



TOWN OF PARADISE VALLEY
6401 E LINCOLN DR
PARADISE VALLEY AZ 85253
480-948-7411

Dec 29, 2016 Receipt No: 5.039959

FRANCIS J SLAVIN

PERMITS-5507 E SAN MIGUEL LANE 10-32-270 VARIANC 1,735.00

TOTAL:		1,735.00
CHECK	Chk No: 28711	1,735.00
TOTAL APPLIED:		1,735.00
CHANGE TENDERED:		.00

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries, please call 480-348-3532 or 480-348-3518.

RECEIVED

APPLICATION TO BOARD OF ADJUSTMENT FOR APPEAL

DEC 29 2016

DATE: December 29, 2016

LOCATION OF PROPERTY: See legal description attached hereto as Exhibit "A".
ADDRESS

APN: 172-47-078D

LEGAL DESCRIPTION: See legal description attached hereto as Exhibit "A".

OWNER: See authorization letters attached hereto as Exhibit "B" X
PRINTED NAME SIGNATURE

ADDRESS PHONE #

ENGINEER/OTHER: _____ X
PRINTED NAME SIGNATURE

ADDRESS PHONE #

APPLICANT/
REPRESENTATIVE: Francis J. Slavin X
PRINTED NAME SIGNATURE

Francis J. Slavin, P.C., 2198 East Camelback Road, Suite 285, Phoenix, Arizona 85016
ADDRESS

(602) 381-8700 (602) 381-1920
PHONE # FAX #

THE ABOVE APPLICANT HEREBY APPLIES FOR AN APPEAL AS INDICATED BELOW IN ACCORDANCE WITH THE ZONING ORDINANCE AND SECTION 2-5-3 OF THE CODE OF ORDINANCES OF THE TOWN OF PARADISE VALLEY.

STATE GROUNDS FOR APPEAL TO THE BOARD OF ADJUSTMENT. (Please attach additional sheets as necessary).

See December 29, 2016 Letter from Francis J. Slavin to Eva Cutro, Community Development Director and

Zoning Administrator, and Richard Chambliss, Board of Adjustment Chairman, attached hereto as Exhibit "C".

EXHIBIT A

HELEN PURCELL

20121046521 11/16/2012 03:56

ELECTRONIC RECORDING

RECORDING REQUESTED BY
OLD REPUBLIC TITLE AGENCY

ORDER #: 4724011411

WHEN RECORDED MAIL TO

TMS Ventures, LLC
8201 N. Hayden Rd
Scottsdale, AZ 85258

24011411-2-2-1--
mcdevittr

10f1

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**WARRANTY DEED
CORPORATION**

For valuable consideration, receipt of which is hereby acknowledged LaFamilia Management, L.L.L.P., an Arizona limited liability company

Do hereby convey to TMS Ventures, LLC, an Arizona limited liability company

the following real property situated in Maricopa County, Arizona:

See "Exhibit A" attached hereto and made a part hereof.

SUBJECT TO existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements and all other matters of record.

The undersigned hereby warrants the title against all persons whomsoever, subject to the matters above set forth.

Dated: November 9, 2012

LaFamilia Management, L.L.L.P., an Arizona limited liability partnership
By: Famcor Management, Inc., an Arizona corporation, its General Partner

By: Jeffrey M. Andersen
Jeffrey M. Andersen, Vice President

State of Arizona
County of Maricopa

The foregoing instrument was acknowledged before me this 11th day of Nov, 2012
by Jeffrey M. Andersen, Vice President of Famcor Management, Inc., a/an Arizona corporation, on behalf of the corporation, its General Partner of LaFamilia Management, L.L.L.P., an Arizona limited liability partnership.

Christy Keledjian
Notary Public



http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172917 [20121046521] 3 Pages

ORDER NO. : 4724011411-SF

EXHIBIT A

That part of the East 1200 feet of Tract 4, OBRIENS CAMELBACK LANDS, according to Book 18 of Maps, page 36, records of Maricopa County, Arizona, described as follows:

Beginning at the Southeast corner of STONE CANYON EAST, according to Book 81 of Maps, page 34, records of Maricopa County, Arizona;

Thence Southerly, parallel with and 334 feet West of the East line of said Tract 4, a distance of 270 feet;

Thence Northwesterly to a point on the West line of the East 1000 feet of said Tract 4 which is 180 feet Southerly of the Southwest corner of Lot 22 of said Stone Canyon East;

Thence Northerly along said West line, to said Southwest corner;

Thence East along the South line of Stone Canyon East to the Point of Beginning;

EXCEPT all coal and other minerals, as reserved in the Patent.

20121046521
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 12/29/2016 11:17:36 AM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172917>

EXHIBIT B

December 29, 2016

VIA HAND-DELIVERY

Eva Cutro, Director and Zoning Administrator
Community Development Department
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

Richard Chambliss, Chairman
Board of Adjustment
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Phoenix, Arizona 85253

RE: Authorization Letter for Appeal of Zoning Administrator's Decision and Interpretation dated November 29, 2016 to the Town of Paradise Valley Board of Adjustment

Dear Zoning Administrator Cutro and Chairman Chambliss:

I hereby authorize the Law Offices of Francis J. Slavin, P.C. to file an application with the Board of Adjustment appealing the Town Zoning Administrator's November 29, 2016 decision and interpretation regarding the TMS Ventures, LLC Hillside Building Committee application for a proposed residential development on an approximately 3.44-acre property assigned Assessor's Parcel Number 172-47-078D.

Sincerely,

Joe and Teresa Zachariah
Owners of Stone Canyon East Lot 22

By: Teresa Zachariah

Printed Name: Teresa Zachariah

By: Joe

Printed Name: Joe Zachariah

1014735-3-3-1--
sarabiam

CHICAGO TITLE INSURANCE COMPANY
Recorded at the request of:
Chicago Title

When recorded, mail to:
.. Joe Zachariah
.. 5505 E San Miguel Ave
.. Paradise Valley AZ 85253

Escrow No.: CT1014735-CT2909

Space above this line for Recorder's Use

1/2 **RESALE**

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable considerations,

U.S. Bank, N.A., as Trustee for Salomon Brothers Mortgage Securities VII, Inc., Asset-Backed Floating Rate Certificates Series 1998-NC4

does hereby convey to

~~Joe K. Zachariah~~ and Teresa C. Zachariah AND JOE ZACHARIAH, WIFE AND
HUSBAND
the following real property situated in Maricopa County, Arizona.

Lot 22, of Stone Canyon East, according to the Plat of Record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 81 of Maps, Page 34.

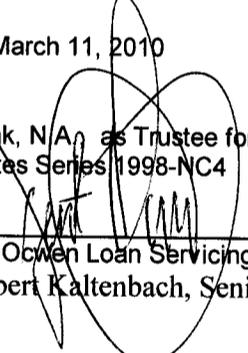
EXCEPT all coal and other minerals as reserved in the Patent from the United States of America, Records of Maricopa County, Arizona.

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, covenants, conditions and restrictions as may appear of record.

And the Grantor hereby binds itself and its successors to warrant and defend the title, against all acts of the Grantor herein, and no other, subject to the matters set forth.

Dated: March 11, 2010

U.S. Bank, N.A., as Trustee for Salomon Brothers Mortgage Securities VII, Inc., Asset-Backed Floating Rate Certificates Series 1998-NC4

BY: 
Owen Loan Servicing, LLC
Robert Kaltenbach, Senior Manager



http://recorder.maricopa.gov/reccoddata/verifycert.aspx?id=172894[20100542481] 4 Pages

NOTARY ACKNOWLEDGMENT(S) TO SPECIAL WARRANTY DEED

State of FL

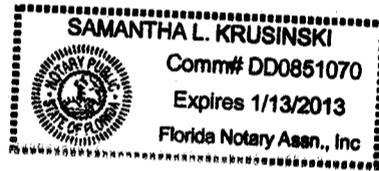
County of ORANGE

The foregoing document was acknowledged before me this 12 day of MARCH, 2010

by Robert Kaltenbach, Senior Manager

(Seal)

Samantha L. Krusinski
Notary Public Samantha L. Krusinski



Escrow No.: CT1014735-CT2909

**ACCEPTANCE OF COMMUNITY PROPERTY
WITH RIGHT OF SURVIVORSHIP**

Teresa C Zachariah and Joe Zachariah each state that:

They have offered to purchase the real property situated in Maricopa County described as follows:

Lot 22, of Stone Canyon East, according to the Plat of Record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 81 of Maps, Page 34.

EXCEPT all coal and other minerals as reserved in the Patent from the United States of America, Records of Maricopa County, Arizona.

Each of them, individually and jointly as Grantees, declare that it is their intention to accept the conveyance and acquire all interest in the real property as community property with right of survivorship, and not as a community property estate and not as tenants in common.

By the execution and delivery of this "Acceptance of Community Property With Right of Survivorship" they direct and authorize Escrow Agent to attach this "Acceptance of Community Property With Right of Survivorship" to the deed upon its execution and delivery and to record this "Acceptance of Community Property With Right of Survivorship" together with the deed.

Dated: June 24, 2010

Teresa C. Zachariah
Teresa C Zachariah

Joe Zachariah
Joe Zachariah

NOTARY ACKNOWLEDGMENT(S) TO ACCEPTANCE OF COMMUNITY PROPERTY

State of Arizona

County of Maricopa

The foregoing document was acknowledged before me this 25th day of June, 2010.

by TERESA C. ZACHARIAH and Joe Zachariah.

(Seal)

Karla Verdicino
Notary Public



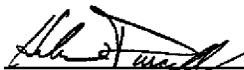
KARLA VERDICINO
Notary Public - Arizona
Maricopa County
Expires 08/31/2012

20100542481
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 12/29/2016 09:46:46 AM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172894>

December 29, 2016

VIA HAND-DELIVERY

Eva Cutro, Director and Zoning Administrator
Community Development Department
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

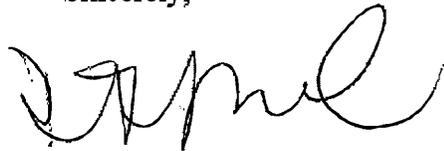
Richard Chambliss, Chairman
Board of Adjustment
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Phoenix, Arizona 85253

RE: Authorization Letter for Appeal of Zoning Administrator's Decision and Interpretation dated November 29, 2016 to the Town of Paradise Valley Board of Adjustment

Dear Zoning Administrator Cutro and Chairman Chambliss:

I hereby authorize the Law Offices of Francis J. Slavin, P.C. to file an application with the Board of Adjustment appealing the Town Zoning Administrator's November 29, 2016 decision and interpretation regarding the TMS Ventures, LLC Hillside Building Committee application for a proposed residential development on an approximately 3.44-acre property assigned Assessor's Parcel Number 172-47-078D.

Sincerely,

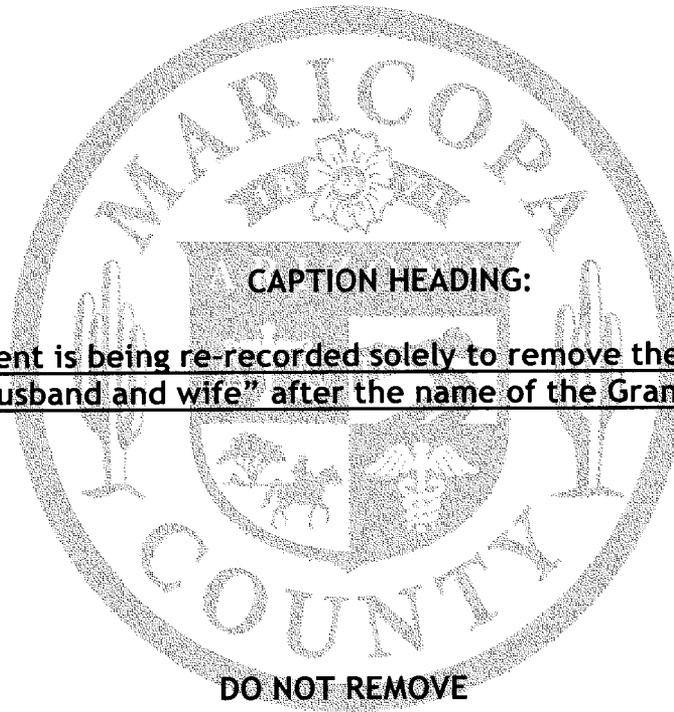


Rosanne T. Appel
Owner of Stone Canyon East Lot 23

2276003-2-1-1--A
fraustoj

WHEN RECORDED MAIL TO:

Rosanne T. Appel
5 Lynn Road
Cherry Hills Village, CO 80113



THIS IS PART OF THE OFFICIAL DOCUMENT

RECORDING REQUESTED BY
Greystone Title Agency
AND WHEN RECORDED MAIL TO:
ROSANNE T. APPEL
5 LYNN ROAD
CHERRY HILLS VILLAGE, CO 80113

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20090808938 08/31/2009 01:54
2276003-1-3-1--
ELECTRONIC RECORDING

ESCROW NO.: 00002276 - 003 - AMA

SPACE ABOVE THIS LINE FOR RECORDER'S USE

1/2

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we, **Gary R. Hawkins and R. Gail Hawkins, husband and wife**

do/does hereby convey to **Rosanne T. Appel, a married woman as her sole and separate property,**
~~husband and wife~~

the following real property situated in Maricopa County, ARIZONA:

Lot 23, of Stone Canyon East, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded Book 81 of Maps, Page 34.

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record. And I or we do warrant the title against all persons whomsoever, subject to the matters set forth above.

Dated: August 20, 2009

Grantors:



Gary R. Hawkins

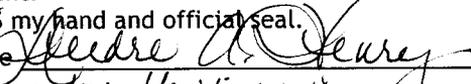


R. Gail Hawkins

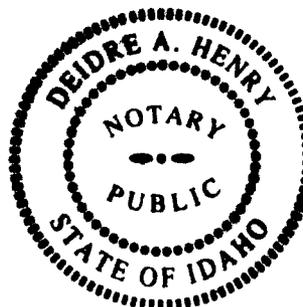
State of Idaho }ss:
County of Ada

On August 20th, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **Gary R. Hawkins and R. Gail Hawkins** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 
Residing in: Meridian, ID
Commission Expires: Nov 14, 2012

FOR NOTARY SEAL OR STAMP



20090814786
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 12/29/2016 09:46:46 AM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172893>

December 29, 2016

VIA HAND-DELIVERY

Eva Cutro, Director and Zoning Administrator
Community Development Department
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

Richard Chambliss, Chairman
Board of Adjustment
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Phoenix, Arizona 85253

**RE: Authorization Letter for Appeal of Zoning Administrator's Decision
and Interpretation dated November 29, 2016 to the Town of Paradise Valley
Board of Adjustment**

Dear Zoning Administrator Cutro and Chairman Chambliss:

I hereby authorize the Law Offices of Francis J. Slavin, P.C. to file an application with the Board of Adjustment appealing the Town Zoning Administrator's November 29, 2016 decision and interpretation regarding the TMS Ventures, LLC Hillside Building Committee application for a proposed residential development on an approximately 3.44-acre property assigned Assessor's Parcel Number 172-47-078D.

Sincerely,

Ingrid Lenz Harrison and Alfred Harrison,
Trustees of the Ingrid Lenz Harrison Revocable Trust
Under Agreement Dated November 19, 1999, as Amended
Owners of Stone Canyon East Lot 24

By: Ingrid Lenz Harrison

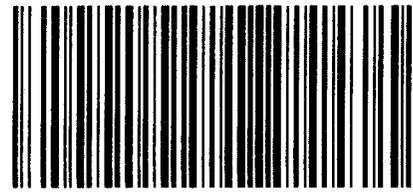
Printed Name: INGRID LENZ HARRISON

By: Alfred Harrison

ALFRED HARRISON

WHEN RECORDED, MAIL TO:

Leonard, Street and Deinard (MR/JA)
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2009-0537533 06/12/09 01:46 PM
47 OF 133

BROWN

SPECIAL WARRANTY DEED

For valuable consideration, INGRID LENZ HARRISON, a married woman, does hereby convey to INGRID LENZ HARRISON AND ALFRED HARRISON, OR THEIR SUCCESSORS, AS TRUSTEES OF THE INGRID LENZ HARRISON REVOCABLE TRUST UNDER AGREEMENT DATED NOVEMBER 19, 1999, AS AMENDED ("Grantees"), their entire interest in the property situated in Maricopa County, Arizona, and legally described as:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS SCHEDULE "A".

This transfer is exempt from the Affidavit of Value requirement pursuant to A.R.S. § 42-1614(B)(8).

In accordance with A.R.S. 33-404, as amended June 22, 1976, the following are the names and addresses of the beneficiaries of the above-mentioned trust:

Ingrid Lenz Harrison
1410 Shoreline Drive
Wayzata, MN 55391

Alfred Harrison
1410 Shoreline Drive
Wayzata, MN 55391

This conveyance is subject to: current taxes, assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record.

Dated this 27th day of April, 2009.

Ingrid Lenz Harrison
Ingrid Lenz Harrison

3/13

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 27th day of April, 2009, by Ingrid Lenz Harrison, a married woman, Grantor.



Julie Kuehl
Notary Public

http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172892 [20090537533] 4 Pages

SCHEDULE "A"
LEGAL DESCRIPTION

Lot 24, of STONE CANYON EAST, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 81 of Maps, Page 34.

<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172892> [20090537533] 4 Pages

20090537533
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 12/29/2016 09:46:45 AM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=172892>

December 29, 2016

VIA HAND-DELIVERY

Eva Cutro, Director and Zoning Administrator
Community Development Department
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

Richard Chambliss, Chairman
Board of Adjustment
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Phoenix, Arizona 85253

RE: Authorization Letter for Appeal of Zoning Administrator's Decision and Interpretation dated November 29, 2016 to the Town of Paradise Valley Board of Adjustment

Dear Zoning Administrator Cutro and Chairman Chambliss:

On behalf of Save Camelback Mountain, an Arizona non-profit corporation, I hereby authorize the Law Offices of Francis J. Slavin, P.C. to file an application with the Board of Adjustment appealing the Town Zoning Administrator's November 29, 2016 decision and interpretation regarding the TMS Ventures, LLC Hillside Building Committee application for a proposed residential development on an approximately 3.44-acre property assigned Assessor's Parcel Number 172-47-078D.

Sincerely,

SAVE CAMELBACK MOUNTAIN, an Arizona
non-profit corporation

By: Thomas F. Husband
Printed Name: THOMAS F. HUSBAND
Its: DIRECTOR

ARIZONA CORP. COMMISSION
FILED

ARTICLES OF INCORPORATION

OF

SEP 09 2016

SAVE CAMELBACK MOUNTAIN, AN

FILE NO. 212154L3

ARIZONA NON-PROFIT CORPORATION

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned incorporator, whose mailing address appears beneath his name, for the purpose of forming a nonprofit corporation under the laws of the State of Arizona does hereby adopt the following Articles of Incorporation.

ARTICLE I

The name of this corporation is and shall be SAVE CAMELBACK MOUNTAIN.

ARTICLE II

The known place of business of this corporation shall initially be 2198 E. Camelback Rd., Ste. 285, Phoenix, Arizona 85016, in Maricopa County, Arizona, but it may establish other principal places of business and other offices at such other places, either within or without the State of Arizona, as the Board of Directors may from time to time determine.

ARTICLE III

This corporation is organized and shall be operated as a nonprofit corporation solely and exclusively for the promotion of social welfare, and specifically for the preservation of the quality of life, peace and tranquility of the residents of the Town of Paradise Valley, Arizona (the "Town") as a whole, which shall also benefit the residents who live in the Stone Canyon East subdivision (the "Development") by preserving the safety and property values of the lot owners and the quality of life in Stone Canyon East which cannot otherwise be adequately protected. Without limiting the generality of the foregoing or the character of the affairs that the corporation shall conduct in the future, the corporation initially shall conduct the following business: take such action as may be deemed necessary or appropriate by the members and/or directors of the corporation, to the extent permitted in accordance with applicable law, at any time and from time to time, including the filing such papers as may be necessary or appropriate in order for the Corporation, or the owners of lots in Stone Canyon East who become members of the Corporation and are not already parties thereto, to intervene in the pending Maricopa County Superior Court case filed on June 21, 2016 by TMS Ventures, LLC ("TMS") against Teresa C. Zachariah, Joe Zachariah, Rosanne T. Appel, Ingrid Lenz Harrison, Alfred Harrison, Jerry D. Smith, et. al., Case No. CV2016-005381 (the "Pending Lawsuit"), and/or to file suit against the Town and its officials acting in their official capacities to prevent the Town from

taking action and to challenge any action previously taken by the Town which would permit development on the north face of Camelback Mountain by TMS (the "Contemplated Lawsuit") and to take such other action in order to challenge or contest in a lawful manner by judicial, legislative, quasi-judicial and administrative means, the validity and enforceability of certain actions taken and contemplated to be taken by the Town and TMS to facilitate the construction of one or more permanent structures on the north face of Camelback Mountain, which actions are inimical to the purposes for which this Corporation is organized, and to insure that TMS and the Town shall act in accordance with, and shall strictly comply with, all applicable building, fire and traffic safety and other health and/or safety based laws of the State of Arizona and its subdivisions and all private agreements affecting the properties owned by the members of this Corporation who are presently defendants, who intervene as defendants in the Pending Lawsuit or who may become Plaintiffs, together with or in lieu of the Corporation, in the Contemplated Lawsuit and to take any other actions that may be reasonable or necessary to mitigate the negative impact of any deleterious actions by TMS and the Town relating to the proposed construction on the north face of Camelback Mountain and prevent immediate and irreparable harm to the health, safety and welfare of the members of the Corporation who are lot owners within the Development and damage to and/or destruction of the residences in which the members of the Corporation live.

Consistent with the foregoing purposes and subject to all other limitations, restrictions and prohibitions set forth in these Articles, this corporation shall have all the powers specified in Section 10-3302 of the Arizona Revised Statutes, as amended from time to time, and to do all and everything necessary, suitable and proper for the accomplishment of the purposes or attainment of the objects set forth above either alone or in association with other individuals, corporations or partnerships, including federal, state, county and municipal bodies and authorities; and, in general, to do and perform acts and transact business in connection with the foregoing objects which is not inconsistent with law; provided, however, that the corporation shall not perform any act or transact any business that will jeopardize the tax exempt status of the corporation under Section 501(c)(4) of the Internal Revenue Code and its regulations as that Section and regulations now exist or may hereafter be amended or under corresponding laws and regulations hereafter adopted.

ARTICLE IV

No primary or substantial part of the activities of the corporation shall be participation in or intervention in (including the publishing or distributing of statements) any political campaign on behalf of or opposition to any candidate for public office.

ARTICLE V

The time for the commencement of this corporation shall be the date of the filing of these Articles of Incorporation as required by law, and the term of its corporate existence shall be perpetual.

ARTICLE VI

This corporation shall be a nonprofit corporation and shall have no stock, and no dividends or pecuniary profits shall be declared or paid to the directors hereof or to any other private individual, including, without limitation, the members. All the earnings and property of the corporation shall be used to further the purposes and objects of the corporation as set forth in ARTICLE III hereof.

ARTICLE VII

The directors, officers and members of the corporation shall not be individually liable for the corporation's debts or other liabilities. The private property of these individuals shall be exempt from any corporate debts or liabilities. To the fullest extent that Arizona law permits and in accordance with and within the limits of Section 10-3202(B) of the Arizona Revised Statutes, (i) no member, director or person who serves on a board or council of the corporation in a voluntary capacity shall be liable to the corporation or its members for monetary damages for breach of fiduciary duty, and (ii) any director or person who serves on a board or council of the corporation in an advisory capacity shall be immune from civil liability and shall not be subject to suit directly or by way of contribution for any act or failure to act resulting in damage or injury. If the Arizona Revised Statutes are hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent that Arizona law, as so amended, permits. Any repeal or modification of this Article VII shall not adversely affect any right or protection of a director of the corporation existing at the time of the repeal or modification.

ARTICLE VIII

The control and management of the affairs of the corporation shall be vested in a Board of Directors of not less than three (3), nor more than five (5), persons and at no time shall there be an even number of Directors, except as the result of a vacancy, in which event such vacancy shall be filled as provided in the Bylaws. The names of those selected to serve as the initial board of directors, beginning with the incorporation of this corporation and until the second annual meeting of the corporation, or until their successors shall be elected and qualify, are:

Thomas F. Husband
5520 E. San Miguel Ave.
Paradise Valley, AZ 85253

Teresa C. Zachariah
5505 E. San Miguel Ave.
Paradise Valley, AZ 85253

Sheila O. Zueback
5702 N. 55th Pl.
Paradise Valley, AZ 85253

The Bylaws of the corporation shall prescribe the terms of office and manner of election of directors.

ARTICLE IX

This corporation shall have members as provided in the Bylaws of the corporation. The Bylaws of the corporation shall prescribe the qualifications of the members, their manner of selection, the classes of membership, if any, and the rights, duties and voting privileges of each class.

ARTICLE X

No person shall possess any property right in or to the property or assets of the corporation. Upon the dissolution of this corporation as provided in the Bylaws, all assets remaining after payment of any outstanding liabilities shall be distributed exclusively to charitable, religious, educational or scientific organizations which would then qualify under the provisions of Section 501(c)(3) or (4) of the Internal Revenue Code and its regulations as such Section and regulations now exist or may hereafter be amended, or under corresponding laws and regulations hereafter adopted and which organizations have purposes and objects similar to those of the corporation, all determined in accordance with the Bylaws.

