Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331" because some of Plaintiff's claims arise under the Constitution, laws, or treaties of the United States. The Notice further states that for those claims over which this Court does not have original jurisdiction, it has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

II. Discussion

A. Plaintiff's Federal Constitutional Claims

As referenced above, Plaintiff's third claim for relief alleges federal constitutional violations pursuant to 42 U.S.C. § 1983.[3] (Doc. 1-1 at 12-14). Specifically, Plaintiff appears to allege violations of procedural and substantive due process, equal protection, and the takings clause. He contends that Defendants State of Arizona, Maricopa County, including several Maricopa County Superior Court judges, AMRRP, and the Town of Cave Creek singled him out for disparate treatment, "physically invaded, occupied and converted [his] property to the Town of Cave Creek, to adjoining property owners, and Third Parties, falsely arrested [him], detained [him] against his will, issued warrants for his arrest, and physically injured [him]." (Doc. 1-1 at 13). Plaintiff further contends that the defendants "deprived [him] of substantive due process and equal protection as protected by the Constitutions of the United States and Arizona." (*Id.*).

1. Legal Standards

a. Failure to State a Claim under Rule 12(b)(6)

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). A complaint must contain a "short and plain statement showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a). "All that is required are sufficient allegations to put defendants fairly on notice of the claims against them." *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). The Rule 8 standard reflects a presumption against rejecting complaints for failure to state a claim and, therefore, motions seeking such relief are disfavored and

[3] As noted, the third claim for relief also alleges violations of the Arizona Constitution and Arizona statutes. (Doc. 1-1 at 12-14).

rarely granted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248-49 (9th Cir. 1997). Rule 8, however, requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678(2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A complaint need not contain detailed factual allegations to avoid a Rule 12(b)(6) dismissal; it simply must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A complaint has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 556).

"The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that defendant has acted unlawfully." *Iqbal*, 129 S. Ct. at 1949 (citation omitted). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citation omitted).

In addition, the Court must interpret the facts alleged in the complaint in the light most favorable to the plaintiff, while also accepting all well-pleaded factual allegations as true. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000). That rule does not apply, however, to legal conclusions. *Iqbal*, 129 S.Ct. at 1949. A complaint that provides "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Nor will a complaint suffice if it presents nothing more than "naked assertions" without "further factual enhancement." Id. at 557.

b. Standards for § 1983 Claims

42 U.S.C. § 1983 allows individuals to recover damages and other relief for deprivations of constitutional rights that occur under color of state law. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). The elements required to establish a civil rights claim under 42 U.S.C. § 1983 are: "(1) a violation of rights protected by the Constitution or created by

federal statute, (2) proximately caused (3) by conduct of a 'person' (4) acting under color of state law." *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To state a valid constitutional claim, a plaintiff must allege that he suffered a specific injury as a result of the conduct of a particular defendant and he must allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976); *see also Trice v. Modesto City Police Dept.*, 2009 WL 102712, at *8 (E.D. Cal. Jan. 14, 2009) ("In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff's federal rights."). A plaintiff must show that a defendant's affirmative act, participation in another's affirmative acts, or omission of an act which he is legally required to do caused the deprivation of which the plaintiff complains. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

Municipalities and other local government units are persons to whom § 1983 applies. *Monell v. New York City Dept. of Social Serv.*, 436 U.S. 658, 690 (1978). However, a local governmental unit may not be held responsible for the acts of its employees under a *respondeat superior* theory of liability. *See Board of County Commissioners v. Brown*, 520 U.S. 397, 403 (1997); *Monell*, 436 U.S. at 691. To establish municipal liability, a plaintiff must go beyond the *respondeat superior* theory of liability and show that the alleged constitutional deprivation was the product of a policy or custom of the local governmental unit. *Monell*, 436 U.S. at 690-91. A suit against municipal employees in their official capacities is simply another way of pleading an action against the municipal entity. *See Monell*, 436 U.S. at 691 n. 55.

c. Statute of Limitations for § 1983 Claims

A defendant may raise an affirmative defense in a motion to dismiss when the defense is obvious on the fact of the complaint. *Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 902 (9th Cir. 2013); *see also* 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil § 1357 (3d ed. 1998) ("A complaint showing that the governing statute of limitations has run on the plaintiff's claim for relief is the most

common situation in which the affirmative defense appears on the face of the pleading and provides a basis for a motion to dismiss under Rule 12(b)(6)....”). In § 1983 actions, federal courts borrow the statute of limitations of the forum state for personal injury actions. *Wallace v. Kato,* 549 U.S. 384, 387; *TwoRivers v. Lewis,* 174 F.3d 987, 991 (9th Cir. 1999). In Arizona, the statute of limitations for personal injury actions is two years from when the cause of action accrues. *See* A.R.S. § 12-542, *held unconstitutional for wrongful death actions by Anson v. American Motors Corp.*, 155 Ariz. 420, 426, 747 P.2d 581, 587 (App. 1987); *Madden-Tyler v. Maricopa County*, 189 Ariz. 462, 464, 943 P.2d 822, 824 (App. 1997). “[A] claim generally accrues when a plaintiff knows or has reason to know of the injury which is the basis of his action.” *Cabrera v. City of Huntington Park*, 159 F.3d 374, 379 (9th Cir. 1998); *see also Manzanita Park, Inc. v. Insurance Co. of North America*, 857 F.2d 549, 557 (9th Cir. 1988) (holding that in Arizona, a cause of action for negligence accrues when the plaintiff knows or should have known of the defendant's negligent conduct and after plaintiff has suffered actual injury or damage).

2. Application

Defendants Town of Cave Creek, AMRRP and Maricopa County each argue in their motions to dismiss that Plaintiff's § 1983 claims should be dismissed for failure to state a claim and because they are barred by the statute of limitations. (Docs. 42 at 8-9 and 12-15; 54-1 at 5-9; and 56-1 at 10-16). The Court first addresses the statute of limitations defense.

Although Plaintiff conspicuously omits dates from his Complaint, including from his § 1983 claims, it is clear from the state court actions cited in the Complaint, that his claims accrued more than two years before he filed the Complaint. As Defendant Maricopa County asserts in its motion to dismiss, Plaintiff's "Section 1983 claims arising out of the recordation, assessment and taxation of the lot splits 'as if they [were] lawfully subdivided' accrued no later than February 10, 2009, and likely much earlier." (Doc. 42 at 9). February 10, 2009 is the date Plaintiff filed a Verified Complaint in Maricopa

County Superior Court in Case No. CV2009-050821. (Doc. 42-2). In that Verified Complaint, Plaintiff claimed the Town of Cave Creek and other defendants violated his rights by classifying the division of his parcels as a "subdivision" rather than a "lot split." (Doc. 42-2 at 8, 11-12). Moreover, in the Arizona Court of Appeals decision affirming the Superior Court's ruling to grant summary judgment for the defendants on statute of limitations grounds, the factual and procedural history explains how issues surrounding the division of Plaintiff's parcels of land first arose back in 2002. (Doc. 42-2 at 20-25). The Court of Appeals explains that in August 2002, the Town of Cave Creek denied Plaintiff's request to split the second parcel, 211-10-003, because of concerns that a split of that parcel, combined with the previously approved lot split of the adjacent first parcel, 211-10-010, would result in the creation of a "subdivision," for which Plaintiff had not met the qualifications. (Doc. 42-2 at 21).

Thus, Plaintiff has been disputing the Town of Cave Creek's actions pertaining to the division of his parcels since as far back as 2002. Plaintiff has therefore known about the actions that form the basis for his § 1983 claims for years, and even challenged those actions in at least one prior state court action, as referenced here. The Court has no difficulty concluding that Plaintiff's § 1983 claims in this lawsuit, all of which pertain to disagreements over the division of his parcels, are barred by the two year statute of limitations applicable to such claims.

Regardless, even if Plaintiff could somehow establish that any of his § 1983 claims accrued no more than two years before he filed this action, the claims are subject to dismissal for failure to state a claim. First, throughout most of his third claim for relief, Plaintiff's allegations are against the "3rd Claim Defendants," which Plaintiff identifies as the State of Arizona, "State Actors of the Judicial Branch of the State of Arizona," Maricopa County, AMRRP, and the Town of Cave Creek "or its state actors." By asserting allegations against the "3rd Claim Defendants" generally, Plaintiff fails to link a specifically named defendant with an act or omission that demonstrates a violation of his constitutional rights. Plaintiff must indicate which defendant committed an act that

caused the deprivation of his rights. He has not done so.

Moreover, Plaintiff's conclusory allegations of constitutional violations are wholly unsupported by facts, providing nothing more than "naked assertions" without "further factual enhancement." *See Twombly*, 550 U.S. at 555. For example, with respect to his claims for substantive due process and equal protection, Plaintiff simply asserts, "Under color of law, 3rd Claim Defendants deprived [him] of substantive due process and equal protection as protected by the Constitutions of the United States and Arizona." (Doc. 1-1 at 15). The Court is unable to identify a single federal constitutional claim that is adequately pled with supporting facts. For these reasons, Plaintiff's federal constitutional claims pursuant to 42 U.S.C. § 1983, as alleged in his third claim for relief, will be dismissed from this action.

B. Supplemental Jurisdiction and Remand

As noted above, this case was removed to federal court based on federal question jurisdiction as a result of Plaintiff's § 1983 claims, and supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367. (Doc. 1). However, a district court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). The Supreme Court has recognized that "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to exercise jurisdiction over the remaining state law claims." *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 n.7 (1988).

Here, in light of the Court's dismissal of Plaintiff's § 1983 claims, the basis for federal question jurisdiction no longer exists. The Court therefore finds that this action should be remanded. Plaintiff's federal claims represent only a small fraction of the overall number of claims. Because the remaining claims address alleged violations of Arizona law, Arizona courts have a greater interest and expertise in resolving the claims. In addition, "remand will benefit the federal system by allowing this Court to devote its

>> APPENDIX C <<

scarce resources to resolving federal issues." *See Power Road-Williams Field LLC v. Gilbert*, 14 F.Supp.3d 1304, 1313 (D.Ariz. 2014).

Accordingly,

IT IS ORDERED that the Motions to Dismiss filed by Defendants State of Arizona (Doc. 35), Maricopa County (Doc. 42), Arizona Municipal Risk Retention Pool (Doc. 54), and Town of Cave Creek (Doc. 56) are **GRANTED in part** to the extent that Plaintiff's federal constitutional claims pursuant to 42 U.S.C. § 1983 are **DISMISSED**.

IT IS FURTHER ORDERED that this case is remanded to Maricopa County Superior Court.

IT IS FINALLY ORDERED that Plaintiff's Motion to Remand to Superior Court (Doc. 115) and Motion for Extension of Time to Reply (Doc. 128) are **DENIED** as moot.

Dated this 6th day of February, 2015.

Honorable Diane J. Humetewa
United States District Judge

>> APPENDIX D <<

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Arek Fressadi, et al., Plaintiffs, v. Arizona Municipal Risk Retention Pool, et al., Defendants.	No. CV-14-01231-PHX-DJH **ORDER**

This matter is before the Court on Plaintiff's Motion to Reconsider Court Orders (Doc. 138). Plaintiff seeks reconsideration of the Court's Order (Doc. 131) dismissing the § 1983 claims from his Complaint. The Court dismissed the claims because they were filed after the two year statute of limitations expired and because they failed to state a claim for relief. The Court then declined to exercise supplemental jurisdiction over the remaining state law claims and remanded the case to Maricopa County Superior Court.

Motions for reconsideration are governed by LRCiv 7.2(g)(1), which provides:

> The Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence. Any such motion shall point out with specificity the matters that the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time and the reasons they were not presented earlier, and any specific modifications being sought in the Court's Order. No motion for reconsideration of an Order may repeat any oral or written

> argument made by the movant in support of or in opposition to the motion that resulted in the Order. Failure to comply with this subsection may be grounds for denial of the motion.

Motions for reconsideration should be granted only in rare circumstances. *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). "Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki* , 779 F.2d 906, 909 (3d Cir.1985), *cert. denied*, 476 U.S. 1171 (1986). Such motions should not be used for the purpose of asking a court "'to rethink what the court had already thought through - rightly or wrongly.'" *Defenders of Wildlife*, 909 F.Supp. at 1351 (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

The Court has reviewed Plaintiff's argument that the statute of limitations for his § 1983 claims has not expired. Plaintiff contends the Court erroneously relied on a 2009 state court action to determine when the § 1983 claims accrued. According to Plaintiff, the rulings in that state court action were obtained by "fraud on the court" and are therefore void. Plaintiff also disputes the Court's determination that his allegations of constitutional violations in the Third Claim for Relief were "wholly unsupported by facts." He argues the Court should have considered facts alleged in other sections of the Complaint that he says supported his constitutional claims.

The Court finds Plaintiff has failed to satisfy the standards for reconsideration. Plaintiff has not presented newly discovered evidence, shown the Court committed clear error or the initial decision was manifestly unjust, or revealed an intervening change in controlling law. The Court already considered the issues Plaintiff addresses in his motion for reconsideration and found that his § 1983 claims are barred by the statute of

limitations and that they fail to allege sufficient facts to state claims for relief. Plaintiff has not demonstrated that this is one of the rare circumstances where a motion for reconsideration should be granted.

Accordingly,

IT IS ORDERED that Plaintiff's Motion to Reconsider Court Orders (Doc. 138) is **DENIED**.

Dated this 16th day of March, 2015.

Honorable Diane J. Humetewa
United States District Judge

>> APPENDIX E <<

U.S. CONSTITUTION

FIFTH AMENDMENT / AMENDMENT V
(Excerpt)

No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT / AMENDMENT XIV
(Excerpt)

Section 1. … 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.

ARTICLE VI, CLAUSE 2
SUPREMACY CLAUSE
(Excerpt)

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.

>> APPENDIX E <<

U.S. CODE

28 U.S.C. § 2106
Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

42 U.S.C. § 1983
Civil action for deprivation of rights
(Excerpt)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S. Code § 1985
Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully,

and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1988
Proceedings in vindication of civil rights
(Excerpt)

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

>> APPENDIX E <<

ARIZONA CONSTITUTION

ARTICLE 2 SECTION 1
Fundamental principles; recurrence to

A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

ARTICLE 2 SECTION 2
Political power; purpose of government

All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

ARTICLE 2 SECTION 3
Supreme law of the land

The Constitution of the United States is the supreme law of the land.

ARTICLE 2 SECTION 4
Due process of law

No person shall be deprived of life, liberty, or property without due process of law.

ARTICLE 2 SECTION 11
Administration of justice

Justice in all cases shall be administered openly, and without unnecessary delay.

>> APPENDIX E <<

ARTICLE 2 SECTION 13
Equal privileges and immunities

No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

ARTICLE 2 SECTION 17
Eminent domain; just compensation for private property taken; public use as judicial question

Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, paid into court for the owner, secured by bond as may be fixed by the court, or paid into the state treasury for the owner on such terms and conditions as the legislature may provide, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefore be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

ARTICLE 18 SECTION 6
Recovery of damages for injuries

The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation.

>> APPENDIX E <<

ARIZONA REVISED STATUTES

A.R.S. § 9-462
Definitions; general provisions concerning evidence

A. In this article, unless the context otherwise requires:

1. "Board of adjustment" means the official body designated by local ordinance to hear and decide applications for variances from the terms of the zoning ordinance and appeals from the decision of the zoning administrator.

2. "Municipal" or "municipality" means an incorporated city or town.

3. "Planning agency" means the official body designated by local ordinance to carry out the purposes of this article and may be a planning department, a planning commission, a hearing officer, the legislative body itself or any combination thereof.

4. "Zoning administrator" means the official responsible for enforcement of the zoning ordinance.

5. "Zoning ordinance" means a municipal ordinance regulating the use of the land or structures, or both, as provided in this article.

B. Formal rules of evidence or procedure which must be followed in court shall not be applied in zoning matters, except to the extent that a municipality may provide therefor.

A.R.S. § 9-462.01
Zoning regulations; public hearing; definitions
(Excerpt)

A. Pursuant to this article, the legislative body of any municipality by ordinance may in order to conserve and promote the public health, safety and general welfare:

1. Regulate the use of buildings, structures and land as between agriculture, residence, industry, business and other purposes.

…

3. Regulate the location, height, bulk, number of stories and size of buildings and structures, the size and use of lots, yards, courts and other open spaces, the percentage of a lot that may be occupied by a building or structure, access to incident solar energy and the intensity of land use.

…

5. Establish and maintain building setback lines.

…

7. Require as a condition of rezoning public dedication of rights-of-way as streets, alleys, public ways, drainage and public utilities as are reasonably required by or related to the effect of the rezoning.

8. Establish floodplain zoning districts and regulations to protect life and property from the hazards of periodic inundation. Regulations may include variable lot sizes, special grading or drainage requirements, or other requirements deemed necessary for the public health, safety or general welfare.

9. Establish special zoning districts or regulations for certain lands characterized by adverse topography, adverse soils, subsidence of the earth, high water table, lack of water or other natural or man-made hazards to life or property. Regulations may include variable lot sizes, special grading or drainage requirements, or other requirements deemed necessary for the public health, safety or general welfare.

…

B. For the purposes of subsection A of this section, the legislative body may divide a municipality, or portion of a municipality, into zones of the number, shape and area it deems best suited to carry out the purpose of this article and articles 6, 6.2 and 6.3 of this chapter.

C. All zoning regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulations in one type of zone may differ from those in other types of zones as follows:

1. Within individual zones, there may be uses permitted on a conditional basis under which additional requirements must be met, including requiring site plan review and approval by the planning agency. The conditional uses are generally characterized by any of the following: (a) Infrequency of use. (b) High degree of traffic generation. (c) Requirement of large land area.

2. Within residential zones, the regulations may permit modifications to minimum yard lot area and height requirements.

D. To carry out the purposes of this article and articles 6 and 6.2 of this chapter, the legislative body may adopt overlay zoning districts and regulations applicable to particular buildings, structures and land within individual zones. For the purposes of this subsection, "overlay zoning district" means a special zoning district that includes regulations that modify regulations in another zoning district with which the overlay zoning district is combined. Overlay zoning districts and regulations shall be adopted pursuant to section 9-462.04.

E. The legislative body may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If at the expiration of this period the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

F. All zoning and rezoning ordinances or regulations adopted under this article shall be consistent with and conform to the adopted general plan of the municipality, if any, as adopted under article 6 of this chapter. In the case of uncertainty in construing or applying the conformity of any part of a proposed rezoning ordinance to the adopted general plan of the municipality, the ordinance shall be construed in a manner that will further the implementation of, and not be contrary to, the goals, policies and applicable elements of the general plan. A rezoning ordinance conforms with the land use element of the general plan if it proposes land uses, densities or intensities within the range of identified uses, densities and intensities of the land use element of the general plan.

…

H. A municipality may not adopt a land use regulation or impose any condition for issuance of a building or use permit or other approval that violates section 9-461.16.

I. In accordance with article II, sections 1 and 2, Constitution of Arizona, the legislative body of a municipality shall consider the individual property rights and personal liberties of the residents of the municipality before adopting any zoning ordinance.

…

K. For the purposes of this section:

> 1. "Development rights" means the maximum development that would be allowed on the sending property under any general or specific plan and local zoning ordinance of a municipality in effect on the date the municipality adopts an ordinance pursuant to subsection A, paragraph 12 of this section respecting the permissible use, area, bulk or height of improvements made to the lot or parcel. Development rights may be calculated and allocated in accordance with factors including dwelling units, area, floor area, floor area ratio, height limitations, traffic generation or any other criteria that will quantify a value for the development rights in a manner that will carry out the objectives of this section.
>
> 2. "Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic or social impact to the receiving property or to neighboring property.

3. "Sending property" means a lot or parcel with special characteristics, including farmland, woodland, desert land, mountain land, floodplain, natural habitats, recreation or parkland, including golf course area, or land that has unique aesthetic, architectural or historic value that a municipality desires to protect from future development.

4. "Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

A.R.S. § 9-462.02
Nonconformance to regulations; outdoor advertising change; enforcement
(Excerpt)

A. The municipality may acquire by purchase or condemnation private property for the removal of nonconforming uses and structures. The elimination of such nonconforming uses and structures in a zoned district is for a public purpose. Nothing in an ordinance or regulation authorized by this article shall affect existing property or the right to its continued use for the purpose used at the time the ordinance or regulation takes effect, nor to any reasonable repairs or alterations in buildings or property used for such existing purpose.

…

A.R.S. § 9-462.03
Amendment procedure

A. The governing body of the municipality shall adopt by ordinance a citizen review process that applies to all rezoning and specific plan applications that require a public hearing. The citizen review process shall include at least the following requirements:

1. Adjacent landowners and other potentially affected citizens will be notified of the application.

2. The municipality will inform adjacent landowners and other potentially affected citizens of the substance of the proposed rezoning.

3. Adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issues or concerns that they may have with the proposed rezoning before the public hearing.

B. A zoning ordinance that changes any property from one zone to another, that imposes any regulation not previously imposed or that removes or modifies any such regulation previously imposed must be adopted following the procedure prescribed in the citizen review process and in the manner set forth in section 9-462.04.

>> APPENDIX E <<

A.R.S. § 9-462.04
Public hearing required; definition
(Excerpt)

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. Notice of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen days before the hearing in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to be legible from the public right-of-way and in at least ten public places in the municipality. A posted notice shall be printed so that the following are visible from a distance of one hundred feet: the word "zoning", the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.

2. In proceedings involving rezoning of land that abuts other municipalities or unincorporated areas of the county or a combination thereof, copies of the notice of public hearing shall be transmitted to the planning agency of the governmental unit abutting such land. In proceedings involving rezoning of land that is located within the territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the municipality shall send copies of the notice of public hearing by first class mail to the military airport. In addition to notice by publication, a municipality may give notice of the hearing in any other manner that the municipality deems necessary or desirable.

3. In proceedings that are not initiated by the property owner involving rezoning of land that may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

4. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by paragraph 5 of this subsection:

(a) A ten percent or more increase or decrease in the number of square feet or units that may be developed.

(b) A ten percent or more increase or reduction in the allowable height of buildings.

(c) An increase or reduction in the allowable number of stories of buildings.

(d) A ten percent or more increase or decrease in setback or open space requirements.

(e) An increase or reduction in permitted uses.

5. In proceedings governed by paragraph 4 of this subsection, the municipality shall provide notice to real property owners pursuant to at least one of the following notification procedures:

(a) Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the changes.

(b) If the municipality issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include notice of the changes with such utility bills or other mailings.

(c) The municipality shall publish the changes before the first hearing on such changes in a newspaper of general circulation in the municipality. The changes shall be published in a "display ad" covering not less than one eighth of a full page.

6. If notice is provided pursuant to paragraph 5, subdivision (b) or (c) of this subsection, the municipality shall also send notice by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such notice. The municipality may charge a fee not to exceed five dollars per year for providing this service and may adopt procedures to implement this paragraph.

7. Notwithstanding the notice requirements in paragraph 4 of this subsection, the failure of any person or entity to receive notice does not constitute grounds for any court to invalidate the actions of a municipality for which the notice was given.

…

C. After the hearing, the planning commission or hearing officer shall render a decision in the form of a written recommendation to the governing body. The recommendation shall include the reasons for the recommendation and be transmitted to the governing body in such form and manner as may be specified by the governing body.

D. If the planning commission or hearing officer has held a public hearing, the governing body may adopt the recommendations of the planning commission or hearing officer without holding a second public hearing if there is no objection, request for public hearing or other protest. The governing body shall hold a public hearing if requested by the party aggrieved or any member of the public or of the governing body, or, in any case, if a public hearing has not been held by the planning commission or hearing officer. … Notice of the time and place of the hearing shall be given in the time and manner provided for the giving of notice of the hearing by the planning commission as specified in subsection A of this section. A municipality may give additional notice of the hearing in any other manner as the municipality deems necessary or desirable.

E. A municipality may enact an ordinance authorizing county zoning to continue in effect until municipal zoning is applied to land previously zoned by the county and annexed by the municipality, but in no event for longer than six months after the annexation.

F. A municipality is not required to adopt a general plan before the adoption of a zoning ordinance.

G. If there is no planning commission or hearing officer, the governing body of the municipality shall perform the functions assigned to the planning commission or hearing officer.

…

I. In applying an open space element or a growth element of a general plan, a parcel of land shall not be rezoned for open space, recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing.

J. Notwithstanding section 19-142, subsection B, a decision by the governing body involving rezoning of land that is not owned by the municipality and that changes the zoning classification of such land may not be enacted as an emergency measure and the change shall not be effective for at least thirty days after final approval of the change in classification by the governing body.

K. For the purposes of this section, "zoning area" means both of the following:

1. The area within one hundred fifty feet, including all rights-of-way, of the affected property subject to the proposed amendment or change.

2. The area of the proposed amendment or change.

>> APPENDIX E <<

A.R.S. § 9-462.05
Enforcement

A. The legislative body of a municipality has authority to enforce any zoning ordinance enacted pursuant to this article in the same manner as other municipal ordinances are enforced.

B. If any building structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of the provisions of this article or of any ordinance adopted pursuant to the provisions of this article, the legislative body of the municipality may institute any appropriate action to:

1. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.

2. Restrain, correct or abate the violation.

3. Prevent the occupancy of such building, structure or land.

4. Prevent any illegal act, conduct, business or use in or about such premises.

C. By ordinance, the legislative body shall establish the office of zoning administrator. The zoning administrator is charged with responsibility for enforcement of the zoning ordinance.

D. By ordinance, the legislative body shall establish all necessary and appropriate rules and procedures governing application for zoning amendment, review and approval of plans, issuance of any necessary permits or compliance certificates, inspection of buildings, structures and lands and any other actions which may be considered necessary or desirable for enforcement of the zoning ordinance.

A.R.S. § 9-462.06
Board of adjustment

A. The legislative body, by ordinance, shall establish a board of adjustment, which shall consist of at least five but no more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief that has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.

2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

3. Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order, requirement, decision or determination as necessary.