ARTICLE XI

These Articles of Incorporation may be amended as provided in the Bylaws of the corporation. In the event of any conflict or inconsistency between these Articles of Incorporation and the Bylaws of the corporation, the provisions of these Articles of Incorporation shall have priority. In the event of any conflict or inconsistency between the Bylaws of the corporation and any other governance documents of the corporation, the Bylaws shall have priority.

ARTICLE XII

The corporation shall indemnify each of its past, present and future members, directors, officers, employees and agents, which includes uncompensated or volunteer members of advisory boards and councils of the corporation, against all expenses they incur, including, but not limited to, legal fees, costs, judgments and penalties, which may be incurred, rendered or levied in any legal action brought against any of them for or on account of any action or omission alleged to have been committed while acting within the scope of their authority as members, directors, officers, employees, members of advisory boards or councils, or agents of the corporation. Whenever any person reports to the President of the corporation that a legal action has been brought or is about to be brought against the person, for or on account of any action or omission alleged to have been committed by the person while acting within the scope of the person's function as a member, director, officer, employee, advisory board or council member, or agent of the corporation, members of the Board of Directors, who are not parties to the action, suit or proceeding, at the next regular or at a special meeting held within a reasonable

time thereafter, shall determine, in good faith, whether, in regard to the matter involved in the action or contemplated action, the person acted, or failed to act, in good faith and in the manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. If the Board of Directors determines that the person did so act with regard to the matter involved in the action or contemplated action, indemnification shall be mandatory and shall be automatically extended as specified herein; provided that the corporation shall have the right to refuse indemnification in any instance in which the person to whom indemnification would otherwise have been applicable shall unreasonably refuse to permit the corporation, at its own expense and through counsel of its own choosing, to defend the person in the action. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or its equivalent shall not by itself create the presumption that the person acted or failed to act other than in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful. The corporation shall provide for indemnification in accordance with this Article XII and Section 10-3850 *et seq.* of the Arizona Revised Statutes and to the fullest extent that Arizona law permits.

ARTICLE XIII

This corporation hereby appoints Francis J. Slavin, P.C., an Arizona professional corporation, 2198 E. Camelback Rd., Ste. 285, Phoenix, Arizona 85016 as its initial statutory agent. All notices and processes, including service of a summons, may be served upon said statutory agent and, when so served, shall be lawful, personal service upon this corporation. The Board of Directors may, at any time, appoint another agent for such purpose, and filing of such other appointment shall revoke this or any other previous appointment of such agent.

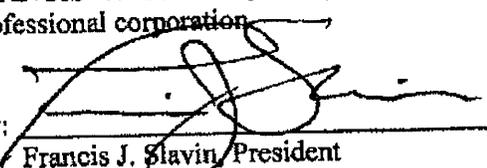
ARTICLE XIV

All powers, duties and responsibilities of the incorporator shall cease at the time of delivery of these Articles of Incorporation to the Arizona Corporation Commission for filing.

**[THE REMAINDER OF THIS PAGE
INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned incorporator has hereunto signed his name
this 8th day of September, 2016.

FRANCIS J. SLAVIN, P.C., an Arizona
professional corporation

By: 

Francis J. Slavin, President
2198 E. Camelback Rd., Ste. 285
Phoenix, Arizona 85016

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 5th day of September, 2016, before me, the undersigned officer, personally
appeared Francis J. Slavin, President of FRANCIS J. SLAVIN, P.C., an Arizona professional
corporation, known to me to be the person whose name is subscribed for the foregoing
instrument and acknowledged that he executed the same in his authorized capacity for the
purposes therein contained.


Notary Public

My Commission Expires:

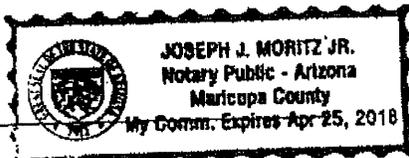


EXHIBIT C

FRANCIS J. SLAVIN, P.C.

FRANCIS J. SLAVIN
JOSEPH J. MORITZ, JR.*
ELLEN B. DAVIS
DANIEL J. SLAVIN
HEATHER N. DUKES

*CERTIFIED SPECIALIST, REAL ESTATE LAW

2198 EAST CAMELBACK ROAD
SUITE 285
PHOENIX, ARIZONA 85016
(602) 381-8700
FAX 381-1920

EMAIL: b.slavin@fjslegal.com

December 29, 2016

VIA HAND-DELIVERY

Eva Cutro, Director and Zoning Administrator
Community Development Department
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

Mr. Richard Chambliss, Chairman
Board of Adjustment
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

RE: Notice of Appeal of Zoning Administrator's Enforcement Decision dated November 29, 2016 (the "ZA Decision") to the Town of Paradise Valley (the "Town") Board of Adjustment (the "Board") regarding the TMS Ventures, LLC ("TMS") Hillside Building Committee Application Case No. 16-280 (the "TMS Application") for a proposed residential development on an approximate 3.44-acre property assigned Assessor's Parcel No. 172-47-078D (the "TMS Property").

Dear Zoning Administrator Cutro and Chairman Chambliss:

Pursuant to Ariz. Rev. Stat. Sections 9-462.05 and 9-462.06 and Town Code Section 2-5-3.C.1, on behalf of aggrieved persons Teresa and Joe Zachariah, Terry Appel, Alfred and Ingrid Harrison, and Save Camelback Mountain, an Arizona non-profit corporation (collectively "Appellants"), our firm hereby submits this notice of appeal to the Town's Zoning Administrator and Board of Adjustment appealing the Zoning Administrator's November 29, 2016 decision to waive enforcement of the Town Zoning and Subdivision ordinances regarding the TMS Application.

I. BASIS OF APPEAL TO BOARD OF ADJUSTMENT

Pursuant to Ariz. R. Stat. § 9-462.05, the Town of Paradise Valley is required to establish the office of Zoning Administrator who is charged with the responsibility for enforcement of the Zoning Ordinance. This appeal of the ZA Decision is being filed for the purpose of obtaining an order from the Board of Adjustment that the Zoning Administrator erred in the enforcement of the Town's Zoning Ordinance and Subdivision Code by deciding that the Hillside Building Committee may process, consider and decide the TMS Application "at-risk" without TMS first complying with the following Town code and ordinance requirements:

1. TMS is required to establish that the TMS Property is a "Lot" having adequate frontage on a public or private street prior to submitting plans for Hillside Building Committee review and approval. See Town Zoning Ordinance §§ 2206.I.B, 2206.II, and 2203 definition of "Lot". The private roadway depicted in the plans submitted as part of the TMS Application is the subject of a lawsuit which is currently pending in Maricopa County Superior Court. TMS filed a lawsuit against Appellants Zachariah, Appel and Harrison (owners of Stone Canyon East ("SCE") Lots 22 – 24) and Jerry Smith (owner of SCE Lot 25) asking a Court to enter judgment granting legal access to the TMS Property. TMS has alleged 5 alternative counts in the lawsuit seeking a judgment establishing legal access in the form of either public right-of-way or a private roadway. Thus, TMS must submit to the Town a copy of a final court judgment establishing legal access to the TMS Property before the Town may proceed with the TMS Application.

2. TMS is also required to obtain approval of a conditional use permit from the Town's Planning Commission and Town Council (on appeal) for the proposed private roadway depicted in the plans submitted as part of the TMS Application. See Town Zoning Ordinance §§ 1101.B, 1103.2.B, and 1103.4.C.

3. TMS is also required to obtain subdivision plat approval from the Town Mayor and Council inasmuch as the TMS Property was unlawfully subdivided from a larger property in 1970 after becoming part of the original incorporated area of the Town in 1961. See Section 2 of the Town's 1962 Subdivision Regulations adopted by Town Ordinance No. 16; see also current Town Zoning Ordinance §§ 2202 and 2203; see also Town Subdivision Code Article 6-1.

4. Before the Town may accept and process the TMS Application for approval by the Hillside Building Committee, TMS is also required to obtain variances from the strict application of the Town Zoning Ordinance and Subdivision Code. In our firm's letter dated September 20, 2016 (referred to as the "Slavin Letter" in the ZA Decision), the following

variances were disclosed to the Hillside Building Committee and the Zoning Administrator as being required:

A. Variance to reduce the required width of a driving surface for a private roadway providing access to one (1) or two (2) residences from 16 feet to 12 feet. See Town Zoning Ordinance § 1103.2.B.3.b.i.

B. Variance to reduce the required paved surface width for a private roadway providing: (i) access to 2 lots from 15 feet to 12 feet and (ii) access to 3 lots from 20 feet to 12 feet. See Town Subdivision Code Article 6-7.C.4.

C. In the alternative, a variance to reduce the required pavement width for a public roadway from 20 feet to 12 feet. See Town Subdivision Code Article 6-7.C.3.

D. In the alternative, a variance to increase the allowable grade for a public roadway from 15 percent to 30 percent. See Town Subdivision Code Article 6-7.C.3.

E. Variance to increase the maximum length of any continuous retaining wall from 100 linear feet to 115 linear feet. See Town Zoning Ordinance § 2207.VI.C.1.a.

F. Variance to increase the maximum height of a retaining wall to a height greater than 8 feet. See Town Zoning Ordinance § 2207.VI.C.1.a; see also Town Subdivision Code Article 6-7.C.15.

G. Variance to increase the amount of land devoted to public rights of way or private roads approved by Special Use Permit [sic] from 10 percent of the gross parcel area to approximately 19 percent. See Town Subdivision Code Article 6-7.C.7.

H. Variance to increase the percentage of the total area subject to cut and fill for purposes of private and public roads to a percentage greater than 5 percent of the gross parcel area. See Town's Subdivision Code Article 6-7.C.8

The Zoning Administrator has erred by allowing TMS to continue to process the TMS Application "at risk" and to obtain a decision by the Hillside Building Committee without first obtaining the necessary approvals required by the Town's Zoning Ordinance and Subdivision Code, as set forth in our September 20, 2016 letter. The Zoning Administrator has no authority under state statutes or the Town's codes and ordinances to waive enforcement of the Zoning Ordinance and Subdivision Code requirements in order to allow the TMS Application to be processed at-risk and prematurely decided by the

Hillside Building Committee. An “at-risk” application is not authorized or implied under State enabling legislation or the Town’s codes and ordinances.

Furthermore, the TMS Application and plan of development greatly depends upon the outcome of the TMS lawsuit. The counts set forth in the TMS Complaint and our clients’ Counterclaim could result in a judgment that the TMS Property is served by: (1) no legal access, (2) legal access in the form of a public easement across SCE Lots 22-25, (3) legal access via a private easement across SCE Lots 22-25, or (4) legal access resulting from a private way of necessity and the condemnation of a roadway in a location determined by the court. Until a final judgment is entered, the Town has no way of knowing which roadway standards and requirements from the Zoning Ordinance and Subdivision Code to apply when evaluating the TMS development plans. Similarly, the Town is unable to impose certain variance requirements for approval of the TMS Application until the roadway location and type of roadway (public vs. private) is determined by the court. Different sets of variances will be required depending on the court’s ruling. Therefore, it is impractical and erroneous for the Zoning Administrator to allow TMS to process the TMS Application at risk before the Hillside Building Committee prior to the Town receiving evidence of the court’s ruling in the TMS lawsuit.

II. JURISDICTION OF BOARD OF ADJUSTMENT

The Town Board of Adjustment has jurisdiction to hear this appeal of the Community Development Director’s erroneous decision to waive enforcement of the Town’s Zoning Ordinance. The jurisdiction of the Board to hear appeals of this nature has been established by statute pursuant to the following sections of Ariz. Rev. Stat. § 9-462.06:

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.

...

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.

Emphasis added.

The Town's Community Development Director performs the duties of the Zoning Administrator. See Town Code § 2-5-3.C.1. As the Zoning Administrator, decisions by the Community Development Director regarding the enforcement of the Town's Zoning Ordinance may be appealed to the Board of Adjustment. *Id.* Thus, the enforcement decisions made by Director Cutro, as Zoning Administrator, in the ZA Decision may be appealed to the Board of Adjustment by the Appellants as aggrieved persons owning adjacent properties and a non-profit corporation having an interest in the preservation of Camelback Mountain.

III. STAY OF ALL PROCEEDINGS

As required by Ariz. R. Stat. § 9-462.06(E), the TMS Application as well as any new applications relating to the development of the TMS Property are automatically stayed by this appeal to the Board of Adjustment. Ariz. R. Stat. § 9-462.06(E) states as follows:

- 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. . . .

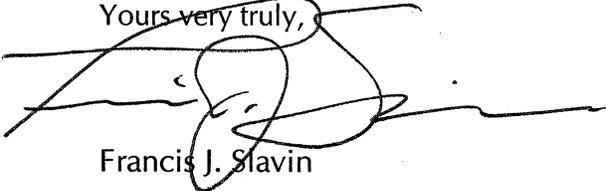
In this case, a stay of the TMS Application and all related development applications for the TMS Property would not cause imminent peril to life or property. Thus, all proceedings in this matter, including applications, hearings, reviews, and decisions relating to the TMS Property, are stayed until the Board of Adjustment hears and issues a final decision on this appeal.

IV. SUBMITTAL OF SUPPLEMENTAL NARRATIVE AND EXHIBITS IN ADVANCE OF BOA HEARING

Pursuant to Subsection E of the "Procedures for Board Meetings" section set forth in the Town of Paradise Valley Board of Adjustment Rules & Regulations revised on August 6, 1997 and the Town's Board of Adjustment Appeal Process Guide and Submittal

Ms. Eva Cutro, Community Development Director and Zoning Administrator
Mr. Richard Chambliss, Board of Adjustment Chairman
TOWN OF PARADISE VALLEY
December 29, 2016
Page 6 of 6

Requirements handout, Appellants provide notice to the Board that Appellants intend to file with the Board and the Zoning Administrator a supplemental narrative together with exhibits, demonstratives, statements, and/or proposed findings of fact and conclusions of law at least 21 calendar days prior to the Board hearing scheduled in this matter. Thank you in advance.

Yours very truly,

Francis J. Slavin

Enclosures

1. Letter dated September 20, 2016 from Francis J. Slavin, P.C. to Scott Jarson, Chairman of the Town's Hillside Building Committee, with revised page 21 to correct error in demonstrative depicting "Sections of Private Roadway Serving More Than One (1) Lot."

2. Letter dated November 29, 2016 from Eva Cutro, Director and Zoning Administrator of Town Community Development Department, and Andrew Miller, Town Attorney, to Attorneys Andrew Abraham and Douglas Jorden, counsel for TMS Ventures, LLC.

Cc: Catherine Kauffman, Town BOA Member (via hand-delivery w/ attachments)
Emily Kile, Town BOA Member (via hand-delivery w/ attachments)
Eric Leibsohn, Town BOA Member (via hand-delivery w/ attachments)
Robert Nagle, Town BOA Member (via hand-delivery w/ attachments)
Jon Newman, Town BOA Member (via hand-delivery w/ attachments)
Hope Ozer, Town BOA Member (via hand-delivery w/ attachments)
Kevin Burke, Town Manager (via hand-delivery w/ attachments)
Andrew Miller, Town Attorney (via hand-delivery w/ attachments)
Duncan Miller, Town Clerk (via hand-delivery w/ attachments)
Andrew Abraham, Esq., Counsel for TMS Ventures, LLC (via hand-delivery w/ attachments)
Douglas Jorden, Esq., Counsel for TMS Ventures, LLC (via hand-delivery w/ attachments)



November 29, 2016

Doug Jorden
Jorden, Hiser & Joy, P.L.C.
5080 North 40th Street, Suite 245
Phoenix, AZ 85018

Andrew Abraham
Burch & Cracchiolo, P.A.
702 East Osborn Road
Phoenix, AZ 85014

Re: Application by TMS Ventures, LLC for Hillside Building Committee Review for Property Located at 5507 East San Miguel, Paradise Valley, Arizona ("TMS Property")

Dear Mr. Jorden and Mr. Abraham:

The Town staff has been made aware of the pending litigation between TMS Ventures and the four property owners neighboring the TMS Property (that is, Joe and Teresa Zachariah, Roseanne Appel, Alfred and Ingrid Harrison, and Jerry Smith, collectively, the "Four Neighbors"), including having been supplied copies of some of the pleadings in that litigation (Maricopa County Superior Court Case No. CV2016-005381, the "Pending Litigation"). Further, the Town Hillside Committee has been sent a detailed letter dated September 20, 2016 from attorney Francis Slavin, representing three of the Four Neighbors, with many new historical facts and legal assertions (the "Slavin Letter"). Given the Pending Litigation and new factual and legal issues raised by the Slavin Letter, we wanted to communicate to you the Town staff's position on the processing of the Application for Hillside Building Committee Review for the TMS Property (the "TMS Application"), namely, that the processing of the TMS Application should be seen as "at risk" at this time, for the reasons noted below.

First, given the Pending Litigation, the Town staff will insist that a final order or final settlement of the Pending Litigation on the form of legal access be provided to the Town staff prior to the issuance of any building permit for the TMS Property. Second, based on the determination by the courts of the form of legal access to the TMS Property (or possibly that there is no legal access at all), any prior Hillside Committee approval may be inapplicable or void and another application may need to be processed.

The Town staff fully believes and intends that the TMS Property access issues are a private matter to be resolved by the parties to the Pending Litigation. Further, depending on the court's resolution of other issues that have been raised in the Pending Litigation and in the Slavin Letter, additional or different development requirements may apply.

The Town wants to be sure that you are aware that the existing uncertainties may impact the Town's development requirements and the review and approval processes for the TMS Property. At this time, the Town intends to continue to process the TMS Application as requested by your client, but this is "at risk" to your client and, as noted above, the Town's development and processing requirements are dependent upon the final outcome of the Pending Litigation. Further, the Town's issuance of a building or other construction permits will be contingent upon final resolution of the Pending Litigation.

Sincerely,



Andrew Miller
Town Attorney



Eva Cutro
Community Development Director

cc: Hillside Building Committee Members
Kevin Burke, Town Manager
Duncan Miller, Town Clerk

FRANCIS J. SLAVIN
JOSEPH J. MORITZ, JR.*
ELLEN B. DAVIS
DANIEL J. SLAVIN
HEATHER N. DUKES

*CERTIFIED SPECIALIST, REAL ESTATE LAW

EMAIL: b.slavin@fjslegal.com

September 20, 2016

VIA HAND-DELIVERY

Mr. Scott Jarson, Chairman
Hillside Building Committee
TOWN OF PARADISE VALLEY
6401 East Lincoln Drive
Paradise Valley, Arizona 85253

RE: Opposition to Application by TMS Ventures, LLC, an Arizona limited liability company ("TMS" or the "Applicant") for Hillside Building Committee ("HBC") Approval of Residential Plans for 3.44-Acre Parcel Assigned Assessor Parcel Number 172-47-078D (the "Property"), Case No. 16-280 (the "Application")

Dear Chairman Jarson:

On behalf of Teresa and Joe Zachariah, Terry Appel, Alfred and Ingrid Harrison and Save Camelback Mountain, an Arizona non-profit corporation, whose members reside in the Stone Canyon East neighborhood, we thank you for allotting us additional time to present the concerns of our clients to the Hillside Building Committee during the September 8, 2016 meeting. In response to the Chairman's request, we shortened our presentation, electing to forgo at the time presenting detail to support the overview of our clients' position. The purpose of this letter is to provide that detail. Please accept this letter as part of the Hillside Building Committee's official records regarding TMS' Application for HBC approval of a building permit to construct a 10,000 s.f. residence on a 3.44-acre parcel with a 53% natural slope on the north face of Camelback Mountain.

As we presented during the HBC meeting, the Committee lacks the legal authority to process a formal application to approve a building permit to construct the proposed residence on the Property for the following 4 reasons:

1. There is no established legal access for the Property to and from a public street.
2. The access being claimed by TMS would constitute a private roadway as defined under the Town's Zoning Ordinance, requiring the Applicant to obtain a conditional use permit from the Town's Planning Commission.

3. Inasmuch as the 3.44-acre Property was unlawfully subdivided after the larger parcel from which the Property was subdivided became part of the original incorporated area of the Town, TMS is required to obtain subdivision plat approval from the Town Mayor and Council as required by the Town's Subdivision Code.

4. The Applicant's proposal does not satisfy certain requirements of the Town Zoning Ordinance and Subdivision Code, which would require the Applicant to obtain approvals for several variances from the Town's Board of Adjustment and Town Council, respectively.

For these reasons, we would request written confirmation from the Committee that the TMS Application will not be scheduled for a Formal Hillside Committee Review Meeting unless and until TMS were to obtain: (1) a final court judgment granting legal access to the Property over and across our clients' Stone Canyon East Lots 22, 23, and 24, (2) a conditional use permit approval for the private roadway, (3) a subdivision plat approval establishing the Property as a legal Lot, and (4) all necessary variance approvals.

I. **LEGAL ACCESS TO THE TMS PROPERTY**

A. **LEGAL ACCESS TO PROPERTY MUST BE ESTABLISHED PRIOR TO CONCEPT PLAN REVIEW AND ISSUANCE OF FORMAL HBC AND BUILDING PERMIT APPROVALS**

TMS must establish that the Property has frontage on a public or private street prior to submitting plans for Hillside Building Committee review and approval. Pursuant to Section 2206 of the Hillside Building Regulations, "an applicant shall submit . . . seven (7) copies of a preliminary site plan. . . along with topographic information for the Lot" in order to be scheduled for an HBC Concept Plan Review Meeting.¹ The application requirements for a Formal Hillside Committee Review Meeting also refer to surveys, site plans and studies for the entire "lot".² The term "Lot" is defined in the Hillside Building Regulations as follows:

Lot – A parcel of land occupied or intended for occupancy by one main building, together with any accessory buildings including the open spaces required of the Hillside Regulations and having adequate frontage on a public or private street.³

To date, TMS has been unable to demonstrate that the Property constitutes a "Lot" having adequate frontage on a public or private street. See Sections I.B and I.C below.

¹ Emphasis added. See Section 2206.I.B of the Town of Paradise Valley Zoning Ordinance.

² See Section 2206.II. of the Town of Paradise Valley Zoning Ordinance.

³ Emphasis added. See Section 2203 of the Town of Paradise Valley Zoning Ordinance; see also Article 6-1 of the Town Code.

With no frontage on a public or private street, the Hillside application submitted by TMS to date is incomplete, and the Hillside Building Committee has no authority to review plans and schedule meetings regarding development on the Property.

B. THE LAWSUIT FILED BY TMS CONCEDES THAT THE PROPERTY CURRENTLY HAS NO LEGAL ACCESS

The private road depicted in the TMS plans extending south and east from the San Miguel Avenue cul-de-sac to the TMS Property over and across Stone Canyon East Lots 22, 23, 24 and 25 is the subject of a lawsuit which is currently pending in Maricopa County Superior Court.⁴ On April 25, 2016, TMS filed the Lawsuit against our clients (owners of Lots 22-24) and Jerry Smith (owner of Lot 25) asking a Court to enter judgment granting an easement for legal access to the TMS Property across Stone Canyon East Lots 22 through 25. TMS is essentially asking the Court to enter judgment granting TMS the legal right to access and build the private road in the proposed location depicted on its current site plan submitted to the HBC.

Without getting into too much detail, TMS, on August 19, 2016, filed a Verified Second Amended Complaint (the "Complaint") containing 5 alternate counts, claiming:

First, an easement document recorded in 1960 (the "1960 Easement Document")⁵ created an express easement over and across our clients' lots,

Second, the TMS Property enjoys an implied easement over and across our clients' lots,

Third, the 1960 Easement Document created a public road over and across our clients' lots and constituted a common law dedication,

Fourth, the conveyancing history and patterns within Tract 4 of O'Briens Camelback Lands created an easement for the benefit of TMS across our clients' lots under an implied way of necessity theory, or

Fifth, TMS is entitled to condemn an easement over and across our clients' lots pursuant to a private way of necessity theory.

TMS has also included a Count in their Complaint seeking an injunction against the Zachariahs and Appels to prevent them from continuing to maintain security gates which, for more than 10 years, have peaceably and adversely blocked TMS and its predecessors' access to the Property.

⁴ *TMS Ventures, LLC v. Zachariah, et al*, Maricopa County Superior Court Case No. CV2016-005381 (the "Lawsuit").

⁵ Easement for Roadway recorded on March 1, 1960 at Docket 3178, Page 402, Official Records of the Maricopa County Recorder's Office ("MCR").

We have filed a Counterclaim against TMS demonstrating how each of TMS' legal theories will not prevail in Court and seeking a judgment quieting title in our clients to the proposed easement area. For instance, the 1960 Easement Document did not comply with state statutes for creating public roadways, and there has been no acceptance of the public easement for ownership and maintenance by either the County or the Town. The Town Attorney and TMS' attorney have confirmed this in their correspondence to one another and our clients. We have enclosed a copy of our clients' Answer and Counterclaim as **Exhibit "1"**.

Immediately after filing the Lawsuit, TMS brought this application before the HBC claiming to have the present legal right to build the private road leading to its Property across our clients' lots. By filing the Lawsuit against our clients, TMS has admitted that it has no such legal right at this time. Only a judgment entered by a court of law may establish legal access to the Property. Since no judgment has been entered, TMS does not enjoy legal access to the Property across our clients' lots. The Hillside Building Committee has no authority to process plans or issue approvals for the Property until a judgment is entered granting legal access to TMS.