H. A board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the board of adjustment, it shall exercise all of the functions and duties of the board of adjustment in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the board, at any time within fifteen days after the board has rendered its decision, may file an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the legislative body or board, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, may file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

>> APPENDIX E <<

A.R.S. § 9-463
Definitions

In this article, unless the context otherwise requires:

1. "Design" means street alignment, grades and widths, alignment and widths of easements and rights-of-way for drainage and sanitary sewers and the arrangement and orientation of lots.

2. "Improvement" means required installations, pursuant to this article and subdivision regulations, including grading, sewer and water utilities, streets, easements, traffic control devices as a condition to the approval and acceptance of the final plat thereof.

3. "Land splits" as used in this article means the division of improved or unimproved land whose area is two and one-half acres or less into two or three tracts or parcels of land for the purpose of sale or lease.

4. "Municipal" or "municipality" means an incorporated city or town.

5. "Planning agency" means the official body designated by local ordinance to carry out the purposes of this article and may be a planning department, a planning commission, the legislative body itself, or any combination thereof.

6. "Plat" means a map of a subdivision:

(a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance.

(b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute.

(c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinance and other state statute.

7. "Right-of-way" means any public or private right-of-way and includes any area required for public use pursuant to any general or specific plan as provided for in article 6 of this chapter.

8. "Street" means any existing or proposed street, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement for public vehicular access or a street shown in a plat heretofore approved pursuant to law or a street in a plat duly filed and recorded in the county recorder's office. A street includes all land within the street right-of-way whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges and viaducts.

9. "Subdivider" means a person, firm, corporation, partnership, association, syndicate, trust or other legal entity that files application and initiates proceedings for the subdivision of land in accordance with the provisions of this article, any local applicable ordinance and other state statute, except that an individual serving as agent for such legal entity is not a subdivider.

10. "Subdivision" means any land or portion thereof subject to the provisions of this article as provided in section 9-463.02.

11. "Subdivision regulations" means a municipal ordinance regulating the design and improvement of subdivisions enacted under the provisions of this article or any prior statute regulating the design and improvement of subdivisions.

A.R.S. § 9-463.01
Authority
(Excerpt)

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.

…

G. The legislative body of every municipality shall comply with this article and applicable state statutes pertaining to the hearing, approval or rejection, and recordation of:

1. Final subdivision plats.

2. Plats filed for the purpose of reverting to acreage of land previously subdivided.

3. Plats filed for the purpose of vacating streets or easements previously dedicated to the public.

4. Plats filed for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

H. Approval of every preliminary and final plat by a legislative body is conditioned upon compliance by the subdivider with:

1. Rules as may be established by the department of transportation relating to provisions for the safety of entrance upon and departure from abutting state primary highways.

2. Rules as may be established by a county flood control district relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation.

3. Rules as may be established by the department of health services or a county health department relating to the provision of domestic water supply and sanitary sewage disposal.

I. If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within an active management area, as defined in section 45-402, the final plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. The legislative body of the municipality shall note on the face of the final plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to section 45-576, or is exempt from the requirement pursuant to section 45-576. J. Except as provided in subsections K and P of this section, if the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the director of water resources has given written notice to the municipality pursuant to section 45-108, subsection H, the final plat shall not be approved unless one of the following applies:

1. The director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 and the subdivider has included the report with the plat.

2. The subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108.

…

K. The legislative body of a municipality that has received written notice from the director of water resources pursuant to section 45-108, subsection H or that has adopted an ordinance pursuant to subsection O of this section may provide by ordinance an exemption from the requirement in subsection J or O of this section for a subdivision that the director of water resources has determined will have an inadequate water supply because the water supply will be transported to the subdivision by motor vehicle or train if all of the following apply:

1. The legislative body determines that there is no feasible alternative water supply for the subdivision and that the transportation of water to the subdivision will not constitute a significant risk to the health and safety of the residents of the subdivision.

2. If the water to be transported to the subdivision will be withdrawn or diverted in the service area of a municipal provider as defined in section 45-561, the municipal provider has consented to the withdrawal or diversion.

3. If the water to be transported is groundwater, the transportation complies with the provisions governing the transportation of groundwater in title 45, chapter 2, article 8.

4. The transportation of water to the subdivision meets any additional conditions imposed by the legislative body.

L. A municipality that adopts the exemption authorized by subsection K of this section shall give written notice of the adoption of the exemption, including a certified copy of the ordinance containing the exemption, to the director of water resources, the director of environmental quality and the state real estate commissioner. If the municipality later rescinds the exemption, the municipality shall give written notice of the rescission to the director of water resources, the director of environmental quality and the state real estate commissioner. A municipality that rescinds an exemption adopted pursuant to subsection K of this section shall not readopt the exemption for at least five years after the rescission becomes effective.

M. If the legislative body of a municipality approves a subdivision plat pursuant to subsection J, paragraph 1 or 2 or subsection O of this section, the legislative body shall note on the face of the plat that the director of water resources has reported that the subdivision has an adequate water supply or that the subdivider has obtained a commitment of water service for the proposed subdivision from a city, town or private water company designated as having an adequate water supply pursuant to section 45-108.

N. If the legislative body of a municipality approves a subdivision plat pursuant to an exemption authorized by subsection K of this section or granted by the director of water resources pursuant to section 45-108.02 or 45- 108.03: 1. The legislative body shall give written notice of the approval to the director of water resources and the director of environmental quality. 2. The legislative body shall include on the face of the plat a statement that the director of water resources has determined that the water supply for the subdivision is inadequate and a statement describing the exemption under which the plat was approved, including a statement that the legislative body or the director of water resources, whichever applies, has determined that the specific conditions of the exemption were met. If the director subsequently informs the legislative body that the subdivision is being served by a water provider that has been designated by the director as having an adequate water supply pursuant to section 45-108, the legislative body shall record in the county recorder's office a statement disclosing that fact.

O. If a municipality has not been given written notice by the director of water resources pursuant to section 45- 108, subsection H, the legislative body of the municipality, to protect the public health and safety, may provide by ordinance that, except as provided in subsections K and P of this section, the final plat of a subdivision located in the municipality and outside of an active management area will not be approved by the legislative body unless the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108. Before holding a public hearing to consider whether to enact an

ordinance pursuant to this subsection, a municipality shall provide written notice of the hearing to the board of supervisors of the county in which the municipality is located. A municipality that enacts an ordinance pursuant to this subsection shall give written notice of the enactment of the ordinance, including a certified copy of the ordinance, to the director of water resources, the director of environmental quality, the state real estate commissioner and the board of supervisors of the county in which the municipality is located. If a municipality enacts an ordinance pursuant to this subsection, water providers may be eligible to receive monies in a water supply development fund, as otherwise provided by law.

P. Subsections J and O of this section do not apply to:

1. A proposed subdivision that the director of water resources has determined will have an inadequate water supply pursuant to section 45-108 if the director grants an exemption for the subdivision pursuant to section 45-108.02 and the exemption has not expired or if the director grants an exemption pursuant to section 45-108.03.

2. A proposed subdivision that received final plat approval from the municipality before the requirement for an adequate water supply became effective in the municipality if the plat has not been materially changed since it received the final plat approval. If changes were made to the plat after the plat received the final plat approval, the director of water resources shall determine whether the changes are material pursuant to the rules adopted by the director to implement section 45-108. If the municipality approves a plat pursuant to this paragraph and the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat.

Q. If the subdivision is composed of subdivided lands as defined in section 32-2101 outside of an active management area and the municipality has not received written notice pursuant to section 45-108, subsection H and has not adopted an ordinance pursuant to subsection O of this section:

1. If the director of water resources has determined that there is an adequate water supply for the subdivision pursuant to section 45-108 or if the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an adequate water supply by the director of water resources pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.

2. If the director of water resources has determined that there is an inadequate water supply for the subdivision pursuant to section 45-108, the municipality shall note this on the face of the plat if the plat is approved.

R. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.

S. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

T. The legislative bodies of cities and towns may regulate by ordinance land splits within their corporate limits. Authority granted under this section refers to the determination of division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels that are not the result of land splits as defined in section 9-463.

U. For any subdivision that consists of ten or fewer lots, tracts or parcels, each of which is of a size as prescribed by the legislative body, the legislative body of each municipality may expedite the processing of or waive the requirement to prepare, submit and receive approval of a preliminary plat as a condition precedent to submitting a final plat and may waive or reduce infrastructure standards or requirements proportional to the impact of the subdivision. Requirements for dust-controlled access and drainage improvements shall not be waived.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 9-463.05
Development fees; imposition by cities and towns; infrastructure improvements plan; annual report; advisory committee; limitation on actions; definitions

A. A municipality may assess development fees to offset costs to the municipality associated with providing necessary public services to a development, including the costs of infrastructure, improvements, real property, engineering and architectural services, financing and professional services required for the preparation or revision of a development fee pursuant to this section, including the relevant portion of the infrastructure improvements plan.

B. Development fees assessed by a municipality under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. The municipality shall calculate the development fee based on the infrastructure improvements plan adopted pursuant to this section.

3. The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.

4. Costs for necessary public services made necessary by new development shall be based on the same level of service provided to existing development in the service area.

5. Development fees may not be used for any of the following:

(a) Construction, acquisition or expansion of public facilities or assets other than necessary public services or facility expansions identified in the infrastructure improvements plan.

(b) Repair, operation or maintenance of existing or new necessary public services or facility expansions.

(c) Upgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.

(d) Upgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.

(e) Administrative, maintenance or operating costs of the municipality.

6. Any development for which a development fee has been paid is entitled to the use and benefit of the services for which the fee was imposed and is entitled to receive immediate service from any existing facility with available capacity to serve the new service units if the available capacity has not been reserved or pledged in connection with the construction or financing of the facility.

7. Development fees may be collected if any of the following occurs:

(a) The collection is made to pay for a necessary public service or facility expansion that is identified in the infrastructure improvements plan and the municipality plans to complete construction and to have the service available within the time period established in the infrastructure improvement plan, but in no event longer than the time period provided in subsection H, paragraph 3 of this section.

(b) The municipality reserves in the infrastructure improvements plan adopted pursuant to this section or otherwise agrees to reserve capacity to serve future development.

(c) The municipality requires or agrees to allow the owner of a development to construct or finance the necessary public service or facility expansion and any of the following apply:

(i) The costs incurred or money advanced are credited against or reimbursed from the development fees otherwise due from a development.

(ii) The municipality reimburses the owner for those costs from the development fees paid from all developments that will use those necessary public services or facility expansions.

(iii) For those costs incurred the municipality allows the owner to assign the credits or reimbursement rights from the development fees otherwise due from a development to other developments for the same category of necessary public services in the same service area.

8. Projected interest charges and other finance costs may be included in determining the amount of development fees only if the monies are used for the payment of principal and interest on the portion of the bonds, notes or other obligations issued to finance construction of necessary public services or facility expansions identified in the infrastructure improvements plan.

9. Monies received from development fees assessed pursuant to this section shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Monies received from a development fee identified in an infrastructure improvements plan adopted or updated pursuant to subsection D of this section shall be used to provide the same category of necessary public services or facility expansions for which the development fee was assessed and for the benefit of the same service area, as defined in the infrastructure improvements plan, in which the development fee was assessed. Interest earned on monies in the separate fund shall be credited to the fund.

10. The schedule for payment of fees shall be provided by the municipality. Based on the cost identified in the infrastructure improvements plan, the municipality shall provide a credit toward the payment of a development fee for the required or agreed to dedication of public sites, improvements and other necessary public services or facility expansions included in the infrastructure improvements plan and for which a development fee is assessed, to the extent the public sites, improvements and necessary public services or facility expansions are provided by the developer. The developer of residential dwelling units shall be required to pay development fees when construction permits for the dwelling units are issued, or at a later time if specified in a development agreement pursuant to section 9-500.05. If a

development agreement provides for fees to be paid at a time later than the issuance of construction permits, the deferred fees shall be paid no later than fifteen days after the issuance of a certificate of occupancy. The development agreement shall provide for the value of any deferred fees to be supported by appropriate security, including a surety bond, letter of credit or cash bond.

11. If a municipality requires as a condition of development approval the construction or improvement of, contributions to or dedication of any facilities that were not included in a previously adopted infrastructure improvements plan, the municipality shall cause the infrastructure improvements plan to be amended to include the facilities and shall provide a credit toward the payment of a development fee for the construction, improvement, contribution or dedication of the facilities to the extent that the facilities will substitute for or otherwise reduce the need for other similar facilities in the infrastructure improvements plan for which development fees were assessed.

12. The municipality shall forecast the contribution to be made in the future in cash or by taxes, fees, assessments or other sources of revenue derived from the property owner towards the capital costs of the necessary public service covered by the development fee and shall include these contributions in determining the extent of the burden imposed by the development. Beginning August 1, 2014, for purposes of calculating the required offset to development fees pursuant to this subsection, if a municipality imposes a construction contracting or similar excise tax rate in excess of the percentage amount of the transaction privilege tax rate imposed on the majority of other transaction privilege tax classifications, the entire excess portion of the construction contracting or similar excise tax shall be treated as a contribution to the capital costs of necessary public services provided to development for which development fees are assessed, unless the excess portion was already taken into account for such purpose pursuant to this subsection.

13. If development fees are assessed by a municipality, the fees shall be assessed against commercial, residential and industrial development, except that the municipality may distinguish between different categories of residential, commercial and industrial development in assessing the costs to the municipality of providing necessary public services to new development and in determining the amount of the development fee applicable to the category of development. If a municipality agrees to waive any of the development fees assessed on a development, the municipality shall reimburse the appropriate development fee accounts for the amount that was waived. The municipality shall provide notice of any such waiver to the advisory committee established pursuant to subsection G of this section within thirty days.

14. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the municipality shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

C. A municipality shall give at least thirty days' advance notice of intention to assess a development fee and shall release to the public and post on its website or the website of an association of cities and towns if a municipality does not have a website a written report of the land use assumptions and infrastructure improvements plan adopted pursuant to subsection D of this section. The municipality shall conduct a public hearing on the proposed development fee at any time after the expiration of the thirty day notice of intention to assess a development fee and at least thirty days before the scheduled date of adoption of the fee by the governing body. Within sixty days after the date of the public hearing on the proposed development fee, a municipality shall approve or disapprove the imposition of the development fee. A municipality shall not adopt an ordinance, order or resolution approving a development fee as an emergency measure. A development fee assessed pursuant to this section shall not be effective until seventy-five days after its formal adoption by the governing body of the municipality. Nothing in this subsection shall affect any development fee adopted before July 24, 1982.

D. Before the adoption or amendment of a development fee, the governing body of the municipality shall adopt or update the land use assumptions and infrastructure improvements plan for the designated service area. The municipality shall conduct a public hearing on the land use assumptions and infrastructure improvements plan at least thirty days before the adoption or update of the plan. The municipality shall release the plan to the public, post the plan on its website or the website of an association of cities and towns if the municipality does not have a website, including in the posting its land use assumptions, the time period of the projections, a description of the necessary public services included in the infrastructure improvements plan and a map of the service area to which the land use assumptions apply, make available to the public the documents used to prepare the assumptions and plan and provide public notice at least sixty days before the public hearing, subject to the following:

1. The land use assumptions and infrastructure improvements plan shall be approved or disapproved within sixty days after the public hearing on the land use assumptions and infrastructure improvements plan and at least thirty days before the public hearing on the report required by subsection C of this section. A municipality shall not adopt an ordinance, order or resolution approving the land use assumptions or infrastructure improvements plan as an emergency measure.

2. An infrastructure improvements plan shall be developed by qualified professionals using generally accepted engineering and planning practices pursuant to subsection E of this section.

3. A municipality shall update the land use assumptions and infrastructure improvements plan at least every five years. The initial five year period begins on the day the infrastructure improvements plan is adopted. The municipality shall review and evaluate its current land use assumptions and shall cause an update of the infrastructure improvements plan to be prepared pursuant to this section.

4. Within sixty days after completion of the updated land use assumptions and infrastructure improvements plan, the municipality shall schedule and provide notice of a public hearing to discuss and review the update and shall determine whether to amend the assumptions and plan.

5. A municipality shall hold a public hearing to discuss the proposed amendments to the land use assumptions, the infrastructure improvements plan or the development fee. The land use assumptions and the infrastructure improvements plan, including the amount of any proposed changes to the development fee per service unit, shall be made available to the public on or before the date of the first publication of the notice of the hearing on the amendments.

6. The notice and hearing procedures prescribed in paragraph 1 of this subsection apply to a hearing on the amendment of land use assumptions, an infrastructure improvements plan or a development fee. Within sixty days after the date of the public hearing on the amendments, a municipality shall approve or disapprove the amendments to the land use assumptions, infrastructure improvements plan or development fee. A municipality shall not adopt an ordinance, order or resolution approving the amended land use assumptions, infrastructure improvements plan or development fee as an emergency measure.

7. The advisory committee established under subsection G of this section shall file its written comments on any proposed or updated land use assumptions, infrastructure improvements plan and development fees before the fifth business day before the date of the public hearing on the proposed or updated assumptions, plan and fees.

8. If, at the time an update as prescribed in paragraph 3 of this subsection is required, the municipality determines that no changes to the land use assumptions, infrastructure improvements plan or development fees are needed, the municipality may as an alternative to the updating requirements of this subsection publish notice of its determination on its website and include the following:

(a) A statement that the municipality has determined that no change to the land use assumptions, infrastructure improvements plan or development fee is necessary.

(b) A description and map of the service area in which an update has been determined to be unnecessary.

(c) A statement that by a specified date, which shall be at least sixty days after the date of publication of the first notice, a person may make a written request to the municipality requesting that the land use assumptions, infrastructure improvements plan or development fee be updated.

(d) A statement identifying the person or entity to whom the written request for an update should be sent.

9. If, by the date specified pursuant to paragraph 8 of this subsection, a person requests in writing that the land use assumptions, infrastructure improvements plan or development fee be updated, the municipality shall cause, accept or reject an update of the assumptions and plan to be prepared pursuant to this subsection.

10. Notwithstanding the notice and hearing requirements for adoption of an infrastructure improvements plan, a municipality may amend an infrastructure improvements plan adopted pursuant to this section without a public hearing if the amendment addresses only elements of necessary public services in the existing infrastructure improvements plan and the changes to the plan will not, individually or cumulatively with other amendments adopted pursuant to this subsection, increase the level of service in the service area or cause a development fee increase of greater than five per cent when a new or modified development fee is assessed pursuant to this section. The municipality shall provide notice of any such amendment at least thirty days before adoption, shall post the amendment on its website or on the website of an association of cities and towns if the municipality does not have a website and shall provide notice to the advisory committee established pursuant to subsection G of this section that the amendment complies with this subsection.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall include:

1. A description of the existing necessary public services in the service area and the costs to upgrade, update, improve, expand, correct or replace those necessary public services to meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards, which shall be prepared by qualified professionals licensed in this state, as applicable.

2. An analysis of the total capacity, the level of current usage and commitments for usage of capacity of the existing necessary public services, which shall be prepared by qualified professionals licensed in this state, as applicable.

3. A description of all or the parts of the necessary public services or facility expansions and their costs necessitated by and attributable to development in the service area based on the approved land use assumptions, including a forecast of the costs of infrastructure, improvements, real property, financing, engineering and architectural services, which shall be prepared by qualified professionals licensed in this state, as applicable.

4. A table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of necessary public services or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial.

5. The total number of projected service units necessitated by and attributable to new development in the service area based on the approved land use assumptions and calculated pursuant to generally accepted engineering and planning criteria.

6. The projected demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.

7. A forecast of revenues generated by new service units other than development fees, which shall include estimated state-shared revenue, highway users revenue, federal revenue, ad valorem property taxes, construction contracting or similar excise taxes and the capital recovery portion of utility fees attributable to development based on the approved land use assumptions, and a plan to include these contributions in determining the extent of the burden imposed by the development as required in subsection B, paragraph 12 of this section.

F. A municipality's development fee ordinance shall provide that a new development fee or an increased portion of a modified development fee shall not be assessed against a development for twenty-four months after the date that the municipality issues the final approval for a commercial, industrial or multifamily development or the date that the first building permit is issued for a residential development pursuant to an approved site plan or subdivision plat, provided that no subsequent changes are made to the approved site plan or subdivision plat that would increase the number of service units. If the number of service units increases, the new or increased portion of a modified development fee shall be limited to the amount attributable to the additional service units. The twenty-four month period shall not be extended by a renewal or amendment of the site plan or the final

subdivision plat that was the subject of the final approval. The municipality shall issue, on request, a written statement of the development fee schedule applicable to the development. If, after the date of the municipality's final approval of a development, the municipality reduces the development fee assessed on development, the reduced fee shall apply to the development.

G. A municipality shall do one of the following:

1. Before the adoption of proposed or updated land use assumptions, infrastructure improvements plan and development fees as prescribed in subsection D of this section, the municipality shall appoint an infrastructure improvements advisory committee, subject to the following requirements:

(a) The advisory committee shall be composed of at least five members who are appointed by the governing body of the municipality. At least fifty per cent of the members of the advisory committee must be representatives of the real estate, development or building industries, of which at least one member of the committee must be from the home building industry. Members shall not be employees or officials of the municipality.

(b) The advisory committee shall serve in an advisory capacity and shall:

(i) Advise the municipality in adopting land use assumptions and in determining whether the assumptions are in conformance with the general plan of the municipality.

(ii) Review the infrastructure improvements plan and file written comments.

(iii) Monitor and evaluate implementation of the infrastructure improvements plan.

(iv) Every year file reports with respect to the progress of the infrastructure improvements plan and the collection and expenditures of development fees and report to the municipality any perceived inequities in implementing the plan or imposing the development fee.

(v) Advise the municipality of the need to update or revise the land use assumptions, infrastructure improvements plan and development fee.

(c) The municipality shall make available to the advisory committee any professional reports with respect to developing and implementing the infrastructure improvements plan.

(d) The municipality shall adopt procedural rules for the advisory committee to follow in carrying out the committee's duties.

2. In lieu of creating an advisory committee pursuant to paragraph 1 of this subsection, provide for a biennial certified audit of the municipality's land use assumptions, infrastructure improvements plan and development fees. An audit pursuant to this paragraph shall be conducted by one or more qualified professionals who are not employees or officials of the municipality and who did not prepare the infrastructure improvements plan. The audit shall review the progress of the infrastructure improvements plan, including the collection and expenditures of development fees for each project in the plan, and evaluate any inequities in implementing the plan or imposing the development fee. The municipality shall post the findings of the audit on the municipality's website or the website of an association of cities and towns if the municipality does not have a website and shall conduct a public hearing on the audit within sixty days of the release of the audit to the public.

H. On written request, an owner of real property for which a development fee has been paid after July 31, 2014 is entitled to a refund of a development fee or any part of a development fee if:

1. Pursuant to subsection B, paragraph 6 of this section, existing facilities are available and service is not provided.

2. The municipality has, after collecting the fee to construct a facility when service is not available, failed to complete construction within the time period identified in the infrastructure improvements plan, but in no event later than the time period specified in paragraph 3 of this subsection.

3. For a development fee other than a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within ten years after the fee has been paid or, for a development fee for water or wastewater facilities, any part of the development fee is not spent as authorized by this section within fifteen years after the fee has been paid.

I. If the development fee was collected for the construction of all or a portion of a specific item of infrastructure, and on completion of the infrastructure the municipality determines that the actual cost of construction was less than the forecasted cost of construction on which the development fee was based and the difference between the actual and estimated cost is greater than ten per cent, the current owner may receive a refund of the portion of the development fee equal to the difference between the development fee paid and the development fee that would have been due if the development fee had been calculated at the actual construction cost.

J. A refund shall include any interest earned by the municipality from the date of collection to the date of refund on the amount of the refunded fee. All refunds shall be made to the record owner of the property at the time the refund is paid. If the development fee is paid by a governmental entity, the refund shall be paid to the governmental entity.

K. A development fee that was adopted before January 1, 2012 may continue to be assessed only to the extent that it will be used to provide a necessary public service for which development fees can be assessed pursuant to this section and shall be replaced by a development fee imposed under this section on or before August 1, 2014. Any municipality having a development fee that has not been replaced under this section on or before August 1, 2014 shall not collect development fees until the development fee has been replaced with a fee that complies with this section. Any development fee monies collected before January 1, 2012 remaining in a development fee account:

1. Shall be used towards the same category of necessary public services as authorized by this section.

2. If development fees were collected for a purpose not authorized by this section, shall be used for the purpose for which they were collected on or before January 1, 2020, and after which, if not spent, shall be distributed equally among the categories of necessary public services authorized by this section.

L. A moratorium shall not be placed on development for the sole purpose of awaiting completion of all or any part of the process necessary to develop, adopt or update development fees.

M. In any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.

N. Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees for each service area. The annual report shall include the following:

1. The amount assessed by the municipality for each type of development fee.

2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.

4. The amount of development fee monies used to repay:

(a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment, including the amount needed to repay the debt service obligations on each facility for which development fees have been identified as the source of funding and the time frames in which the debt service will be repaid.

(b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment, the total amount advanced by the municipality for each facility, the source of the monies advanced and the terms under which the monies will be repaid to the municipality.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.

6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

O. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

P. A municipality that fails to file the report and post the report on the municipality's website or the website of an association of cities and towns if the municipality does not have a website as required by this section shall not collect development fees until the report is filed and posted.

Q. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.

R. A municipality may continue to assess a development fee adopted before January 1, 2012 for any facility that was financed before June 1, 2011 if:

1. Development fees were pledged to repay debt service obligations related to the construction of the facility.

2. After August 1, 2014, any development fees collected under this subsection are used solely for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued before June 1, 2011 to finance construction of the facility.

S. Through August 1, 2014, a development fee adopted before January 1, 2012 may be used to finance construction of a facility and may be pledged to repay debt service obligations if:

1. The facility that is being financed is a facility that is described under subsection T, paragraph 7, subdivisions (a) through (g) of this section.

2. The facility was included in an infrastructure improvements plan adopted before June 1, 2011.

3. The development fees are used for the payment of principal and interest on the portion of the bonds, notes or other debt service obligations issued to finance construction of the necessary public services or facility expansions identified in the infrastructure improvement plan.