C. THE TOWN LACKS AUTHORITY TO RECOGNIZE AN EASEMENT FOR ACCESS BASED UPON IMPLIED WAY OF NECESSITY

The Town Attorney and Town staff cannot step into the shoes of the court and determine that the TMS Property enjoys legal access by an implied way of necessity theory. Implied way of necessity is a common law theory created and enforced by our courts. In certain conveyancing patterns, where land is sold to a third party that has no outlet to a public street, the seller by implication grants an implied way of necessity to the third party for ingress and egress over the parcel retained by the seller. In this case, the conveyancing history of Tract 4 prevents TMS from claiming an implied way of necessity across our clients' lots. Furthermore, under Arizona law, our adverse possession claims arising from the locked gates blocking access to the TMS Property for more than the 10-year statutory period bars TMS from establishing legal access by an implied way of necessity theory.

Neither the Town Attorney nor the Town staff have any legal authority to make a determination that a parcel enjoys legal access by this common law doctrine. Only a court has that authority. The Town Attorney and the Applicant's attorney attempted to usurp the court's authority by exchanging written correspondence with one another and our clients finding the TMS Property to have legal access by an implied way of necessity. After sending a draft letter to the Town Attorney for input and direction, on August 5, 2013, counsel for TMS sent a formal letter to the Town Attorney providing information as to why

he believed TMS had access to the Property “based on the legal doctrine of ‘implied way of necessity’”⁶

On August 13, 2013, the Town Attorney sent a letter to our clients and the Smiths confirming that he “reviewed the cases cited in Mr. Jorden’s letter, and agree[d] that it does appear that the Scali [TMS] Property enjoys an implied way of necessity” The Town Attorney’s stated purpose for writing the letter to our clients was to make them “aware of the Scali property legal access request and . . . [the Town Attorney’s] agreement that it does appear to be legally accurate.” In the August 13th letter, the Town Attorney also went as far as to decide the exact location of the implied way of necessity, which is a determination made by courts after substantial evidence is presented regarding the reasonable convenience of the parties and evidence of prior use.⁷ The Town Attorney invited a response to his letter by August 27, 2013.

Then, on September 4, 2013, the Town Attorney sent a confirming letter to counsel for TMS stating that the “Town Attorney’s Office agrees that there is legal access to the Scali Property by way of an implied way of necessity” and confirmed the exact location of the implied way of necessity to TMS’ counsel. The Town Attorney also confirmed that the easement would “function as a right-of-way or private road within the meaning of Section 2207 of the Town’s Zoning Ordinance.”⁸

On August 19, 2016, TMS filed a Verified Second Amended Complaint adding a count for an implied way of necessity for the court to decide. Once again, TMS concedes that the Town Attorney’s opinion should be left to the court to decide.

Town staff have committed an illegal and unauthorized act by issuing an opinion to TMS, our clients and this Committee that the Applicant enjoys an easement under a common law implied way of necessity theory. Moreover, the Town Attorney has no authority to interpret what constitutes a private roadway under the Town’s Zoning Ordinance – only the Community Development Director, acting in her official capacity as the Town’s Zoning Administrator, has that authority to interpret the Town’s Zoning

⁶ See August 5, 2013 letter from Attorney Doug Jorden to Town Attorney Andrew Miller attached hereto as **Exhibit “2”**.

⁷ See August 13, 2013 letter from Town Attorney Andrew Miller to Zachariah, Appels, Harrisons and Smiths attached hereto as **Exhibit “3”**. “The implied way of necessity would basically run along the property line between 5505 E. San Miguel and 5511 E. San Miguel, approximately where the current shared driveway for these two properties exists, and then along the southern 25’ of the 5519 E. San Miguel and 5525 E. San Miguel properties”

⁸ See September 4, 2013 letter from Town Attorney Andrew Miller to Attorney Douglas Jorden attached hereto as **Exhibit “4”**.

Ordinance.⁹ This is black letter law known by most lawyers practicing land use law in Arizona. To date, there has been no formal determination by Director Eva Cutro regarding this issue of access. Therefore, TMS has no basis to argue that legal access to the TMS Property has been approved by the prior actions and decisions of Town staff, and Hillside Building Committee review of the TMS Application is premature.

II. CONDITIONAL USE PERMIT APPROVAL FOR PRIVATE ROADWAY LEADING TO TMS PROPERTY

Assuming the court were to determine that TMS enjoys a private easement across our clients' Lots 22, 23 and 24 in Stone Canyon East, the Hillside Building Committee would have no authority to hear and decide this application because there has been no conditional use permit approved for the private roadway in the location and width approved by the court.

A. PRIVATE ROADWAY VS. DRIVEWAY DESIGNATION

At the September 8, 2016 HBC meeting, there was some discussion as to whether the alleged easement area leading south from the San Miguel cul-de-sac to the northeast corner of the TMS Property would constitute a "driveway" or a "private roadway" under the Town's Zoning Ordinance. Upon reviewing the Zoning Ordinance, the Subdivision Code, and prior correspondence and reports issued by Town staff, in the event a judgment were entered by the court in favor of TMS' implied way of necessity claim, the easement area across our clients' lots would constitute a private roadway rather than a driveway. The Town's Zoning Ordinance requires conditional use permits to be issued for private roadways.¹⁰

Under Section 1103.2.B.1 of the Town's Zoning Ordinance, a private roadway is defined as:

A roadway not dedicated to or maintained by the Town of Paradise Valley that provides access to properties. A private roadway shall be established only in conjunction with the vacation of a public roadway or in conjunction with the creation of a lot or lots and shall provide access to such lots."

Emphasis added. In this case, the private roadway across our clients' lots would not be dedicated to or maintained by the Town of Paradise Valley. The private roadway would provide access to 3 properties – the Zachariah's Lot 22, the Appel's Lot 23 and the TMS Property. In addition, the private roadway to the TMS Property would be a new street integral to the creation of a lot. As set forth in Section III of this letter below, the TMS Property was unlawfully created in 1970 with no subdivision approval having been issued by the Town. TMS is required to process and obtain approval of a subdivision plat creating a legal lot in its current configuration. Therefore, TMS purports to obtain a private roadway

⁹ See A.R.S. Section 9-462(A)(4) and Section 2-5-3.C.1 of the Paradise Valley Town Code.

¹⁰ See Section 1101.B and 1103.2.B of the Town of Paradise Valley Zoning Ordinance.

in conjunction with the creation of the TMS lot.

The Town staff's Action Report to the Hillside Building Committee regarding the TMS Application issued in advance of the September 8, 2016 meeting labels the easement area across our clients' lots as a "private roadway."¹¹ The following excerpts have been taken from said Action Report:

Background

...

The roadway easement is located on Lots 22, 23, 24 and 25 of the Stone Canyon East subdivision The applicant represents that the private roadway by easement is the only means of ingress/egress to the subject property (which is subject of currently [sic] litigation). However, the private roadway by easement is not part of the Hillside Committee review. . . .

New Single Family Residence

...

The lot is rectangular in shape, has a slope of approximately 53%, and is accessible via the private roadway by easement on the neighboring properties to the south The private roadway by easement is not included in the disturbance calculation since it is not located on the subject lot and since roads are exempt from the disturbed area calculation per Section 2207.III.G of the Town Zoning Ordinance.¹²

As a sidenote, we strongly disagree with staff's statement in the Action Report that the private roadway is not part of the Hillside Committee review. First, the provisions in the Hillside Development Regulations, including the provisions creating the Hillside Building Committee review process, "apply to all land within a Hillside Development Area as denoted on Figure 2 – Hillside Development Area."¹³ The TMS Property and the land over which the private roadway would cross are part of this Hillside Development Area. Second, the private roadway area would become a disturbed area irrespective whether or not it is included in the calculation of maximum disturbed area for the TMS Property. The Committee is charged with evaluating site plans which depict the proposed "limits of disturbance" and landscape plans which include "methods for revegetation of all disturbed areas."¹⁴ The phrase "disturbed area" is defined as "that area of natural ground excluding

¹¹ See Action Report to Hillside Building Committee for File No. 16-280 printed on September 1, 2016 attached hereto as **Exhibit "5"**.

¹² *Id.* Emphasis added.

¹³ See Section 2202 of the Town of Paradise Valley Zoning Ordinance.

¹⁴ See Sections 2206.II.C and II.G of the Town of Paradise Valley Zoning Ordinance.

the footprint of the residence that has been or is proposed to be altered through grading, cut and fill, removal of natural vegetation, placement of material, trenching, or by any means that causes a change in the undisturbed natural surface of the land or natural vegetation.”¹⁵ An approximate 580-foot private roadway extending from the San Miguel cul-des-sac to the TMS property in addition to the 155-foot driveway to be constructed on the TMS Property would have a substantial disturbance area that must be evaluated by the Committee.

Prior to the Action Report being issued, the Town Attorney also confirmed in his September 4, 2013 letter to TMS’ counsel that the easement would constitute a “private roadway” as follows:

The Private Roadway Easement would function as a right-of-way or private road within the meaning of Section 2207 of the Town’s Zoning Ordinance, thus grading within the area of the Private Roadway Easement is exempt from disturbance calculations so that the disturbed area associated with the Private Roadway Easement will not be charged against Lots 22 – 25 of the Stone Canyon East or the Scali Property.

While we dispute the Town Attorney’s authority to interpret and enforce the Town’s Zoning Ordinance, the Action Report to the Hillside Building Committee and the Town Attorney’s letter have clearly described the easement area across our clients’ lots as a “private roadway.” Only certain graded areas for private roadways would be exempt from disturbance area calculations as described in the Action Report and Town Attorney’s letter.¹⁶ If the entire length of the easement area were considered a driveway, the driveway would be charged with a ratio of either 50% or 75% of the total disturbed area for the driveway, depending on the extent of the cut and fill from natural grade.¹⁷ Therefore, TMS must comply with all requirements for private roadways, including the requirement to obtain a conditional use permit approval from the Town’s Planning Commission.

B. CONDITIONAL USE PERMIT REQUIREMENTS FOR PRIVATE ROADWAYS.

In the Town of Paradise Valley, conditional use permits are issued for private roadways.¹⁸ “A conditional use is a land use that is listed in this article [Article 11 –

¹⁵ See Section 2203 of the Town of Paradise Valley Zoning Ordinance.

¹⁶ See Section 2207.III.G of the Town of Paradise Valley Zoning Ordinance. “Grading within street rights-of-way or tracts of land for private roads is exempt from the disturbance calculations. Any roadway grading beyond the limits of the dedicated rights-of-way or private road tracts shall be placed in slope easements and included within the calculations for land disturbance limitations.”

¹⁷ See Section 2207.IV.A of the Town of Paradise Valley Zoning Ordinance. “The driveway shall be included in the calculations for land disturbance limitations at a ratio of 50% of the total disturbed area of the driveway, if the driveway is constructed at a grade plus or minus 6 inches from natural grade. Driveways with cut and fill in excess of 6 inches from natural grade shall be charged with 75% of the total disturbed area of driveway surface.”

¹⁸ See Section 1101.B and 1103.2.B of the Town of Paradise Valley Zoning Ordinance.

Special Uses and Additional Use Regulations] as a permitted use subject to obtaining a conditional use permit.”¹⁹ The purpose of the conditional use permit process is “to determine as an administrative act by the Town, and on a case by case basis, whether through compliance with prescribed development standards or through the imposition of development conditions the requested conditional use can be made compatible with surrounding existing or approved or anticipated land uses.”²⁰ Emphasis added. The conditional use permit is necessary in order to ensure the proposed private roadway meets the prescribed development standards in Section 1103.2.B of the Zoning Ordinance and can be made compatible with the existing residences on our clients’ lots and the larger Stone Canyon East subdivision. The issuance of a conditional use permit for a private roadway being proposed by TMS in this challenging physical and aesthetic setting should be viewed with utmost seriousness and scrutiny.

The conditional use permit process cannot be waived by the Town. “Where a conditional use permit is specifically required by the terms of this article [Article XI of Zoning Ordinance], no structure, building or land shall be used until a conditional use permit has been granted by the Planning Commission or the Town Council.”²¹ All private roadways require a conditional use permit.²² In this case, assuming TMS were to obtain a favorable judgment on legal access, TMS would be required to obtain approval of the Planning Commission or Town Council of a conditional use permit for the private roadway before TMS would be allowed to proceed with Hillside Building Committee review and approval, obtaining building permits to construct the private roadway, and using its Property.

III. SUBDIVISION PLAT APPROVAL FOR TMS PROPERTY

In the event TMS were to obtain a judgment granting legal access to the Property and a conditional use permit for the private roadway, the Hillside Building Committee nevertheless would still have no authority to review and decide the Application inasmuch as the TMS Property is not a lawful, pre-existing lot. TMS must obtain subdivision plat approval from the Town Council prior to obtaining Hillside approval of its plans to construct a residence.

A. PROPERTY’S INCORPORATION IN 1961 AND UNLAWFUL SUBDIVISION IN 1970.

Town staff, including the Town Attorney, have erred by stating in the Action Report to the Committee and in correspondence to our clients that the TMS Property may be developed as a lawful, pre-existing lot that was platted prior to the Town’s annexation of

¹⁹ See Section 1103 of the Town of Paradise Valley Zoning Ordinance.

²⁰ *Id.*

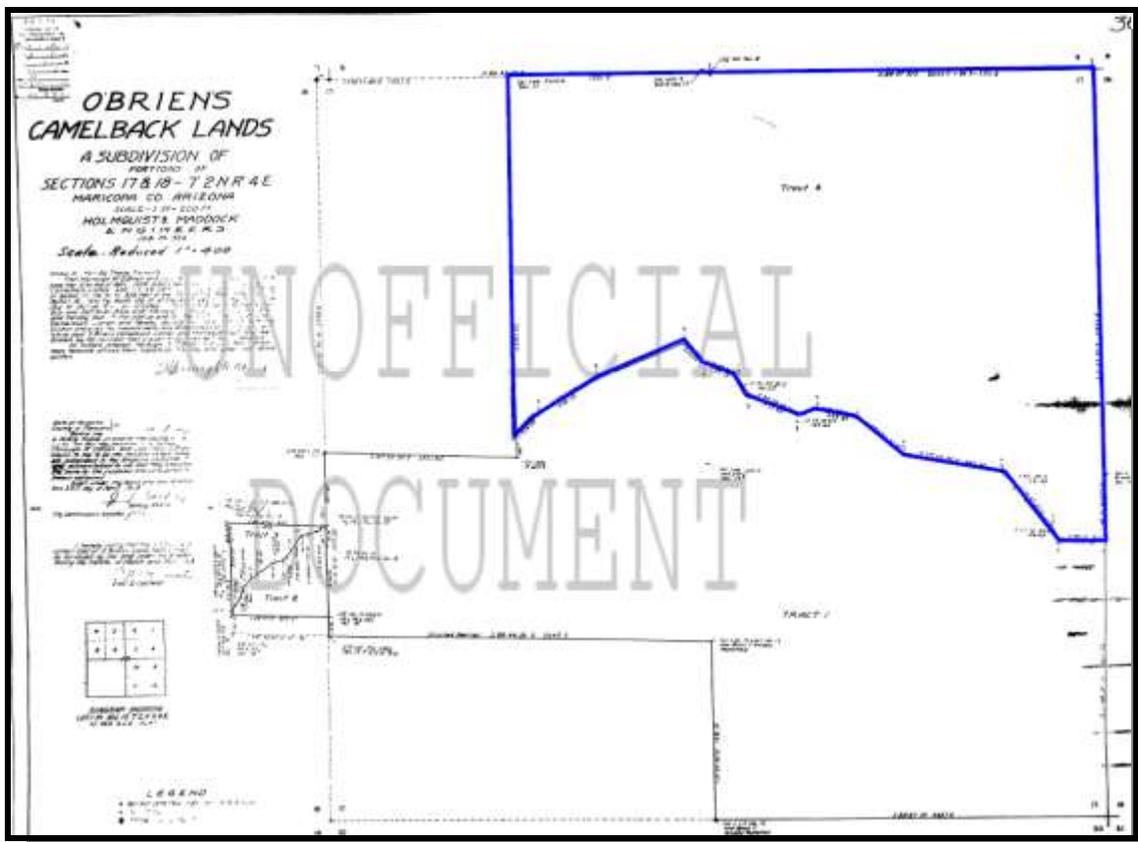
²¹ See Section 1103.4.C of Town of Paradise Valley Zoning Ordinance.

²² See Section 1101.B and 1103.2B of the Town of Paradise Valley Zoning Ordinance.

the Property in 1985. As presented at the September 8, 2016 Hillside Building Committee meeting, in 1961, the TMS Property was included within the original incorporated area of the Town.

The north face of Camelback Mountain was platted in 1928 by Morrrough W. O'Brien as the O'Briens Camelback Lands subdivision plat.²³ The present-day Stone Canyon subdivision, the Stone Canyon East subdivision, the TMS Property, and part of the Phoenix Mountain Preserve are all located within a single, larger parcel designated as Tract 4 on the 1928 O'Briens Camelback Lands subdivision plat.

**Location of TMS Property, Stone Canyon, Stone Canyon East
and Phoenix Mountain Preserve within Tract 4 of O'Brien's Camelback Lands**

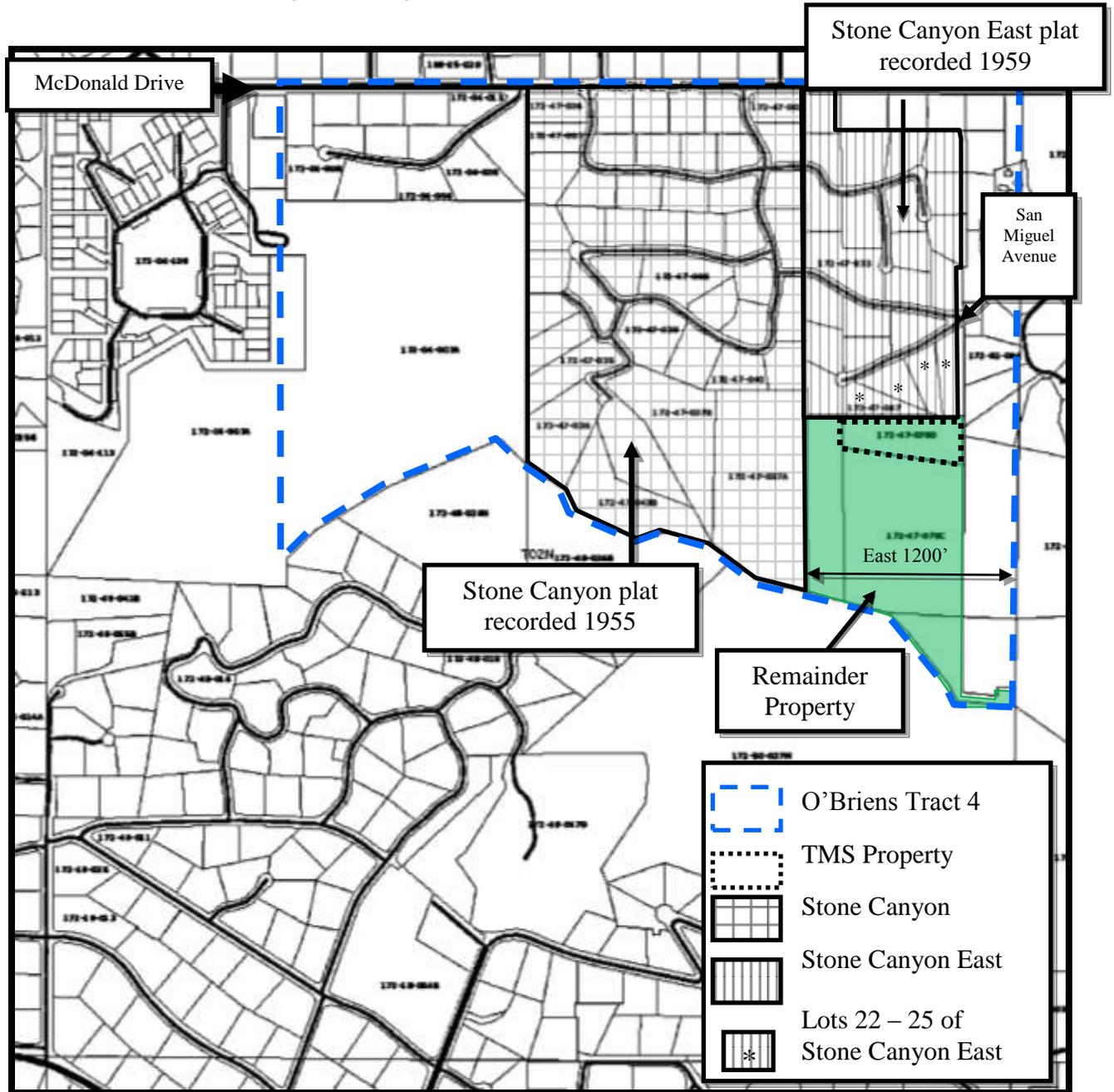


Beginning in 1955, part of Tract 4 was subdivided with the recording of the Stone Canyon subdivision along McDonald Drive.²⁴ In 1959, Tract 4 was again subdivided when

²³ See O'Briens Camelback Lands subdivision plat recorded on April 24, 1928 at Book 18 of Maps, Page 36, MCR, attached hereto as **Exhibit "6"**.

²⁴ See Stone Canyon subdivision plat recorded on March 27, 1955 at Book 62 of Maps, Page 41, MCR, attached hereto as **Exhibit "7"**.

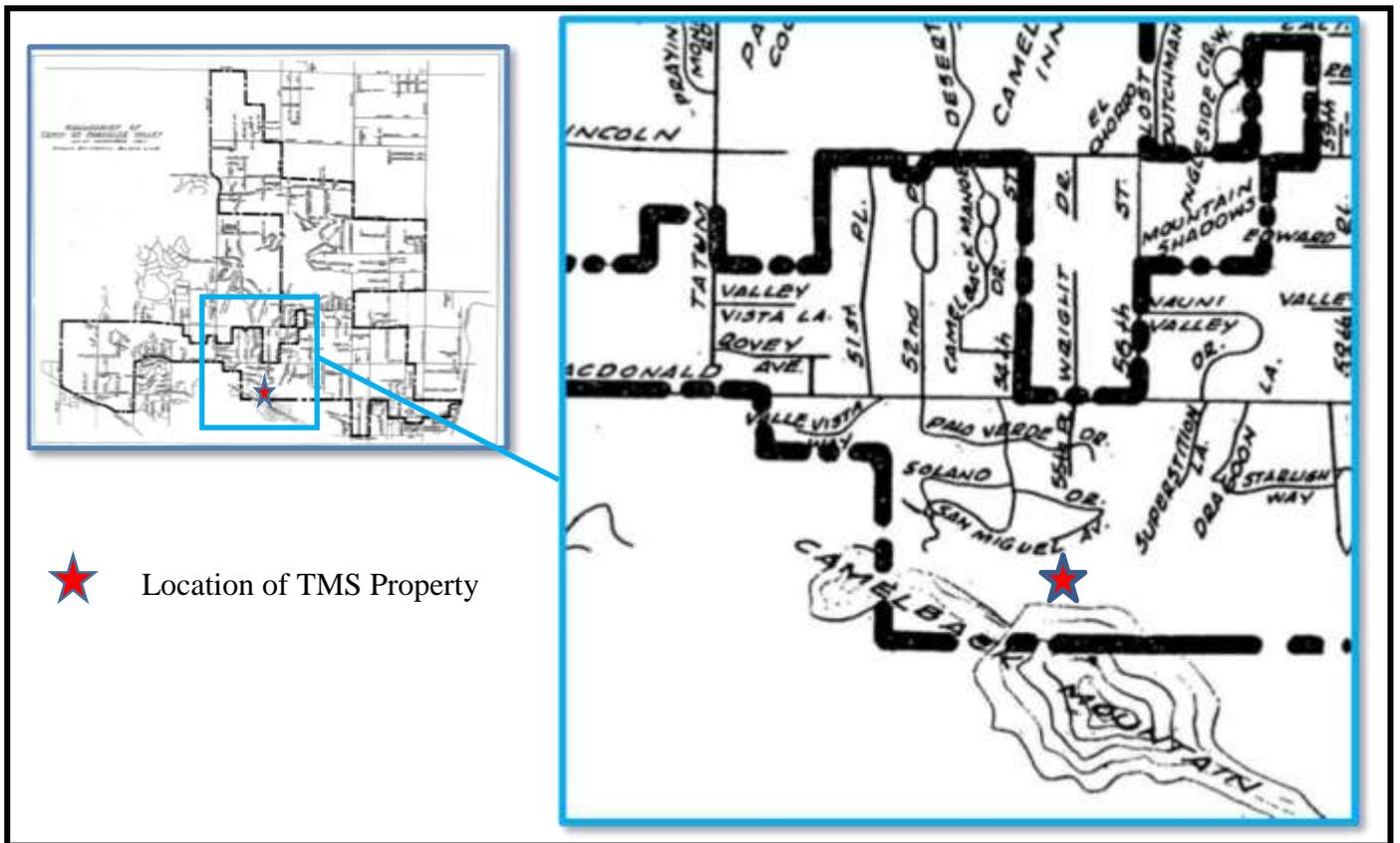
the Stone Canyon East subdivision plat was recorded along McDonald Drive²⁵, resulting in a remainder of Tract 4 lying upslope and south of the Stone Canyon East subdivision (the "Remainder Property"). The Applicant's parcel was part of this larger Remainder Property created in 1959 and designated in green below.



²⁵ See Stone Canyon East subdivision plat recorded on February 27, 1959 at Book 81 of Maps, Page 34, MCR, attached hereto as **Exhibit "8"**.

In 1961, the Town was incorporated. The Order of Incorporation attaches a map showing the original incorporated area of the Town.²⁶ The Remainder Property, which included the TMS Property, was part of this original incorporation area.