T. For the purposes of this section:

1. "Dedication" means the actual conveyance date or the date an improvement, facility or real or personal property is placed into service, whichever occurs first.

2. "Development" means:

(a) The subdivision of land.

(b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure that adds or increases the number of service units.

(c) Any use or extension of the use of land that increases the number of service units.

3. "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise new necessary public service in order that the existing facility may serve new development. Facility expansion does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development.

4. "Final approval" means:

(a) For a nonresidential or multifamily development, the approval of a site plan or, if no site plan is submitted for the development, the approval of a final subdivision plat.

(b) For a single family residential development, the approval of a final subdivision plat.

5. "Infrastructure improvements plan" means a written plan that identifies each necessary public service or facility expansion that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.

6. "Land use assumptions" means projections of changes in land uses, densities, intensities and population for a specified service area over a period of at least ten years and pursuant to the general plan of the municipality.

7. "Necessary public service" means any of the following facilities that have a life expectancy of three or more years and that are owned and operated by or on behalf of the municipality:

(a) Water facilities, including the supply, transportation, treatment, purification and distribution of water, and any appurtenances for those facilities.

(b) Wastewater facilities, including collection, interception, transportation, treatment and disposal of wastewater, and any appurtenances for those facilities.

(c) Storm water, drainage and flood control facilities, including any appurtenances for those facilities.

(d) Library facilities of up to ten thousand square feet that provide a direct benefit to development, not including equipment, vehicles or appurtenances.

(e) Street facilities located in the service area, including arterial or collector streets or roads that have been designated on an officially adopted plan of the municipality, traffic signals and rights-of-way and improvements thereon.

(f) Fire and police facilities, including all appurtenances, equipment and vehicles. Fire and police facilities do not include a facility or portion of a facility that is used to replace services that were once provided elsewhere in the municipality, vehicles and equipment used to provide administrative services, helicopters or airplanes or a facility that is used for training firefighters or officers from more than one station or substation.

(g) Neighborhood parks and recreational facilities on real property up to thirty acres in area, or parks and recreational facilities larger than thirty acres if the facilities provide a direct benefit to the development. Park and recreational facilities do not include vehicles, equipment or that portion of any facility that is used for amusement parks, aquariums, aquatic centers, auditoriums, arenas, arts and cultural facilities, bandstand and orchestra facilities, bathhouses, boathouses, clubhouses, community centers greater than three thousand square feet in floor area, environmental education centers, equestrian facilities, golf course facilities, greenhouses, lakes, museums, theme parks, water reclamation or riparian areas, wetlands, zoo facilities or similar recreational facilities, but may include swimming pools.

(h) Any facility that was financed and that meets all of the requirements prescribed in subsection R of this section.

8. "Qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of the person's license, education or experience.

9. "Service area" means any specified area within the boundaries of a municipality in which development will be served by necessary public services or facility expansions and within which a substantial nexus exists between the necessary public services or facility expansions and the development being served as prescribed in the infrastructure improvements plan.

10. "Service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated pursuant to generally accepted engineering or planning standards for a particular category of necessary public services or facility expansions.

A.R.S. § 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.

>> APPENDIX E <<

A.R.S. § 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.

A.R.S. § 9-500.21
Civil enforcement of municipal ordinances

A city or town that classifies ordinance violations as civil offenses shall establish procedures to hear and determine these violations that may include:

1. Filing of a complaint before a hearing officer. The city or town magistrate may serve as a hearing officer or the city or town may appoint a separate hearing officer.

2. Timely notice of the citation to the violator. If the city or town is unable to personally serve the notice, the notice may be served in the same manner prescribed for alternative methods of service by the Arizona rules of civil procedure or by certified or registered mail, return receipt requested.

3. Procedures for the hearing, record on appeal, default by a defendant and rules of evidence that generally comply with those for civil traffic offenses.

4. Imposition of a civil penalty. At the conclusion of the hearing, the hearing officer shall determine whether a violation exists and, if so, may impose civil penalties of up to the maximum amount specified in section 9-240 for ordinance violations for each day a violation exists beyond the initial notice constituting a separate offense. The hearing officer may also order abatement of the violation pursuant to section 9-499.

5. A provision that if the violator does not comply with a civil enforcement action, the city or town may file a criminal charge. A civil enforcement action is not a prerequisite to the filing of a criminal charge.

6. Judicial review of the final decisions of the hearing officer pursuant to section 12-124.

>> APPENDIX E <<

A.R.S. § 12-349
Unjustified actions; attorney fees, expenses and double damages; exceptions; definition
(Excerpt)

A. Except as otherwise provided by and not inconsistent with another statute, in any civil action commenced or appealed in a court of record in this state, the court shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party, including this state and political subdivisions of this state, if the attorney or party does any of the following:

1. Brings or defends a claim without substantial justification.

2. Brings or defends a claim solely or primarily for delay or harassment.

3. Unreasonably expands or delays the proceeding.

4. Engages in abuse of discovery.

B. The court may allocate the payment of attorney fees among the offending attorneys and parties, jointly or severally, and may assess separate amounts against an offending attorney or party.

...

F. For the purposes of this section, "without substantial justification" means that the claim or defense is groundless and is not made in good faith.

A.R.S. § 12-542
Injury to person; injury when death ensues; injury to property; conversion of property; forcible entry and forcible detainer; two year limitation

Except as provided in section 12-551 there shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions:

1. For injuries done to the person of another including causes of action for medical malpractice as defined in section 12-561.

2. For injuries done to the person of another when death ensues from such injuries, which action shall be considered as accruing at the death of the party injured.

3. For trespass for injury done to the estate or the property of another.

4. For taking or carrying away the goods and chattels of another.

5. For detaining the personal property of another and for converting such property to one's own use.

6. For forcible entry or forcible detainer, which action shall be considered as accruing at the commencement of the forcible entry or detainer.

>> APPENDIX E <<

A.R.S. § 12-821
General limitation; public employee

All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward.

A.R.S. § 12-821.01
Authorization of claim against public entity, public school or public employee

A. Persons who have claims against a public entity, public school or a public employee shall file claims with the person or persons authorized to accept service for the public entity, public school or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues. The claim shall contain facts sufficient to permit the public entity, public school or public employee to understand the basis on which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim that is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained thereon.

B. For the purposes of this section, a cause of action accrues when the damaged party realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition that caused or contributed to the damage.

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.

D. Notwithstanding subsection A, a minor or an insane or incompetent person may file a claim within one hundred eighty days after the disability ceases.

E. A claim against a public entity or public employee filed pursuant to this section is deemed denied sixty days after the filing of the claim unless the claimant is advised of the denial in writing before the expiration of sixty days.

F. This section applies to all causes of action that accrue on or after July 17, 1994.

G. If a genuine issue of material fact exists as to whether the requirements of this section have been complied with, the issue shall be resolved before a trial on the merits and at the earliest possible time.

H. This section does not apply to any claim for just compensation pursuant to chapter 8, article 2.1 of this title.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 13-1802
Theft; classification; definitions
(Excerpt)

A. A person commits theft if, without lawful authority, the person knowingly:

1. Controls property of another with the intent to deprive the other person of such property; or

2. Converts for an unauthorized term or use services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use; or

3. Obtains services or property of another by means of any material misrepresentation with intent to deprive the other person of such property or services; or

…

5. Controls property of another knowing or having reason to know that the property was stolen; or

6. Obtains services known to the defendant to be available only for compensation without paying or an agreement to pay the compensation or diverts another's services to the person's own or another's benefit without authority to do so; or

…

…

D. The inferences set forth in section 13-2305 apply to any prosecution under subsection A, paragraph 5 of this section.

E. At the conclusion of any grand jury proceeding, hearing or trial, the court shall preserve any trade secret that is admitted in evidence or any portion of a transcript that contains information relating to the trade secret pursuant to section 44-405.

F. Subsection B of this section does not apply to an agent who is acting within the scope of the agent's duties as or on behalf of a health care institution that is licensed pursuant to title 36, chapter 4 and that provides services to the vulnerable adult.

G. Theft of property or services with a value of twenty-five thousand dollars or more is a class 2 felony. Theft of property or services with a value of four thousand dollars or more but less than twenty-five thousand dollars is a class 3 felony. Theft of property or services with a value of three thousand dollars or more but less than four thousand dollars is a class 4 felony, except that theft of any vehicle engine or transmission is a class 4 felony regardless of value. Theft of property or services with a value of two thousand dollars or more but less than three thousand dollars is a class 5 felony. Theft of property or services with a value of one thousand dollars or more but less than two thousand dollars is a class 6 felony. Theft of any property or services valued at less than one thousand dollars is a class 1 misdemeanor, unless the property is taken from the person of another, is a firearm or is an animal taken for the purpose of animal fighting in violation of section 13-2910.01, in which case the theft is a class 6 felony.

H. A person who is convicted of a violation of subsection A, paragraph 1 or 3 of this section that involved property with a value of one hundred thousand dollars or more is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

I. For the purposes of this section, the value of ferrous metal or nonferrous metal includes the amount of any damage to the property of another caused as a result of the theft of the metal.

…

K. For the purposes of this section:

…

5. "Property" includes all forms of real property and personal property.

…

>> APPENDIX E <<

A.R.S. § 13-2301
Definitions
(Excerpt)

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

…

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.

…

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.

…

C. For the purposes of this chapter:

…

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.

…

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 … 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:

(iv) Forgery.

(v) Theft.

(vi) Bribery.

…

(ix) Extortion.

…

(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.

(xx) A scheme or artifice to defraud.

…

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

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.

A.R.S. § 13-2310
Fraudulent schemes and artifices; classification; definition

A. Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony.

B. Reliance on the part of any person shall not be a necessary element of the offense described in subsection A of this section.

C. A person who is convicted of a violation of this section that involved a benefit with a value of one hundred thousand dollars or more or the manufacture, sale or marketing of opioids is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

D. This state shall apply the aggregation prescribed by section 13-1801, subsection B to violations of this section in determining the applicable punishment. E. For the purposes of this section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a person of the intangible right of honest services.

A.R.S. § 13-2311
Fraudulent schemes and practices; wilful concealment; classification

A. Notwithstanding any provision of the law to the contrary, in any matter related to the business conducted by any department or agency of this state or any political subdivision thereof, any person who, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry is guilty of a class 5 felony.

B. For the purposes of this section, "agency" includes a public agency as defined by section 38-502, paragraph 6.

>> APPENDIX E <<

A.R.S. § 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 evidence that the person or agent acquiring or maintaining an interest in or transporting, transacting, transferring or receiving the funds on behalf of the defendant did so knowing that the funds were the proceeds of an offense and that a director or high managerial agent performed, authorized, requested, commanded, ratified or recklessly tolerated the unlawful conduct of the person or agent. A person or enterprise shall not be held liable in damages or for other relief pursuant to this section unless the fact finder makes particularized findings sufficient to permit full and complete review of the record, if any, of the conduct of the person. A natural person or enterprise shall not be held liable in damages for recklessly tolerating the unlawful conduct of another person or agent if the other person or agent engaged in unlawful conduct proscribed by section 13-2301, subsection D, paragraph 4, subdivision (b), item (xvi), (xviii), (xix) or (xx) and the unlawful conduct involved the purchase or sale of securities.

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 activity".

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.

A.R.S. § 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.

A.R.S. § 34-252
Contract, combination or conspiracy to restrain trade or commerce; violation; classification

A. A person who enters into any contract, combination, conspiracy or other act in restraint of trade or commerce which is unlawful under title 44, chapter 10, article 1 is guilty of a class 4 felony if the contract, combination, conspiracy or other unlawful act in restraint of trade or commerce involves:

1. A contract between a governmental agency and a person for the purchase of equipment, labor or materials or for the construction or repair of highways, buildings or structures, or additions or alterations to highways, buildings or structures.

2. A subcontract with a contractor or proposed contractor for a governmental agency for the purchase of equipment, labor or materials or for the construction or repair of highways, buildings or structures, or additions or alterations to highways, buildings or structures.

B. This section does not limit or modify section 44-1416.

>> APPENDIX E <<

TOWN OF CAVE CREEK ORDINANCES

CAVE CREEK SUBDIVISION ORDINANCES

SO § 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.

>> APPENDIX E <<

SO § 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.

SO § 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.

>> APPENDIX E <<

- -

CAVE CREEK ZONING ORDINANCES

- -

ZO § 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.

ZO § 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.

ZO § 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.

ZO § 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.

ZO § 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**.

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.

ZO § 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.

ZO § 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 (1 00) 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 reestablished 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.

TOWN OF CAVE CREEK
TOWN CODE

ORDINANCE NO 97-16

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA, AMENDING THE CODE OF THE TOWN OF CAVE CREEK, BY AMENDING CHAPTER 3 PROVIDING THAT PROPERTY OWNERS MAY APPEAL ADMINISTRATIVE APPROVALS WHICH INVOLVE DEDICATION OR EXACTION REQUIREMENTS

WHEREAS, A.R.S. §§ 9-500.12 and 9-500.13 prescribe a procedure whereby property owners may appeal any dedication or exaction arising out of the Town's administrative approval of the use, improvement or development of real property,

WHEREAS, by Laws 1995 (1st Reg Sess.) Ch. 166, § 3, the Legislature has required the Town to enact ordinances to effect the purposes expressed in A.R.S. §§ 9-500.12 and 9-500.13; and

WHEREAS, this Council has determined that the general welfare and well-being of the Town of Cave Creek and its citizens would be promoted and enhanced by enacting the following ordinance to ensure that property owners within the Town limits shall be entitled to the rights set forth in A.R.S. §§ 9-500.12 and 9-500.13,

NOW, THEREFORE, be it ordained by the Mayor and Common Council of the town of Cave Creek, Arizona, as follows:

Section 1. That pursuant to Section 2-5-3 of the Town Code all amendments to the Town Code are by ordinance

Section 2. Chapter 3 of the Town Code, entitled "Administration," is hereby amended by adding a new Article 3-5, entitled "Real Property-Dedication or Exaction Procedures" as follows

Article 3-5 *Real Property-Dedication or Exaction Requirements*

Section 3-5-1 Notice to Property Owners Regarding Appeals of Dedication or Exaction Requirements

The Town Manager and Town Attorney shall approve forms which the Town shall use to notify persons of the procedures for appealing a dedication or exaction by the Town. The Town shall distribute the notification forms to property owners who have been granted an approval for the use, improvement or development of real property subject to the requirement of a dedication or exaction by the Town. The initial notification form shall be as set forth in the attached Exhibit "A." The Town Manager and the Town Attorney may hereafter amend the notification form from time to time without Council approval.

Section 3-5-2 Appointment of Hearing Officers to Hear Appeals of Dedication or Exaction Requirements

The Town Manager and the Town Attorney shall appoint an independent hearing officer or officers to decide appeals of dedication or exact1on requirements.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND Adopted by the Mayor and Common Council of the Town of Cave Creek, this 16th day of June, 1997.

Tom Augherton /s/
TOM AUGHERTON, Mayor

ATTEST:
Cheryle L Witt /s/
CHERYLE L WITT, Town Clerk

APPROVED AS TO FORM:
Thomas K Irvine /s/
THOMAS K IRVINE, Town Attorney

TOWN CODE § 50.031
TRUNK LINES

(A) *Trunk line extensions.* When a sewer trunk line or collection line is not available to a property owner wishing to connect to the public wastewater system, the property owner may petition the town to make the necessary sewer line extensions and improvements needed to allow connection to the public wastewater system. These improvements shall be at the property owner's expense. The property owner shall provide plans and specifications for town approval for any extension or improvement to the public wastewater system. In addition, the property owner shall supply to the town a complete set of plans and specifications reflecting the "as built" conditions of any extension or improvement to the public wastewater system. The property owner may request from the town and the town may provide plans and specifications for any extension or improvement to the public wastewater system, but, under any circumstance, the property owner shall still be liable for any fees set by the town. If the town agrees to provide plans and specifications for any proposed wastewater extension or improvement, the property owner shall be liable for all costs associated with the providing of such plans and specifications. The associated costs shall include, but not be limited to, engineering design and technical writings, legal, administrative, and construction-related costs, and advertising. If any property owner provides the town with plans and specifications for any wastewater extension and improvement, the property owner shall still be liable for any fees set by the town, and, in addition, the property owner shall also be liable for any cost incurred by the town for review and approval of any plans and specifications for any wastewater extension and improvement submitted to the town. The property owner shall also provide, at no charge to the town, the necessary easements required by the town for any wastewater extension or improvement.

(B) *Connection by use of a common sewer pipe.* Each user of the town's wastewater system shall be liable for any and all sewer fees established by proper and legal action of the town, either by action of the Town Council or through official town administrative policies or procedures, whether or not each individual user is connected directly to the town's wastewater system or the connection is made through a common sewer pipe which may serve more than one individual user. If any connection to the town's wastewater system is made by the use of any type or form of a common sewer pipe connection, plan, or scheme, the entire common sewer pipe connection, plan, or scheme shall be subject to the requirements of this chapter.

(`87 Code, Art. 17-3) (Ord. 94-06, passed 3-7-94)

TOWN CODE § 150.02
DEDICATION AND EXACTION APPEALS

(A) *Notice to property owners regarding appeals of dedications or exactions.* The Town Manager and Town Attorney shall approve forms which the town shall use to notify persons of the procedures for appealing a dedication or exaction by the town. The town shall distribute the notification forms to property owners who have been granted an approval for the use, improvement, or development of real property subject to the requirement of a dedication or exaction by the town. The initial notification form shall be as set forth in division (C) of this section. The Town Manager and the Town Attorney may hereafter amend the notification form from time to time without Town Council approval.

(B) *Appointment of hearing officers to hear appeals of dedication or exaction requirements.* The Town Manager and Town Attorney shall appoint an independent hearing officer or officers to decide appeals of dedication or exaction requirements.

(C) *Notice of appeal from dedication and exaction determinations.*

NOTICE OF APPEAL FROM DEDICATION AND EXACTION DETERMINATIONS

STATE OF ARIZONA
TOWN OF CAVE CREEK
NOTICE OF APPEAL

Appeal Pursuant of A.R.S. §§ 9-500.12 and 9-500.13 Relating to Appeals of Dedications and Exactions

APPLICANT: _____ CASE # _____
ADDRESS: _____ PARCEL #: _____
LOCATION: _____ ZONING: _____

QUARTER SECTION:

Please take notice that _____ appeals the determination by the Cave Creek Zoning Administrator to require the following:

Signature _____ Date _____

(Ord. 97-16, passed 6-16-97)

Statutory reference:

Appeals from dedications and exactions, see A.R.S. § 9-500.12

>> APPENDIX F <<

MOTION FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Appellant-Plaintiff Arek R. Fressadi moves this Court to take judicial notice of the attached documents and their descriptions herein, and for this Court to consider them as incorporated into Appellant's Opening and Reply Briefs.

Out of an abundance of caution, this motion also incorporates herein his 1st (DktEntry 33) & 2nd (DktEntry 53) Motions to Supplement & Amend the Record arguments, attachments, and their descriptions. They are **public records that were before District Court incorporated by reference therein**, mentioned in Fressadi's Complaint, his Supplemental Affidavit, an Affidavit by the engineer whose statements lead to Fressadi's discovering that Cave Creek had concealed violations of due process per A.R.S. §§ 9-500.12 & 9-500.13 in 2013, and incorporated filings, including his "Sewer Brief"[1] that incorporated Index of Records from #CV2006-014822, from which in part this case arises.

Appellant asks this Court to take judicial notice of the following:

1) **FOIA Request Documents – NEW EVIDENCE:** Fressadi recently obtained public records from the Town of Cave Creek made available by a Freedom of Information Act (FOIA) request. Fressadi asked for all notices, takings reports, and nexus of proportionality reports from the Town of Cave Creek from 2001 to present including his property.

[1] Appellant's Opening "Sewer Brief" 1 CA-CV 12-0238 to the State of Arizona Court of Appeals from Maricopa County's Superior Court case #CV2009-050821, where Cave Creek did not reimburse Fressadi for installing a sewer that served an area of town besides his own lots. At the time, Fressadi had not discovered Cave Creek's fraudulent concealment regarding A.R.S. §§ 9-500.12 & 9-500.13.

The Town had no records of providing Fressadi with a notice, takings report, or establishing the nexus of proportionality when the Town required the creation of a fourth lot, "Parcel A" a/k/a "211-10-010D," to approve Fressadi's lot split that covertly converted the split into a non-conforming subdivision in December 2001. However, folder/File # 512-15-02 is the "smoking gun." It shows Cave Creek knew how to minimally comply with the requirements of A.R.S. § 9-500.12 in 1997, then concealed its failure to follow due process per A.R.S. §§ 9-500.12 & 9-500.13 as its official policy from 2001 to present. Cave Creek only selectively enforced these State statues from 1997 to 2001. After the Town lost several of its exaction requests during the hearing process, it switched to a coercive "Deed of Gift" process accepted by Town Council as evidenced by the Engineering Department's spreadsheets through to 2016. The Town Clerk affirmed that the Town stopped providing any notice per A.R.S. § 9-500.12 for Town-required exactions as the Town's Official policy, after September 2001. Fressadi applied for a lot split in October 2001. A preponderance of this evidence suggests that Defendants Cave Creek / AMRRP and their Attorney, Defendant Jeffrey T. Murray, committed fraud upon the court in District and State courts since the onset of litigation in 2006, with their paucity of disclosure and concealing that these files existed. EXHIBITS 1-5.

2) **Another Takings Case in Cave Creek:** By 2012, Cave Creek did not even bother asking for a Deed of Gift in this instance. They just took

88, NORMATTIVA art. 4(1), which Fressadi referred to in his Opening Brief; Italy's Law No. 18 of February 27, 2015, on Civil Liability of Magistrates, GAZETTA UFFICIALE (G.U.) No. 52, NORMATTIVA, which amends the earlier version; and an English explanation of these laws on the U.S. Library of Congress website, an unquestionably reliable source: http://www.loc.gov/law/foreign-news/article/italy-civil-liability-of-judges.

DOCUMENTS AND THEIR DESCRIPTIONS TO BE JUDICIALLY NOTICED

As permitted by law and supported by case law set forth as stated above, Appellant requests that the Court take judicial notice of the following relevant documents and their descriptions to realize the ripple-effect of Cave Creek's concealment to follow due process as codified in A.R.S. §§ 9-500.12 & 9-500.13 as described in his Opening Brief.

Public Records Obtained by Request Through the Freedom of Information Act (FOIA)

In bad faith and part of their pattern of fraud on the court, and with an evil hand guided by an evil mind that shocks the conscience in what appears to be a conspiring fraudulent scheme, AMRRP, Cave Creek DOES III-XX, Maricopa County DOES XXI-XXX, Members of the Judicial Branch of the State of Arizona DOES XXXI-L, other Defendants engaging in said civil conspiracy, and all of their Attorneys, who, under color of law in corroboration with and for Defendant government agencies, have evaded questions and suppressed disclosure regarding Cave Creek's due process violations and concealment of material fact incessantly since Appellant applied for a lot split in 2001 and throughout this case. Defendants

accomplished this conspiracy by using generic and disingenuous arguments of "statutes of limitations" when they knowingly ran out the clock on their concealed malfeasance as if Appellant "should have known" his lots were an unlawful / non-conforming subdivision; "not arguing with particularity," when case law supports liberally construing a *pro se* compliant and Appellant incorporated particularity by reference herein. Appellant now has FOIA evidence that indicates Cave Creek's OFFICIAL POLICY is to not abide by the law and follow due process as codified in A.R.S. §§ 9-500.12 & 9-500.13.

On August 29, 2016, Appellant went to Cave Creek's Town Hall to review "public records" pulled by the Town Clerk, Carrie A. Dyrek, per Fressadi's FOIA requests (see Exhibit A of Exhibit 1). These records are not available online but are required by the Town to maintain and allow the public to view per A.R.S §§ 39-101 *et seq*. Fressadi requested that the Town provide documents showing how they have complied with A.R.S. § 9-500.12 & § 9-500.13, to include the name of Cave Creek's Hearing Officer, Notices to property owners, Takings Reports, and Nexus of Proportionality Reports. Under penalty of perjury, Appellant affirms that Clerk Dyrek admitted that there was no Hearing Officer after September 2001;[3] that she did not send out notices per A.R.S. § 9-500.12 because she was "not asked to" by Town Officials. The Engineering Department required exactions and dedications, but there were no Takings Reports nor Nexus of Proportionality Reports; only a few "Exaction Files" from 1997 to 2001 where some Notices were given to property owners and hearings took place with a Hearing Officer. Cave Creek's

[3] As there is no Hearing Officer as of 2001 per A.R.S. § 9-500.12, the Town Council is responsible to act as the Hearing Officer until a new one is appointed.

current Town Manager Peter Jankowski, an attorney, admitted "There are a lot of questionable lot splits [in Cave Creek]." The Town had NO Exaction File for Fressadi's property. The Town has NO documents of their requirement for the exaction/dedication of "Parcel A," which covertly became lot 211-10-010D. The Town did not produce all materials per Fressadi's FOIA requests and has yet to produce materials for additional requests, including the previous Town Manager's emails.[4] However, Clerk Dyrek affirmed that she gave Fressadi "all" of Cave Creek's "Exaction Files," a spreadsheet of "all" Deeds of Gift recorded by the Town's Engineering Department, "all" Oaths of Office and rosters, and everything else Fressadi requested, as stated:

> From: Carrie Dyrek [mailto:cdyrek@cavecreek.org]
> Sent: Thursday, September 08, 2016 9:14 AM
> To: Arek Fressadi; Peter Jankowski; Carrie Dyrek
> Cc: editors@sonorantruth.org; Eileen Wright; GCFreeman; Jodi R. Netzer; Adam Trenk
> Subject: RE: payment for copies of public records
>
> I provided you all the public records we have. Carrie
>
> Carrie A. Dyrek, MMC

Documents received and key results of the FOIA requests are as follows:

[4] Cave Creek sued Town Manager Usama Abujbarah for destroying evidence by asking to delete his e-mail account from the Town's computer system after he was fired in 2013, after serving since 1999.
http://www.azcentral.com/story/news/local/scottsdale/2015/02/23/cave-creek-asks-dismiss-former-town-managers-lawsuit/23912519/
Clerk Dyrek affirmed that there are about 4,000 emails, but on September 8, 2016 she stated that they "will be reviewed one by one to see the content of the email and any attachments and redact any information that is not public," leading to the suspicion that the Town is hiding more information.