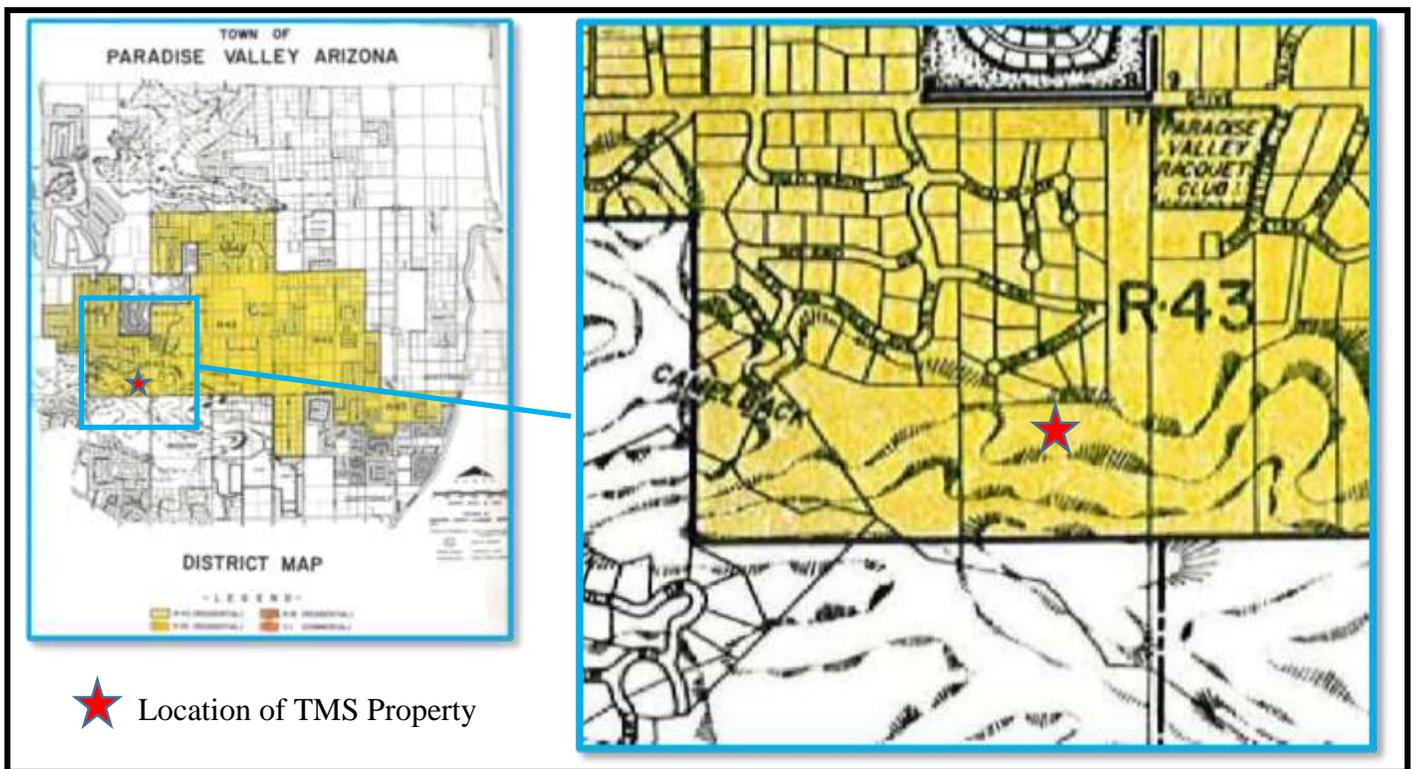
**BOUNDARIES OF TOWN OF PARADISE VALLEY AS OF NOVEMBER 1961
(Attached to Order of Incorporation)**



²⁶ See Order of Incorporation dated May 25, 1961 attached hereto as **Exhibit “9”**.

On October 16, 1961, the Mayor and Town Council adopted Ordinance No. 10, which attached a copy of the Town's first Zoning Ordinance and the official zoning district map of the Town (the "District Map").²⁷ The District Map designates the Stone Canyon and Stone Canyon East subdivisions, the TMS Property as well as the rest of the area of the Town with the R-43 Residential Zoning District.

**TOWN OF PARADISE VALLEY ORDINANCE NO. 10
DATED OCTOBER 16, 1961
Zoning District Map**

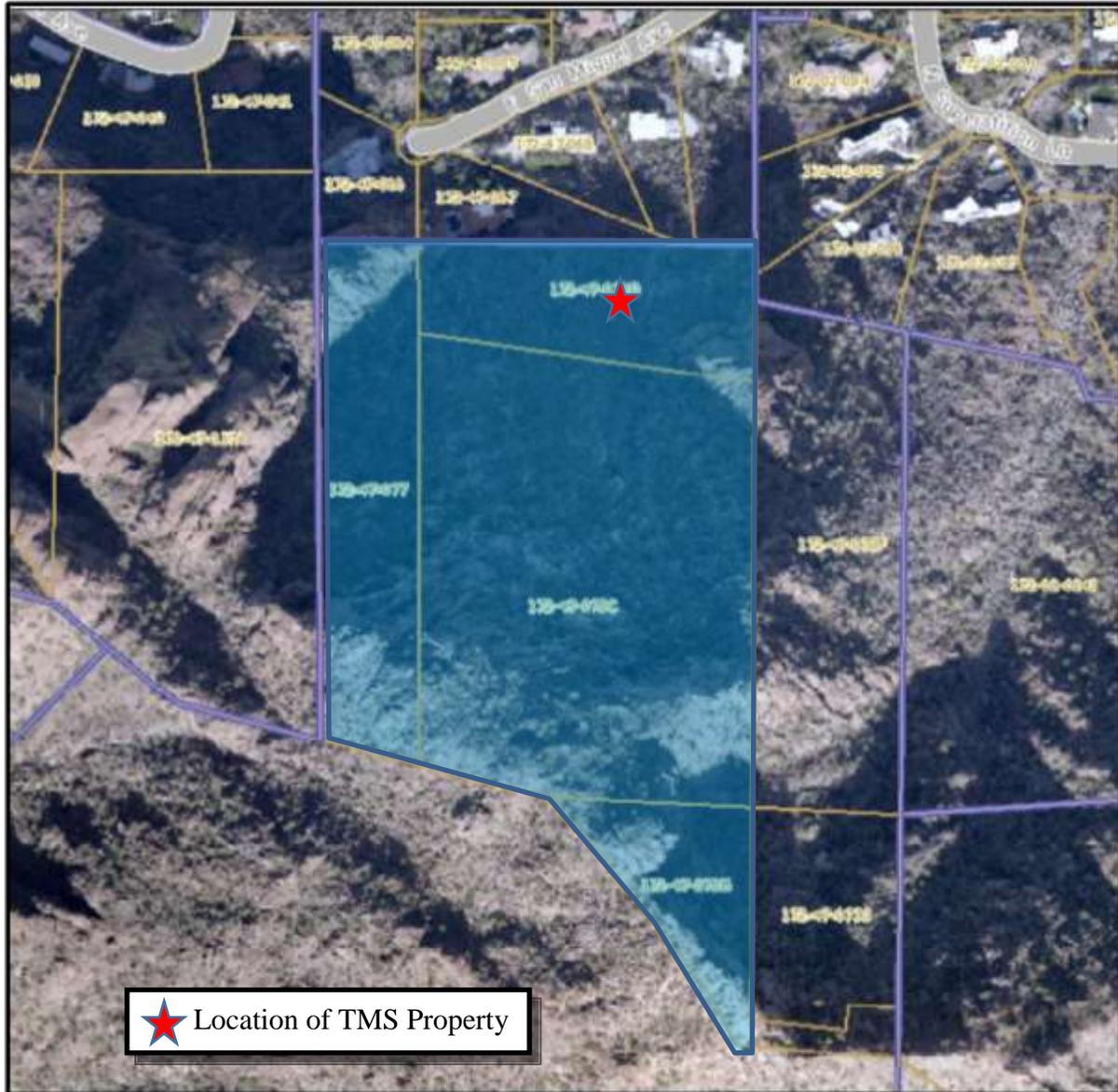


We have also reviewed the Town's Ordinances and Resolutions passed and adopted between January 1984 and December 1986. We have found no Ordinance or Resolution in that time frame which would substantiate the statement by Town Staff that the TMS Property was annexed into the Town in 1985. Rather, the TMS Property was included in the original land area incorporated as the Town of Paradise Valley in 1961. Therefore, the Applicant's property has been within the Town's jurisdiction since 1961, not 1985.

²⁷ See Town of Paradise Valley Ordinance No. 10 dated October 16, 1961 attached hereto as **Exhibit "10"**.

At the time of the Town's incorporation in 1961, the TMS Property was part of the Remainder Property, which extended south of the south line of the Stone Canyon East subdivision to the mountain ridge-line and was referenced in the Remainder Property legal description attached to the conveyancing deeds between 1961 and 1970 as Parcel No. 1 (the "Remainder Parcel No. 1").²⁸ See area designated with blue overlay below.

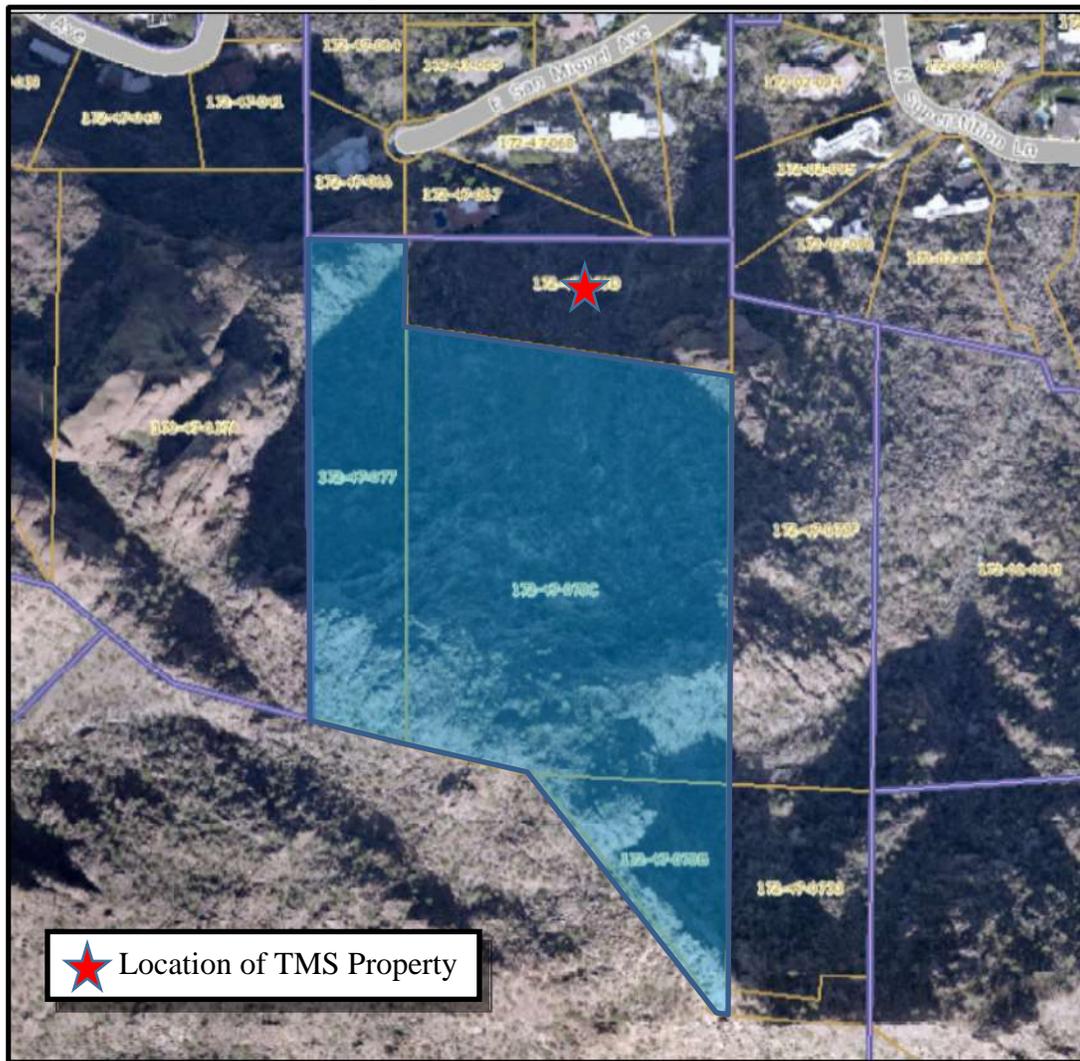
Remainder Parcel No. 1 as of October 25, 1961



²⁸ See Special Warranty Deed recorded on October 25, 1961 at Docket 3895, Page 476, MCR conveying Remainder Parcel to Riley, Rodgers and Rehm, the Trust Beneficiaries of Phoenix Title and Trust Company Trust Nos. 2643 and 2644. The TMS Property was included in the legal description for Parcel No. 1 attached to the Special Warranty Deed. See Exhibit "11" attached hereto.

After the Town's incorporation, the Remainder Property was conveyed to a series of owners, eventually ending up in the ownership of a limited partnership entity named Camelback Mountain Properties.²⁹ In 1970, Camelback Mountain Properties unlawfully subdivided the Remainder Property when it conveyed the Remainder Property to the City of Phoenix to be included in the Phoenix Mountain Preserve except for the present-day 3.44-acre Property now owned by the Applicant, TMS.³⁰

**Remainder Parcel No. 1 Divided & Conveyed, in Part, to City of Phoenix on April 10, 1970
Present-Day TMS Property Retained by Camelback Mountain Properties**



²⁹ See conveyancing deeds for Remainder Property recorded between 1961 and 1970 attached hereto as **Exhibit “12”**.

³⁰ See Warranty Deed from Camelback Mountain Properties to the City of Phoenix recorded on April 10, 1970 at Docket 8083, Page 449, MCR, attached hereto as **Exhibit “13”**.

The 1970 deed to the City of Phoenix had the legal effect of creating the present-day TMS Property in the form of an exception to the Remainder Parcel No. 1 legal description as follows:

Parcel No. 1:

That part of the East 1200 feet of Tract 4, O'Brien's Camelback Lands, according to the plat of record in Book 18 of Maps, at Page 36 in the records of Maricopa County, Arizona, lying South of the South line of Stone Canyon East, according to the plat of record in Book 81 of Maps at Page 34 in the records of said County, and lying West of the West line of the East 334 feet of said Tract 4;

EXCEPT that part thereof described as follows:

BEGINNING at the Southeast corner of said Stone Canyon East; thence Southerly, parallel with and 334 feet West of the East line of said Tract 4, a distance of 270 feet; thence Northwesterly to a point in the West line of the East 1000 feet of said Tract 4 which is 180 feet Southerly of the Southwest corner of Lot 22 in Stone Canyon East; thence Northerly, along said West line, to said Southwest corner; thence East, along the South line of Stone Canyon East, to the point of beginning.

Legal Description for TMS Property appearing in 1970 Special Warranty Deed for the first time.

This division of the Remainder Parcel No. 1 in 1970 required a subdivision plat approval by the Town of Paradise Valley.

B. TOWN SUBDIVISION CODE REQUIREMENTS IN EFFECT IN 1970.

At the time the Remainder Property was divided, creating the present-day TMS Property, the Town's 1962 Subdivision Regulations had been adopted by the Mayor and Town Council and were in full force and effect.³¹ As shown by the following definitions from Section 2 of the 1962 Subdivision Regulations, the division of the Remainder Property in 1970 would have required a subdivision plat approval by the Town's Planning Commission and Mayor and Council:

Easement: A grant by a property owner of the use of a strip of land for a specific purpose or purposes, by the general public, a corporation, or a certain person or persons.

Lot: A portion of a subdivision or other parcel of land having frontage on a street and intended for transfer of ownership or intended or used for building development.

³¹ See Ordinance No. 16 dated September 27, 1962 adopting Subdivision Regulations of the Town of Paradise Valley, Arizona, attached hereto as **Exhibit "14"**.

Street: For the purposes of these regulations, a street includes road, highway, drive, lane, avenue, boulevard, easement for access, right-of-way, parking or any other way whether public or private, which affords the principal means of access to abutting property.

Subdivision: The division for lease or sale to the public of a tract or parcel of land into five or more lots, tracts or parcels of land, or, if a new street is involved, any division of a parcel of land; or the division of any residential lot, the boundaries of which have been fixed by a recorded plat; provided, that a partitioning or division of land into tracts or parcels of land of five acres or more and not involving a new street, or the sale or exchange of parcels of land to or between adjoining property owners where such sale or exchange does not create additional lots, shall not be deemed a subdivision. The partitioning of land in accordance with State Statutes regulating the partitioning of land held in common ownership shall not be deemed a subdivision.³²

Emphasis added. Inasmuch as a new street would have been required in order to provide access to the newly divided Property, it was necessary for the predecessor of TMS, Camelback Mountain Properties, to obtain a subdivision plat approval from the Town of Paradise Valley. No subdivision approval has ever been issued by the Town, and the Property does not have frontage on a street. Furthermore, because TMS and the Town Attorney and Town staff appear to be cooperating to recognize an easement across our clients' lots by an implied way of necessity theory, they have conceded that there has been no "grant of easement" constituting a "street" which would have previously provided the principal means of access to the Property. Thus, by definition, the division of the Remainder Property would involve a new street, and the TMS Property was created by an unlawful subdivision in 1970. The TMS Property remains an illegal, non-conforming lot today. TMS is required to obtain subdivision plat approval from the Town before it may process plans before this Committee and seek building permit approvals.

C. TOWN SUBDIVISION CODE REQUIREMENTS CURRENTLY IN EFFECT.

All properties within a Hillside Development Area are subject to special provisions relating to lot split and subdivision development as set forth in the subdivision code.³³ The current Subdivision Code contains definitions similar to the 1962 Subdivision Regulations for the terms "easement", "lot", "street" and "subdivision".

³² *Id.*

³³ See Section 2202 of the Town of Paradise Valley Zoning Ordinance.

Easement – A grant by a property owner of the use of a strip of land for a specific purpose or purposes, by the general public, a corporation, or a certain person or persons.³⁴

Lot – A parcel of land occupied or intended for occupancy by one main building, together with any accessory buildings including the open spaces required of the Hillside Regulations and having adequate frontage on a public or private street.³⁵

Street – A road, highway, drive, lane, avenue, boulevard, easement for access, right of way, parking or any other way, whether public or private, which affords the principal means of access to abutting property.³⁶

Subdivision – 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; provided that the sale or exchange of parcels of land to or between adjoining property owners where such sale or exchange does not create additional lots shall not be deemed a subdivision. The partitioning of land in accordance with state statutes regulating the partitioning of land held in common ownership shall not be deemed a subdivision.³⁷

Emphasis added. The implied way of necessity theory currently being recognized by the Town Attorney is not a “grant of easement” for purposes of processing a subdivision plat with the Town. Note that the current Subdivision Code continues to define an easement as “a grant by a property owner”, similar to the 1962 Subdivision Regulations. The Town staff may not “grant” an easement to the Applicant by merely agreeing with a legal position presented by the Applicants’ attorney which is based upon an implied way of necessity easement theory. Unless and until a judgment is entered by the court granting some form of legal access to the TMS Property, the Property has no frontage on a public or private street and cannot be developed.

The Remainder Property was divided in 1970 and such division necessarily involved a new street which would afford the principal means of access to the TMS Property. Today, development of the TMS Property continues to involve a new street, with

³⁴ See Article 6-1 of the Town Code.

³⁵ See Section 2203 of Town of Paradise Valley Zoning Ordinance and Article 6-1 of Town Code.

³⁶ See Article 6-1 of the Town Code.

³⁷ *Id.*

the issues of creating legal access and establishing the location of the new street being litigated in court. In the event a judgment were entered by the court granting an easement to TMS, under the Town's current Subdivision Code, TMS would be required to submit a subdivision plat for its Property and the new street in order to remedy its predecessor's illegal division of the Remainder Property. Until a subdivision plat is approved by the Town, the Hillside Building Committee has no authority to review and approve plans for development on an illegal lot.

IV. VARIANCES OF TOWN ZONING ORDINANCE AND SUBDIVISION CODE

Finally, the Hillside Building Committee may not proceed with reviewing and approving the TMS submittal until TMS obtains all necessary variances of certain Zoning Ordinance and Subdivision Code requirements set forth in detail below. Variances of the Town's Zoning Ordinance requirements, including the Hillside Building Regulations, would need to be approved by the Town's Board of Adjustment prior to Hillside Building Committee review and approval. Likewise, variances of the Subdivision Code requirements would need to be approved by the Town Council.

TMS has attempted to bypass all variance requirements arising from the section of roadway which crosses our clients' Lots 22, 23 and 24 by conspicuously excluding the private roadway from its Hillside Building Committee application. This attempt is impermissible, and Town staff have no authority to waive or divert any section of the roadway from the Committee's review. The roadway would lie within the Town's Hillside Development Area and would result in disturbed area to the Hillside. Thus, any application submitted by TMS for HBC review and approval must include the entire segment of the roadway leading from San Miguel Avenue to the TMS Property.

A. ZONING ORDINANCE VARIANCES

1. Private Roadway

TMS must widen the paved width of its proposed 12-foot private roadway to comply with the conditional use permit requirements set forth in Section 1103.2 of the Zoning Ordinance or it must obtain a variance from the Town's Board of Adjustment. The standards for private roadways require the driving surface to be not less than 16 feet in width where the roadway is to provide access to one (1) or two (2) residences.³⁸ Where access to a public road for three or more residences is to be provided by a private road, all standards and requirements for subdivisions shall apply³⁹ (See Section IV.B.1 below).

³⁸ See Section 1103.2.B.3.b.i of the Town of Paradise Valley Zoning Ordinance.

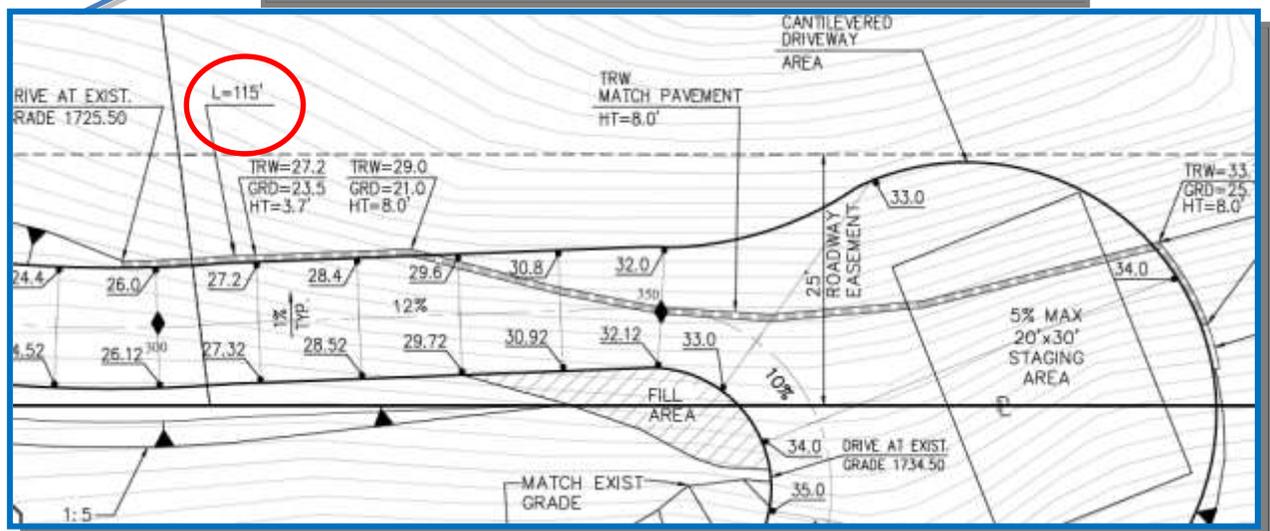
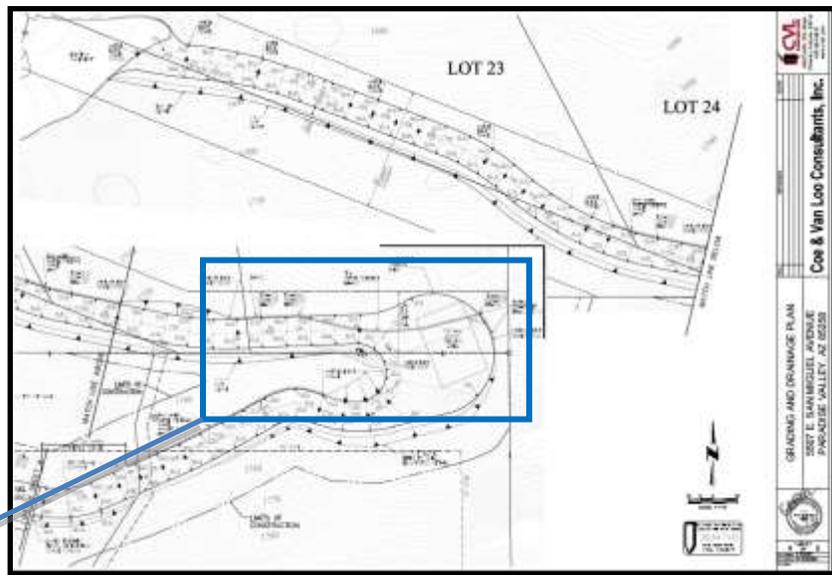
³⁹ See Section 1103.2.B.3.b.ii of the Town of Paradise Valley Zoning Ordinance.

2. Retaining Walls

Under Section 2207.VI.C.1.a of the Town's Zoning Ordinance, "the maximum length of any continuous retaining wall shall not be more than 100 linear feet." TMS must obtain a variance for at least one of its retaining walls shown in its July 27, 2016 grading and drainage plans at 115 linear feet.

Section 2207.VI.C.1.a of the Town's Zoning Ordinance also states that the maximum height of any retaining wall shall not be more than 8 feet. The records produced by TMS' consultants to our firm indicate that the private roadway across our clients' lots may require an 18-foot high retaining wall. Until TMS submits plans for the private roadway for the Town's review, it is unclear whether additional variance approvals relating to retaining walls would be required.

Retaining Wall Length of 115 Feet Requires Variance (As shown on Grading and Drainage Plans dated July 27, 2016)



B. SUBDIVISION CODE VARIANCES

TMS must process a subdivision plat approval in order to create a legal lot involving a new street, and therefore, must comply with all Hillside requirements in the Subdivision Code or obtain variance approvals of those requirements from the City Council prior to submitting for Hillside Building Committee review and approval.

1. Pavement Width of Private Roadway in Hillside Area

TMS is required to obtain a variance of Article 6-7.C.4 of the Subdivision Code which requires a “private roadway, where permitted, . . . to have a paved surface width of not less than fifteen [15] feet if serving two lots, and twenty [20] feet if serving three or more lots.” The private roadway to serve the TMS Property is designed by TMS at a 12-foot surface width, on average. The private roadway would serve 3 lots from the point of connection with San Miguel Avenue uphill to a point past the Appel’s driveway on Lot 23. The private roadway would then serve 2 lots from the point of intersection with the Appel’s driveway to the Zachariah’s driveway connection on Lot 22. Therefore, TMS must obtain a variance to reduce the requisite 20-foot and 15-foot pavement widths to only 12 feet along these stretches of the private roadway.



Sections of Private Roadway Serving More Than One (1) Lot

★ Location of TMS Property

- Stretch of Private Roadway Serving 3 Lots
20-ft pavement width required; 12-ft pavement width proposed by TMS.
- Stretch of Private Roadway Serving 2 Lots
15-ft pavement width required; 12-ft pavement width proposed by TMS.

2. Pavement Width and Maximum Grade of Public Road in Hillside Area

In the unlikely event the court were to decide that a public roadway exists across our clients' lots as result of the recording of the 1960 Easement Document, TMS must obtain 2 variances of Article 6-7.C.3 of the Subdivision Code in order to construct the roadway as proposed: (1) a variance to construct a public road with a grade exceeding 15 percent and (2) a variance to construct a public road with a reduced pavement width of less than 20 feet.

TMS is proposing a roadway which varies in most areas between a 20% slope and 30% slope in grade. Article 6-7.C.3 of the Subdivision Code states that the maximum grade of a public road "shall not exceed 15% except that under demonstrated hardship the Commission may recommend and the Council may approve a road having grade not to exceed 20%." In addition, TMS is proposing a road with an average 12-foot pavement width. Article 6-7.C.3 of the Subdivision Code states that, "[t]o minimize cuts, the Commission may recommend and the Council may approve a road of reduced pavement width but not less than 20 feet wide." In order to construct a public roadway with a pavement width of 12 feet and a grade exceeding 15 percent, TMS would be required to obtain these 2 variances of Article 6-7.C.3 of the Town's Subdivision Code.

3. Roadway Retaining Walls Exceeding 8 Feet in Height

TMS must obtain a variance of Article 6-7.C.15 of the Subdivision Code to construct roadway retaining walls which exceed 8 feet in height along the section of roadway on our clients' lots. From the information obtained from the files of TMS consultants' pursuant to subpoena, apparently the section of private roadway on our clients' lots was excluded from the Hillside Building Committee application over concern that the retaining walls could measure up to 18 feet in height.

4. Land Devoted to Private Roads Limited to 10 Percent of Gross Parcel Area.

Article 6-7.C.7 of the Subdivision Code states that "[i]n any Hillside Development Area to be subdivided, the amount of land devoted to public rights of way or private roads approved by Special Use Permit⁴⁰ shall not exceed ten (10) percent of the gross parcel area." The TMS Property is approximately 3.44 gross acres, or 149,846 square feet. Ten (10) percent of the gross parcel area would equal 14,985 square feet. Therefore, the area of the TMS Property devoted to the private roadway would be limited to 14,985 square feet.

⁴⁰ Sic. Private roads are approved by conditional use permit, not special use permit. See Section 1101.B of the Town of Paradise Valley Zoning Ordinance.

The proposed private roadway leading to the TMS Property totals approximately 580 feet in length with an estimated 50-foot width devoted to the private roadway. Based upon these estimates, the private roadway area would total 29,000 square feet, which would greatly exceed the 14,985 square-foot limitation. TMS would be required to obtain a variance of Article 6-7.C.7 of the Subdivision Code if the area of the private roadway does indeed exceed 14,985 square feet.

5. Cut and Fill Areas for Private Roads Limited to 5 Percent of the Gross Parcel Area.

Pursuant to Article 6-7.C.8 of the Subdivision Code, “[t]he total area subject to cut and/or fill for purposes of public or private roads within a Hillside Development Area subdivision shall not exceed five (5) percent of the gross parcel area.” With a gross parcel area of 149,846 square feet, five (5) percent of the TMS gross parcel area would equal approximately 7,492 square feet.

TMS’ proposed private roadway totals approximately 580 feet in length with an estimated width of 20 feet for cut and fill purposes. Based upon these estimates, the private roadway cut and fill area would total 11,600 square feet. Therefore, TMS would be required to obtain a variance of Article 6-7.C.8 of the Subdivision Code.

V. CONCLUSION

In the event this Application is scheduled for a Formal Hillside Committee Review Meeting before any of these 4 requirements have been fulfilled by TMS, our clients will be forced to take any and all appropriate measures to enjoin the HBC members from exceeding their authority and jurisdiction to hear and decide this premature Application. As currently proposed, this Application involves unlawful access to the Property over and across our clients’ lots, poses several critical safety concerns that could result in damage to property or loss of life which remain unaddressed by the Applicant, would undoubtedly result in a diminution of our clients’ property values and would cause irreversible scarring on the north face of the iconic Camelback Mountain. As members of the Towns’ Hillside Building Committee, you are charged with enforcing the Hillside Development Regulations to “provide for the safety and welfare of the Town and its residents” and “to preserve and protect the hillside environment.”⁴¹ We hope our presentation at the September 8, 2016 HBC meeting and the information set forth in this follow-up letter will cause the Committee to require the Applicant to present hard evidence of legal access to the Property, obtain all prerequisite approvals from the Town, and complete the requisite studies and plans prior to deciding whether or not to approve the TMS application.

⁴¹ See Section 2201 of the Town of Paradise Valley Zoning Ordinance.

Mr. Scott Jarson, Chairman
Hillside Building Committee
September 20, 2016
Page 24 of 24

We look forward to hearing from you. Thank you.

Yours very truly,



Francis J. Slavin

FJS
Enclosures

Cc:

Daran Wastchak, HBC Member (via hand-delivery w/ attachments)
Scott Moore, HBC Member (via hand-delivery w/ attachments)
Jonathan Wainwright, HBC Member (via hand-delivery w/ attachments)
Jeffrey P. Wincel, HBC Member (via hand-delivery w/ attachments)
Dolf Strom, HBC Member (via hand-delivery w/ attachments)
Thomas G. Campbell, HBC Member (via hand-delivery w/ attachments)
Richard K. Mahrle, Esq., HBC Member (via hand-delivery w/ attachments)
Scott McPherson, HBC Member (via hand-delivery w/ attachments)
Kevin Burke, Town Manager (via hand-delivery w/ attachments)
Andrew Miller, Town Attorney (via hand-delivery w/ attachments)
Eva Cutro, Town Community Development Director (via hand-delivery w/ attachments)
Duncan Miller, Town Clerk (via hand-delivery w/ attachments)
Andrew Abraham, Esq., Counsel for TMS Ventures, LLC (via hand-delivery w/ attachments)
Douglas Jorden, Esq., Counsel for TMS Ventures, LLC (via hand-delivery w/ attachments)

EXHIBIT 1

1 Francis J. Slavin, #002972
Heather N. Dukes, #030161
2 FRANCIS J. SLAVIN, P.C.
2198 East Camelback Road, Suite 285
3 Phoenix, Arizona 85016
4 Tel. (602) 381-8700
Fax (602) 381-1920
5 Email: service@fjslegal.com
6 b.slavin@fjslegal.com
h.dukes@fjslegal.com

7 *Attorneys for Defendants/Counterclaimants*

8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 TMS VENTURES, LLC, an Arizona limited
12 liability company,

13 Plaintiff,

14 v.

15 TERESA C. ZACHARIAH and JOE
ZACHARIAH, wife and husband;
16 ROSANNE T. APPEL, a married woman
as her sole and separate property;
17 INGRID LENZ HARRISON and ALFRED
18 HARRISON, or their successors, as Trustees of
The Ingrid Lenz Harrison Revocable Trust
19 Under Agreement Dated November 19, 1999,
as amended; JERRY D. SMITH, Trustee of the
20 JDS Trust Dated August 22, 2005; JOHN
21 DOES I-Z, JANE DOES 1-X; ABC
CORPORATIONS I-X; BLACK AND WHITE
22 PARTNERSHIPS I-X and XYZ LIMITED
23 LIABILITY COMPANIES 1-X,

24 Defendants.

25 TERESA C. ZACHARIAH AND JOE
26 ZACHARIAH, wife and husband; ROSANNE
T. APPEL, a married woman as her sole and
separate property; INGRID LENZ HARRISON

Case No. CV2016-005381

**ANSWER
AND
COUNTERCLAIM**

(Assigned to the Hon. Lori Bustamante)

1 and ALFRED HARRISON, or their successors,
2 as Trustees of the Ingrid Lenz Harrison
3 Revocable Trust Under Agreement Dated
4 November 19, 1999, as amended,

5 Counterclaimants,

6 v.

7 TMS VENTURES, LLC, an Arizona limited
8 liability company,

9 Counterdefendants.

10 Defendants Teresa C. Zachariah and Joe Zachariah (“Defendants Zachariah”),
11 Rosanne T. Appel (“Defendant Appel”) and Ingrid Lenz Harrison and Alfred Harrison
12 (“Defendants Harrison”) (collectively herein “Defendants”), by and through counsel
13 undersigned, respond to Plaintiff’s Verified First Amended Complaint and admit, deny and
14 allege as follows:

15 **PARTIES & JURISDICTION**

16 1. Plaintiff TMS Ventures, LLC is an Arizona limited liability company with its
17 principal place of business in Maricopa County, Arizona.

18 **ANSWER: Admit.**

19 2. Upon information and belief, Defendants Teresa C. Zachariah and Joe Zachariah,
20 wife and husband, are residents of Maricopa County, Arizona.

21 **ANSWER: Admit.**

22 3. Upon information and belief, Defendant Rosanne T. Appel, is a resident of
23 Arapahoe County, Colorado.

24 **ANSWER: Admit.**

25 4. Upon information and belief, Defendants Ingrid Lenz Harrison and Alfred
26 Harrison, as Trustees of the Ingrid Lenz Harrison Revocable Trust Under Agreement Dated
November 19, 1999, as amended, are residents of Hennipin County, Minnesota.

1 **ANSWER: Admit.**

2 5. Upon information and belief, Defendant Jerry D. Smith, Trustee of the JDS Trust
3 dated August 22, 2005, is a resident of Maricopa County, Arizona.

4 **ANSWER: Defendants lack knowledge or information sufficient to form a belief as to**
5 **the truth of the allegations.**

6 6. Defendants John Doe I-X and Jane Doe I-X, ABC Corporations I-X, Black and
7 White Partnerships I-X, and XYZ Limited Liability Companies I-X, all represent unknown
8 parties who own or claim entitlement to the real property or easement described in this
9 Complaint and/or have caused events to occur as described herein. The true names of these
10 defendants are unknown. Plaintiff will request leave to amend its Complaint when the true
11 names are ascertained.

12 **ANSWER: Defendants lack knowledge or information sufficient to form a belief as to**
13 **the truth of the allegations.**

14 7. All of the Defendants shall collectively be referred to as the “Defendants.”

15 **ANSWER: The averment contained in this paragraph consists of a defined term for**
16 **this pleading to which no response is required. In answering this complaint on behalf**
17 **of Defendants Zachariah, Appel and Harrison, the term “Defendants” used herein**
18 **shall solely refer to Defendants Zachariah, Appel and Harrison and no other**
19 **defendants.**

20 8. Venue is proper in this court pursuant to A.R.S. § 12-401(12).

21 **ANSWER: Admit.**

22 9. The court has subject matter jurisdiction over this matter because it concerns real
23 property located in Maricopa County, Arizona, and there is *in personam* jurisdiction over
24 the Defendants above named with respect to the claims alleged in this Complaint.

25 **ANSWER: Admit.**

26

1 **GENERAL ALLEGATIONS**

2 10. Plaintiff is the owner of residential real property located at 5507 E. San Miguel
3 Lane, Paradise Valley, Arizona 85253 (APN 172-47-078D) (the "Property"). The Property
4 is located on the North side of Camelback Mountain and is currently a vacant lot.

5 **ANSWER: Admit that Plaintiff is the record title owner of real property assigned**
6 **Assessor Parcel Number 172-47-078D (the "Property") which is located on the north**
7 **face of Camelback Mountain and deny the remaining allegations.**

8 11. The Property is primarily surrounded by park and recreation area owned by the
9 City of Phoenix (along the East, West and South boundaries of the Property).

10 **ANSWER: Admit the West and South property lines of the Property and all but**
11 **approximately the north 110 feet of the East property line of the Property are bounded**
12 **by land owned by the City of Phoenix and deny the remaining allegations.**

13 12. This lawsuit seeks a determination as to the validity of and Plaintiff's right to use
14 that certain easement titled "Easement for Roadway" and recorded on March 1, 1960 at
15 Docket 3178, Page 402, in the Maricopa County Recorder's Office (the "Easement"). A true
16 and correct copy of the Easement is attached hereto as Exhibit A.

17 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
18 **for its failure to comply with Arizona law. The averments contained in this paragraph**
19 **consist of legal conclusions and argument to which no response is required. In the**
20 **event a response is required, Defendants deny the assertions contained in this**
21 **paragraph.**

22 13. Defendants are the owners of Lots 22, 23, 24, and 25 in the Stone Canyon East
23 subdivision.

24 **ANSWER: Admit that Defendants Zachariah own Lot 22 and the residence located**
25 **thereon, that Defendant Appel owns Lot 23 and the residence located thereon, and that**
26 **Defendants Harrison own Lot 24 and the residence located thereon, and lack**

1 **knowledge or information sufficient to form a belief as to the truth of the remaining**
2 **allegations.**

3 14. The Stone Canyon East subdivision plat was recorded on February 27, 1959 at
4 Book 81 of Maps, Page 34, Maricopa County Recorder's Office (the "Plat"). A true and
5 correct copy of the subdivision plat is attached hereto as Exhibit B.

6 **ANSWER: Admit.**

7 15. Defendants' property (Lots 22, 23, 24, and 25) are adjacent to the Property owned
8 by Plaintiff.

9 **ANSWER: Admit that Lots 22, 24, and 25 lie adjacent to the Property and deny the**
10 **remaining allegations.**

11 16. The Property is not located within the Stone Canyon East subdivision.

12 **ANSWER: Admit.**

13 17. Defendants Teresa C. Zachariah and Joe Zachariah, wife and husband, are the
14 owners of Lot 22 of the Stone Canyon East subdivision, commonly known as 5505 E. San
15 Miguel Avenue, Paradise Valley, Arizona 85253. They acquired title to their property by
16 virtue of a Special Warranty Deed recorded on June 25, 2010 at Document No. 2010-
17 0542481, M.C.R. A true and correct copy of said deed is attached as Exhibit C and
18 incorporated by this reference.

19 **ANSWER: Admit.**

20 18. Defendant Rosanne T. Appel is the owner of Lot 23 of the Stone Canyon East
21 subdivision, commonly known as 5507 E. San Miguel Avenue, Paradise Valley, Arizona
22 85253. Defendant acquired title to her property by virtue of a Warranty Deed recorded on
23 August 31, 2009 at Document No. 2009-0808938, M.C.R. A true and correct copy of said
24 deed is attached as Exhibit D and incorporated by this reference.

25 **ANSWER: Admit.**

26

1 19. Defendants Ingrid Lenz Harrison and Alfred Harrison, as Trustees of the Ingrid
2 Lenz Harrison Revocable Trust Under Agreement Dated November 19, 1999, as amended,
3 are the owners of Lot 24 of the Stone Canyon East subdivision, commonly known as 5519
4 E. San Miguel Avenue, Paradise Valley, Arizona 85253. Defendant acquired title to her
5 property by virtue of a Special Warranty Deed recorded on June 12, 2009 at Document No.
6 2009-0537533, M.C.R. A true and correct copy of said deed is attached as Exhibit E and
7 incorporated by this reference.

8 **ANSWER: Admit that Defendants Harrison own Lot 24 located at 5519 East San**
9 **Miguel Avenue, Paradise Valley, Arizona 85253 and acquired title by virtue of a**
10 **Special Warranty Deed attached as Exhibit E, and deny the remaining allegations.**

11 20. Defendant Jerry D. Smith, Trustee of the JDS Trust dated August 22, 2005, is the
12 owner of Lot 25 of the Stone Canyon East subdivision, commonly known as 5525 E. San
13 Miguel Avenue, Paradise Valley, Arizona 85253. Defendant acquired title to her property
14 by virtue of a Warranty Deed recorded on June 19, 2006 at Document No. 2006-0819362,
15 M.C.R. A true and correct copy of said deed is attached as Exhibit E and incorporated by
16 this reference.

17 **ANSWER: Lack knowledge or information sufficient to form a belief as to the truth of**
18 **the allegations.**

19 21. Plaintiff purchased the Property on or about November 16, 2012 pursuant to the
20 Warranty Deed recorded that same date in Maricopa County Recorder's Office Document
21 No. 2012-1046521, a true copy of which is attached as Exhibit G and incorporated by this
22 reference.

23 **ANSWER: Lack knowledge or information sufficient to form a belief as to the truth of**
24 **the allegations.**

25 22. Prior to purchasing the Property, the Plaintiff knew about and relied upon the
26 Easement, which provided for ingress and egress leading to the Property.

1 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
2 **for its failure to comply with Arizona law. The averments contained in this paragraph**
3 **consist of legal conclusions and argument to which no response is required. In the**
4 **event a response is required, Defendants deny the assertions contained in this**
5 **paragraph.**

6 23. Upon information and belief, Phoenix Title and Trust Company (“Phoenix Title”)
7 was a subdivision trust company used to create the Stone Canyon East subdivision.

8 **ANSWER: Lack knowledge or information sufficient to form a belief as to the truth of**
9 **the allegations.**

10 24. At all times relevant to the Easement, Phoenix Title held common ownership of
11 the real property that included the Plaintiff’s Property, and Defendants’ property (Lots 22,
12 23, 24, and 25).

13 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
14 **for its failure to comply with Arizona law. The averments contained in this paragraph**
15 **consist of legal conclusions and argument to which no response is required. In the**
16 **event a response is required, Defendants deny the assertions contained in this**
17 **paragraph.**

18 25. The Easement’s stated purpose is to “increase the width of San Miguel Avenue as
19 shown on said plat and **to provide for another roadway not shown in said plat.”** *See*
20 Exhibit A (emphasis added).

21 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
22 **for its failure to comply with Arizona law. The averments contained in this paragraph**
23 **consist of legal conclusions and argument to which no response is required. In the**
24 **event a response is required, Defendants deny the assertions contained in this**
25 **paragraph.**

26 26. The Easement created a roadway easement across the Defendants’ properties:

1 NOW, THEREFORE ... Phoenix Title and Trust Company . . . does hereby
2 grant to the County of Maricopa, State of Arizona, an easement for roadway
3 purposes . . . as contained herein and as set forth below, said easement to be
4 over the following described premises:

5 [...] A strip of land 25' wide along the N. side and a strip of
6 land 25' wide along the S. line of the lot line separating Lots 22
7 and 23, and 25' wide N. of the S. border of said subdivision in
8 Lots 24 and 25.

9 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
10 **for its failure to comply with Arizona law. The averments contained in this paragraph**
11 **consist of legal conclusions and argument to which no response is required. In the**
12 **event a response is required, Defendants deny the assertions contained in this**
13 **paragraph.**

14 27. As stated therein, the recorded Easement consists of twenty-five feet (25') along
15 each side of the common boundary line between Lot 22 and Lot 23, and twenty-five feet
16 (25') along the southern boundary line of Lot 24 and Lot 25.

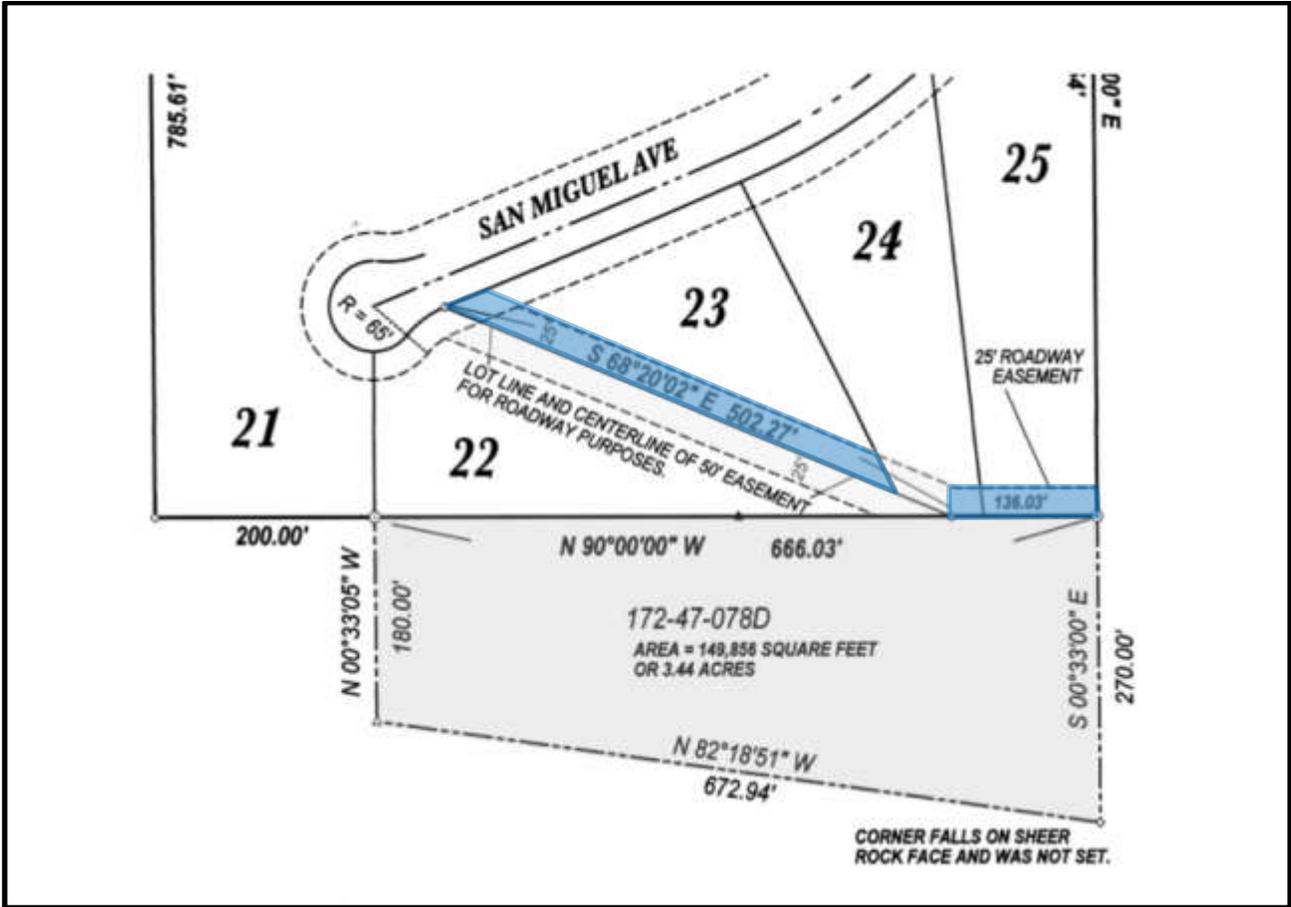
17 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
18 **for its failure to comply with Arizona law and further allege that the language quoted**
19 **in the document entitled Easement for Roadway attached as Exhibit A to the Verified**
20 **First Amended Complaint provides a legal description only along the north side of the**
21 **south line separating Lots 22 and 23, and 25 feet wide north of the south border of the**
22 **Stone Canyon East subdivision in Lots 24 and 25 and deny the remaining allegations.**

23 28. As depicted below, the Easement (highlighted in yellow) provides for a roadway
24 leading from San Miguel Avenue to the Plaintiff's Property (highlighted in green):



1 ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid
 2 for its failure to comply with Arizona law and further allege that the sketch
 3 accompanying Paragraph 28 of the First Amended Complaint incorrectly depicts the
 4 legal description in the document entitled Easement for Roadway. The legal
 5 description in the document is accurately portrayed by the area delineated in blue in
 6 Figure 1 below. The averments contained in this paragraph consist of legal
 7 conclusions and argument to which no response is required. In the event a response is
 8 required, Defendants deny the assertions contained in this Paragraph.

9
 10 **FIGURE 1**



1 29. The Easement constitutes the only express legal access to the Plaintiff's Property.

2 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
3 **for its failure to comply with Arizona law. The averments contained in this paragraph**
4 **consist of legal conclusions and argument to which no response is required. In the**
5 **event a response is required, Defendants deny the assertions contained in this**
6 **paragraph.**

7 30. Plaintiff seeks a declaration from the court that it is entitled to use the Easement
8 for ingress and egress to and from the Property.