EXHIBIT 1 – FOIA Requests to the Town of Cave Creek: Appellant made FOIA requests as Cave Creek concealed evidence and their failure to follow due process per A.R.S. § 9-500.12. The Town's FOIA response indicates that Cave Creek failed to follow due process as required in A.R.S. § 9-500.12.

EXHIBIT 2 – Exaction/Dedication Files: As there was no Hearing Officer nor adherence to A.R.S. § 9-500.12 before 1997, the Town stopped keeping exaction files after September 2001. Two exaction "requirements" were made in 1997, four in 1998, and one in 2001. The documents show varying degrees of compliance, and get worse over time.

- **EXHIBIT A – FOLDER #01 / FILE #01, Mr. Varner, exaction request sometime before August 1997:** This sparse folder contains confused correspondence by the Town Engineer's Assistant Kathy Goodhart, and Town Manager Kerry Dudek, regarding a scheduled hearing in August 1997 for "Mr. Varner," represented by Kenneth Van Winkle, Jr., Esq. At the time, Cave Creek actually had a Hearing Officer, Rick Garnett, Esq. The hearing was held without the Town's Attorney nor Varner as he believed the matter was settled. Hearing notes went missing. Hearing Officer Garnett gave them to Planning Director / Zoning Administrator Ian Cordwell who claimed to have not seen them. Varner agreed to dedicate 13.5 feet of property, as an existing road; however, the Town surveyed a 20 foot wide dedication. There is no information as to why or how the size of dedication area was made wider by the Town, but it appears to have been a Takings.

- **EXHIBIT B – FOLDER #02 / FILE #02, James and Liz Lincoln, dedication request December 4, 1997:** This file contains some compliance

of notice per A.R.S. § 9-500.12, indicating that Cave Creek knew it had a duty to follow A.R.S. § 9-500.12. This file includes:

1) **Request for Roadway Dedication:** This letter to the property owners contains at least a minimal explanation at to why the dedication (or exaction) is needed, that "property owners may appeal administrative approvals which involve dedication or exaction requirements" and per A.R.S. § 9-500.12, "the appeal shall be in writing and filed with or mailed to the hearing officer as designated by the city or town within thirty days after the final determination is made. No fee shall be charged for filing the appeal."
2) **Appeal Form:** The letter included an appeal request form.
3) **Ordinance No. 97-16; A.R.S. §§ 9-500.12 & 9-500.13:** The property owners appear to have been provided with *full versions* of the statutes.
4) **Copies to the Hearing Officer:** Hearing Officer Garnett received copies of the appeal form and the letter that the Lincolns had sent with it prior to the hearing from Clerk Dyrek.
5) **Certified Mail for Hearing Date:** The letter mentions the dedication "requirement" letter, acknowledges receipt of the Lincolns' appeal, mentions Town Code, Article 3-5, and A.R.S. § 9-500.12, and provides the hearing date, time address, and Hearing Officer contact information. The letter was correctly sent via Certified Mail, and was copied to Town Attorney Tom Irvine, Town Manager Larry Paine, Town Engineer Phil Hughes, Development Services Director Carol Mansfield, Building Official Mike Brown, and the Hearing Officer,

with the Clerk File number, and filed with the correct folder number.

6) **Hearing Notes:** Town Engineer Phil Hughes argued that exactions were *required*; however, Hearing Officer Rick Garnett, Esq. insisted on rereading the law, that exactions "*may"* be required. However, Hughes stated, "The Town always has the remedy of condemnation if it needs a dedication." Neighbors were adamant about keeping the roads unpaved and "rural," and that no dedication was necessary as the road was not part of a long-term transportation plan.

7) **Decision:** Garnett determined that a dedication was not necessary as the Lincolns were building an addition to an existing structure rather than building a new one and, "it is uncontested that the Town already had an easement of the same dimension as the proposed dedication."

8) **Copies to Property Owners:** The Lincolns received the Hearing Notes and Hearing Officer Garnett's decision. The town had provided them with a copy of A.R.S. § 9-500.12 in the event that the Hearing Officer's decision was unfavorable and the Lincolns wished to appeal.

• EXHIBIT C – FOLDER #03 / FILE #02, Roger & Deanna Burton, dedication request March 5, 1998: Cave Creek "required" that easements already established on the Burtons' property be dedicated to the Town for "Public Rights-of-Way and Utility Easements." Copies of A.R.S. § 9-500.12 & 9-500.13 and the Ordinances were not included. A settlement was reached where "Appellant would voluntarily dedicate the north 25ft of the easement on the Glory Road alignment contingent upon Council's approval of abandonment of the South 25ft of that easement as well as the

50 foot easement on located on the 40th Street alignment."

• **EXHIBIT D – FOLDER #04 / FILE #04, Daniel & Katherine Pirotte, dedication request March 18, 1998:** Hearing Officer Garnett saw the issue as whether Morningstar Road "serves needs other than those created by residential development adjacent to the road" and found that it does "serve primarily as an access road for its own residences." Garnett denied the appeal, using reference to A.R.S. § 9-500.12(E) regarding nexus, "there is a rational relation and rough proportionality between the exaction and the needs created collectively by the persons from whom dedication is required by the Town." The Pirottes were informed of their right to appeal the decision to the Superior Court within 30 days per A.R.S. § 9-500.12(G).

• **EXHIBIT E – FOLDER #06 / FILE #05 (another one), Raymond W. and Judy D. Foster, dedication request October 6, 1998:** It is unclear by the contents of this folder, whether Cave Creek followed due process in A.R.S. §§ 9-500.12 and 9-500.13 regarding this dedication.

• **EXHIBIT F – FOLDER #07 / FILE #06, Lawrence & Maria Hames, dedication request November 19, 1998:** It is unclear by the contents of this folder, whether Cave Creek followed due process in A.R.S. §§ 9-500.12 and 9-500.13 regarding this dedication.

• **EXHIBIT G – FOLDER # 05 / FILE #05, Shaun Gasparini c/o Larry Lazarus of Larry Lazarus & Associates, dedication request ~September 24, 2001:** It is unclear by the contents of this folder, whether Cave Creek followed due process in A.R.S. §§ 9-500.12 and 9-500.13 regarding this dedication.

ORDINANCE NO. 97-16

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA, AMENDING THE CODE OF THE TOWN OF CAVE CREEK, BY AMENDING CHAPTER 3 PROVIDING THAT PROPERTY OWNERS MAY APPEAL ADMINISTRATIVE APPROVALS WHICH INVOLVE DEDICATION OR EXACTION REQUIREMENTS

WHEREAS, A.R.S. §§ 9-500.12 and 9-500.13 prescribe a procedure whereby property owners may appeal any dedication or exaction arising out of the Town's administrative approval of the use, improvement or development of real property;

WHEREAS, by Laws 1995 (1st Reg. Sess.) Ch. 166, § 3, the Legislature has required the Town to enact ordinances to effect the purposes expressed in A.R.S. §§ 9-500.12 and 9-500.13; and

WHEREAS, this Council has determined that the general welfare and well-being of the Town of Cave Creek and its citizens would be promoted and enhanced by enacting the following ordinance to ensure that property owners within the Town limits shall be entitled to the rights set forth in A.R.S. §§ 9-500.12 and 9-500.13,

NOW, THEREFORE, be it ordained by the Mayor and Common Council of the Town of Cave Creek, Arizona, as follows:

Section 1. That pursuant to Section 2-5-3 of the Town Code all amendments to the Town Code are by ordinance.

Section 2. Chapter 3 of the Town Code, entitled "Administration," is hereby amended by adding a new Article 3-5, entitled "Real Property-Dedication or Exaction Procedures" as follows:

Article 3-5 *Real Property-Dedication or Exaction Requirements*

Section 3-5-1 Notice to Property Owners Regarding Appeals of Dedication or Exaction Requirements

The Town Manager and Town Attorney shall approve forms which the Town shall use to notify persons of the procedures for appealing a dedication or exaction by the Town. The Town shall distribute the notification forms to property owners who have been granted an approval for the use, improvement or development of real property subject to the requirement of a dedication or exaction by the Town. The initial notification form shall be as set forth in the attached Exhibit "A." The Town Manager

and the Town Attorney may hereafter amend the notification form from time to time without Council approval.

Section 3-5-2 Appointment of Hearing Officers to Hear Appeals of Dedication or Exaction Requirements

The Town Manager and the Town Attorney shall appoint an independent hearing officer or officers to decide appeals of dedication or exaction requirements

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Cave Creek, this 16th day of June, 1997

TOM AUGHERTON, Mayor

ATTEST:

CHERYLE L. WITT, Town Clerk

APPROVED AS TO FORM:

THOMAS K. IRVINE, Town Attorney

EXHIBIT A

STATE OF ARIZONA

TOWN OF CAVE CREEK

NOTICE OF APPEAL

Appeal Pursuant of A.R.S.§§ 9-500.12 and 9-500.13 Relating to Appeals of Dedications and Exactions

APPLICANT: _____ CASE #: _____

ADDRESS : _____ PARCEL#: _____

LOCATION: _____ ZONING: _____

QUARTER SECTION:

Please take notice that _____ appeals the determination by the Cave Creek Zoning administrator to require the following:

Signature_____ Date_____

Reviser's Notes:

1994 Note. Laws 1994, Ch. 280, sec. 2 added another new § 9-500.10 that was renumbered as § 9-500.11, subsection H was relettered as subsection I and subsection I was relettered as subsection H, pursuant to authority of § 41-1304.02.

1995 Note. Pursuant to authority of § 41-1304.02, in the section heading "definition" was substituted for "definitions" and in subsection E, paragraph 7 the spelling of "cotrustees" was corrected.

Cross References

Commerce department powers and duties, see § 41-1504.
Theme parks,
Exemptions from local taxes, see § 42-1453.
Local excise taxes, see § 42-1581.

§ 9-500.11. Expenditures for economic development; definition

A. In addition to any other powers granted to a city or town, the governing body of a city or town may appropriate and spend public monies for and in connection with economic development activities.

B. To fund economic development activities under this section, a city or town subject to the requirements of § 9-500.06 shall not impose a new fee or tax on a single specific industry or type of business.

C. For the purposes of this section, "economic development activities" means any project, assistance, undertaking, program or study, whether within or outside the boundaries of the city or town, including acquisition, improvement, leasing or conveyance of real or personal property or other activity, that the governing body of the city or town has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the city or town.

Added as § 9-500.10 by Laws 1994, Ch. 280, § 2. Renumbered as § 9-500.11.

Historical and Statutory Notes

1994 Reviser's Note:

Pursuant to authority of § 41-1304.02, this section, added by Laws 1994, Ch. 280, sec. 2 as § 9-500.10, was renumbered as § 9-500.11.

§ 9-500.12. Appeals of dedication or exaction requirements on administrative approvals of the use, improvement or development of real property; burden of proof; attorney fees

A. Notwithstanding any other provision of this chapter, if a property owner requests and an administrative agency or official of a city or town makes a final determination that grants an approval for the use, improvement or development of real property subject to the requirement of a dedication or exaction as a condition of granting the approval, the property owner may appeal the required dedication or exaction to a hearing officer designated by the city or town. The city or town shall notify the property owner that the property owner has the right to appeal the dedication or exaction pursuant to this section and shall provide a description of the appeal procedure. The city or town shall not

>> APPENDIX F <<

request the property owner to waive the right of appeal or trial de novo at any time during the consideration of the property owner's request.

B. This section does not apply to a dedication or exaction required in a legislative act of a city or town council that does not give discretion to an administrative agency or official to determine the nature or extent of the dedication or exaction.

C. The appeal shall be in writing and filed with or mailed to the hearing officer as designated by the city or town within thirty days after the final determination is made. No fee shall be charged for filing the appeal.

D. After receipt of an appeal, the hearing officer shall schedule a time for the appeal to be heard not later than thirty days after receipt. The property owner shall be given at least ten days' notice of the time when the appeal will be heard unless the property owner agrees to a shorter time period.

E. In all proceedings under this section the agency or official of the city or town has the burden to establish that there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication or exaction is roughly proportional to the impact of the proposed use, improvement or development. If more than a single parcel is involved this requirement applies to the entire property that is subject to the approval.

F. The hearing officer shall decide the appeal within five working days after the appeal is heard. If the agency of the city or town does not meet its burden under subsection E, the hearing officer shall modify or delete the requirement of the dedication or exaction.

G. If the hearing officer modifies or affirms the requirement of the dedication or exaction, a property owner aggrieved by a decision of the hearing officer may file, at any time within thirty days after the hearing officer has rendered a decision, a complaint for a trial de novo in the superior court on the facts and the law regarding the issues of the condition or requirement of the dedication or exaction. In accordance with the standards for granting preliminary injunctions, the court may exercise any legal or equitable interim remedies that will permit the property owner to proceed with the use, enjoyment and development of the real property subject to the dedication or exaction but that will not render moot any decision upholding the dedication or exaction.

H. All matters presented to the superior court pursuant to this section have preference on the court calendar on the same basis as condemnation matters, and the court shall further have the authority to award reasonable attorney fees incurred in the appeal and trial pursuant to this section to the prevailing party. The court may further award damages that are deemed appropriate to compensate the property owner for direct and actual delay damages on a finding that the city or town acted in bad faith in requiring the dedication or exaction.

Added by Laws 1995, Ch. 166, § 1.

>> APPENDIX F <<

Historical and Statutory Notes

1995 Reviser's Note:

Pursuant to authority of § 41–1304.02, in subsection G, first sentence "file" was transposed to follow "may" and in the second sentence the comma after "court" and the words "the court" were transposed in that order to follow "injunctions".

§ 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.

Added by Laws 1995, Ch. 166, § 1.

Historical and Statutory Notes

Laws 1995, Ch. 166, §§ 3 to 5, provide:

"**Sec. 3. Reports by counties and municipalities**

"Every city and town with a population of more than two thousand persons according to the most recent United States decennial census and every county shall prepare and submit a report to the governor, the speaker of the house of representatives and the president of the senate on or before November 1, 1995. The report shall show the ordinances, rules and administrative procedures and any other actions taken by the city, town or county or any agency of the city, town or county in response to the limitations placed on governments' actions by the decisions in the cases described in §§ 9–500.13 and 11–811, Arizona Revised Statutes, as added by this act.

"**Sec. 4. Joint legislative study committee on the constitutional regulation of private real property**

"A. A joint legislative study committee on the constitutional regulation of private real property is established consisting of the following members:

"1. Three members of the senate, not more than two of whom are from the same political party, appointed by the president of the senate.

"2. Three members of the house of representatives, not more than two of whom are from the same political party, appointed by the speaker of the house of representatives.

"B. The committee shall:

"1. Review the reports submitted by cities, towns and counties pursuant to § 3 of this act.

"2. Develop information on issues related to the compliance by local governments with §§ 9–500.13 and 11–811, Arizona Revised Statutes, as added by this act.

"3. Study the applicability of the principles contained in the cases described in §§ 9–500.13 and 11–811, Arizona Revised Statutes, as added by this act, to particular facts and circumstances and government actions in this state.

"4. Study potential legal and administrative procedures necessary to secure the constitutional rights of real property owners against government intrusion.

"5. Report its findings and recommendations, including any proposed legislation, to the speaker of the house of representatives and to the president of the senate on or before December 15, 1995.

"**Sec. 5. Repeal**

"Section 4 of this act is repealed from and after December 31, 1995."

CAVE CREEK
ARIZONA

SETTLED 1870 · INCORPORATED 1986

March 5, 1998

Roger and Deanna Burton
31250 N. 41st Street
Cave Creek, Az 85331

Re: Dedication of Right of Way at Parcel 211-19-102B

Dear Mr. and Mrs. Burton:

In reviewing the survey of your property, it was discovered that the easements abutting Glory Road were never dedicated to the Town for Public Rights-of-Way and Utility Easements. Currently there are fifty foot Patent Reservations (BLM Easements) existing along this alignment. Dedication of these easements usually take place at the building permit stage for the primary residence. In your case, we are addressing the issue prior to the building permit, at your request.

At this time, the Town is requesting dedication of 25 feet on the Glory Road alignment. After dedication, I will recommend that Town Council abandon the remaining twenty-five feet of the fifty foot easement. Deeding of these rights-of-way to the Town does not reduce the size of your property below the minimum required for permitting in your particular zoning district.

Acceptance of right-of-way by the Town does not obligate the Town to build or improve roadway within that right-of-way the goals and objectives of the General Plan of the Town of Cave Creek are that improvements of roads are to be made and paid for by contiguous property owners and others utilizing said road. The Town accepts roads into the road system for maintenance only after improvements are made to minimum Town standards.

Please contact me at your earliest convenience so that we may discuss this matter further.

Sincerely,

Phil Hughes
Town Engineer

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331 ★ 602/488-1400 ★ FAX 602/488-2263

>> APPENDIX F <<

March 11, 1998

Town of Cave Creek
Mr. Phil Hughes
37622 North Cave Creek Road
Cave Creek, Arizona 85331

Re: Dedication of Right of Way at Parcel 211-19-102B

Dear Phil:

In response to your letter of March 5, 1998 requesting property dedication of 25 feet on the Glory Road alignment of our parcel, we respectfully deny your request.

Given the position of our property, (basically at the end of the road) we do not see the need for such a taking and would ask that the Town withdraw its request. Further, we would request abandonment of the 50 foot right-of-way recorded in Docket #3309.

Attached is a completed application for appeal of the requested dedication. I understand that I will be informed of my hearing date within ten days.

Thank you for consideration of my request.

Sincerely,

Roger

Roger K. Burton

>> APPENDIX F <<

APPLICATION FOR APPEAL OF EXACTION OR DEDICATION PURSUANT TO THE TOWN CODE OF THE TOWN OF CAVE CREEK

1. Name of property owner: ROGER & DEANNA BURTON

2. Address of property owner: 9448 E. CAMINO DEL SANTO
SCOTTSDALE, AZ. 85260

3. Daytime phone number of Property owner: 530-5046

4. Address or general description of property which is the subject of a dedication or exaction:
PARCE 211-19-102B

5. The name of the Town Board, Commission or Official who has required a dedication or exaction.
PHIL HUGHES

6. The date the dedication or exaction was requested: MARCH 5, 1998

7. What approval was requested by the property owner which resulted in the dedication or exaction requirement:
PRELIM. TO BUILDING PERMIT – SEEKING ABANDONMENT OF R.O.W.

8. What dedication or exaction was required by the Town?
25 FT. DEDICATION ALONG NORTH PROPERTY BOUNDARY

9. Does the property owner waive the ten day time period for notice of this hearing on this appeal? Yes ___ No X

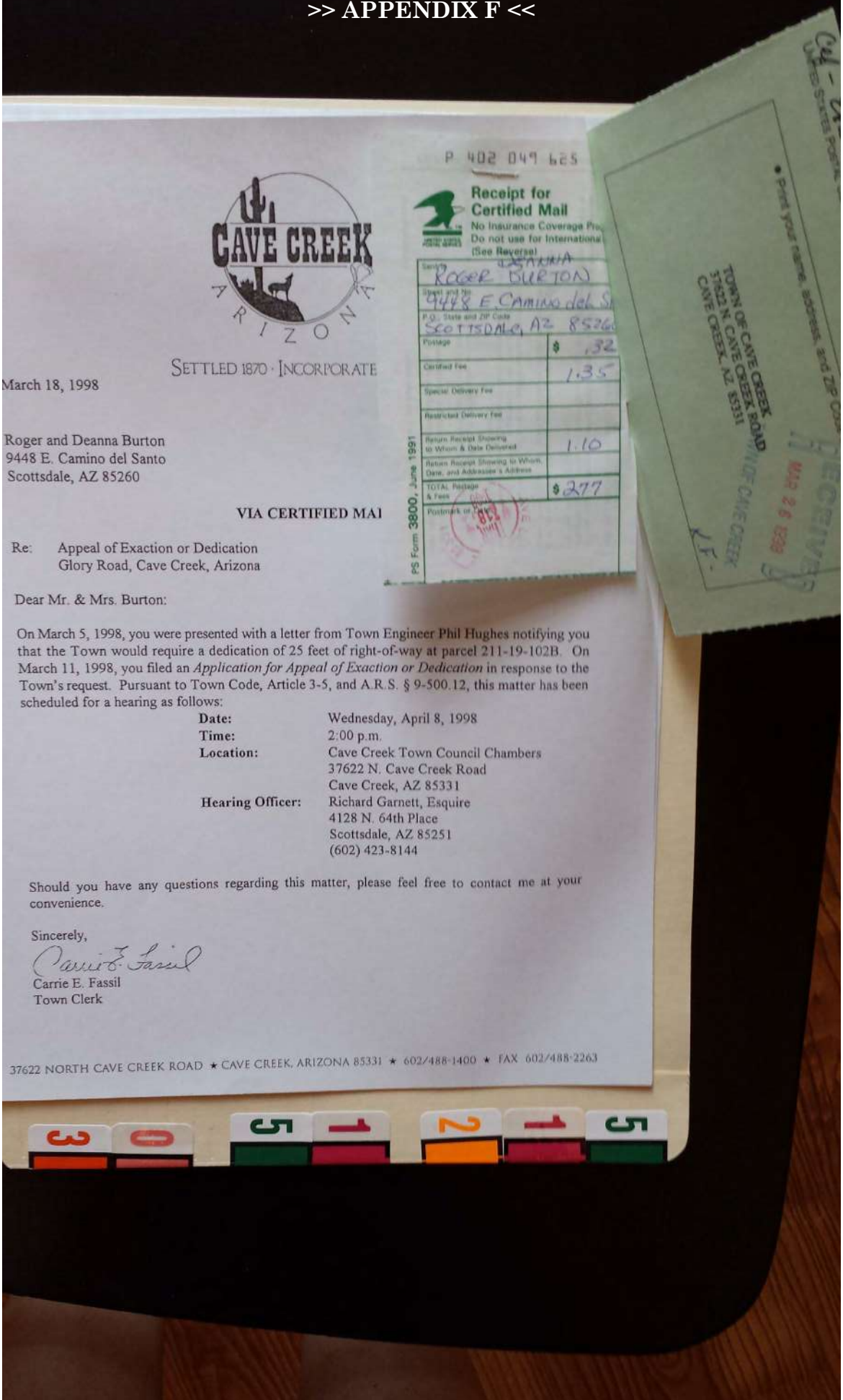
Signature(s) of Property Owner: Roger K Burton

Date: 3-11-98

[Additional sheets may be used if necessary]
[A copy of this appeal must be mailed or delivered to the Board, Commission or Town Employee which required the dedication or exaction.]

g:\exaction.appeal

>> APPENDIX F <<



CAVE CREEK
ARIZONA
SETTLED 1870 · INCORPORATE

March 18, 1998

Roger and Deanna Burton
9448 E. Camino del Santo
Scottsdale, AZ 85260

VIA CERTIFIED MAI

Re: Appeal of Exaction or Dedication
Glory Road, Cave Creek, Arizona

Dear Mr. & Mrs. Burton:

On March 5, 1998, you were presented with a letter from Town Engineer Phil Hughes notifying you that the Town would require a dedication of 25 feet of right-of-way at parcel 211-19-102B. On March 11, 1998, you filed an *Application for Appeal of Exaction or Dedication* in response to the Town's request. Pursuant to Town Code, Article 3-5, and A.R.S. § 9-500.12, this matter has been scheduled for a hearing as follows:

Date:	Wednesday, April 8, 1998
Time:	2:00 p.m.
Location:	Cave Creek Town Council Chambers 37622 N. Cave Creek Road Cave Creek, AZ 85331
Hearing Officer:	Richard Garnett, Esquire 4128 N. 64th Place Scottsdale, AZ 85251 (602) 423-8144

Should you have any questions regarding this matter, please feel free to contact me at your convenience.

Sincerely,

Carrie E. Fassil
Town Clerk

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331 ★ 602/488-1400 ★ FAX 602/488-2263

P 402 049 625

Receipt for Certified Mail
No Insurance Coverage Pro
Do not use for International
(See Reverse)

Sent to: DEANNA ROGER BURTON
Street and No.: 9448 E. CAMINO del S
P.O., State and ZIP Code: SCOTTSDALE, AZ 8526

Postage	$ .32
Certified Fee	1.35
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.10
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	$ 2.77
Postmark or Date	

PS Form 3800, June 1991

• Print your name, address, and ZIP Code

TOWN OF CAVE CREEK
37622 N. CAVE CREEK ROAD
CAVE CREEK, AZ 85331

MAR 26 1998

>> APPENDIX F <<

RECEIVED
APR 15 1998
TOWN OF CAVE CREEK

Richard W. Garnett III
Attorney at Law
6220 E. Hillcrest Blvd.
Scottsdale, AZ 85251
Ph. 602 4238144; FAX 602 8741067
email rgarnett@netzone.com

Carrie E. Fassil
Town Clerk
37622 North Cave Creek Road
Cave Creek, Arizona 85331

12 April 1998

re: Burton Exaction Appeal

Dear Ms. Fassil:

The hearing on this matter was held yesterday as scheduled. After presentation of the basic facts and some discussion, the parties agreed to a contingent settlement arrangement. Specifically, The Town, through Phil Hughes, Town engineer, agreed to use its best efforts to secure Council approval for abandonment of an existing 50 foot right of way on the east side of the Burton property, and the southern 25 feet of the existing 50 foot right of way on the north side of the property. In return, Mr. Burton agreed to dedicate to the Town a fee interest the North 25 feet of said right of way abutting his property.

The parties further agreed that all of the above-described abandonments and dedication would be accomplished within six months from the date of the hearing. Otherwise, this agreement will be void and the hearing will be reconvened for decision as soon as practicable thereafter. Each party agreed to waive any time limitations which might conflict with the foregoing.