9 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
10 **for its failure to comply with Arizona law. The averments contained in this paragraph**
11 **consist of legal conclusions and argument to which no response is required. In the**
12 **event a response is required, Defendants deny the assertions contained in this**
13 **paragraph.**

14 31. The Easement has been partially constructed and a portion of the Easement serves
15 as a roadway leading to Lot 22 and Lot 23.

16 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
17 **for its failure to comply with Arizona law. The averments contained in this paragraph**
18 **consist of legal conclusions and argument to which no response is required. In the**
19 **event a response is required, Defendants deny the assertions contained in this**
20 **paragraph.**

21 32. Phoenix Title recorded the Easement for Roadway in 1960 while it owned the
22 Property and the lots encumbered by the easement (Lots 22, 23, 24, and 25).

23 **ANSWER: Admit that the document entitled Easement for Roadway attached as**
24 **Exhibit A to Plaintiff's Verified First Amended Complaint was recorded in 1960 and**
25 **deny the remaining allegations.**

26

1 33. Following the recording of the Easement, Phoenix Title sold Lots 22, 23, 24, and
2 25 and the Property to third-parties with express language in the various deeds that title was
3 taken “subject to ... easements” of record.

4 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
5 **for its failure to comply with Arizona law. The averments contained in this paragraph**
6 **consist of legal conclusions and argument to which no response is required. In the**
7 **event a response is required, Defendants deny the assertions contained in this**
8 **paragraph.**

9 34. Upon information and belief, Defendants purchased their lots (Lots 22, 23, 24,
10 and 25) with actual and/or constructive knowledge of the Easement.

11 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
12 **for its failure to comply with Arizona law. The averments contained in this paragraph**
13 **consist of legal conclusions and argument to which no response is required. In the**
14 **event a response is required, Defendants deny the assertions contained in this**
15 **paragraph.**

16 35. Defendants are bound by the terms and restrictions imposed by the Easement.

17 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
18 **for its failure to comply with Arizona law. The averments contained in this paragraph**
19 **consist of legal conclusions and argument to which no response is required. In the**
20 **event a response is required, Defendants deny the assertions contained in this**
21 **paragraph.**

22 36. On or about March 31, 2016, and more than 20 days before filing this lawsuit,
23 Plaintiff, through its attorney, tendered to Defendants a written demand to acknowledge the
24 Easement, together with a Quit Claim Deed and \$5.00 cash pursuant to A.R.S. § 12-
25 1103(B). A copy of the letters are attached as Exhibit H and incorporated by this reference.
26

1 **ANSWER: Admit that copies of the letters attached as Exhibit H were tendered to**
2 **each of said Defendants. Allege that the document defined by Plaintiff as “the**
3 **Easement” is invalid for its failure to comply with Arizona law. The remaining**
4 **averments contained in this paragraph consist of legal conclusions and argument to**
5 **which no response is required. In the event a response is required, Defendants deny**
6 **the remaining assertions contained in this paragraph.**

7 37. Despite demand, Defendants have not signed the Quit Claim Deed or responded
8 to the letters sent by Plaintiff.

9 **ANSWER: Admit that Defendants have not signed Quit Claim Deeds and deny the**
10 **remaining allegations.**

11 38. Plaintiff is entitled to its reasonable attorneys’ fees and costs pursuant to A.R.S.
12 §§ 12-1103.

13 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
14 **and argument to which no response is required. In the event a response is required,**
15 **Defendants deny the assertions in this paragraph.**

16 **COUNT I**
17 **(Quiet Title/Declaratory Judgment- Express Easement)**

18 39. Plaintiff incorporates all of the allegations contained in the preceding paragraphs
19 as if fully stated here.

20 **ANSWER: Defendants incorporate by reference their responses to the allegations**
21 **contained above.**

22 40. An express public easement for ingress and egress exists from San Miguel
23 Avenue to the Plaintiff’s Property.

24 **ANSWER: Deny.**

25 41. Upon information and belief, Defendants claim there is no such easement, which
26 is adverse to Plaintiff’s title and usage of the Property.

1 **ANSWER: Defendants admit that no easement exists for Plaintiff over Defendants'**
2 **property and deny the remaining allegations.**

3 42. Defendants' claims are without any right, and Defendants have no right, title,
4 estate, lien or interest superseding Plaintiff's use and entitlement to the Easement.

5 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
6 **for its failure to comply with Arizona law. The averments contained in this paragraph**
7 **consist of legal conclusions and argument to which no response is required. In the**
8 **event a response is required, Defendants deny the assertions contained in this**
9 **paragraph.**

10 43. Plaintiff seeks a determination that the Easement is valid and enforceable and that
11 Plaintiff is entitled to use the Easement for ingress and egress for the benefit of its Property.

12 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
13 **for its failure to comply with Arizona law. The averments contained in this paragraph**
14 **consist of legal conclusions and argument to which no response is required. In the**
15 **event a response is required, Defendants deny the assertions contained in this**
16 **paragraph.**

17 44. A real and present controversy exists between the parties because Defendants
18 refuse to recognize and honor the right of Plaintiff to use the Easement for ingress and
19 egress to the Property.

20 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
21 **for its failure to comply with Arizona law. Admit that Defendants refuse to recognize**
22 **that Plaintiff has any right to use any part of Lots 22, 23, and 24 as an easement for**
23 **access, ingress and egress to the Property and deny the remaining allegations.**

24 45. Defendants have refused and continue to refuse to recognize Plaintiff's right to go
25 on and use the Easement for access, ingress and egress to Plaintiff's Property.

26

1 **of the Stone Canyon East subdivision plat, and deny the remaining allegations.**

2 50. On or about March 1, 1960, the common grantor (Phoenix Title) executed and
3 caused an “Easement for Roadway” to be recorded, a true and correct copy of which is
4 attached as Exhibit A hereto.

5 **ANSWER: Admit that Phoenix Title and Trust Company, an Arizona corporation, as**
6 **Trustee, executed the document entitled Easement for Roadway attached as Exhibit A**
7 **to the First Amended Complaint, and deny the remaining allegations.**

8 51. The common grantor stated in the “Easement for Roadway” that the purpose of
9 this document was “to increase the width of San Miguel Avenue as shown on said plat and
10 to provide for another roadway not shown in said plat.” *Id.*

11 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
12 **and argument to which no response is required. In the event a response is required,**
13 **Defendants deny the assertions contained in this paragraph.**

14 52. As evidenced by the recorded Easement, the common grantor intended to provide
15 for ingress and egress to the Property from San Miguel Avenue.

16 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
17 **for its failure to comply with Arizona law. The averments contained in this paragraph**
18 **consist of legal conclusions and argument to which no response is required. In the**
19 **event a response is required, Defendants deny the assertions contained in this**
20 **paragraph.**

21 53. Without an easement, the Property would be landlocked on Camelback Mountain.

22 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
23 **and argument to which no response is required. In the event a response is required,**
24 **Defendants deny the assertions contained in this paragraph.**

1 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
2 **and argument to which no response is required. In the event a response is required,**
3 **Defendants deny the assertions contained in this paragraph.**

4 59. The roadways contained in the Easement have been dedicated for public use.

5 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
6 **for its failure to comply with Arizona law. The averments contained in this paragraph**
7 **consist of legal conclusions and argument to which no response is required. In the**
8 **event a response is required, Defendants deny the assertions contained in this**
9 **paragraph.**

10 60. Plaintiff is entitled to use the Easement for ingress and egress to the Property.

11 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
12 **for its failure to comply with Arizona law. The averments contained in this paragraph**
13 **consist of legal conclusions and argument to which no response is required. In the**
14 **event a response is required, Defendants deny the assertions contained in this**
15 **paragraph.**

16 **COUNT IV**
17 **(Private Way of Necessity - A.R.S. § 12-1201, et seq.)**

18 61. Plaintiff incorporates all of the allegations contained in the preceding paragraphs
19 as if fully stated here.

20 **ANSWER: Defendants incorporate by reference their responses to the allegations**
21 **above.**

22 62. As an alternative count, Plaintiff is entitled to a private way of necessity as
23 provided for under A.R.S. § 12-1201, et. seq.

24 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
25 **and argument to which no response is required. In the event a response is required,**
26 **Defendants deny the assertions contained in this paragraph.**

1 **ANSWER: Defendants incorporate by reference their responses to the allegations**
2 **above.**

3 68. The Easement is an express easement that was recorded before Defendants
4 acquired any interest in their property. Alternatively, Plaintiff's Property is benefitted by an
5 implied easement in the same location as the Easement.

6 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
7 **for its failure to comply with Arizona law. The averments contained in this paragraph**
8 **consist of legal conclusions and argument to which no response is required. In the**
9 **event a response is required, Defendants deny the assertions contained in this**
10 **paragraph.**

11 69. The Easement (express or implied) is fifty-feet (50') in width and extends from
12 San Miguel Avenue to the Property.

13 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
14 **for its failure to comply with Arizona law. The averments contained in this paragraph**
15 **consist of legal conclusions and argument to which no response is required. In the**
16 **event a response is required, Defendants deny the assertions contained in this**
17 **paragraph.**

18 70. The defendant owners of Lots 22 and 23 have maintained a secured gate at the
19 entrance to the Easement which those Defendants can lock or unlock at their convenience.

20 **ANSWER: Admit that the owners of Lot 22 and 23 have maintained a secured gate on**
21 **their respective properties. Allege that the document defined by Plaintiff as "the**
22 **Easement" is invalid for its failure to comply with Arizona law. The remaining**
23 **averments contained in this paragraph consist of legal conclusions and argument to**
24 **which no response is required. In the event a response is required, Defendants deny**
25 **the remaining assertions contained in this paragraph.**

1 71. Said gate has made it impossible for Plaintiff to use the Easement for ingress and
2 egress to Plaintiff's Property.

3 **ANSWER: Admit that the owners of Lots 22 and 23 have maintained a secured gate**
4 **on their respective properties. Admit that it is only physically possible for the owners**
5 **of Lots 22 and 23 to use their respective properties. Allege that the document defined**
6 **by Plaintiff as "the Easement" is invalid for its failure to comply with Arizona law.**
7 **The remaining averments contained in this paragraph consist of legal conclusions and**
8 **argument to which no response is required. In the event a response is required,**
9 **Defendants deny the remaining assertions contained in this paragraph.**

10 72. Additionally Plaintiff believes Defendants will restrict access to the Easement
11 (express or implied) while Plaintiff constructs the remaining portions of the Easement, so it
12 can provide physical access to the Property within the boundaries of the Easement.

13 **ANSWER: Admit that the owners of Lots 22 and 23 have maintained a secured gate**
14 **on their respective properties. Admit that it is only physically possible for the owners**
15 **of Lots 22 and 23 to use their respective properties. Allege that the document defined**
16 **by Plaintiff as "the Easement" is invalid for its failure to comply with Arizona law.**
17 **The remaining averments contained in this paragraph consist of legal conclusions and**
18 **argument to which no response is required. In the event a response is required,**
19 **Defendants deny the remaining assertions contained in this paragraph.**

20 73. Plaintiff has no adequate remedy at law and has (and will) suffer irreparable
21 harm.

22 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
23 **and argument to which no response is required. In the event a response is required,**
24 **Defendants deny the assertions contained in this paragraph.**

25 74. Plaintiff's right to free and unrestricted ingress and egress to the Property is
26 unique and difficult if not impossible to measure in monetary damages.

1 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
2 **and argument to which no response is required. In the event a response is required,**
3 **Defendants deny the assertions contained in this paragraph.**

4 75. In addition or in the alternative, the actions by Defendants constitute a breach of
5 their covenant to Plaintiff's quiet and peaceful enjoyment of the Easement (express or
6 implied). Plaintiff seeks recovery of the actual and consequential damages from the
7 Defendants together with its reasonable attorneys' fees and costs.

8 **ANSWER: The averments contained in this paragraph consist of legal conclusions**
9 **and argument to which no response is required. In the event a response is required,**
10 **Defendants deny the assertions contained in this paragraph.**

11 76. For the reasons stated, Plaintiff requests that the court enjoin the Defendants from
12 restricting or impeding Plaintiff's use, access to, or construction of the Easement, including
13 but not limited to enjoining Defendants from maintaining a secured gate across the
14 Easement.

15 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
16 **for its failure to comply with Arizona law. The averments contained in this paragraph**
17 **consist of legal conclusions and argument to which no response is required. In the**
18 **event a response is required, Defendants deny the assertions contained in this**
19 **paragraph.**

20 77. It is essential that the court temporarily restrain and/or enter a preliminary
21 injunction against Defendants prohibiting them from continuing the conduct described
22 above because those actions adversely affect the Plaintiff's right to use the Easement.

23 **ANSWER: Allege that the document defined by Plaintiff as "the Easement" is invalid**
24 **for its failure to comply with Arizona law. The averments contained in this paragraph**
25 **consist of legal conclusions and argument to which no response is required. In the**
26 **event a response is required, Defendants deny the assertions contained in this**

1 **paragraph.**

2 78. Upon application, the Defendants should be required to appear and show cause
3 why they should not be enjoined during the pendency of this lawsuit.

4 **ANSWER: Allege that the document defined by Plaintiff as “the Easement” is invalid**
5 **for its failure to comply with Arizona law. The averments contained in this paragraph**
6 **consist of legal conclusions and argument to which no response is required. In the**
7 **event a response is required, Defendants deny the assertions contained in this**
8 **paragraph.**

9 **79. Defendants deny each and every allegation not expressly admitted herein.**

10 **AFFIRMATIVE DEFENSES**

11 Defendants allege that the Plaintiff’s claims are barred by the following affirmative
12 defenses:

13 A. **LACHES.** Defendants Zachariah and Appel assert the affirmative
14 defense of laches. Since 1973, the owner of the Property and its successors knew or should
15 have known that the residence and improvements have been constructed on Lot 22 including
16 the paved driveway and turn around area serving the residence on Lot 22. Since 1987, the
17 owner of the Property and its successors knew or should have known that a private security
18 gate had been erected and thereafter continuously maintained upon and across the entire
19 width of the 25-foot easement over Lot 22 SCE being claimed by Plaintiff.

20 Since 1983, the owner of the Property and its successors, knew or should have
21 known that the residence and improvements have been constructed on Lot 23 including the
22 paved driveway from San Miguel Avenue serving the property. Since 1998, the owner of
23 the Property and its successors knew or should have known that a private security gate had
24 been erected and thereafter continuously maintained across the 25-foot easement area on Lot
25 23 SCE being claimed by Plaintiff.

1 No one on behalf of the owner of the Property has ever contacted either
2 Defendant Zachariah or Defendant Appel claiming that they were trespassing on the
3 easement area being claimed by Plaintiff. Defendants have relied on the silence of Plaintiff
4 and its predecessors when purchasing and maintaining residences and improvements on
5 Lots 22 and 23.

6 B. **WAIVER.** Defendants assert the affirmative defense of waiver. When
7 Phoenix Title and Trust Company, as Trustee, first conveyed Lots 22-25 SCE, it failed to
8 specifically reserve an easement for access, ingress and egress over and across Lots 22-25
9 SCE for the benefit of the Property, and thus knowingly relinquished the right to later claim
10 an easement for the Property over and across Lots 22-25 SCE.

11 C. **STATUTE OF LIMITATIONS.** Defendants Zachariah and Appel
12 assert the affirmative defense of statute of limitations. As stated above, the owners of Lots
13 22 and 23 SCE peaceably, adversely and continuously maintained site improvements in and
14 upon the claimed easement area on their respective lots and the security gates blocking
15 access to the claimed easement area on their respective lots for more than a period of three
16 (3) years prior to the commencement of the instant lawsuit by Plaintiff. Under A.R.S.
17 § 12-253, Plaintiff's claim violates the applicable statute of limitations and is barred.

18 D. Plaintiff fails to state a claim upon which relief may be granted.

19 E. Plaintiff's claims may be barred by the doctrine of unclean hands.

20 F. Discovery has not yet begun in this case and therefore Defendants
21 assert each and every affirmative defense set forth in Rules 8(c) and 12, Ariz. R. Civ. P.

22 **WHEREFORE, having fully defended and offered affirmative defenses,**
23 **Defendants pray that Plaintiff's Verified First Amended Complaint be dismissed, that**
24 **Plaintiff take nothing thereby, that Defendants be awarded the costs and expenses**
25 **incurred herein, including reasonable attorneys' fees, and for such other and further**
26 **relief as the Court may deem just in the premises.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COUNTERCLAIM

Counterclaimants/Defendants Teresa C. Zachariah and Joe Zachariah, Roseanne T. Appel, and Ingrid Lenz Harrison and Alfred Harrison (herein “Counterclaimants”) for their counterclaims against Counterdefendant/Plaintiff TMS Ventures, LLC, in this action, allege as follows:

GENERAL ALLEGATIONS

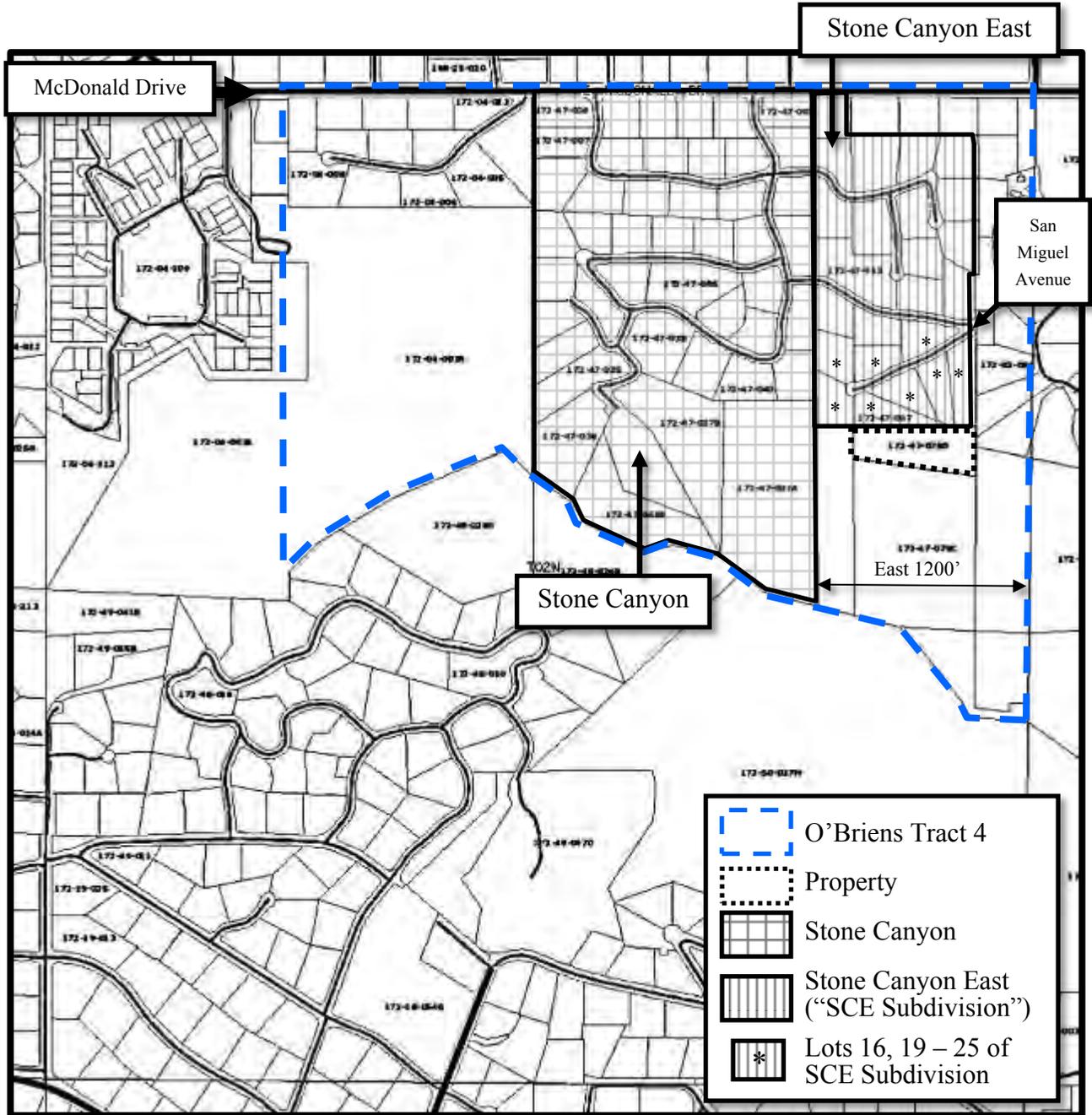
**Conveyance History of the Property and
Lots 22, 23 and 24 Stone Canyon East**

1. The Property as defined in the First Amended Complaint and the Stone Canyon East subdivision are part of Tract 4 of O’Brien’s Camelback Lands, a subdivision map recorded 89 years ago on April 24, 1928 in Book 18 of Maps, Page 36 of the Official Records of the Maricopa County Recorder (“MCR”) (herein “O’Briens Tract 4). *See* Figure 2 below.

2. The Stone Canyon subdivision plat was recorded 61 years ago on March 27, 1955 at Book 62 of Maps, Page 41, MCR. The Stone Canyon East subdivision plat was recorded 57 years ago on February 27, 1959 at Book 81 of Maps, Page 34, MCR (the “SCE Subdivision” or “SCE”). *See* Exhibit B attached to the First Amended Complaint. The Stone Canyon and the Stone Canyon East subdivisions are both part of O’Briens Tract 4. The Stone Canyon subdivision is contiguous to the west border of the Stone Canyon East subdivision. *See* Figure 2 below.

///
///
///
///
///
///

FIGURE 2
O'Brien's Tract 4
Section 17, Township 2 North, Range 4 East



3. The Property and Lots 16 and 19 through 25 of the SCE Subdivision have a common origin, both being part of the east 1200 feet of O'Brien's Tract 4. See Figure 2 above.

1 4. By Warranty Deed recorded September 13, 1948, at Docket 271, Page 324,
2 MCR, R. D. Searles, as Grantor, conveyed to Alan Chase, as Grantee, the East 1200 feet of
3 O'Brien's Tract 4. *See* Warranty Deed attached as **Exhibit "1"**.

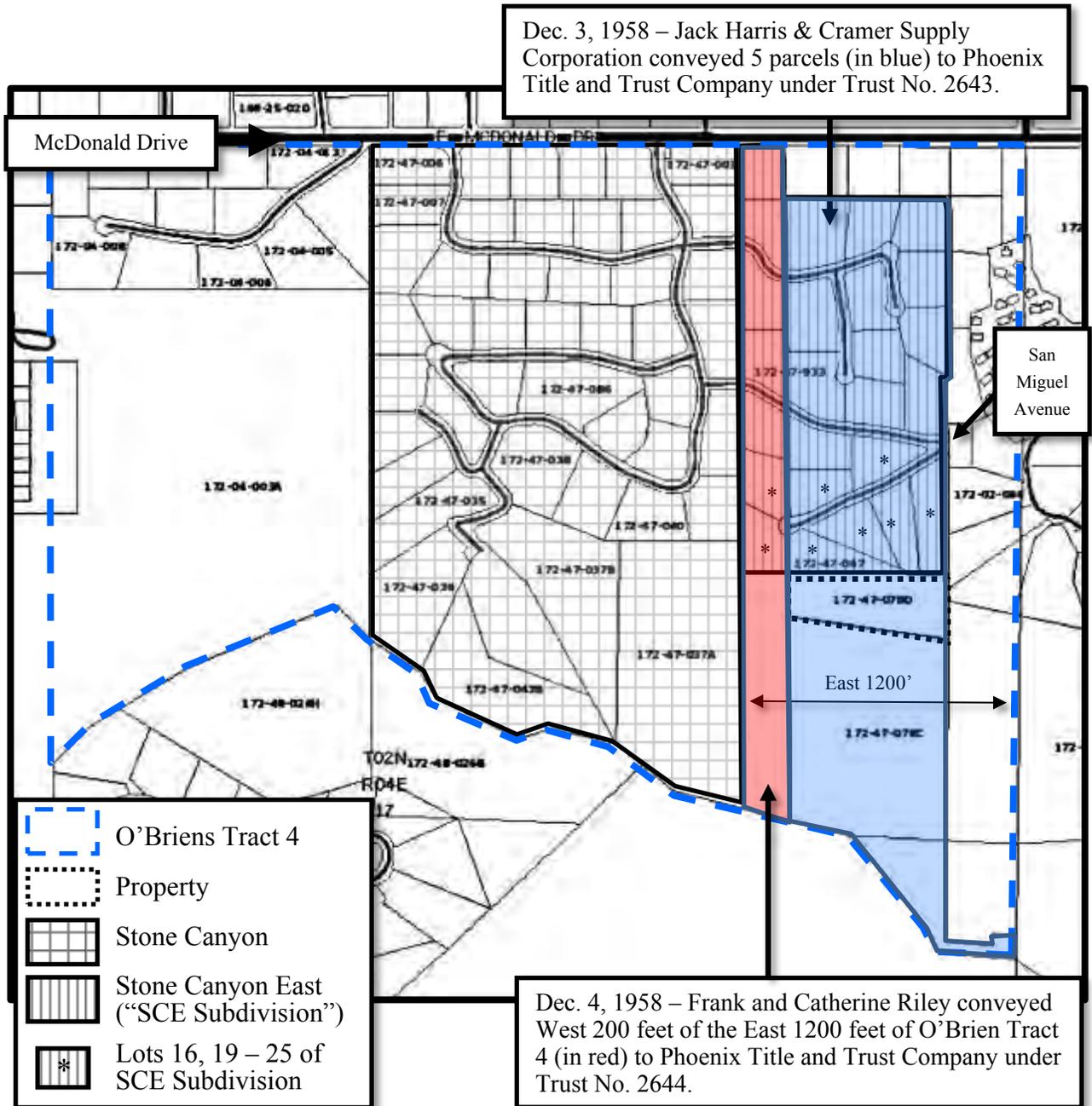
4 5. Through a series of mesne conveyances, the East 1200 foot parcel was split
5 and conveyed until the remainder of the parcel was conveyed to Phoenix Title, as Trustee,
6 under Trust Nos. 2643 and 2644:

7 i. By Warranty Deed recorded on December 3, 1958, in Docket 2676,
8 Pages 77 and 78 MCR, Jack Harris and Cramer Supply Corporation deeded 5 parcels to
9 Phoenix Title as Trustee under Trust No. 2643. A copy of said deed is attached hereto as
10 **Exhibit "2"**. *See also* Figure 3 below.