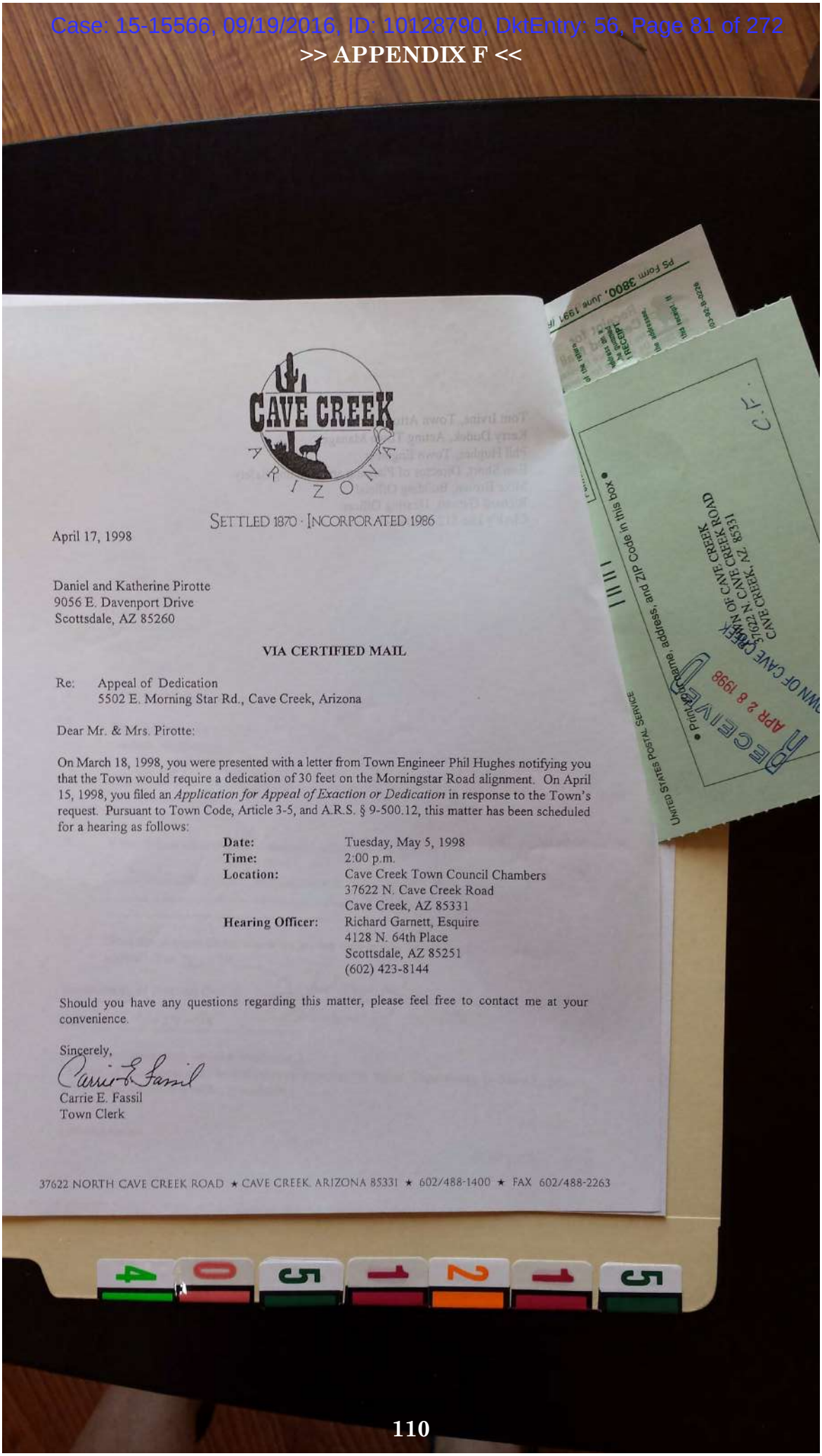
Thank you for your consideration. Please feel free to contact me if you have questions or comments or would like to discuss any aspect in more detail.

Sincerely,

RWG

Cef
Appeal request received March 11
Notified Rick Garnett: 3/18
Schedule wk-of Apr. 6, 1998 (Tuesday NOT Good)
Notified property owners: 3/18/98
Hearing date set for: April 8, 1998
2:00 p.m. Council Chambers
Notified staff: 3/18/98

>> APPENDIX F <<



CAVE CREEK
ARIZONA
SETTLED 1870 · INCORPORATED 1986

April 17, 1998

Daniel and Katherine Pirotte
9056 E. Davenport Drive
Scottsdale, AZ 85260

VIA CERTIFIED MAIL

Re: Appeal of Dedication
5502 E. Morning Star Rd., Cave Creek, Arizona

Dear Mr. & Mrs. Pirotte:

On March 18, 1998, you were presented with a letter from Town Engineer Phil Hughes notifying you that the Town would require a dedication of 30 feet on the Morningstar Road alignment. On April 15, 1998, you filed an *Application for Appeal of Exaction or Dedication* in response to the Town's request. Pursuant to Town Code, Article 3-5, and A.R.S. § 9-500.12, this matter has been scheduled for a hearing as follows:

Date:	Tuesday, May 5, 1998
Time:	2:00 p.m.
Location:	Cave Creek Town Council Chambers 37622 N. Cave Creek Road Cave Creek, AZ 85331
Hearing Officer:	Richard Garnett, Esquire 4128 N. 64th Place Scottsdale, AZ 85251 (602) 423-8144

Should you have any questions regarding this matter, please feel free to contact me at your convenience.

Sincerely,

Carrie E. Fassil
Town Clerk

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331 ★ 602/488-1400 ★ FAX 602/488-2263

>> APPENDIX F <<

512-15-04

RECEIVED
MAY 14 1998
TOWN OF CAVE CREEK

TOWN OF CAVE CREEK
EXACTION APPEAL

In the Matter of Appeal of
Daniel and Katherine Pirotte

Introduction And Background : On May 5, 1998, in the Cave Creek Town Hall hearing was held before the undersigned hearing officer on the matter of the exaction appeal of Daniel and Katherine Pirotte. The appeal is from a requirement by the Town to dedicate a 30 foot roadway easment on the Morningstar Road alignment as a condition to issuance of a building permit for the property. The subject property is 9056 E. Davenport Drive. The requested easement along the sourthern edge of the property is already subject to a permanent right of way for road purposes.

At the hearing both appellants presented testimony in support of the appeal. Mr. Phil Hughes, Public Works Director, spoke in justification of the need for the easement.

Discussion: The basic issue appears to be whether, to any substantial degree, Morningstar Road serves needs other than those created by residential development adjacent to the road. Though the road is a minor collector, the evidence indicates that it does not carry through traffic, but does in fact serve primarily as an access road for its own residences.

Under these circumstances, the hearing officer finds that there is a rational relation and rough proportiality between the exaction and the needs created collectively by the persons from whom dedication is required by the Town.

For these reasons the appeal is hereby denied. Appellant is entitled to appeal this decision to the Superior Court within 30 days in accordance with ARS 9-500.12 G.

Dated this 11th day of May, 1998.

Richard W. Garnett III
Hearing Officer, Cave Creek

A 05 1 2 1 5

CAVE CREEK
ARIZONA

SETTLED 1870 · INCORPORATED 1986

October 6, 1998

Raymond W. Foster, Jr.
Judy D. Foster
7575 E. Indian Bend
Scottsdale, AZ 85255

Certified Return receipt
mailed on 10/6/98
PH

Re: Dedication of Right of Way at 7491 E. Arroyo
Parcel 216-20-014X
Building Permit No. 98-277

Dear Mr. & Mrs. Foster:

The Cave Creek Zoning Ordinance requires that "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 adopted Town long-range transportation corridor plans." (Section 16-4-1)

The Town Engineer has made a final determination that this property abuts and/or is on Arroyo Road which is part of the transportation plan of the Town of Cave Creek.

The Town will require dedication of one-half (½) right-of-way (25 feet) along the North property line on Arroyo Road prior to issuance of a zoning clearance for the referenced building permit. I have enclosed a Deed of Gift for your consideration and editing.

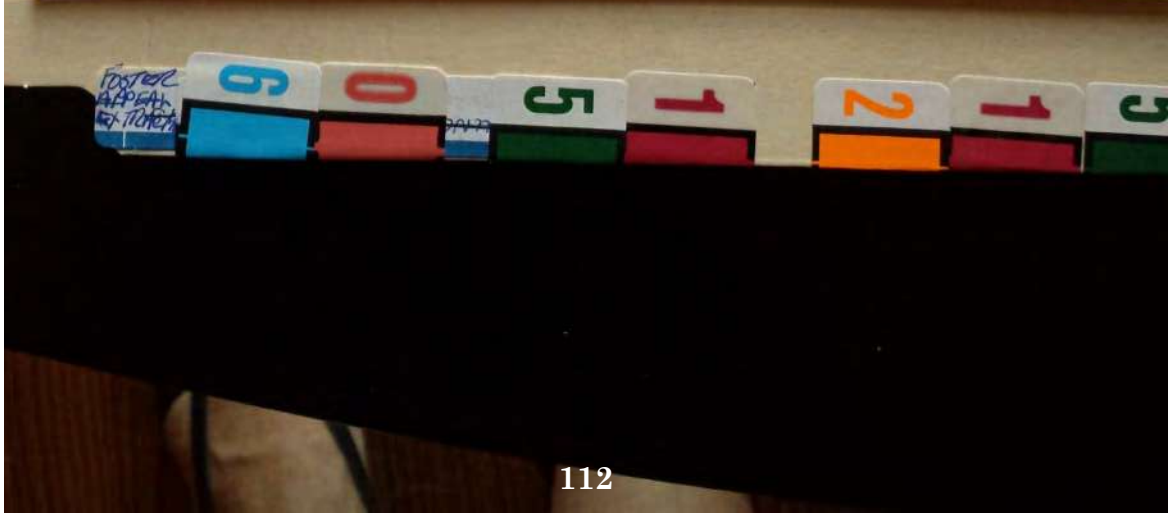
Town of Cave Creek Ordinance No. 97-16 provides "that property owners may appeal administrative approvals which involve dedication or exaction requirements." A.R.S. §§ 9-500.12 provides that "The appeal shall be in writing and filed with or mailed to the hearing officer as designated by the city or town within thirty days after the final determination is made. No fee shall be charged for filing the appeal."

Sincerely,

Philip D. Hughes
Town Engineer

c. Town Manager
Director of Planning and Building Safety
Town Attorney
Town Clerk

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331
ADMINISTRATION 602/488-1400
COURT / MARSHAL 602/488-1409
ENGINEERING 602/595-1935
BUILDING / SAFETY 602/488-1414
PLANNING & ZONING 602/595-1930
FAX 602/488-2263



>> APPENDIX F <<

512-15-05

APPLICATION FOR APPEAL OF EXACTION OR DEDICATION PURSUANT TO THE TOWN CODE OF THE TOWN OF CAVE CREEK

1. Name of property owner: Raymond W. Foster / Judy D. Foster

2. Address of property owner: 7575 E. Indian Band Rd #1078 Scottsdale, AZ 85250

3. Daytime phone number of Property owner: 542-7902

4. Address or general description of property which is the subject of a dedication or exaction: 7491 E. Arroyo Rd. Cave Creek.

5. The name of the Town Board, Commission or Official who has required a dedication or exaction. Phil Hughes/Town Engineer

6. The date the dedication or exaction was requested: 10-27-98

7. What approval was requested by the property owner which resulted in the dedication or exaction requirement: Residential Building Permit Application

8. What dedication or exaction was required by the Town? 25' Right away - North Boundries on 7491 E. Arroyo Rd.

9. Does the property owner waive the ten day time period for notice of this hearing on this appeal? Yes ✓ No ___

Signature(s) of Property Owner: Raymond W. Foster Jr.

Date: 11-19-98

[Additional sheets may be used if necessary]
[A copy of this appeal must be mailed or delivered to the Board, Commission or Town Employee which required the dedication or exaction.]

g:\mc\exaction.appeal

NOV-19-98 09:49 FROM:TOWN OF CAVE CREEK ID:602 488 2263 PAGE 2/2

CAVE CREEK
ARIZONA

SETTLED 1870 · INCORPORATED 1986

December 7, 1998

Raymond W. and Judy D. Foster
7575 E. Indian Bend Road, #1078
Scottsdale, AZ 85250

VIA CERTIFIED MAIL

Re: Appeal of Dedication
7491 E. Arroyo Rd., Cave Creek, Arizona

Dear Mr. & Mrs. Foster:

On October 6, 1998, you were presented with a letter from Town Engineer Phil Hughes notifying you that the Town would require a dedication of 25 feet on the E. Arroyo Road alignment. On November 19, 1998, you filed an *Application for Appeal of Exaction or Dedication* in response to the Town's request. Pursuant to Town Code, Article 3-5, and A.R.S. § 9-500.12, this matter has been scheduled for a hearing as follows:

Date:	Tuesday, December 15, 1998
Time:	9:00 a.m.
Location:	Cave Creek Town Council Chambers 37622 N. Cave Creek Road Cave Creek, AZ 85331
Hearing Officer:	Richard Garnett, Esquire 4128 N. 64th Place Scottsdale, AZ 85251 (602) 423-8144

Should you have any questions regarding this matter, please feel free to contact me at your convenience.

Sincerely,

Carrie A. Dyrek

Carrie A. Dyrek
Town Clerk

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331
ADMINISTRATION 602/488-1400
COURT / MARSHAL 602/488-1409
ENGINEERING 602/595-1935
BUILDING / SAFETY 602/488-1414
PLANNING & ZONING 602/595-1930
FAX 602/488-2263

CAVE CREEK
ARIZONA

SETTLED 1870 · INCORPORATED 1986

November 19, 1998

sent certified return receipt req

Lawrence and Maria Hames
15095 N. Thompson Peak Parkway
Scottsdale, AZ 85260

Re: Dedication of Right of Way 6789 E. Saber Road

Dear Mr. and Mrs. Hames:

In reviewing your Building Permit Application it has been determined that the above-mentioned property abuts and/or is on Saber Road, which is a public street and identified in the Town's Transportation Plan.

Due to this fact, the Town will require a dedication of one-half (1/2) right-of-way (25 feet) along your North property line on Saber Road, prior to issuance of the zoning clearance for the above-referenced building permit.

Section 16-4-1 of the Town's Zoning ordinance states that *"prior to the 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 adopted Town long-range corridor plans."*

Ordinance No. 97-16 provides that *"property owners may appeal administrative approvals which involve dedication or exaction requirements."* ARS § 9-500.12 provides that *"the appeal shall be in writing and filed with or mailed to the hearing officer as designated by the city or town within thirty days after the final determination is made. No fee shall be charged for filing the appeal."*

Acceptance of right-of-way by the Town does not obligate the Town to build or improve roadway within that right-of-way. The goals and objectives of the General Plan of the Town of Cave Creek are that improvements of roads are to be made and paid for by contiguous property owners and others utilizing said road. The Town accepts roads into the road system for maintenance only after improvements are made to minimum Town standards.

If you have any questions, or require additional information, please contact my office.

Sincerely,

Philip D. Hughes
Town Engineer

37622 NORTH CAVE CREEK ROAD ★ CAVE CREEK, ARIZONA 85331
ADMINISTRATION 602/488-1400
COURT / MARSHAL 602/488-1409
ENGINEERING 602/595-1935
BUILDING / SAFETY 602/488-1414
PLANNING & ZONING 602/595-1930
FAX 602/488-2263

LAW OFFICES
DAVID K. JONES, P.C.
A PROFESSIONAL CORPORATION
ONE ARIZONA CENTER
4TH FLOOR
400 EAST VAN BUREN STREET
PHOENIX, ARIZONA 85004

DAVID K. JONES
DARIN A. SENDER
LARRY S. LAZARUS, OF COUNSEL

(602) 340-0900
FACSIMILE (602) 340-8955
E-MAIL dkjpc@neta.com

March 16, 1999

Via Telefacsimile (488-2263)
and First Class Mail

Kathy Goodhart
Engineering Assistant
TOWN OF CAVE CREEK
37622 North Cave Creek Road
Cave Creek, Arizona 85331

RE: Dedication of Right-Of-Way For 6789 East Saber Road

Dear Ms. Goodhart:

This firm represents Larry and Maria Hames, the owner of the property referenced above. Our clients have forwarded to us materials relating to the dedication of right-of-way that the Town is purporting to require of our clients as a condition to the issuance of building permits for the home they intend to construct.

The record in the appeal our clients made makes it clear that the Town does not have the legal basis to require a dedication of right-of-way. The right-of-way that the Town seeks to require is to create a connection to other property, not the Hames'. The Nollan-Dolan exaction criteria established that, in order for an exaction to be constitutional, it must be required in order to offset some impact on the community created by the development approval sought by the property owners, and the exaction must be roughly proportional to the need created by the project. In this case, our clients already have legal access by virtue of a private easement that connects to Saber Road, and there would be no conceivable reason for them to need to travel eastward from their current access. Accordingly, the dedication is intended to provide access to property located to the east, not to offset some need created by my clients' home.

It is troubling that the Town advised my clients of their legal right to appeal the administrative dedication requirement to the hearing officer, but did not advise them of their appeal rights once the hearing officer's decision was made. Until my clients consulted with me a couple of days ago, they did not know there was a deadline to appeal the hearing officer's findings. Nonetheless, because of the way that this was handled, my clients find themselves in a quandary. Their choices are to initiate litigation against the Town to compel the issuance of their building permits, or to abandon their current permit request and to re-initiate plan review so that they can make a proper appeal to the hearing officer, this time with the benefit of legal counsel.

The Town would seem to have little to gain by forcing my clients to take either course of action. I understand that the property to the east has no plans that would necessitate access by Saber Road, making the right-of-way a "road to nowhere". Is this worth fighting over to the Town? I have suggested to my clients that perhaps there is an alternative that would give the Town what it needs, if it is needed at all, and could hopefully be accomplished without any further delay in the processing of my clients' building permits. We could agree to a conditional dedication, that would revert to the Hames' property in the event that there is no dedication of the remaining right-of-way for Saber Road in the next ten years between Ridgeway Drive and the east line of Section 27. If, as we suspect, the road to nowhere does not become a fully-dedicated road to somewhere within ten years, the cloud over the ownership of the strip of land in question would be removed.

I tried to contact the Town's attorney to discuss this, but got no return call. I would appreciate it if you would review this and forward a response to me by March 24, 1999. My clients would really like to build on the property with the sense of being treated fairly by the Town, and we are hoping that we can resolve this in a non-adversarial way.

Sincerely,

David K. Jones

CC: Larry and Maria Hames
Thomas K. Irvine, Esq.
Ron Short

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
			Sec 27, W of E Tanya Rd		Road	Douglas B and Annick L. Swensen	88-001	1988		Y
			Spur Cross (N) of Highland		Road	Eleanor D. Lee	88-002	1988		Y
	6140	E	Stagecoach	Pass	Road	Sam and Cathy Caldarazzo	88-003	1988		Y
			N of New River; W of 40th	St	Road	Allan and Karen Leffler	88-004	1988		Y
			N of New River; W of 40th	St	Road	John and Catherine Muller	88-005	1988		Y
			Sec 20 W of 56th		Road	Grace H. Kaiser	89-001	1989		Y
			Sec 5 New River bet. 50 & 5	St	Road	Carolyn and Charles Olsen, Jr.	89-002	1989		Y
			Rockaway Hills Rd; Sec 20		Road	Eli and Serena Shtabsky	89-003	1989		Y
			Sec 22		Road	Frank and Susan Galeno	90-001	1990		Y
			S of Highland; E of 72 St; Sec 23		Road	Jack and Marianna Dillenberg	90-002	1990		Y
			32nd St; Sec 24		Road	Robert D and Bernice H. Johnson	90-003	1990		Y
			Sec 20 W of 56th		Road	R.R. and Mary Hyde Ryan; Mary Seymore P.	91-001	1991		Y
			Surrey Drive		Road	Larry D. Barker	91-002	1991		Y
	5101-5131	E	Cloud	Rd	Road	John E. Johnson; Paul and Debi Steele	92-002	1992		Y
			Spur Cross		Road	David and Jill Cossman	92-003	1992		Y
			Spur Cross		Road	Jerome and Irene Cossman	92-004	1992		Y
	40920	N	28th	St	Road	Raymond R and Linda Schick	92-005	1992		Y
			Sec 23; 26th	St	Road	Frank F. Brannan	93-001	1993		Y
211-47-003Y			50th Alignment	St	Road	Lawrence and Sandra Antilla	93-002	1993		Y
			32nd	St	Road	Richard L. Steiger	93-003	1993		Y
			32nd	St	Road	Puget Sound Shrimp Co	93-004	1993		Y
			32nd	St	Road	Fred and Trudie Tuengel	93-005	1993		Y
			Rockaway Hills	Rd	Road	McGuckin IRA	93-006	1993		Y
			32nd	St	Road	Russell and Janet Merrill	93-007	1993		Y
			Military	Rd	Road	Bill West	93-008	1993		Y
			Schoolhouse	Rd	Road	Lester Hayt	93-009	1993		Y
			Ridgecrest	Rd	Road	Larry and Linda Dalton	93-010	1993		Y
			50th	St	Road	Jay Smith	93-011	1993		Y
			32nd St and Dolores		Road	M.C. Park/Daniel D. Murphy	93-012	1993		
216-20-014G	7455	E	Arroyo	Rd	Road	Gary & Faith Kube	94-001	1994		Y
			Sec 23 T6N R4E		Road	Bill and Debra Burnstein	94-002	1994		Y
			32nd St alignment (N) of Cloud		Road	Frank and Marcella Elis	94-003	1994		Y
			38th St alignment (N) of Cloud		Road	Elmer and Nelle Caughron	94-004	1994		Y
			34th St alignment (N) of Cloud		Road	Stephen and Gloria Maggio	94-005	1994		Y
			36th St alignment (N) of Cloud		Road	Joseph and Denise Maggio	94-006	1994		Y
	36641	N	30th	St	Road	Douglas Turner	94-007	1994		Y
211-19-110			35th St & Cloud Road		Road	James E. & Margie E. Brewwer	94-008	1994		
			Cave Creek and Galloway	Rd/Dr	Road	Cave Creek Gateway Ltd (Ed Larson)	95-002	1995		Y
			Galloway	Dr	Road	Cave Creek Gateway Ltd (CMSC-Bowman, BM	95-003	1995		Y
			Galloway	Dr	Road	CMSC-Bowman, BMS1	95-004	1995		Y
			Galloway	Dr	Road	Virginia White	95-005	1995		Y
211-19-112A;211-19-112B;211-19-112C	38st & Cloud				Road	William & Yvette Morales Smith	95-006	1995		
22-19-112A	36205 N. 38 St		38 Street		Road	William & Yvette Morales Smith	95-007	1995		
			LaSalle	Rd	Road	Carefree heights ltd Partnership	95-008	1995		Y
		N	72nd (North of Rockaway Hi	St	Road	Roger L. and Diane L. Hackett	96-001	1996		Y

10 Pages

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
	40777		Echo Canyon	Dr	Road	James and Lisa O'Toole	96-002	1996		Y
	7600	E	Grapevine	Rd	Road	Emerson and Linda Purkapile	96-003	1996		Y
			72nd	St	Road	Bruce and Sheila Gould Biemeck	96-004	1996		Y
			28th	St	Road	Theodore and Claudia Ferris	96-005	1996		Y
			Ridgeway	Dr	Road	Bill and Debra Burnstein	96-006	1996		Y
211-67-048			Maddock	Rd	Road	Rod and Lissa Stewart	96-007	1996		Y
			Lone Mountain (N)	Rd	Road	Rick and Hilda Huntress	96-008	1996		Y
						Cave Creek Six LLC	96-009	1996		
			Schoolhouse	Rd	Road	David L. Phelps	97-001	1997		Y
			Cave Creek	Rd	Road	Evelyn Felice	97-002	1997		Y
			Grapevine	Rd	Road	Walter B. Nelson and Jean Nelson	97-003	1997		Y
			60th	St	Road	Fred N. Martin and Beverly A. Hooson	97-004	1997		Y
211-67-48	3039 E.		Maddock		Road	Rodney T. & Lissa R. Stewart	97-005	1997		
			Mesquite	Rd	Road	Richard C. Smith and Helen Patricia Smith	98-001	1998		Y
			78th	St	Road	Ronald J. Rollette	98-002	1998		Y
211-47-097	34837	N	53rd	St	Road	Walden, Robert & Phyllis	98-003	35899		Y
			70th	St	Road	Vern L. Herrscher and Norma J. Herrscher	98-004	35899		Y
			Grapevine	Rd	Road	The Stertzer Family Trust	98-005	35899		Y
	5401		Honda Bow		Road	Foothills Equipment Rental	98-006	35899		Y
	6711		Ridgecrest	Rd	Road	Varner, Howard J and Ruth	98-007			Y
211-47-106	35201	N	50th	St	Road	Gilson, Todd and Melody	98-008	35899		Y
211-47-110A	5101	E	Cloud	Rd	Road	Russell/Hall				Y
	40601	N	26th	St	Road	Kostelnik, Walter S.	98-009	1998		Y
	39595	N	34th	St	Road	Richard L. Dibbs and Lori A. Sanger	98-010	1998		Y
	3602	E	Cloud	Rd	Road	Elliott, William R and Cameron C	98-011	1998		Y
	40455	N	60th	St	Road	James L. Keen and Roberta A. Daquet	98-012	1998		Y
	38020	N	Vermeersch	Rd	Road	Willingham, Robert G.	98-013	1998		Y
216-10-003E, 216-10-003F and 216-10-003G			LaSalle	Rd	Road	Helen R and James E Snider, Jr.	98-014	1998		Y
			Lone Mountain (N)	Rd	Road	Robinson, David L and Kay L	98-015	1998		Y
			36th St @ Glory	Rd	Road	King, David and Vicki	98-016	1998		Y
	40001	N	68th	St	Road	Burnstein, Bill J. and Debra S.	98-017	1998		Y
	5454	E	Morningstar	Rd	Road	Dowd, Daniel T and Tamara L	98-018	1998		Y
	35101		50th	St	Road	VanMeter, Thomas E and Jane A	98-019	1998		Y
			Desert Hills Dr. alignment		Road	Anderson, Jeroll and Thomas W	98-020	1998		Y
	41337	N	Old Stage	Rd	Road	Pinkerton, David S and Lori	98-021	1998		Y
	33208	N	53rd	Pl	Road	Seroka, Paul J and Evaughn M	98-022	1998		Y
	33207	N	53rd	Pl	Road	Rodger D Burgess and Sharon L. Munnelly	98-023	1998		Y
	37702	N	Schoolhouse	Rd	Road	Shindler, Anthony J and Jennifer	98-024	1998		Y
	37764	N	Schoolhouse	Rd	Road	Schindler, Philip M.	98-025	1998		Y
	37788	N	Schoolhouse	Rd	Road	Schindler, Jerome P and Judith	98-026	1998		Y
	5501 and 5519	E	Yolantha		Road	Yolantha Partners	98-027	1998		Y
	6032	E	Cave Creek	Rd	Road	Doe Diablos Pequenos LLC	98-028	1998		Y
	40612	N	28th	St	Road	Schmeiser, Gordon F and Shirley A	99-001	1999		Y
	7491	E	Arroyo	Rd	Road	Foster, Raymond W and Judy D	99-002	1999		Y
	35445	N	50th	St	Road	Daum, Duane E and Tobe G	99-003	1999		Y
216-11-002G					Road	Robert A. Cox	99-004	1999		Y
211-47-003K	4963	E	New River	Rd	Road	Deborah Jean Samson	99-005	1999		Y