11 ii. By Warranty Deed recorded December 4, 1958 in Docket 2677, Page
12 138 MCR, Frank Riley and Catherine D. Riley conveyed the west 200 feet of the east 1200
13 feet of O'Briens Tract 4 to Phoenix Title as Trustee under Trust No. 2644. A copy of said
14 deed is attached hereto as **Exhibit "3"**. *See also* Figure 3 below.

15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///

FIGURE 3
O'Briens Tract 4
1958 Conveyances from Harris, Cramer Supply & Riley to Phoenix Title



6. Frank Riley and Catherine Riley were the beneficiaries of Trust 2644.

7. Theodore A. Rehm and Marianna Rehm and C. Tim Rodgers and Mildred Jane Rodgers, and/or Stone Canyon East Properties, an Arizona corporation, whose

1 principals were Theodore and Marianna Rehm and C. Tim and Mildred Rodgers, were the
2 beneficiaries of Trust 2643.

3 8. On March 3, 1959 in Docket 2774 at Pages 27-29, MCR, Phoenix Title as
4 Trustee recorded the Declaration of Restrictions for Lots 1 through 25 inclusive of Stone
5 Canyon East. A copy of said Declaration of Restrictions is attached hereto as **Exhibit "4"**
6 (the "Declaration").

7 9. Under Paragraph 5 of the Declaration, C. Tim Rodgers and Theodore A.
8 Rehm are named as members of the SCE Subdivision committee.

9 10. On March 1, 1960 at Docket 3178, Pages 402-403, MCR, Phoenix Title as
10 Trustee recorded a document entitled "Easement for Roadway," a copy of which is attached
11 to the First Amended Complaint as Exhibit A.

12 11. By Special Warranty Deed recorded on October 25, 1961 at Docket 3895,
13 Page 476, MCR, Phoenix Title, as Trustee, conveyed to Trust beneficiaries, Frank and
14 Catherine Riley as to an undivided one-third interest, Theodore and Marianna Rehm, as to
15 an undivided one-third interest, and C. Tim and Mildred Rodgers, an undivided one-third
16 interest, in all of the land in Trust lying south of the south line of the SCE Subdivision (the
17 "Remainder Parcel"). Endorsed at the bottom left of the Deed is the statement: "Deed from
18 Trustee to Cestui que Trust. No Internal Revenue stamps required." A copy of said deed is
19 attached hereto as **Exhibit "5"**. *See also* Figure 4 below.

20 12. By Special Warranty Deed recorded on June 5, 1964 at Docket 5080, Page 25,
21 MCR, Phoenix Title, as Trustee, conveyed Lot 22 of the SCE Subdivision to Stone Canyon
22 East Properties, an Arizona corporation and related entity of the Trust beneficiaries,
23 Theodore Rehm and C. Tim Rodgers. A copy of said deed is attached hereto as **Exhibit**
24 **"6"**.

25 13. By Warranty Deed recorded June 5, 1964 at Docket 5080, Page 17, MCR,
26 Phoenix Title and Trust beneficiaries, Theodore and Marianna Rehm, as to an undivided

1 one-third interest, and C. Tim and Mildred Rodgers, an undivided one-third interest,
2 conveyed together an undivided two-thirds interest in the Remainder Parcel to Stone
3 Canyon East Properties, an Arizona corporation and related entity of the Trust beneficiaries,
4 Theodore Rehm and C. Tim Rodgers. A copy of said deed is attached hereto as **Exhibit**
5 **“7”**. *See also* Figure 4 below.

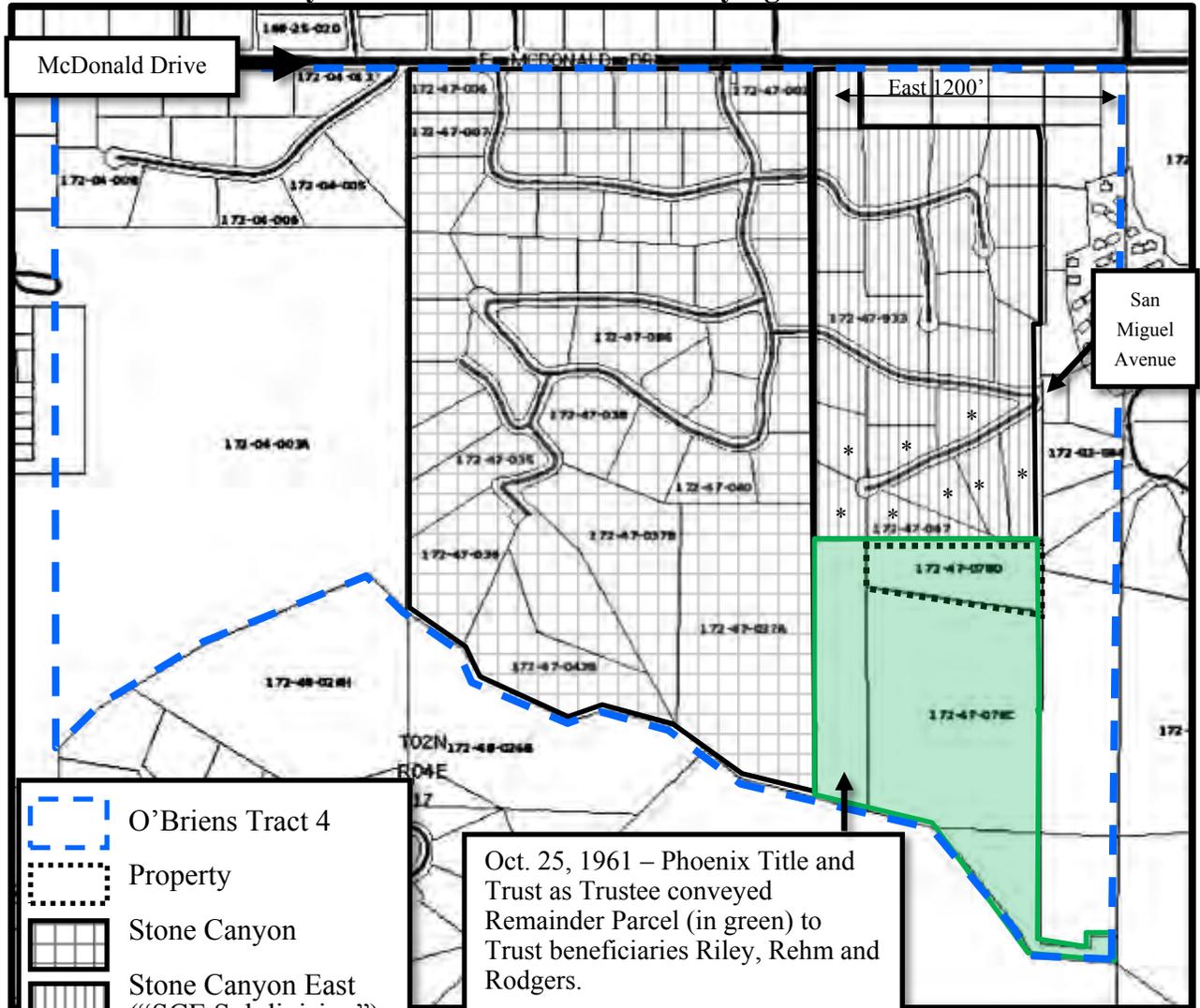
6 14. By Warranty Deed recorded June 5, 1964 at Docket 5080, Page 19, MCR,
7 Stone Canyon East Properties, as to an undivided two-thirds interest, and Frank Riley (then
8 a divorced man), as to an undivided one-third interest, conveyed to John D. Ratliff, husband
9 of Dellamae Ratliff, as his sole and separate property, all of the Remainder Parcel. A copy
10 of said deed is attached hereto as **Exhibit “8”**. *See also* Figure 4 below.

11 15. By Warranty Deed recorded June 30, 1964 at Docket 5110, Page 314 MCR,
12 John D. Ratliff conveyed all of the Remainder Parcel to a related entity, Camelback
13 Mountain Properties, a limited partnership. A copy of said deed is attached hereto as
14 **Exhibit “9”**. *See also* Figure 4 below.

15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FIGURE 4
1961-1964 Conveyances of Remainder Parcel Lying South of SCE Subdivision



- O'Briens Tract 4
- Property
- Stone Canyon
- Stone Canyon East ("SCE Subdivision")
- Lots 16, 19 – 25 of SCE Subdivision

Oct. 25, 1961 – Phoenix Title and Trust as Trustee conveyed Remainder Parcel (in green) to Trust beneficiaries Riley, Rehm and Rodgers.

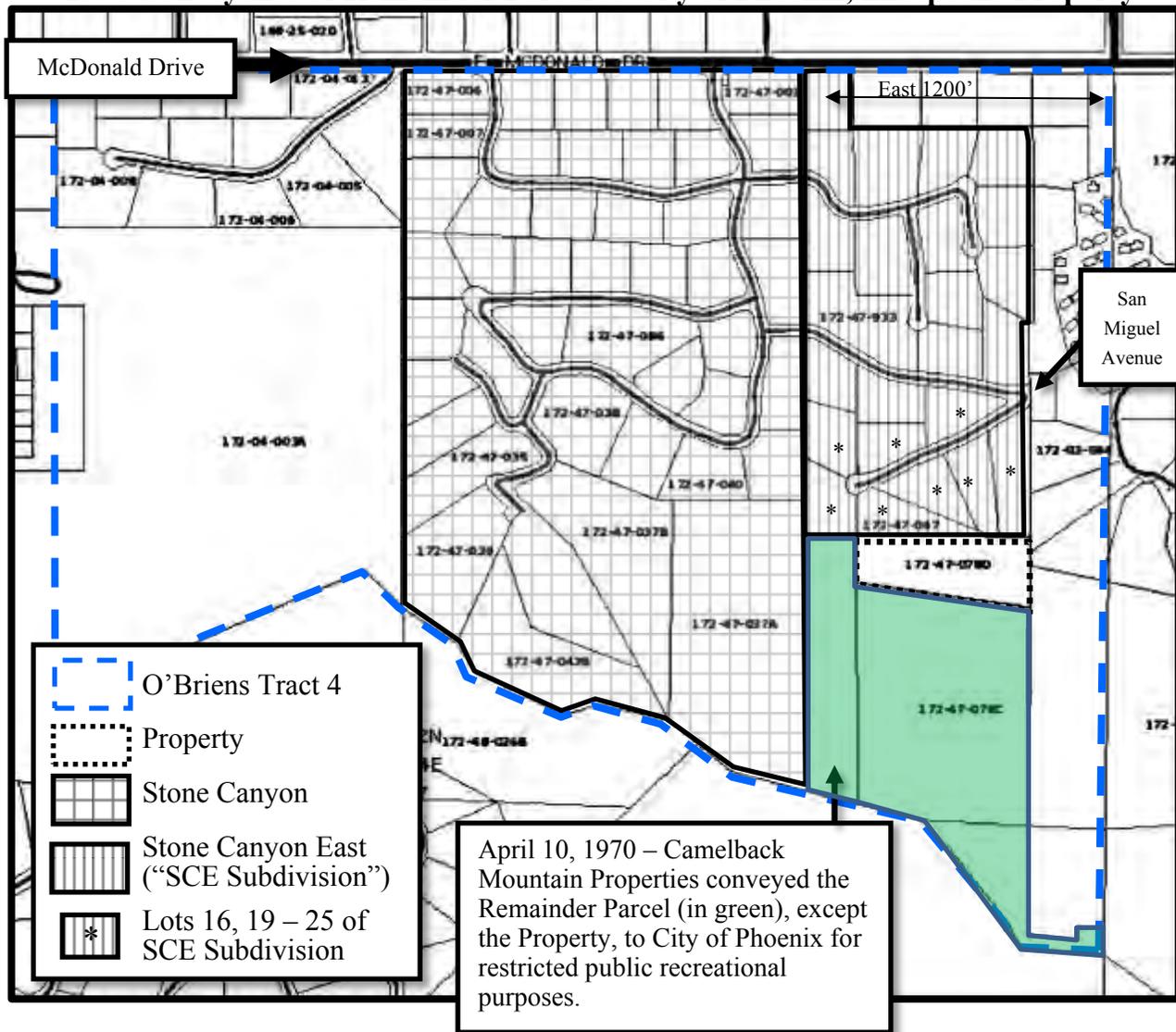
June 5, 1964 – Rehm and Rodgers conveyed interest (2/3) in Remainder Parcel to related entity, Stone Canyon East Properties.

June 5, 1964 – Stone Canyon East Properties (2/3) and Riley (1/3) conveyed Remainder Parcel to Ratliff.

June 30, 1964 – Ratliff conveyed Remainder Parcel to related entity

1 16. By Warranty Deed recorded April 10, 1970 in Docket 8083, Pages 449-450,
 2 MCR, Camelback Mountain Properties, a limited partnership, by Sun Ventures, Inc., an
 3 Arizona general partnership, its General Partner, by John D. Ratliff, President, conveyed to
 4 the City of Phoenix all of the Remainder Parcel, except for the Property. The deed restricted
 5 the use of the property being conveyed to public recreational purposes. A copy of said deed
 6 is attached hereto as **Exhibit "10"**. See also Figure 5 below.

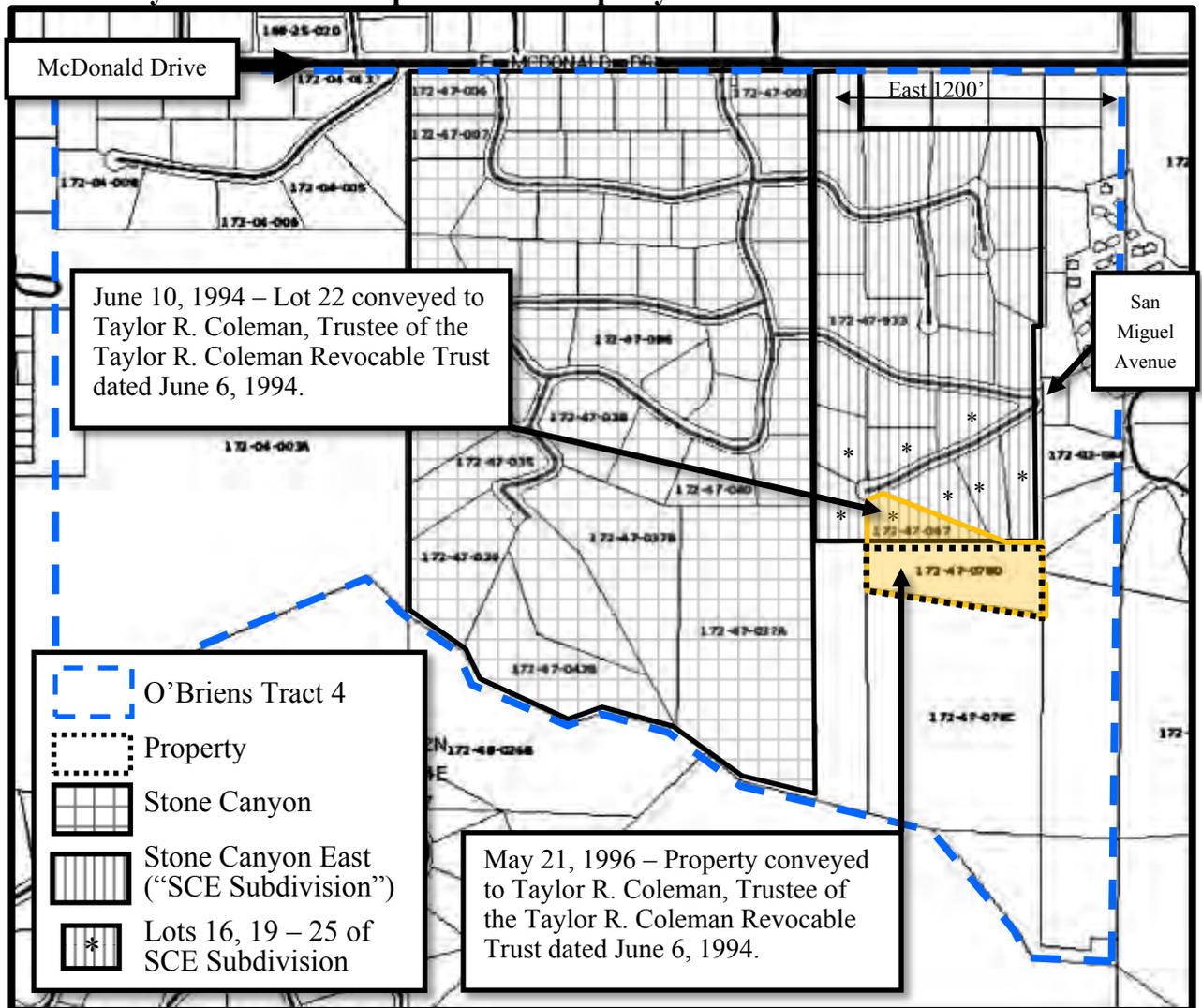
7
 8 **FIGURE 5**
1970 Conveyance of Remainder Parcel to City of Phoenix, Except the Property



1 17. By Warranty Deed recorded June 10, 1994, at Instrument No. 1994-0463126,
 2 MCR, title to Lot 22 SCE was conveyed to Taylor R. Coleman, as Trustee of the Taylor R.
 3 Coleman Revocable Trust dated June 6, 1994. A copy of said deed is attached hereto as
 4 **Exhibit “11”**. See Figure 6 below.

5 18. By Special Warranty Deed recorded May 21, 1996, at Instrument No. 1996-
 6 0353874, MCR, title to the Property was conveyed to Taylor R. Coleman, Trustee of the of
 7 the Taylor R. Coleman Revocable Trust dated June 6, 1994. A copy of said deed is attached
 8 hereto as **Exhibit “12”**. See Figure 6 below.

9 **FIGURE 6**
Taylor Coleman Acquisition of Property and Lot 22 of SCE Subdivision



1 grade to the drive/parking area next to the garage. It crosses the 25 feet of Lot 23, extending
2 north of the common property line with Lot 22 which is being claimed for an easement by
3 Counterdefendant. There is a security gate spanning about 18 feet of the 25-foot claimed
4 easement area. The gate has been continuously located on Lot 23 SCE for approximately
5 eighteen (18) years. It is kept closed and locked. The gate blocks physical access to the 25-
6 foot wide disputed easement area lying east of the gate.

7 26. Until being served the demand letters attached as Exhibit H to the First
8 Amended Complaint, no one had ever contacted Counterclaimants Zachariah, Appel or
9 Harrison contending that the owner of the Property claimed an easement for access, ingress
10 and egress over and across Lots 22, 23 and 24 SCE to San Miguel Avenue.

11 **Disputed Easement Area Physical Setting**

12 27. The legal description of the easement area over and across Lots 22 and 23
13 being claimed by Counterdefendant is 50 feet wide with 25 feet each lying on either side of
14 the common property line separating Lots 22 and 23 SCE (herein the “disputed easement
15 area”).

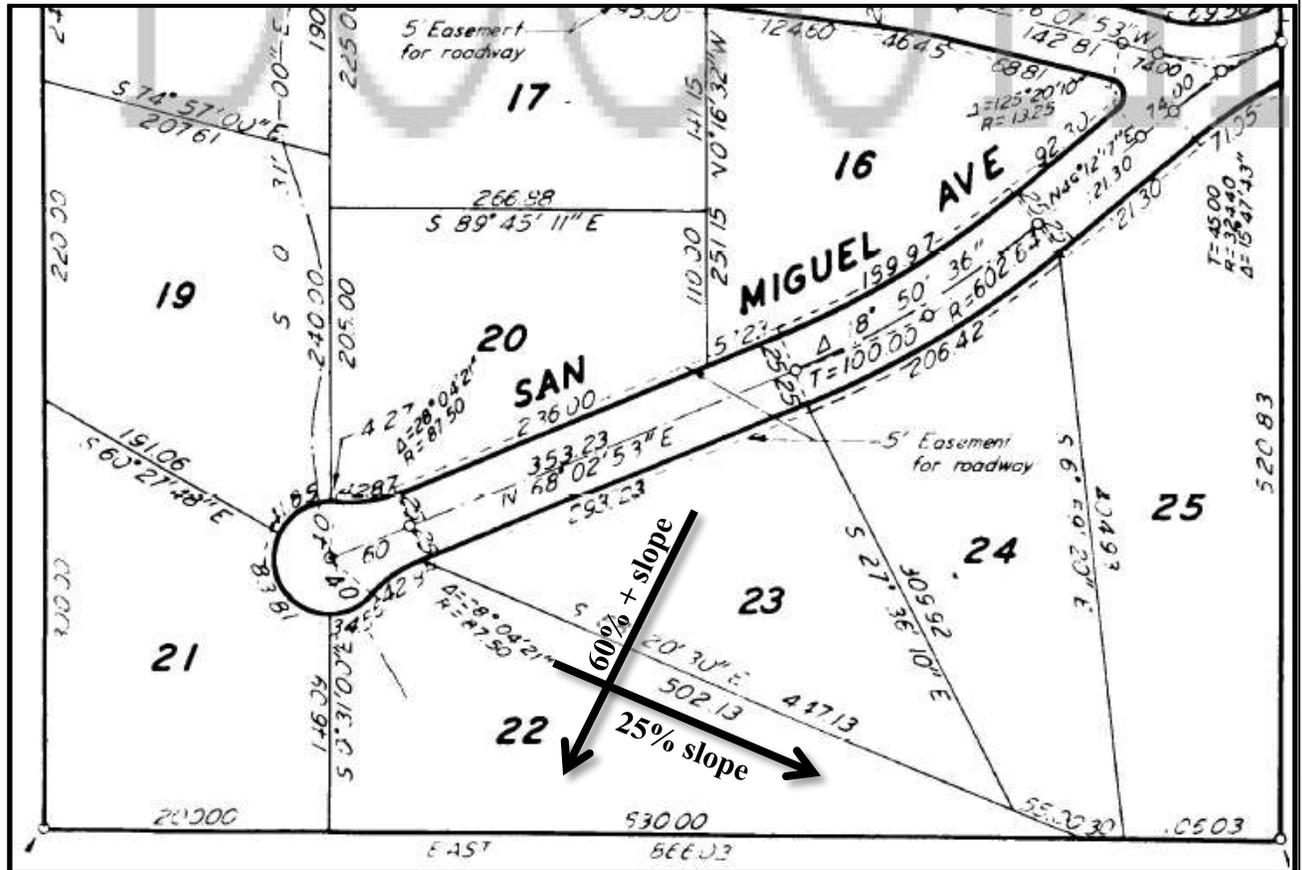
16 28. Referring to Exhibit B of the First Amended Complaint, the lot line separating
17 Lots 22 and 23 extends in a northwest to southeast direction. The ground elevation of the
18 pad of the Lot 22 residence lies approximately 35 feet higher than the ground elevation of
19 the pad of the Lot 23 residence.

20 29. The slope from Lot 22 downhill to Lot 23 is approximately 60 percent. *See*
21 *Figure 7* below.

22 30. The disputed easement area extends from the San Miguel Avenue cul-de-sac
23 fronting Lots 22 and 23 SCE uphill along the common property line and at a 25 percent
24 gradient across the face of the slope of Lots 22 and 23. *See Figure 7* below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

FIGURE 7
SLOPE ANALYSIS ALONG SHARED PROPERTY LINE OF LOTS 22 AND 23



17 31. Just beyond and uphill to the southeast of the turn-around drive area on Lot 22
18 in line with the disputed easement area, there is a large boulder outcrop. The Lot 23
19 residence lies directly below the outfall area of this boulder outcrop.

20 32. Proceeding along the disputed easement area on a diagonal across the slope of
21 Lots 22 and 23, there are several other large boulder outcrops lying with the disputed
22 easement area. The residences on Lots 16, 17, 20, and 24 lie within the outfall area of these
23 outcrops.

1 **Town of Paradise Valley Requirements**

2 33. Under the Town of Paradise Valley Zoning Ordinance, every residence must
3 front on a public street or a private road. Article II, Town of Paradise Valley Zoning
4 Ordinance.

5 34. Town of Paradise Valley requirements for a private road are:

6 1) The minimum right-of-way width shall be 50 feet.

7 . . .

8 3) Where access to a public road [San Miguel Avenue] for three
9 (3) or more residences [the Property and Lots 22 and 23
10 SCE] is to be provided by way of a private road, all standards
11 and requirements for subdivisions as contained in the Code
12 and Ordinances of the Town of Paradise Valley shall apply,
13 and such private road shall be subject to those conditions
imposed by reason of the issuance of a use permit in
accordance with the Code and Ordinances of the Town of
Paradise Valley. (brackets and emphasis supplied)

14 4) All private roads, for so long as they shall remain private,
15 shall be maintained to the foregoing [Town of Paradise
16 Valley] standards, and in the event the Town of Paradise
17 Valley is required to perform any maintenance upon the
18 same for the health and welfare of the people of the Town of
19 Paradise Valley, the said Town may assess the cost thereof
against the party . . . having applied for a residential building
permit . . .; agreement thereto by such applicant shall be a
condition of issuance of any residential building permit.