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
	6789	E	Saber	Rd	Road	Hames, Lawrence R and Maria S	99-006	1999		Y
216-07-040		E	Cave Creek	Rd	Road	Cavalier Gateway LLC	99-007	1999		Y
216-12-004P			Sec 22, T6N, R4E		Road	Norton, Todd and Rebecca	2000-01	2000		Y
211-19-095A & 211-19-095B			Glory	Rd	Road	Puma, Nicholas and Lillian	2001-01	2001		
	6146	E	Seco	Pl	Road	Donald P and Eleanor L Radke	2001-02	2001		Y
211-47-29	35302	N	51st	St	Trail	Bambi Muller and Lowell Relkin	2001-03	2001		Y
211-82-111	41860	N	Spur Cross	Rd	Road	Kenneth E Mathis, Sr.	2001-04	2001		Y
211-10-001B & 211-10-001C					Trail	UOI Desert Valley Development	2002-01	2002		Y
216-20-019B					Road	Diffee, Raymond and Karen Sue	2002-02	2002		Y
211-10-003D			School House	Rd	Util/Road	Jocelyn Kremer	N/A	2003		Y
216-12-002P & 216-12-002N					Road	Weaver Hanes	2003-01	2003		Y
216-11-002B					Road	Schoonover, Paul and Grace	2003-02	2003		Y
216-12-004K					Road	Michael Philips and Hilda	2003-03	2003		Y
216-16-018F					Road	Terry Zerkle and Katya Kincel	2004-01	2004		Y
211-43-029					Road	Arnold Naches	2004-02	2004		Y
211-08-008 and 010					Road	Desert Pacific Developers	2004-03	2004		Y
216-12-001P					Trail	Robert Myers Horse Trail	2004-04	2004		Y
211-47-071					Trail	William Miller	2004-05	2004		Y
211-64-001X	2777	E	Ridgecrest	Rd	Trail	Smith, Terry	2004-06	2004		Y
211-46-049A					Road	Black Mt. Baptist Church	2004-07	2004		Y
216-07-009A					Road	Cave Creek Management Group	2004-08	2004		Y
216-14-005					Road	Rick and Christine Neimeyer	2004-09	2004		Y
216-17-004K					Road	Rudy and Diana Johnson	2004-10	2004		Y
216-17-004J					Road	Julianne Loegler	2004-11	2004		Y
216-17-004H					Road	Julianne Loegler	2004-12	2004		Y
216-17-004N					Road	Julianne Loegler	2004-13	2004		Y
216-17-004L					Road	V. Kerry and Pauline A. Smith	2004-14	2004		Y
216-17-004M					Road	Joseph and Rebecca Guy	2004-15	2004		Y
211-02-004J					Road	William Wicevich and Rebecca Lester	2004-16	2004		Y
216-20-001H					Road	Walter and Marina Schuster	2004-17	2004		Y
211-04-012C					Trail	Mary Hart for Horse Trail	2004-18	2004		Y
211-04-012D					Trail	Robert and Dale Lynn Nevin	2004-19	2004		Y
211-56-004A					Trail	William and Jacinta Nelson	2004-20	2004		Y
211-03-009H					Trail	William and Jacinta Nelson	2004-21	2004		Y
211-13-027			Victoria	Dr	Road	Kenneth Palmer	2004-22	2004		Y
211-11-047A					Road	Colonial Bank	2004-23	2004		Y
216-13-021			Arroyo	Rd	Road	George Stine	2004-24	2004		Y
216-11-002B					Road	Paul Hubert and Grace Stokes Schoonover	2004-25	2004		Y
216-14-003R					Road	Robert Long	2004-26	2004		Y
216-14-003S					Road	Doug Mohn, Sotazona Homes	2004-27	2004		Y
216-14-003T					Road	Doug Mohn, Sotazona Homes	2004-28	2004		Y
216-14-003U					Road	John Lessen	2004-29	2004		Y
216-06-053E					Road	Fontaine, Raymond and Karen	2004-30	2004		Y
211-48-004V					Road	Billington, Mark and Phyllis	2004-31	2004		Y
211-47-036					Road	Vincent A. Francia and Amelia Blanco	2004-32	2004		Y
216-20-021B					Road	Michael Mora and Judy Gardner	2004-33	2004		Y
216-20-019A					Road	Norma Jane Clarke/Trustee of Clarke Rev. Tr	2004-34	2004		Y

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
216-20-017B					Road	Suzanne R. Hartung	2004-35	2004		Y
216-20-016A					Road	Lynne Stoneberg	2004-36	2004		Y
216-20-017A					Road	Ming Hor Yee and Sue Goon Yee	2004-37	2004	Nov-04	Y
216-20-020B					Road	Richard L. Hall	2004-38	2004		Y
					Road	Jeff and Susan Mast	2004-39	2004		Y
216-20-016C					Road	Irene E. Christian, Trustee	2004-40	2004		Y
211-13-028			Victoria	Dr	Road	Kenneth Palmer	2004-41	2004		Y

2005 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-81-001F					Trail	Don and Karen Knight	2005-01	1/11/2005	**3/30/2005**	Jan-05
211-01-046C & 046D					Road	Tom and Kimberly Prodan	2005-02	unk	**3/7/2005**	Feb-05
211-64-035	2797	E	Ridgecrest	Rd	Trail	Elizabeth Geneva Smith (Smith Trust)	2005-03	unk.	**3/7/2005**	Feb-05
211-67-042	2875	W	Maddock	Rd	Road	Thomas R. Caringi and Paula G. Patton	2005-04	1/24/2005	**3/7/2005**	Feb-05
211-46-010C					Road	Richard L. Belveal, Trustee	2005-05	2/8/2005	**3/7/2005**	Feb-05
211-64-003Z					Trail	Kathryn Sue Smith	2005-06	2/16/2005	**3/30/2005**	Mar-05
211-48-057					Road	John G. Bigelow, Jr.	2005-07	3/4/2005	**3/30/2005**	Mar-05
216-14-001T					Trail	William M. Marsh and Carol L. Marsh	2005-08	3/22/2005	**7/18/2005**	Apr-05
211-46-024A					Road	Thomas Edward and Debra A. Miller	2005-09	3/24-28/05	**7/18/2005**	Apr-05
211-48-004L		S	30' of Lot 5, Sec 6, T5N, R4E		Road	Michael Leonard and Danae Austin Bradley	2005-10	4/28/2005	**6/8/2005**	May-05
216-06-029P			Military Rd & Skyline Drive		Road	GV Group, LLC	2005-11	5/9/2005	**6/8/2005**	May-05
211-03-009U			20' SW 1/4, NW 1/4, SE 1/3 Sec 21 T6N,R4E		Trail	Keith and Tammy Teegardin	2005-12	5/6/2005	**9/9/2005**	Jun-05
211-03-009V			20' SW 1/4, NW 1/4, SE 1/4, Sec 21, T6N, R4E		Trail	Robert and Barbara Nesheim	2005-13	5/9/2005	**9/9/2005**	Jun-05
211-48-059		S	30' of S 1/2, E 1/2, SE 1/4, NW !/4 Sec 6, T5N, R4E		Road	Ray A and Debby Borzini	2005-14	5/16/2005	**7/18/2005**	Jun-05
216-29-003C	37445	N	School House	Rd	Road	John and Marilyn Bonnell	2005-15	5/18/2005	**7/18/2005**	Jun-05
211-48-056		S	30' of W 1/2, SE 1/4, NW 1/4, Sec 6, T5N, R4E, GLO Lot 5		Road	Richard and Kimberly J. Russek	2005-16	6/1/2005	**7/18/2005**	Jun-05
211-59-067B	5450	E	Desert Hills	Dr	Road	Bruce R and Julie A Becwar	2005-17	6/5/2005	**6/24/2005**	Jun-05
211-46-016		SE	Corner of 54th St and Yolantha		Road	Stephen M. Pollock	2005-18	6/10/2005	**7/18/2005**	Jun-05
202-19-022M			SE1/4, SE1/4, SE1/4, Sec 8, T6N, R4E		Road	James G. Anderson	2005-18 A	7/1/2005	**8/12/2005**	Aug-06
202-19-022L			SE1/4, SE1/4, SE1/4, Sec. 8, T6N, R4E		Road	James G. Anderson	2005-18 B	7/1/2006	**8/12/2005**	Aug-06
211-11-050			40' of W 43' of SE 1/4 of Sec 28, T6N, R4E		Road	Anthony F and Mary C Venetucci	2005-19	8/8/2005	**9/9/2005**	Aug-05

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
211-14-044E			E 1/2 of the NW 1/4 of Sec 33, T6N, R4E		Easement	Anthony F and Mary C Venetucci	2005-20	9/9/2005	**11/9/2005**	Oct-05
216-12-004F			W 30' of NW 1/4 of SW 1/4 of NE 1/4 of SW 1/4 of Sec 22, T6N, R4E		Road	Todd M. Meyers	**PENDING**	**PENDING**		
211-67-049	3133	E	Maddock	Rd	Road	L.H. Posen	**PENDING**	**PENDING**		
211-46-016					Road	Robert D and Lillian M. Barker	**PENDING**	**PENDING**		
211-16-038			Highlands @ Canyon Ridge		Road	Hermosa Vista LLC/John Huston	Plat dedication	10/1/2005	plat dedication	plat dedication
216-14-006			part of @1/2, SW1/4, NE1/4, NE1/4, Sec 22, T		Trail	Louis and Marie Skorish	2005-21	10/29/2005	**1/13/2006**	Nov-05
216-14-007			Part of the E1/2, SW1/4, NE1/4, NE1/4, Sec 2		Trail	Louis and Marie Skorish	2005-22	10/29/2005	**1/13/2006**	Nov-05
216-06-032A			15' of SW 1/4 of Sec 27, T6N, R4E		Road	Prairie Sky, LLC (Marshall Woodbury)	2005-23	12/13/2005	**1/24/2006**	Jan-05

2006 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
216-12-002W	6435	E	Arroyo	Rd	Road	John and Grace Meeth	2006-01	3/16/2006	**4/25/2006**	4/17/2006
216-16-024C	41688	N	Fleming Springs	Rd	Road	Tom Peterson	2006-02	4/7/2006	**4/25/2006**	4/17/2006
216-11-009P			North 30' of E1/2 or NW1/4 of NE1/4 of NW1/		Road	Erwin M. Koeritz	2006-03	5/10/2006	**6/13/2006**	6/5/2006
216-11-011	39225	N	66th	St - also known a	Road	Gary L. Rector	2006-04	5/13/2006	**6/13/2006**	6/5/2006
216-17-004U			20' of previously abandoned ROW		Road	Julianne Loegler	2006-05	6/1/2006	**6/26/2006**	6/19/2006
211-06-041			Part of SW 1/4 SW 1/4; Sec 27, T6N, R4E (ex		Road	Thompson Peak One Holdings, LLC (Wold)	2006-06	6/5/2006	**6/26/2006**	6/19/2006
216-86-006A & 216-86-007A			40' of the 628.66' of the NE 1/4 of the SE 1/4		Road	Robert Selman	2006-07	6/5/2006	**6/5/2007**	6/19/2006
216-11-001			20' of S 1/2, SE 1/4, NW 1/4 of Sec 27, T6N,		Trail	Queen Creek Ten, Inc./Jacob Jorde, VP	2006-08	7/6/2006	**7/26/2006**	7/24/2006
211-59-067B ***	5450	E	Desert Hills	Dr	Road	Bruce R and Julie A Becwar	2006-09	6/5/2005	**PENDING**	6/24/2005
211-46-033A	34920	N	46th	St	Road	Thomas/Janet Wilhelm & Troy/Dana Wiggin	2006-10a & b	9/21/2006	**7/28/2008**	10/16/2006
			PHASE V,according to Book 873 of Maps, page 44, records of Maricopa County, Arizona.		Conservation and Public Open Space	Apache Springs Land, LLC	2006-11	12/8/2006		

2007 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
216-12-028	6412	E	Arroyo	Rd	Road	Kenneth and Sussan Mathis	2007-01	1/4/2007	**4/10/2007**	4/2/2007
211-16-018			N1/2, S1/2, NE 1/4, N1/2, S1/2, S1/2, NE 1/4 Sec 32 T6N R4E		Trail	Desert Foothills Land Trust	2007-03	5/15/2007	**6/27/2007**	6/18/2007
211-48-058			S 30' of E 300', W 315', S1/2 of E 1/2 of SE1/4 of NW 1/2; Sec 6 T5N R4E		Road	Doug & Dolores Brown	2007-02	6/14/2007	**7/23/2007**	7/16/2007

As of 8/3/2016

Deed of Gift by APN

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
211-02-023		Lot #1	Village @ Miravista	(MCR 408-25)	Trail	Usama & Jumam Abujbarah	2007-04	7/9/2007	**8/7/2007**	7/16/2007
216-16-010		Lot #9	Rockaway Hills		Util Road	Charles F. Eppel	2007-05	8/24/2007	**9/27/2007**	9/24/2007
216-06-036A		N	33' of the NW 1/4 of the SW 1/4 of Sec 27, T6N, R4E		Road	Floyd J and Barbara J Wernimont	2007-06	10/2/2007	**10/22/2007**	10/15/2007
211-59-062		N	1/2 of SW 1/4 of NE 1/4; Sec 20,T6N, R4E		Trail	Oscar J.D. & Norma K. Nelson	2007-07	10/11/2007	**11/14/2007**	11/5/2007
211-13-029J	E of Carriage Dr	S	1/2 of Sec 33, T6N, R4E		Util Road & water booster station	AZ Biochem (Millett)	2007-08	11/9/2007	**12/5/2007**	11/19/2007
211-64-007M			W2, NW4,NE4, NE4, Sec 23, T6N R3E		Trail	Eddie Ann Bonser	2007-09(A)	11/13/2007	**2/14/2008**	12/3/2007

2008 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-64-007N			E2, NW4, NE4, Sec 23, T6N, R3E		Trail	Brandon & Gretchen Bonser	2008-01	11/26/2007	**2/1/2008**	1/7/2008
211-64-007N			E2, NW4, NE4, Sec 23, T6N, R3E		Trail	Brandon & Gretchen Bonser	2008-01 (A)	10/1/2008	**11/17/2008**	1/7/2008
211-48-003B		Lot #2	Lot split Bk 726, Pg 31 MCR; part of SE1/4 of NE1/4, Sec 6 T5N R4E		Util Road	Richard & Holly Warnol	2008-02	11/20/2007	**2/1/2008**	1/7/2008
211-48-003A		Lot #1	Lot split Bk 726, Pg 31 MCR; part of SE1/4 of NE1/4, Sec 6 T5N R4E		Util Road	Troy A & Cheree A Burleson	2008-03	11/20/2007	**2/1/2008**	1/7/2008
211-48-003E		Lot #3A	Amended lot split, Bk 861, Pg 14 MCR, SE 1/4 of NE 1/4, Sec 6 T5N R4E		Util Road	Troy A & Cheree A Burleson	2008-04	11/20/2007	**2/1/2008**	1/7/2008
216-17-003A			S 1/2 of SE 1/4 and @ 1/2 of SW 1/4 of Sec.14, T6N, R4E		Road	CC Investors 220 LLC/James Barrons, Mgr	2008-05	12/14/2007	**2/1/2008**	1/7/2008
216-06-031D			School House and Cave Creek Rd		Water Easement	Cave Creek Land Venture LLC	2008-06	2/8/2008	**3/20/2008**	2/4/2008
211-11-048G			Portion of west 1/2 of SE 1/4 of Sec 28; T6N; R4E		Sewer Easement	Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints	2008-07	12/6/2007	**2/1/2008**	1/7/2008
211-48-063		Lot #4	Estado de Cholla Phase 2		Sewer Easement	Jesse C & Lynn A Zamora	2008-08	1/31/2008	**2/14/2008**	2/4/2008
211-48-061		Lot #2	Estado de Cholla Phase 2		Sewer Easement	Michael B & Sallie B. Goldberg	2008-09	2/4/2008	**2/27/2008**	2/19/2008
211-48-003E		Lot 3A	Book 861, Page 14		Sewer Easement	Troy & Cheree Burleson	2008-10	2/6/2008	**2/27/2008**	2/19/2008
211-48-003A		Lot 1	Book 726, Page 31		Sewer Easement	Troy & Cheree Burleson	2008-11	2/6/2008	**2/27/2008**	2/19/2008
211-48-003F		Lot 3B	Book 861, Page 14		Sewer Easement	Troy & Cheree Burleson	2008-12	2/6/2008	**2/27/2008**	2/19/2008
211-48-067		Lot 8	Estado de Cholla Phase 2		Sewer Easement	Douglas W & Lidia Haser	2008-13	2/7/2008	**2/27/2008**	2/19/2008
211-48-003B		Lot 2	Bk 726 of Maps, Pg. 31		Sewer Easement	Richard & Holly Warnol	2008-15	2/6/2008	**2/27/2008**	2/19/2008
211-48-065		Lot 6	Estado de Cholla, Phase 2 Bk 677, Pg 2		Sewer Easement	Scott R & Jamee K Hubler	2008-14	2/14/2008	**3/7/2008**	3/3/2008

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
211-67-073		Lot 12	GLO, T6N, R3E, Sect 35		Road	David Cantelme	2008-16	2/1/2008	**3/31/2008**	3/17/2008
216-11-009T	6636	E	Tanya	Rd	Road	Clifford F. Gammelin (Trustee)	2008-17	3/6/2008	**3/31/2008**	3/17/2008
216-11-010	6636	E	Tanya	Rd	Road	Clifford F. Gammelin (Trustee)	2008-18	3/6/2008	**3/31/2008**	3/17/2008
216-14-001X			W1/2 of S1/2 of E 1/2 of NE		Road	Jeffrey A and Lisa Kennedy	2008-19	4/19/2008	**7/18/2008**	6/16/2008
216-20-014Y	7507	E	Arroyo	Rd (23 Arroyo)	Road	Paul & Debra Hinshaw	2008-20	6/10/2008	**7/18/2008**	7/7/2008
211-48-104 & 105	Lots 22 & 23		Las Ventanas		Sewer Easement	PK Development - Lenn Pritchard	2008-21	8/18/2008	**8/28/2008**	8/4/2008
211-48-091/103/104 & 106	s 9, 21,22 & Tract A		Las Ventanas		Sewer & Trail	PK Development - Lenn Pritchard	2008-22	8/18/2008	**8/28/2008**	8/4/2008
211-64-007R			Cahava Springs	SE1/4, NE 1/4 , N	Sewer Easement	Apache Springs Land LLC	2008-23	10/2/2008	**10/20/2008**	9/15/2008
211-64-007T			Cahava Springs	NE1/4, NE 1/4 , N	Sewer Easement	Apache Springs Land LLC	2008-24	10/2/2008	**10/20/2008**	9/15/2008
211-64-007D			32nd St	SE1/4, NE1/4, Se	Road	Heinz G & Christa L Schwartz	2008-25	**PENDING**	**PENDING**	9/15/2008
211-18-001A				SW1/4, Sec 13, T	Road	Shane Spaulding	2008-26	**PENDING**	**PENDING**	9/15/2008
211-18-001B				SW1/4, Sec 13, T	Road	Shane Spaulding	2008-27	**PENDING**	**PENDING**	9/15/2008
211-64-008A				NE1/4, Sec 23, T	Booster Station	Heinz & Christa Schwarta	2008-28	**PENDING**	**PENDING**	9/15/2008
211-65-002K				NW1/4, Sec 24, T	Util Road	Lange Mines Ltd (Heinz/Christa Schwartz)	2008-29	**PENDING**	**PENDING**	9/15/2008
216-20-014W		E	Arroyo	Rd (s 25' of e 1/2	Road	Ronald W. and Karen A. Auerbach	2008-30	9/22/2008	**11/4/2008**	10/6/2008
211-78-007			Ocotillo	Rd	Trail	Bruce Joseph Simon & Elaine Elliott	2008-31	10/1/2008	**12/1/2008**	12/1/2008
211-07-006E				S 1/2,NE 1/4 - Se	Trail	Craig M. Rundbaken/Laura L'Heureux	2008-32	11/8/2008	**12/1/2008**	12/1/2008

2009 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-12-705A			Lot 6 Rancho Manana Resor	Sec28 T6N R4E	Sewer Easement	Weirauch Properties LLC	2009-01	3/11/2009	**3/19/2009**	3/17/2009
211-10-006B & C				SE 1/4 of SE 1/4	Trail	Desert's Edge Development LLC	2009-02	3/2/2009	3/2/2009	3/2/2009
211-10-006C				SE 1/4 of SE 1/4	Road	Desert's Edge Development LLC	2009-03	3/2/2009	3/2/2009	3/2/2009
216-20-014V				21/2, SE1/4, NE	Road	John and Ginger Zuber	2009-04	4/21/2009	6/22/2011	5/4/2009
211-14-045D			Hohokam	Place (w of CC Rd	Road	Barry C Wukasch	2009-05A	4/20/2009	4/20/2009	Prev Plan Approval
211-14-045D			Hohokam	Place (w of CC Rd	Sign Easement	Barry C Wukasch	2009-05B	4/20/2009	4/20/2009	Prev Plan Approval
211-82-131		E & E	Mountain Reserve & Desert	Drive & Place	Road	North Mountain Reserve HOA	2009-06	8/26/2009	10/26/2009	9/21/2009

2010 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-46-004K				1900SF; @ South side Carefree Hwy; near SEC CC Rd; Alignment #2	Road	Dr. Robert Bullington, Jr, Trustee; CC56 Trust U/T/A March 2, 1987	2010-01	5/12/2010	5/18/2010	6/14/2010

Deed of Gift by APN

As of 8/3/2016

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
211-46-004K				1400 SF on SWC Carefree Hwy/56th St	Road	Dr. Robert Bullington, Jr, Trustee; CC56 Trust U/T/A March 2, 1987	2010-02	5/12/2010	5/20/2010	6/14/2010
211-46-004K				3795 SF on SEC Cave Creek/Carefree Hwy; Alignment #1	Road	Dr. Robert Bullington, Jr, Trustee; CC56 Trust U/T/A March 2, 1987	2010-03	5/12/2010	5/20/2010	6/14/2010
211-46-004L				9828 SF on SWC Cave Creek/Carefree Hwy	Road	Bromax LLC by Bro Retail Group Inc, its Mgr	2010-04	5/27/2010	5/27/2010	6/7/2010
216-20-014K	7404	E	Arroyo	Rd	Road	Peter E. Bellis (Trustee-Bellis Family Trust)	2010-05	6/9/2010	7/21/2010	7/19/2010
216-20-014H				W1/2, NW 1/4, SE 1/4, SW 1/4 S23T6NR4E	Road	Douglas/Ann Isaly - Sarah Isaly Logsdon	2010-06 (A)&(B)	5/26/2010	7/21/2010	7/19/2010
216-20-014X	7491	E	Arroyo	Rd	Road	Toby & Lori Pearce	2010-07	6/23/2010	7/21/2010	7/19/2010
216-20-014G	7455	E	Arroyo	Rd	Road	Gary & Faith Kube (Trustees of Kube Family Trust)	2010-08	6/11/2010	7/21/2010	7/19/2010
216-20-014J	7439	E	Ridgecrest	Rd	Road	James & Joann Moorer	2010-09	6/1/2010	7/21/2010	7/19/2010

2011 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-12-778	6145	E	Cave Creek	Rd	Trail	Rancho Verde Del Rio	2011-1	12/10/2010	**1/6/2011**	1/3/2011
216-07-006B	6948	E	Cave Creek	Rd	Road	Cave Creek Building Supply	2011-2	10/5/2011	**1/25/2012**	10/17/2011
216-06-027 B & C		E	Cave Creek	Rd	Trail	Greg Johnson	2011-3	10/11/2011	**1/25/2012**	10/17/2011

2012 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-01-005J	5002	E	Morning Star	Road	Road	Donald E Sorchych	2012-01	1/5/2012	1/25/2012	1/17/2012

2014 Deeds of Gift

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date

Deed of Gift by APN — **As of 8/3/2016**

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
7 Deeds of Gift			Bella Vista Loop (Jack Cartwright Pass)	easement	easement	Diane Sucato, Jim Mount, MDB Holdings (2), Larry Wendt (3),	2014-01	10/24/13 10/31/13 10/28/13 (2) 2/25/14 4/3/14	4/8/2014	1/21/2014
211-08-063,	6037	E.	Cave Creek	Road	Trail *	William M. Grace, Grace Capital Investment Corporation	2014-02	2/19/2015	3/4/2015	11/3/2014
211-08-060	6045	E.	Cave Creek	Road	Trail *	William M. Grace, Grace Capital Investment Corporation	2014-02	2/19/2015	3/4/2015	11/3/2014
211-08-062	6047	E.	Cave Creek	Road	Trail *	William M. Grace, Grace Capital Investment Corporation		2/19/2015	3/4/2015	11/3/2014
211-08-059	6049	E.	Cave Creek	Road	Trail	Julie E. Moran	2014-03	3/5/2014	4/1/2015	11/3/2014

2015 Deeds of Gifts

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	Date Recorded	Council Mtg Date
211-64-008A			Saddle Mountain Rd.	public roadway and utility purposes	**Roadway**	Heinz G. & Christa L. Schwartz	2015-01	5/13/2015		May-15
216-06-024C			Part of sw1/4, Sec 27, T6N,R.4e		**Right-of-Way**	Buffalo Espress-T.C. Thorstenson	2015-02		6/1/2015	
216-06-024C			Part of sw1/4, Sec 27, T6N,R.4e		**Easement**	Buffalo Espress-T.C. Thorstenson	2015-03		6/1/2015	
211-13-028A			E 20 ft of S1/2 of nw qtr of ne qtr of se qtr Sec 33, T6N, R4E		**Utility Easement**	Steven H. Messner 1114 Flynn Lane, Phoenix AZ 85014	2015-04	6/10/2015	9/21/2015	Sep-15

Deed of Gift by APN — **As of 8/3/2016**

Parcel No.	Street #	Dir.	Street Name	Type	Type of Deed of Gift	Grantor(s)	File No.	Date Signed	To Council	Council Approval
211-13-027A			E 10 feet of W 53 ft of N1/2 of NW qtr of NE qtr of SE qtr of Sec33, T6N, R4E		**Utility Easement**	Steven A. Gruenemeier & Gail M. Clement	2015-05		9/21/2015	
Lot 1, Book 1237, Page 50			of the NE Qtr of Section 8, Township 5 N, R 4 E of the Gila and Salt River Base and Meridian, Maricopa County, AZ		**Public Water Easement**	Tucson Circle LLC (Tractor Supply)	2016-01	12/8/2015	4/18/2016	Apr-16
Lot 4, Book 1237, Page 50			of the NE Qtr of Section 8, Township 5 N, R 4 E of the Gila and Salt River Base and Meridian, Maricopa County, AZ		**Public Water Easement**	Cave Creek AZ Development Group LLC a North Carolina LLC (AutoZone)	2016-02	3/7/2016	4/18/2016	Apr-16

127

ORDINANCE NO. O2005 - 11

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CAVE CREEK, MARICOPA COUNTY, ARIZONA, AMENDING THE TOWN OF CAVE CREEK ZONING ORDINANCE, AS INCORPORATED IN THE CAVE CREEK TOWN CODE, DATED JANUARY 6, 2003, BY AMENDING CHAPTER 1 – TITLE, PURPOSE AND SCOPE, SECTION 1.7 – VIOLATIONS AND PENALTIES

NOW, THEREFORE, be it ordained by the Mayor and Common Council of the Town of Cave Creek, Arizona, as follows:

Section 1. That Chapter 1 – Title, Purpose and Scope, Section 1.7 – Violations and Penalties of the Town of Cave Creek Zoning Ordinance is hereby amended as follows, **effective thirty (30) days following the adoption of 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~~ **RESPONSIBLE FOR A CIVIL CODE INFRACTION,** punishable as provided in the Cave Creek Town Code **Section 10.99 (a)** ~~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.

Section 2. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason held to be invalid or unconstitutional by the decisions of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Cave Creek, Arizona this 21st day of November, 2005.

FOR THE TOWN OF CAVE CREEK:

Vincent Francia, Mayor

ATTEST TO:

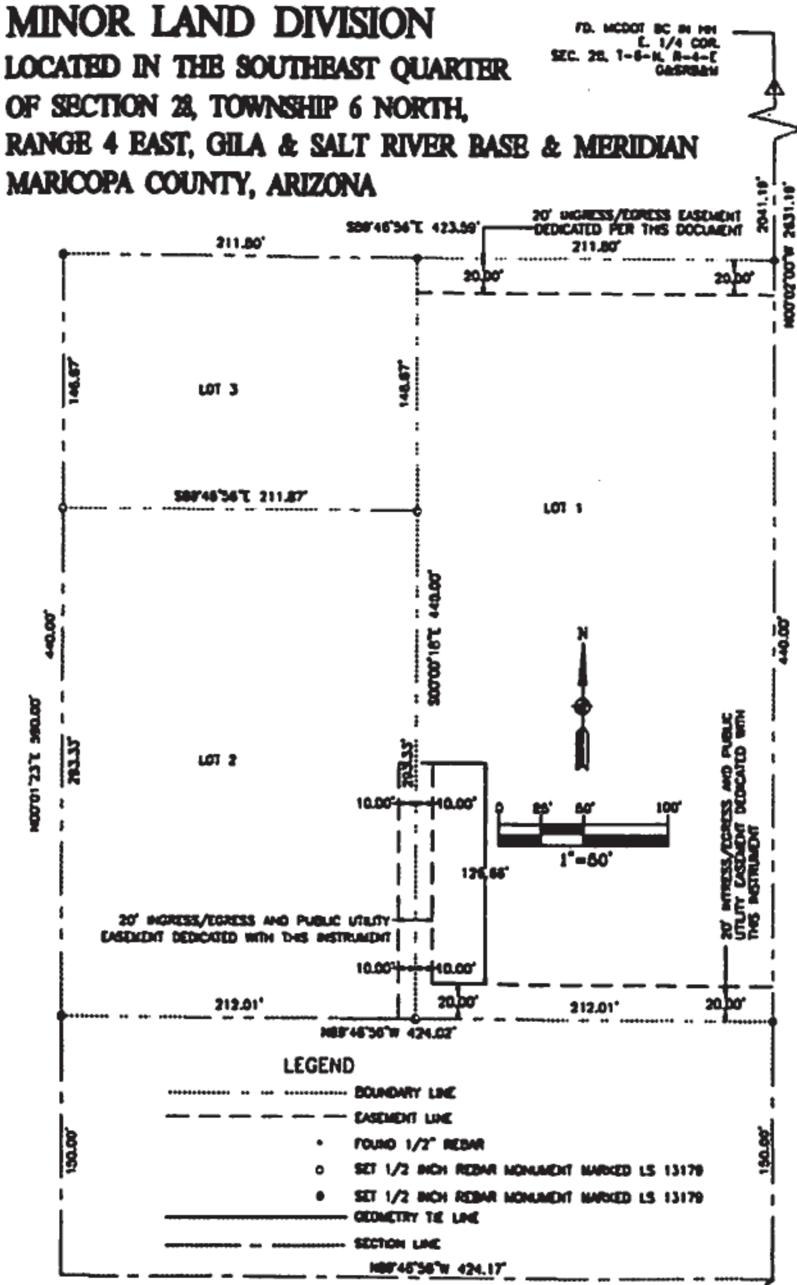
Carrie Dyrek, Town Clerk

APPROVED AS TO FORM:

William E. Farrell, Town Attorney

MINOR LAND DIVISION

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



AREAS		
LOT 1	LOT 2	LOT 3
93,237 SQ. FT.	62,160 SQ. FT.	31,080 SQ. FT.
2.14 ACRES	1.43 ACRES	0.71 ACRE

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL:
THENCE N89°48'56"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°48'56"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 SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°48'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 212.01' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°48'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.80' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28;
THENCE S00°02'00"E ALONG SAID EAST LINE A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT UNDER AND ACROSS THE NORTH AND THE SOUTH 20' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES UNDER AND ACROSS THE WEST 10' OF THE NORTH 126.665' OF THE SOUTH 146.665' THEREOF.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N89°48'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE 212.01' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°48'56"W ALONG SAID PARALLEL LINE A DISTANCE OF 212.01' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°48'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.87' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES UNDER AND ACROSS THE EAST 10' OF THE SOUTH HALF THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°48'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE, A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°48'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 211.80' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.67' TO THE POINT OF BEGINNING.

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS ________ DAY OF ________ OF 2001.

ATTESTED:

________________ DIRECTOR OF PLANNING ________ DATE

________________ TOWN CLERK, TOWN OF CAVE CREEK ________ DATE

CBR CONSULTANTS
CIVIL ENGINEERING AND LAND SURVEYING
700 E. MESQUITE, UNIT O 212
TEMPE, ARIZONA 85281-1957
PHONE: (480) 377-1264
CELL: (480) 600-1123
FAX: (480) 377-1267

RALPH D. NISCHBAUM, P.E.
ARVEL R. JONES, P.

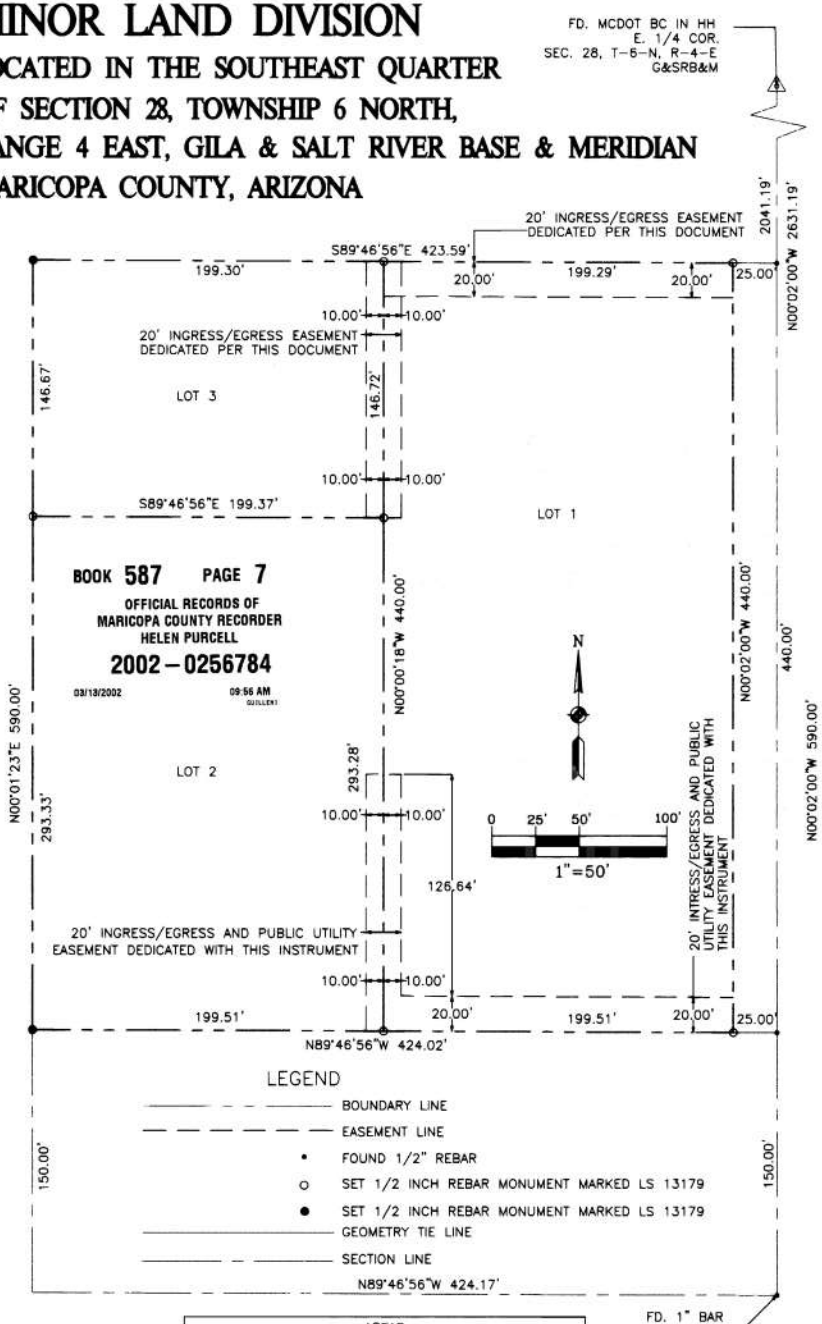
THIS IS TO CERTIFY THAT I, ARVEL R. JONES AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION, DURING THE MONTH OF OCTOBER 2001, THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS NOTED AND THAT SAID SURVEY MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

13179 ARVEL R. JONES

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



AREAS		
LOT 1	LOT 2	LOT 3
87,732 SQ. FT.	58,501 SQ. FT.	29,231 SQ. FT.
2.01 ACRES	1.34 ACRES	0.67 ACRE

LEGAL DESCRIPTION OF PARENT PARCEL

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE N89°46'56"W ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 424.17' TO THE SOUTHEAST CORNER OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG THE EAST LINE OF SAID SUBDIVISION A DISTANCE OF 590.00' TO A CORNER OF THIS PARCEL;
THENCE S89°46'56"E, ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 423.59' TO A CORNER OF THIS PARCEL, SAID POINT BEING ON THE EAST LINE OF SAID SOUTHEAST QUARTER OF SECTION 28;
THENCE S00°02'00"E ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28 A DISTANCE OF 590.00' TO THE SOUTHEAST SECTION CORNER OF SAID SECTION 28 AND THE POINT OF BEGINNING.

EXCEPT THE SOUTH 150' THEREOF.

LEGAL DESCRIPTION LOT 1

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 A POINT MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00', TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 25.00';
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE, A DISTANCE OF 199.51' TO THE POINT OF BEGINNING OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°00'18"W A DISTANCE OF 440.00' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 199.29' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179, SAID POINT BEING 25.00' FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;
THENCE S00°02'00"E ALONG SAID PARALLEL LINE A DISTANCE OF 440.00' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT OVER, UNDER AND ACROSS THE NORTH AND THE SOUTH 20' THEREOF FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES.

AND, TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE WEST 10' OF THE SOUTH 126.64' AND THE NORTH 146.72' THEREOF.

LEGAL DESCRIPTION LOT 2

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00' TO A POINT;
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE 199.51' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179, THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N89°46'56"W ALONG SAID PARALLEL LINE A DISTANCE OF 199.51' TO A CORNER OF THIS PARCEL LOCATED ON A LINE THAT IS ALSO THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA AND MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO A CORNER OF THIS PARCEL, MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.37' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E, A DISTANCE OF 293.28' TO THE POINT OF BEGINNING OF THIS PARCEL.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE SOUTH HALF OF THE EAST 10' THEREOF.

LEGAL DESCRIPTION LOT 3

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, MONUMENTED BY A 1" IRON BAR;
THENCE N00°02'00"W ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 150.00';
THENCE N89°46'56"W ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 424.02' TO A POINT ON A LINE THAT IS THE EAST LINE OF "VILLAGE VISTA" SUBDIVISION, AS RECORDED IN BOOK 82 OF MAPS, PAGE 15, RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 293.33' TO THE POINT OF BEGINNING OF THIS PARCEL;
THENCE CONTINUING N00°01'23"E ALONG SAID EAST LINE OF "VILLAGE VISTA", A DISTANCE OF 146.67' TO A CORNER OF THIS PARCEL MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S89°46'56"E ALONG A LINE PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 199.30' TO A POINT MONUMENTED BY A ½" REBAR MARKED LS 13179;
THENCE S00°00'18"E A DISTANCE OF 146.72' TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR THE PURPOSES OF INGRESS, EGRESS AND PUBLIC UTILITIES OVER, UNDER AND ACROSS THE EAST 10' THEREOF.

BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.

THIS IS TO CERTIFY THAT THE LOT SPLIT SHOWN HEREON WAS APPROVED BY THE TOWN OF CAVE CREEK ON THIS 31st DAY OF DECEMBER OF 2001.

ATTESTED:
DIRECTOR OF PLANNING — DATE 12/31/01

TOWN CLERK, TOWN OF CAVE CREEK — DATE 1/2/02

CBR CONSULTANTS
CIVIL ENGINEERING AND LAND SURVEYING
700 E. MESQUITE, UNIT D 212
TEMPE, ARIZONA 85281-1957
PHONE: (480) 377-1264
CELL: (480) 600-1123
FAX: (480) 377-1267
RALPH D. NISENBAUM, P.E.
ARVEL R. JONES, R.L.S.

THIS IS TO CERTIFY THAT I, ARVEL R. JONES AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF ONE SHEET CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION, DURING THE MONTH OF OCTOBER 2001; THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS NOTED AND THAT SAID SURVEY MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

REGISTERED LAND SURVEYOR No. 13179 ARVEL R. JONES Date Signed 12-31-01 ARIZONA U.S.A.

JOB NUMBER: M102
JOB NAME: School House
FILE LOCATION: D:\Land Projects\M102 School House\Survey.dwg

131

567-7

>> APPENDIX H <<

L-01-10

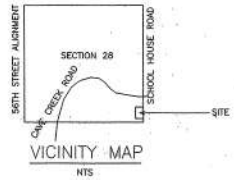
BASIS OF BEARING: N00°02'00"W THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOW ON GLO PLAT 234, RECORDS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT.

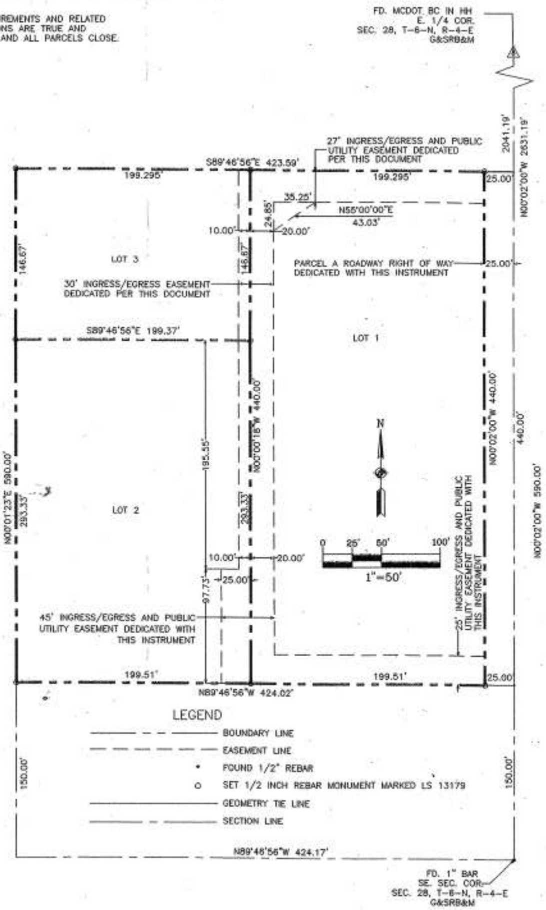
AREAS		
LOT 1	LOT 2	LOT 3
87,732 SQ. FT.	58,501 SQ. FT.	29,231 SQ. FT.
2.01 ACRES	1.34 ACRES	0.67 ACRE

NOTE:
ALL MEASUREMENTS AND RELATED CALCULATIONS ARE TRUE AND ACCURATE AND ALL PARCELS CLOSE.

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





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.

BOOK 631 PAGE 35
OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER
HELEN PURCELL
2003-0488178

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. (12/31/01)

ATTESTED:
DIRECTOR OF PLANNING — 4/17/03 DATE
TOWN CLERK, TOWN OF CAVE CREEK — 4/18/03 DATE

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 22002453-8, 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.

JOB NUMBER: M102 & M2-28
JOB NAME: School House Road

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

CBR | CONSULTANTS

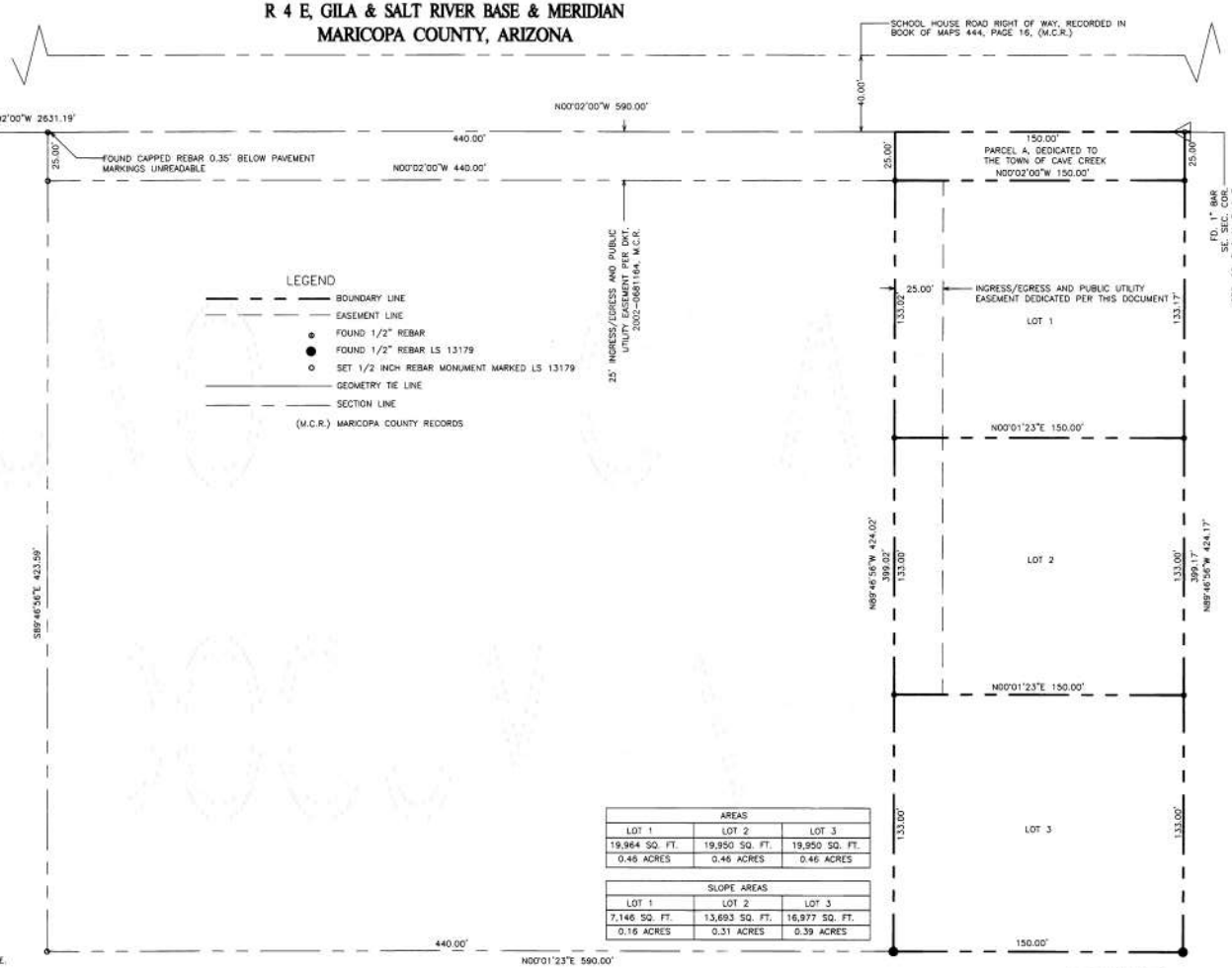
CIVIL ENGINEERING
LAND SURVEYING

L-03-03

652-28

MINOR LAND DIVISION
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, T 6 N, R 4 E, GILA & SALT RIVER BASE & MERIDIAN MARICOPA COUNTY, ARIZONA

BOOK 652 PAGE 28
OFFICIAL RECORDS OF MARICOPA COUNTY RECORDER HELEN PURCELL
2003-1312578
04/18/2003 02:38 PM



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

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

DIRECTOR OF PLANNING — DATE 9/16/03

TOWN CLERK, TOWN OF CAVE CREEK — DATE 9/18/03

Mayor, Town of Cave Creek — 9/18/03 Date

LEGAL DESCRIPTION OF LOT 2

THE EAST 133' OF THE WEST 266' OF THE SOUTH 150' OF THE FOLLOWING PARCEL.

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, TOWN OF CAVE CREEK, ARIZONA, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS

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

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

183

>> APPENDIX J <<

SECURITY TITLE AGENCY

When recorded mail to:

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**

DO NOT REMOVE

This is part of the official document.

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 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

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 Rudasill Rd

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.

ArekFressadi@gmail.com • 520.216.4103 • 10780 Fullerton Road, Tucson AZ 85736

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.

>> APPENDIX N <<

Arek R. Fressadi

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

November 7, 2017
Served/Filed *via CM/ECF*

Request to Publish Court Memorandum, Case #15-15566, DktEntry 124-1

Dear Ms. Dwyer:

Pursuant to Circuit Rules 36-4 and 36-2(a),(b),(c),(d),(e), Plaintiff-Appellant Arek R. Fressadi respectfully requests that the Panel's Memorandum, DktEntry 124-1 in *Fressadi, et al v. Arizona Municipal Risk Retention Pool*, *et al*, be published according to 9th Circuit standards in preparation of filing Petitions for Rehearing and Rehearing *En Banc* per FRAP 35 and 40.

The Panel's ruling is catastrophic—it fosters municipalities to continually violate federal and state law, and their own ordinances, without redress or remedy. The ruling undermines well-established case law of the U.S. Supreme Court, 9th, and other circuits regarding the Doctrines of Equitable Tolling and Equitable Estoppel to vanquish procedural due process notice protection by relying on Defendants' fraudulent abuse of Statues of Limitations. It also undermines well-established law and the Relations Back Doctrine per Fed.R.Civ.P. Rule 15(c) that permits *pro se* Plaintiffs to amend a Complaint, especially given the newly discovered evidence proving Defendants' misconduct, to which they *admitted*. *See* Opening Brief ("OB") DktEntry 40 and Reply Brief ("RB") DktEntry 103, incorporated herein. *See also* DktEntry 56, the Motion for Judicial Notice that contained the evidence, which this Court denied in order to issue its ruling.

This case is a matter of first impression, "[i]nvolv[ing] a legal or factual issue of unique interest or substantial public importance"—violations of the Supremacy Clause to time bar claims that involve continuing violations[1] by a municipality evoking state statutes of limitations based on fraud, Circuit Rule 36-2(d). The Doctrines of Equitable Tolling and Equitable Estoppel due to extrinsic fraud and fraud on the court are main arguments throughout the Opening and Reply Briefs. The Panel's ruling "alters" and "modifies" these Doctrines by ignoring them in a manner that "shocks the conscience," relying exclusively on statutes of limitations without considering these well-established exceptions. Circuit Rules 36-2(a)&(d). The ruling "dispos[es] of a case in which there is a published opinion by a lower court or administrative agency," where District Court also overlooked pleadings of extrinsic fraud and fraud on the court throughout the Complaint (Doc. 1-1, incorporated herein), failed to permit *pro se* Plaintiff to amend the Complaint prior to Rule 12(b) dismissal, and failed to comprehend how federal questions affected supplemental jurisdiction. Circuit Rule 36-2(e). Considering the Opening Brief, Reply Brief, and Motions for Judicial Notice (DktEntries 56, 101 *et seq*., 120, incorporated herein), the Panel's ruling "[c]riticizes existing law" to make a mockery of justice. The generic overbroad memorandum causes criticism of the Ninth Circuit and existing law by its evasion and omission of the facts, evidence, and well-established cases that are contrary to the ruling. Circuit Rule 36-2(c). It appears the Panel did not read *pro se* Plaintiffs' filings, only *government* Defendants' assertions and District Court's rulings. As such, this Court facilitates the continuation of Defendants' fraud, which must be corrected.

[1] Fressadi argued continuing constitutional violations and that his property is *still* a *non-conforming* subdivision violating Town ordinances, rendering all permits void and unlawful to sell per A.R.S. § 9-463.03, which can only be remedied by court order. (OB at 16-18, 23)

ArekFressadi@gmail.com • 520.216.4103 • 10780 Fullerton Road, Tucson AZ 85736

This Court has made a perilous precedent by issuing unpublished memoranda. According to Director James C. Duff, reducing the cost of operating the Judiciary is a top priority.[2] As such, it appears that not publishing court rulings has nothing to do with justice but is merely a cost containment measure. In the words of Justice John Paul Stevens' dissent in *County of Los Angeles v. Kling*, 474 U.S. 936, 938 (1985), the 9th Circuit's decision not to publish its opinion is "plainly wrong," likening it to "spawning a body of secret law." Ridding of cases by issuing unpublished rulings that goes against well-established case law has unintended consequences of eroding our Republic. It makes the pursuit of justice a bad joke.

According to the 9th Circuit's 2015 Annual Report, new appeals by pro se litigants numbered 5,855, accounting for 49.3 percent of all appeals opened during the year.[3] According to the U.S. Courts' website, pro se filings increased 18 percent in 2016.[4] The Ninth Circuit has issued ~11,500 unpublished rulings.[5] Given the proliferation of pro se filings and the shortage of qualified judges,[6] publication of *Fressadi v. AMRRP*, *et al*, will warn the public, especially pro se litigants, that reliance on U.S. Supreme Court and Ninth Circuit rulings is misplaced.

Not only is DktEntry 124-1 inconsistent with controlling U.S. Supreme Court decisions such as ***Mullane*, *Nollan*, *Dolan*, *Throckmorton, Hazel-Atlas, Roth, Zinermon, Mathews v. Eldridge***, and relevant Ninth Circuit published opinions such as ***Socop-Gonzalez, Oviatt, Supermail, O'Loghlin, Karim-Panahi, Lopez v. Smith, US v. Estate of Stonehill, Santa Maria v. Pacific Bell*,** but it is also inconsistent with previous decisions made by the Senior Panel member. *See* DktEntry 124-1 at 1-2, *Lukovsky v. City & Cnty. of San Francisco*, 535 F.3d 1044, 1051-52 (9th Cir. 2008)[7] (Equitable estoppel "focuses primarily on the actions taken by the *defendant* to prevent a plaintiff from filing suit[.]") (citation omitted) (emphasis in original) On August 29, 2016, Defendant Town of Cave Creek *admitted* that it prevented Plaintiff from timely filing suit by failing to provide Notice and opportunity to appeal exactions and dedications as required by *Mullane* and Arizona State law, A.R.S. § 9-500.12(B)[8], and provided *evidence* of federal and state law violations as its official policy per *Monell* since October 2001. Unbeknownst to Fressadi at the time and due to his detrimental reliance on the Town's instructions issued under color of law that "5 or more" lots formed a subdivision, Cave Creek converted his 3-lot split into a 4-lot non-conforming subdivision without proper due process, and concealed the continuing violations from Fressadi and the courts since the conversion occurred in October 2001, including continuing to issue void permits as if the property was lawful to hide its fraudulent scheme. The burden shifts to the Town per Federal

---

2 http://www.uscourts.gov/news/2016/02/12/judiciary-transmits-fiscal-year-2017-budget-request-congress

3 http://www.ce9.uscourts.gov/publications/AnnualReport2015.pdf The 2016 Annual Report is unavailable.

4 http://www.uscourts.gov/statistics-reports/judicial-business-2016

5 https://www.ca9.uscourts.gov/search_results.php?q=%22not%20for%20publication%22 Time period on website is unknown. This Court refuses to fully disclose statistics for Not for Publication rulings. Google Scholar shows that the Ninth Circuit issued ~7,000 unpublished memoranda since 2016: https://scholar.google.com/scholar?as_ylo=2016&q=%22not+for+publication%22&hl=en&as_sdt=4,114,129

6 "Approximately 12 percent of all Article III judgeships are vacant. Additionally, the last omnibus judgeship bill was enacted in 1990; some courts have no vacancies but have a dire need for new judgeships." http://www.uscourts.gov/statistics-reports/annual-report-2016

7 It appears the Panel read Defendants' *Lukovski* citation in their Answering Brief (DktEntry 76 at 14-15, 29-30) and did not at all read Plaintiffs' Reply clearly explaining how Defendants' argument was misplaced, overlooking *Lukovski*'s explanation of Equitable Tolling/Estoppel Doctrines. *Lukovski* received notice. Plaintiffs never received notice as required by federal and state law, and discovered the constitutional tort claims from Defendants' fraudulent scheme in 2013 (RB at 31&n.42; OB at 27-28).

8 "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."

Rule of Evidence 301[9], A.R.S. § 9-500.12, especially §(e)[10], and per A.R.S. § 9-500.13[11] to prove whether it complied with Federal Law as the statutes were enacted to provide upon landmark U.S. Supreme Court decisions. By Cave Creek committing extrinsic fraud and fraud on the court, the municipality *knowingly* utilize the statutes of limitations to affect Fressadi and *hundreds* of Cave Creek property owners, inspiring other municipalities to do the same[12]. *See* the Town's log of properties, DktEntry 56 at 20 & 137-146, acquired via the Freedom of Information Act on 8/29/16. **As thoroughly argued in his Opening and Reply Briefs, Fressadi discovered his "injury" of the constitutional tort in 2013**—that Cave Creek violated Federal procedural due process as codified in A.R.S. §§ 9-500.12 & 9-500.13 to affect all substantive claims—thus he TIMELY filed his Complaint in 2014, especially considering that every day of continuing violations is a new offense. (OB at 27-28)

Partial list of U.S. Supreme Court cases that the Panel's ruling contradicts:

- *Bailey v. Glover*, 88 U.S. (21 Wall) 342, 349, 22 L.Ed. 636, 639 (1874) (The doctrine of equitable tolling pauses the statute of limitations when the Defendants "conceal a fraud" or "commit[] a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it.") **(OB at 50-51, 61; RB at 49)**
- *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) (Secure benefits of entitlements by existing law, procedural due process) **(OB at 35, 39)**
- *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (Procedural due process protections, "judgment concerning causation and magnitude of injury necessary to accord meaningful compensation for invasion of [constitutional] rights," i.e. procedural due process) **(RB at 13, 63)**
- *Chambers v. Nasco, Inc.*, 501 U.S. 32, 44, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (Fraud on the court; sanctions)**(OB at 29-30; RB at 107-108; Circuit Advisory Committee Note Rule 46-2(8))**
- *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (Affirms *Mullane*; require notice and pre-deprivation opportunity to be heard) **(OB at 44)**
- *Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401 (1958) (Acts against the Constitution are violations of oath to support it thus make rulings void) **(OB at 35; RB at 45)**
- *County of Sacramento v. Lewis*, 523 U.S. 833, 845-46, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) (Due process violations that "shock the conscience;" right to fundamental fairness) **(OB at 35)**
- *Davis v. Scherer*, 468 US 183 (1984) ("A plaintiff who seeks damages for violation of constitutional or statutory rights may overcome the defendant official's qualified immunity only by showing that those rights were clearly established at the time of the conduct at issue.")
- *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (Fifth and Fourteenth Amendments, "there must be a rough proportionality between the condition imposed and the projected impact of the proposed development," "the city has the burden of establishing the constitutionality of its conditions," "nor shall private property be taken for public use, without just compensation") **(OB at 15, 162-164; RB at 17; A.R.S. §§ 9-500.12 & 9-500.13)**
- *Edgar v. MITE Corp.*, 457 U.S. 624 (1982) (Any state law that violates federal law is void) **(RB at 28, 44-45; State's statutes of limitations as applied violate Supremacy Clause)**

---

[9] "[T]he party against whom a presumption is directed has the burden of producing evidence to rebut the presumption."

[10] "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." (emphasis added)

[11] "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." (emphasis added)

[12] Cave Creek's Attorney Jeffrey Murray also represents Defendant Arizona Municipal Risk Retention Pool (AMRRP), Cave Creek's surety. AMRRP advises and represents seventy-six (76) municipalities.

Elder v. Holloway, 510 U.S. 510, 512 (1994) (In assessing whether the law was clearly established at the time, the court is to consider all relevant legal authority, whether cited by the parties or not.) **(OB at 37)**

Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (Upholds *Estelle & Haines*: *pro se* complaint to be liberally construed and held to less stringent standards) **(OB at 33)**

Estelle v. Gamble, 429 U.S. 97 (1976) (Defendants' "acts or omissions sufficiently harmful to evidence deliberate indifference," "A document filed *pro se* is "to be liberally construed" and "must be held to less stringent standards than formal pleadings drafted by lawyers") **(OB at 33)**

Ex parte Virginia, 100 U.S. 339, 347 (1880) (Judicial Takings, equal protection; "[N]o agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it.") **(RB at 44)**

Ex parte Young, 209 U.S. 123 (1908) (Eleventh Amendment does not prevent federal courts from granting prospective injunctive relief to prevent a continuing violation of federal law; an unconstitutional statute is void, such as statutes of limitations as applied)

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005) (*Rooker-Feldman* does not bar "a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.") **(RB at 37, 43)**

First English Evangelical Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987) ("[T]he compensation remedy is required by the Constitution" whenever the government effects a taking.) **(OB at 162-164; RB at 46; A.R.S. §§ 9-500.12 & 9-500.13)**

Forman v. Davis, 371 U.S. 178 (1962) ("Leave to amend should be 'freely given' by the court") **(RB at 60)**

Glus v. Brooklyn Eastern Dist. Terminal, 359 US 231 (1959) ("... no man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to bar inequitable reliance on statutes of limitations.")

Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)(P*ro se* complaint must be liberally construed and held to less stringent standards) **(OB at 33, 53)**

Hanson v. Denckla, 357 US 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283, (1958) (Procedural due process and equal protection per *Mullane*, judicial takings) **(OB at 60)**

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944) (Vacate rulings based on equitable doctrine of fraud on the court, delayed discovery due to fraudulent scheme, fraud on the court "is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society") **(OB at 34)**

Holland v. Florida, 560 U.S. 631 (2010) (Affirms *Hazel-Atlas*, equitable tolling due to extraordinary circumstances, "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.") **(RB at 54)**

Krupski v. Costa Crociere S.p.A., 130 S.Ct. 2485, 560 U.S. 538 (2010) (Delayed discovery rule and Relation Back Doctrine, ""[T]he purpose of relation back [is] to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits.") **(OB at 28; RB at 62)**

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) (Continuing violations must be remedied; Fifth and Fourteenth Amendment violations of Takings, Due Process, and Just Compensation Clauses are unlawful, violations for deprivation of economically beneficial use of property) **(OB at 51, 162-164; A.R.S. §§ 9-500.12 & 9-500.13)**

Massachusetts v. EPA, 549 U.S. 497, 127 S.Ct. 1438, 167 L.Ed.2d 248 (2007) (Procedural due process violations, "All that is necessary is to show that the procedural step was connected to the substantive result.") **(RB at 14, 41)**

Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (Affirms *Mullane*, procedural due process protections, mandatory notice, "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") **(OB at 47, 61; RB at 50)**

Mennonite Bd. Of Missions v. Adams, 462 U.S. 791 (1983) (Affirms *Mullane*, "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party.") **(RB at 17)**

Miree v. DeKalb County, 433 U.S. 25, 27 n. 2, 97 S.Ct. 2490, 53 L.Ed.2d 557 (1977). ("In reviewing the sufficiency of a complaint in the context of a motion to dismiss we, of course, treat all of the well-pleaded allegations of the complaint as true.") **(OB at 47-48)**

Mireles v. Waco, 502 U.S. 9 (1991) (Affirms *Ex parte Virginia*, "The Court…has recognized that a judge is not absolutely immune from criminal liability") **(RB at 44; Fressadi pled that State judges facilitated pattern of racketeering per A.R.S. §§ 13-1003 & 13-1004(A)&(C) and violated the Supremacy Clause thus ruling without jurisdiction)**

Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (Constitutional tort injury by government's policy or custom, "Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.") **(OB at 38; RB at 13, 28, 31, 34-35, 46)**

Monroe v. Pape, 365 U. S. 167, 173-174 (1961) ("`Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of" state law'" within the meaning of 42 USC § 1983; "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice) **(OB at 45-46)**

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (Due process per the 14th Amendment requires 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.") **(OB at 42-43, 44, 49, 52; RB at 39, 50, 61)**

Nollan v. California Coastal Commission, 483 U.S. 825 (1987) (Government action affects a taking if there is no substantial legitimate government interest and it denies economical viable use of land, including investment-backed expectations; "One of the principal purposes of the Takings Clause is "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.") **(OB at 16, 39, 162-164; RB at 17; 162-164; A.R.S. §§ 9-500.12 & 9-500.13)**

Palazzolo v. Rhode Island, 533 U.S. 606 (2001) (Affirms *Nollan* & Lucas*,* taking of property without compensation in violation of the Takings Clause of the Fifth Amendment binding upon the State through the Due Process Clause of the Fourteenth Amendment) **(OB at 16)**

Rooker-Feldman Doctrine: *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) & *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983) (*Rooker-Feldman* doctrine does not bar subject matter jurisdiction when a federal plaintiff alleges a cause of action for extrinsic fraud on a state court and seeks to set aside a state court judgment obtained by that fraud.) **(OB at 34; RB at 16, 37, 42, 43)**

(In re) Sawyer, 124 U.S. 200 (1888) (When a court does not comply with the Constitution, its orders are void) **(OB at 35)**

Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683 (1974) ("The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." "[S]ince *Ex parte Young,* 209 U. S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law.") **(OB at 35)**

Shaw v. Delta Air Lines, 463 U.S. 85, 96 n.14 (1983) ("A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U. S. C. § 1331 to resolve.") **(OB at 60)**

Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot., 130 S. Ct. 2592, 2602 (2010) (Judicial Takings: "In sum, the Takings Clause bars *the State* from taking private property without paying for it, no matter which branch is the instrument of the taking…If a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property.") **(OB at 62-63; RB at 47-49)**

U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 513 U.S. 18, 25 (1994) (28 U.S.C. § 2106 is "[t]he statute that supplies the power of vacatur." "A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.") (See *United States v. Munsingwear*)

United States v. Munsingwear, 340 U.S. 36, 39 (1950) (The equitable remedy of vacatur ensures that "those who have been prevented from obtaining the review to which they are entitled [are] not…treated as if there had been a review.") ***This is the current state of the Panel's ruling.***

United States v. Throckmorton, 98 US 61 (1878) ("There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." Extrinsic fraud is "[w]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practised on him by his opponent, as by keeping him away from court, a false promise of a compromise.")

Zinermon v. Burch, 494 U.S. 113, 126, 127 (1990) ("The constitutional violation actionable under §1983 [for a procedural due process claim] is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." "[T]o determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate.") **(OB at 46-47; RB at 38)**

Partial list of 9th Circuit cases that the Panel's ruling contradicts:

Alvarez v. Hill, 518 F.3d 1152, 1157-58 (9th Cir. 2008) (viewing the complaint most favorably to the plaintiff on a motion to dismiss means that it need not identify the source of the claim, only provide notice under Fed. Civ. P. 8) **(OB at 38)**

Atkins v. Union Pacific R. Co., 685 F.2d 1146, 1149 (9th Cir. 1982) ("[C]onduct or representations by the defendants which tend to lull the plaintiff into a false sense of security, can estop the defendant from raising the statutes of limitations, on the general equitable principle that no man may take advantage of his own wrong." See *Glus v. Brooklyn Eastern Dist. Terminal*, 359 US 231 (1959)) **(RB at 32)**

Ballaris v. Wacker Siltronic Corp., 370 F.3d 901, 908 (9th Cir. 2004) ("Where, as here, the question presented is one of law, we consider it in light of "all relevant authority," regardless of whether such authority was properly presented in the district court." See *Elder v. Holloway*, 510 U.S. 510, 516 (1994)) **(OB at 37)**

Cervantes v. City of San Diego, 5 F.3d 1273 (9th Cir. 1993) (A motion to dismiss on statute of limitations grounds cannot be granted if "the complaint, liberally construed in light of our 'notice pleading' system, adequately alleges facts showing the potential applicability of the equitable tolling doctrine.") **(OB at 34, 48)**

Cooper v. Ramos, 704 F.3d 772, 778 (9th Cir. 2012) (*Rooker-Feldman* doctrine "does not preclude a plaintiff from bringing an `independent claim' that, though similar or even identical to issues aired in state court, was not the subject of a previous judgment by the state court.") **(RB at 43)**

Eitel v. McCool, 782 F.2d 1470 (9th Cir. 1986) (The first factor the Court considers is the possibility of prejudice to the plaintiff if default judgment is not granted.) **(RB at 57, 59)**

Hexcel Corp. v. Ineos Polymers, Inc., 681 F.3d 1055, 1060 (9th Cir. 2012) ("A statute of limitations may be tolled if the defendant fraudulently concealed the existence of a cause of action in such a way that the plaintiff, acting as a reasonable person, did not know of its existence.") **(RB at 30)**

Hensley v. US, 531 F.3d 1052, 1057-58 (9th Cir. 2008) (“Equitable tolling focuses primarily on the plaintiff's excusable ignorance of the limitations period.” Equitable tolling applies to cases involving fraudulent concealment. See also *Socop-Gonzalez v. INS* and *Supermail*) **(OB at 52)**

Huseman v. Icicle Seafoods, Inc., 471 F.3d 1116 (9th Cir. 2006) (“Equitable estoppel, sometimes called fraudulent concealment, "focuses primarily on the actions taken by the defendant in preventing a plaintiff from filing suit.... [including] the plaintiff's actual and reasonable reliance on the defendant's conduct or representations.”") **(RB at 32; *NB*—Dissenting opinion holds true to equitable doctrines while the same Judge who ruled in Fressadi’s case did not)**

Johnson v. Henderson, 314 F.3d 409, 414 (9th Cir. 2002) (“Equitable estoppel…may come into play if the defendant takes active steps to prevent the plaintiff from suing in time—a situation [often referred to as] fraudulent concealment.”) **(OB at 52)**

Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir.1988) ("[A] claim of municipal liability under section 1983 is sufficient to withstand a motion to dismiss even if the claim is based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice.") **(OB at 36, 53; RB at 31-32, 33-34)**

Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140-41 (9th Cir. 2004) (holding the *Rooker-Feldman* doctrine did not bar a federal plaintiff from seeking to set aside a state court judgment obtained by extrinsic fraud because "[e]xtrinsic fraud on a court is, by definition, not an error by that court") **(OB at 34; RB at 38, 39)**

Lee v. City of Los Angeles, 250 F.3d 668, 689-690 (9th Cir. 2001) (Judicial Notice—The court is permitted to consider material which is properly submitted as part of the complaint, documents that are not physically attached to the complaint if their authenticity is not contested and the plaintiff's complaint necessarily relies on them, and matters of public record.) **(OB at 33-34)**

(In re) Levander, 180 F.3d 1114, 1118, 1119 (9th Cir. 1999) ("a federal court may amend a judgment or order under its inherent power when the original judgment or order was obtained through fraud on the court." Fraud on the court " `embrace [s] only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.'") **(OB at 29-30)**

Lopez v. Smith, 203 F.3d 112 (9th Cir. 2000) **(en banc)** (A district court must construe a pro se pleading "liberally" to determine if it states a claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an opportunity to cure them.) **(RB at 62)**

Lukovsky v. City & County of San Francisco, 535 F.3d 1044, 1047 (9th Cir. 2008) (“"Equitable tolling" focuses on "whether there was excusable delay by the plaintiff: If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs." Equitable estoppel, on the other hand, focuses primarily on actions taken by the *defendant* to prevent a plaintiff from filing suit, sometimes referred to as "fraudulent concealment.”") **(OB at 36; RB at 31&n.42) *NB*—Lukovsky received notice thus equitable tolling did not apply, but Fressadi never received notice as required by law per A.R.S. §§ 9-500.12(b) and did not discover his constitutional tort claims until 2013 due to extrinsic fraud and fraud on the court, thus equitable tolling/estoppel applies.**

Morales v. City of Los Angeles, 214 F.3d 1151, 1153, 1155 (9th Cir. 2000) (A motion to dismiss on statute of limitations grounds cannot be granted if "the complaint, liberally construed in light of our `notice pleading' system, adequately alleges facts showing the potential applicability of the equitable tolling doctrine. ") **(OB at 48)**

Mullis v. US Bankruptcy Court, Dist. of Nevada, 828 F.2d 1385 (9th Cir.1987) (Judicial notice of evidence and other court rulings per Fed.R.Evid. 201; a judge is immune for deprivation of constitutional rights *unless* their acts are in clear absence of all jurisdiction) **(OB at 37)**

O'Loghlin v. County of Orange, 229 F.3d 871,875 (9th Cir. 2000) (The continuing violation doctrine is an equitable doctrine designed "to prevent a defendant from using its earlier illegal conduct to avoid liability for later illegal conduct of the same sort." "[I]f a discriminatory act [procedural due process/equal protection violation] takes place within the limitations period and that act is related and similar to acts that took place outside the limitations period, all the related acts—including the earlier acts—are actionable as part of a continuing violation.") **(RB at 33)**

Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895, 900 (9th Cir. 2007) (The court is to "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." The court may consider "matters properly subject to judicial notice.") **(OB at 36)**

Oviatt v. Pearce, 954 F.2d 1470, 1473-74 (9th Cir.1992) (Abides by *Monell*, deliberate indifference is a question for the jury, "A local government entity is liable under §1983 when 'action pursuant to official municipal policy of some nature cause[s] a constitutional tort.'") **(OB at 38, 40-41)**

Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128-33 (9th Cir. 1995) (A finding of fraud on the court "must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision." "[E]ven assuming [the plaintiff] was not diligent in uncovering the fraud, the district court was still empowered to set aside the verdict, as the court itself was a victim of the fraud."**) (OB at 31, 54, 57)**

Santa Maria v. Pacific Bell, 202 F.3d 1170, 1175 (9th Cir. 2000) ("Equitable tolling may be applied if, despite all due diligence, a plaintiff is unable to obtain vital information bearing on the existence of his claim." "If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs.") **(OB at 36)**

Smith v. Jackson, 84 F.3d 1213, 1217 (9th Cir. 1996) (Plaintiffs' allegations of concealment and the factual nature of the equitable tolling inquiry preclude dismissal on limitations grounds; When analyzing a complaint for failure to state a claim, "[a]ll allegations of material fact are taken as true and construed in the light most favorable to the non-moving party.") **(OB at 47-48, 50)**

Socop-Gonzalez v. INS, 272 F. 3d 1176, 1193 (9th Cir. 2001) **(en banc)** ("We will apply equitable tolling in situations where, "`despite all due diligence, [the party invoking equitable tolling] is unable to obtain vital information bearing on the existence of the claim.'" *Supermail*) **(OB at 52)**

Supermail Cargo, Inc. v. United States, 68 F.3d 1204 (9th Cir. 1995) (A motion to dismiss based on the statute of limitations cannot be granted.) **(OB at 34, 52)**

TwoRivers v. Lewis, 174 F.3d 987,991 (9th Cir.1999)(Under federal law, "a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action.")**(RB at 40)**

US v. Estate of Stonehill, 660 F.3d 415, 443 (9th Cir. 2011) (Rule 60 (b), which governs relief from a judgment or order, provides no time limit on courts' power to set aside judgments based on a finding of fraud on the court; In determining whether fraud constitutes fraud on the court, the relevant inquiry is not whether fraudulent conduct `prejudiced the opposing party,' but whether it "harm [ed] the integrity of the judicial process.'") **(OB at 13, 31, 54, 55, 57)**

For reasons stated, Appellant requests this Court to publish its Memorandum from case #15-15566, DktEntry 124-1, to face its conviction of violating well-established law and failing to uphold the constitution in order to evade holding Defendants' accountable for the malfeasance they concealed from Fressadi and the courts over the years to obstruct justice. Publishing the ruling will ease the process to appeal the Panel's misguided ruling in Appellant's forthcoming Petition for Rehearing and Petition for Rehearing *En Banc*.[13]

This letter will be served on all parties by using the Court's CM/ECF system.

Cordially,

Arek R. Fressadi

Arek R. Fressadi

[13] The time to file Petitions extends 14 days after the Court's order on publication per Circuit Rule 40-2.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Request for Publication 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 November 7, 2017.

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, Plaintiff-Appellant *pro se*