20 Article II, Town of Paradise Valley Zoning Ordinance.

21 35. The minimum right-of-way standard for a private road serving 3 or more
22 residences is 50 feet with a minimum paving width of between 18 and 22 feet. *See* Section
23 4.6 Maps and Standards Motorized Circulation, Option C, Figure 4.6, Town of Paradise
24 Valley General Plan.

1 61. At the time of said conveyance, the Grantees were the beneficial owners of
2 Lots 22-25 SCE being held by Phoenix Title, as Trustee. Thereafter, Lots 23-25 SCE were
3 conveyed to third parties by Phoenix Title, as Trustee, for the benefit of said beneficiaries.
4 The deeds of conveyance for these Lots did not specifically reserve an easement for access,
5 ingress, and egress for the benefit of the Property. For example, see Warranty Deed for Lot
6 25 SCE recorded on March 30, 1961 at Docket 3641, Page 516, MCR, attached hereto as
7 **Exhibit “15”**. Moreover, Lot 22 SCE was first conveyed by Phoenix Title, as Trustee, to
8 Stone Canyon East Properties, an Arizona corporation, owned by Trust beneficiaries
9 Theodore Rodgers and C. Tim Rodgers. See Warranty Deed attached hereto as **Exhibit**
10 **“6”**.

11 WHEREFORE, Counterclaimants pray for Judgment as follows:

12 A. That it be declared and adjudged that by reason of the execution and
13 recordation of the October 25, 1961 deed conveying the Property to the Trust beneficiaries,
14 no implied way of necessity resulted to the Property for access, ingress and egress over and
15 across Lots 22-25, Stone Canyon East, Book 81 of Maps, Page 34, MCR or any part thereof
16 for the benefit of the Property.

17 B. That it be declared and adjudged that when Phoenix Title and Trust conveyed
18 Lots 22-25 SCE to third persons, no implied way of necessity resulted to the Property for
19 access, ingress and egress over and across Lots 23-25 Stone Canyon East or any part thereof
20 for the benefit of the Property.

21 C. That it be declared and adjudged that when Phoenix Title and Trust conveyed
22 Lot 22 SCE to Stone Canyon East Properties, no implied way of necessity resulted to the
23 Property for access, ingress and egress over and across Lot 22 SCE or any part thereof for
24 the benefit of the Property.

25 D. That Counterdefendant, its successors and assigns be forever enjoined and
26 barred from asserting any claim of an implied way of necessity whatever for access, ingress

1 and egress over and across Lots 22-25 Stone Canyon East, Book 81 of Maps, Page 34, MCR
2 or any part thereof for the benefit of the Property.

3 E. That Counterclaimants recover their costs of suit incurred herein including
4 reasonable attorneys' fees; and

5 F. For such other and further relief as this Court deems just in the premises.

6 **SIXTH CLAIM FOR RELIEF**
7 **(Declaratory Judgment - Unlawful Attempt to Amend**
8 **Stone Canyon East Subdivision Plat)**

9 62. Counterclaimants incorporate all of the allegations contained in the preceding
10 paragraphs as if fully stated here.

11 63. On March 1, 1960, the date of recordation of the Easement for Roadway
12 document, Phoenix Title, as Trustee, had already conveyed to third persons legal or
13 equitable title to Lots 4, 5, 6, 7, 8, 9 and 11, SCE. *See* copies of recorded instruments
14 attached hereto as **Exhibits "16" through "22"**.

15 64. Upon conveyance of said Lots, Phoenix Title, as Trustee, retained no right to
16 amend the Stone Canyon East subdivision plat without the approval of all of the owners of
17 these 7 lots.

18 65. By recordation of the Easement for Roadway document on March 1, 1960,
19 Phoenix Title, as Trustee, made a failed attempt to amend the Stone Canyon East
20 subdivision plat by purportedly granting a 50-foot wide roadway easement to Maricopa
21 County over and across Lots 22-25 SCE.

22 66. Phoenix Title, as Trustee, did not obtain the written consent or acceptance of
23 the owners of Lots 4, 5, 6, 7, 8, 9 and 11 SCE for recordation of the Easement for Roadway
24 document.

25
26

1 WHEREFORE, Counterclaimants pray for Judgment as follows:

2 A. That it be declared and adjudged that the execution and recordation of the
3 Easement for Roadway document is null and void for failure of Phoenix Title as Trustee to
4 obtain the consents of the owners of Lots 4, 5, 6, 7, 8, 9 and 11 SCE.

5 B. That Counterdefendant, its successors and assigns be forever enjoined and
6 barred from asserting any claim that the Easement for Roadway document recorded on
7 March 1, 1960 at Docket 3178, Pages 402-403, MCR, constitutes a valid easement
8 whatever, public or private, over and across Lots 22-25 Stone Canyon East, Book 81 of
9 Maps, Page 34, MCR or any part thereof for access, ingress and egress for the Property.

10 C. That Counterclaimants recover their costs of suit incurred herein including
11 reasonable attorneys' fees; and

12 D. For such other and further relief as this Court deems just in the premises.

13 **SEVENTH CLAIM FOR RELIEF**
14 **(Declaratory Judgment - Claimed Easement Violates Declaration of Restrictions)**

15 67. Counterclaimants incorporate all of the allegations contained in the preceding
16 paragraphs as if fully stated here.

17 68. Counterdefendant claims an easement area over and across 25 feet on either
18 side of the common property line of Lots 22 and 23, SCE.

19 69. Counterdefendant further claims an easement area over 25 feet of Lots 22 and
20 23 fronting on San Miguel Avenue.

21 70. The total easement area being claimed on Lot 22 SCE is approximately 13,325
22 square feet.

23 71. The total easement area being claimed on Lot 23 SCE is approximately 16,660
24 square feet.

25 72. The total area of Lot 22 SCE as platted is 52,030 square feet. The total area of
26 Lot 22 after subtracting the total area of the claimed easement area is 38,505 square feet.

1 73. The total area of Lot 23 SCE as platted is 47,716 square feet. The total area of
2 Lot 23 after subtracting the total of the claimed easement area is 31,506 square feet.

3 74. Under the Declaration, none of the SCE lots may be conveyed in less than the
4 full original dimensions of the lots as shown on the Stone Canyon East subdivision plat,
5 except for conveyances to owners of adjacent Lots in which event no resulting lot may
6 contain less than 40,000 square feet.

7 75. Under the Declaration, all lots as platted shall be used for single family
8 dwelling purposes. The Declaration does not allow any lot to be used for a private road
9 serving a parcel not included in the subdivision plat.

10 76. Under the Declaration, the native growth on the Stone Canyon East property
11 shall not be destroyed or removed from any of the lots in the subdivision, except as may be
12 necessary to construct roads, driveways, dwelling houses, garages or gardens relating to the
13 residences on the Stone Canyon East lots.

14 77. The construction of an 18 to 22 foot wide roadway over and across Lots 22-25
15 SCE to serve a residence to be constructed on the Property would destroy native growth in
16 violation of the Declaration.

17 WHEREFORE, Counterclaimants pray for Judgment as follows:

18 A. That it be declared and adjudged that the easement being claimed over Lots
19 22-25 Stone Canyon East violates the Declaration in the following respects:

20 i) it would reduce the original dimensions of Lots 22-25 SCE;

21 ii) it would establish a use on Lots 22-25 SCE which is restricted under
22 the SCE subdivision;

23 iii) it would decrease the sizes of Lots 22 and 23 SCE to less than the
24 required minimum of 40,000 square feet;

25 iv) construction of the roadway would destroy native growth for
26 construction of a residence not part of the SCE subdivision.

1 B. That Counterdefendant, its successors and assigns be forever enjoined and
2 barred from asserting any claim whatever in or to Lots 22, 23, and 24 Stone Canyon East or
3 any part thereof in violation of said Declaration.

4 C. That Counterclaimants recover their costs of suit incurred herein including
5 reasonable attorneys' fees; and

6 D. For such other and further relief as this Court deems just in the premises.

7 **EIGHTH CLAIM FOR RELIEF**
8 **(Declaratory Judgment/Permanent Injunction - Anticipatory Nuisance)**

9 78. Counterclaimants incorporate all of the allegations contained in the preceding
10 paragraphs as if fully stated here.

11 79. Counterdefendant filed with the Town of Paradise Valley an application for a
12 variance to permit an overlength driveway to be built internal to the Property. According to
13 the narrative filed together with the variance application, the Property itself consists of about
14 3.5 acres with a slope exceeding 50 percent. This variance application was withdrawn by
15 Counterdefendant shortly before filing its Complaint in this lawsuit.

16 80. Counterdefendant intends to construct a 10,000 square foot residence on the
17 Property plus a driveway internal to the Property exceeding 205 feet in length with vertical
18 cuts of the mountain face exceeding 8 feet in height.

19 81. Counterclaimant Zachariah's residence on Lot 22 sits horizontally about 50
20 feet south of common property line separating Lots 22 and 23 ("Lots 22 and 23 Property
21 Line"). Counterclaimant Appel's residence on Lot 23 sits horizontally about 50 feet north
22 of the Lot 22 and 23 Property Line.

23 82. Counterdefendant claims the right to excavate and build a private road on the
24 disputed easement area lying 25 feet south of and parallel to the Lots 22 and 23 Property
25 Line as well as 25 feet lying north and parallel to the Property Line.

1 83. In order to obtain a building permit for a residence to be constructed on the
2 Property in the Town of Paradise Valley, Counterdefendant will be required to build an
3 asphalt-paved private road of a width ranging between 18 and 22 feet to accommodate 2-
4 way traffic including fire, police and emergency medical vehicles.

5 84. The maximum excavation and construction area of the private road would lie
6 horizontally about 25 feet from Counterclaimant Zachariah's home to the south and 25 feet
7 from Counterclaimant Appel's home to the north. See Figure 8 below.

8 **Figure 8**
9 **Aerial Photo Showing Proximity of Easement Area to Homes**



85. Counterclaimant Zachariah's residence, garage, swimming pool and outdoor patio areas built on a residential pad which is laterally supported by a steep vertical cut bank on Lot 22 SCE, the base of which lies horizontally between 15 to 20 feet south of the Lots 22 and 23 Property Line.

1 86. In order to cut and fill an engineered roadbed for the private road,
2 Counterdefendant will cause its contractors to use heavy excavation and construction
3 equipment and potentially explosive materials to fracture the rock face of Camelback
4 Mountain located on Lots 22 through 25 SCE. The use of such heavy vehicles, equipment
5 and explosives will create continual noise, vibration, dust and odor 5 days per week for
6 months on end, which will substantially interfere with Counterclaimants' use and enjoyment
7 of their homes and potentially cause damage to the footings, foundation, walls, roofs and
8 other structural parts of their homes.

9 87. Based on a report dated January 26, 2016 submitted by Vann Engineering,
10 Inc. on behalf of Counterdefendant to the Town of Paradise Valley, the excavation of the
11 mountain face for construction of the residence on the Property will create fill areas
12 comprised of "fractured, poor, weak granite" requiring the use of "rock bolts" to stabilize
13 the "rock mass." Said report is attached hereto as **Exhibit "26"**.

14 88. Excavation and construction of the private road will require the removal of a
15 large boulder outcrop lying immediately upgrade from and adjacent to Counterclaimant
16 Appel's residence and one or more large boulder outcrops lying upgrade from
17 Counterclaimant Harrisons' residence on Lot 24 SCE.

18 89. There can be no unconditional assurance given by Counterdefendant or its
19 engineers that, during and after excavation and construction of the private road and
20 Counterdefendant's residence, Counterclaimants will not become subject to unreasonable
21 risk that boulders disturbed by such fracturing operations and fill areas built during
22 excavation and construction will not become dislodged and travel down the slope causing
23 physical injury or death to the occupants and/or property damage to the residences on Lots
24 22, 23 and 24 SCE.

25 90. Once a private road were constructed and a residence were built on the
26 Property, Counterclaimants would forever be exposed to unreasonable risk that boulders or

1 rock materials could at any time become dislodged and trespass onto their homes and/or
2 outdoor living areas.

3 WHEREFORE, Counterclaimants pray for Judgment as follows:

4 A. That it be declared and adjudged that Counterdefendant's future actions in
5 fracturing, excavating and constructing a private road on the disputed easement area over
6 and across Lots 22, 23 and 24 will substantially and unreasonably interfere with
7 Counterclaimants' use and enjoyment of their residences and outdoor living areas.

8 B. That it be declared and adjudged that Counterdefendant's future actions in
9 fracturing, excavating and constructing a private road on the disputed easement area of Lots
10 22, 23 and 24, SCE, and the residence on the Property will substantially and unreasonably
11 interfere with Counterclaimants' use and enjoyment of their residences and outdoor living
12 areas by exposing Counterclaimants to the foreseeable risk and danger that boulders and
13 rocks will become dislodged from the disputed easement area and/or the Property and
14 physically trespass upon Lots 22, 23 and/or 24 SCE causing death, personal injury and/or
15 property damage to Counterclaimants, their family members, invitees and licensees.

16 B. That Counterdefendant, its successors and assigns be forever enjoined from
17 fracturing, excavating and constructing a roadway over and across Lots 22, 23 and 24 and
18 any parts thereof.

19 C. That Counterdefendant, its successors and assigns be forever enjoined from
20 fracturing, excavating and filling the Property for the purpose of constructing a residence
21 thereon.

22 D. That Counterclaimants recover their costs of suit incurred herein including
23 reasonable attorneys' fees; and

24 E. For such other and further relief as this Court deems just in the premises.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 28th day of June, 2016.

FRANCIS J. SLAVIN, P.C.

By: /s/ Francis J. Slavin

Francis J. Slavin
Heather N. Dukes
2198 E. Camelback Road, Suite 285
Phoenix, Arizona 85012

ORIGINAL e-filed this 28th day of
June, 2016, and COPY delivered
through the TurboCourt system to:

Honorable Lori Bustamante
Judge of the Maricopa County Superior Court

COPY of the foregoing emailed and mailed
this 28th day of June, 2016 to:

Andrew S. Abraham, Esq.
Casey Blais, Esq.
BURCH & CRACCHIOLO, P.A.
702 E. Osborn Road
Phoenix, Arizona 85014
aabraham@bcattorneys.com
cglais@bcattorneys.com

By: /s/ Heather N. Dukes

1 VERIFICATION

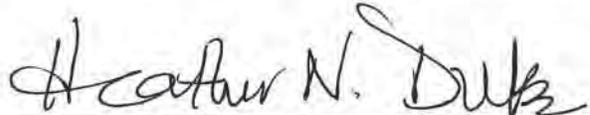
2 STATE OF ARIZONA)
3 County of Maricopa) ss

4
5 Teresa C. Zachariah, being first duly sworn upon oath, deposes and says:

6 That she is one of the named Defendants and Counterclaimants in the above
7 captioned matter; that she has read the foregoing Answer and Counterclaim and knows the
8 contents thereof; and that the same are true both in substance and in fact, except as to those
9 matters and things therein alleged on information and belief, and as to those matters, she
10 believes them to be true.

11 
12 _____
13 Teresa C. Zachariah

14 SUBSCRIBED AND SWORN to before me this 28 day of June, 2016, by Teresa
15 C. Zachariah.

16 
17 _____
18 Notary Public

19 My Commission Expires:

20 3/9/2017



EXHIBIT 2

LAW OFFICES
JORDEN BISCHOFF
& HISER, P.L.C.

7272 E. INDIAN SCHOOL ROAD, SUITE 360
SCOTTSDALE, ARIZONA 85251
TELEPHONE: 480-505-3900
FACSIMILE: 480-505-3901

DOUGLAS A. JORDEN

DIRECT LINE: 480-505-3909
e-mail: djorden@jordenbischoff.com
www.jordenbischoff.com

August 5, 2013

VIA HAND DELIVERY

Andrew Miller
Town of Paradise Valley
6401 E. Lincoln Drive
Paradise Valley, AZ 85253

Re: Property Located at 5507 E. San Miguel Lane, Paradise Valley, Arizona 83253
(the "Property")

Dear Andrew:

We represent Mr. Terry Scali. This letter is written to provide information on why Mr. Scali has access to his Property based on the legal doctrine of "implied way of necessity" and why that private roadway easement should not be interpreted to in a manner that would penalize Mr. Scali's neighbors, Lot 22 and Lot 23 of Stone Canyon East. When boiled down to its essence, the real issue here is one of property rights and the Town recognizing that Mr. Scali is entitled to access to his Property.

Background

In 2012, Mr. Scali purchased the Property, which is adjacent to a subdivision known as Stone Canyon East.¹ On March 1, 1960, an "Easement for Roadway" (copy enclosed)² was recorded, which increases the width of San Miguel Avenue as shown on the plat of Stone Canyon East (by an additional 25-feet on each side) and provides for another roadway not shown on the plat of Stone Canyon East. This other roadway runs along the lot line between Lots 22 and 23 of Stone Canyon East and then extends along the southern lot lines of Lots 24 and 25 of Stone Canyon East. The Property and Stone Canyon East are located within Tract 4 of a much larger subdivision called O'Brien's Camelback Lands;³ all of Tract 4 was once owned by Lulu Avis and Morrough W. O'Brien. After a series of transfers of various portions of Tract 4, the

¹ The plat for Stone Canyon East was recorded on February 27, 1959 at Book 81, page 34 with the Maricopa County, Arizona Recorder ("M.C.R.") (copy enclosed).

² The Easement was recorded on March 1, 1960 at Docket No. 3178, page 402 M.C.R.

³ The plat for O'Brien's Camelback Lands was recorded on April 24, 1928 at Book 18, page 36 M.C.R.

Andrew Miller
Property Located at 5507 E. San Miguel Lane
August 5, 2013
Page 2

Property and the property to become Stone Canyon East were transferred to Jack Harris and Cramer Supply Corporation in 1956,⁴ then to Phoenix Title and Trust Company ("Phoenix Title") in 1958.⁵ Phoenix Title recorded the plat for Stone Canyon East in 1959 and then, after it recorded the Easement in 1960, Phoenix Title conveyed the Property to a group of six individuals in 1961.⁶

The plat for Stone Canyon East was approved by Maricopa County; San Miguel Avenue and the other roads shown on the plat have been built. To date, we have not found evidence that Maricopa County ever accepted the Easement for Roadway. While we will continue to inquire about formal acceptance by Maricopa County, it will be assumed for purposes of this letter that no such acceptance occurred. As you will see, the lack of formal acceptance by Maricopa County does not impact Mr. Scali's right to access his Property and build a home. Stone Canyon East and the Property are now part of the Town of Paradise Valley.⁷

Comments from Neighboring Property Owners.

We are aware that two of Mr. Scali's neighbors (Lots 22 and 23 of Stone Canyon East) have expressed safety concerns relating to actual construction on the Property and the possibility of rocks becoming dislodged and rolling down the mountain onto Lots 22 or 23. We understand and appreciate their concerns. However, that is a completely separate matter from the gravamen of this letter: Mr. Scali's right to access his private property.

Mr. Scali Has an Implied Way of Necessity.

There is a presumption that "whenever a party conveys property he conveys whatever is necessary for the beneficial use of that property." *Bickel v. Hansen*, 169 Ariz. 371, 374, 819 P.2d 957, 960 (App. 1991); *Tobias v. Dailey*, 196 Ariz. 418, 422, 998 P.2d 1091, 1095 (App. 2000)(citing the Restatement).⁸ Therefore, where land is sold that has no outlet, the seller by implication grants an "implied way of necessity" to allow ingress and egress over the parcel to

⁴ The Special Warranty Deed from Arizona Title Guarantee & Trust Company to Jack Harris and Cramer Supply Corporation for part of the property to become Stone Canyon East was recorded on June 27, 1956 at Docket 1933, page 542 M.C.R.; the Warranty Deed from Allen Chase to Jack Harris and Cramer Supply Corporation for other parts of the property to become Stone Canyon East, the Property, and other portions of Tract 4 was recorded on June 27, 1956 at Docket 1933, page 543 M.C.R.

⁵ The Warranty Deed from Jack Harris and Cramer Supply Corporation to Phoenix Title was recorded on December 3, 1958 at Docket 2676, page 77 M.C.R.

⁶ The Special Warranty Deed from Phoenix Title to the six individuals was recorded on October 25, 1961 at Docket 3895, page 476 M.C.R.

⁷ Upon annexation, title and jurisdiction of the streets within the annexed area vest in the municipality. *Read v. City of Scottsdale*, 107 Ariz. 524, 525, 489 P.2d 1204, 1205 (Ariz. 1971). Therefore, when Paradise Valley annexed the Stone Canyon East subdivision within which the Easement for Roadway is located, it succeeded to all of the right, title, and interest of Maricopa County.

⁸ This presumption applies unless it is clear that the parties intended to deprive the property of rights necessary to enjoy the property. RESTATEMENT (THIRD) OF PROPERTY: SERVICITUDES § 2.15, cmt. e (2000).

which he retains ownership, enabling the purchaser to have access to its property. *Bickel*, 169 Ariz. at 374, 819 P.2d at 960; *College Book Centers, Inc. v. Carefree Foothills Homeowners' Ass'n*, 225 Ariz. 533, 541, 241 P.3d 897, 905 (App. 2010); see RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 2.15 (2000). An implied way of necessity can be established if there was once unity of ownership of both the parcel that needs access and the parcel over which access is desired, followed by a severance of the parcels. *Bickel*, 169 Ariz. at 374, 819 P.2d at 960. If there was once unity of title, the right to an implied way of necessity may lie dormant through several transfers of title and pass with each transfer to be exercised at any time. *Id.* Although the condemnation of a private way of necessity under Arizona statutes is another theory for obtaining a right of access, it applies only if no other access exists. See ARIZ. REV. STAT. §§ 12-1201 through 12-1203; *Bickel*, 169 Ariz. at 375, 819 P.2d at 961. Where an implied way of necessity exists, the statutory way of necessity does not come into play "because the purportedly landlocked land is not, in fact, hemmed in." *Bickel*, 169 Ariz. at 375, 819 P.2d at 961.

"Necessary" rights are not limited to those essential to enjoy the property, but also include rights reasonably required to make effective use of the property. RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 2.15, cmt. d. The scope of an implied easement is measured by uses that parties to the original conveyance might reasonably have expected, presuming normal development of the property. *Tobias*, 196 Ariz. at 422, 998 P.2d at 1095. Thus, implied ways of necessity include ingress and egress, but also extend to utilities and other services that are normal for the nature and location of the property and land uses in the community. See RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 2.15; *Richards v. Land Star Group, Inc.*, 593 N.W.2d 103, 109 (Wis. Ct. App. 1999)(finding that a way of necessity can include utilities); *Pinkston v. Hartley*, 511 So.2d 168, 169 (Ala. 1987)(upholding the grant of an implied way of necessity for a sewer easement); *U.S. v. 176.10 Acres of Land*, 558 F. Supp. 1379, 1382 (D. Mass. 1983)(finding it reasonable to assume that the parties foresaw residential use as a probable use and that such use today would include utilities as well as a driveway); *Stair v. Miller*, 447 A.2d 109, 111 (Md. Ct. Sp. App. 1982)(upholding the grant of an implied way of necessity for all necessary utilities); *Morrell v. Rice*, 622 A.2d 1156, 1160 (Me. 1993)(finding that an easement created by necessity "can include not only the right of entry and egress, but also the right to make use of the easement for the installation of utilities").

Here, the Property and Stone Canyon East had a common owner before and at the time that the Stone Canyon East subdivision was established. Necessity for access to the Property is the same today as it was when the Property and the lots within Stone Canyon East were subsequently transferred to separate owners. An implied way of necessity has lain dormant since the Property was separated from Stone Canyon East, which Mr. Scali is entitled to exercise today in order have access to the Property. Such an easement includes ingress, egress, and any underground utility lines necessary for the reasonable use of the Property.⁹

⁹ The Easement for Roadway contemplates that utilities would be needed, allowing Maricopa County to "itself or grant to others the right to place under the surface of the property described above, any type of public utility facilities so long as said facilities do not show above the surface in any manner whatsoever."

Andrew Miller
Property Located at 5507 E. San Miguel Lane
August 5, 2013
Page 4

Mr. Scali's Implied Way of Necessity Should Be Established in the Location of the Additional Road Described in the Easement for Roadway.

An implied way of necessity is usually established in a location designated by the owner of the land over which it passes, subject to the restriction that it must be reasonably convenient. *USA Carthage Leasing, LLC, v. Baer*, 32 A.3d 88, 122 (Md. Ct. Spec. App. 2011); RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8 (2000); 28A C.J.S. *Easements* § 208 (2013). If a location is not selected or is inconvenient, then the person entitled to the way may choose the location. *USA Carthage Leasing*, 32 A.3d at 122; RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8; 28A C.J.S. *Easements* § 208. The route is to be determined by the reasonable convenience of both parties. *USA Carthage Leasing*, 32 A.3d at 122; RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8; 28A C.J.S. *Easements* § 208. When possible, an implied way of necessity is created over existing roadways and driveways; evidence of prior use may be relevant in establishing the location. 28A C.J.S. *Easements* § 208.

Here, the logical location for an implied way of necessity is the location of the additional road described in the Easement for Roadway – it provides access to the nearest public road (San Miguel Avenue), is in a location that had already been selected by Phoenix Title for a roadway easement when it severed ownership of the Property from Stone Canyon East, and is currently being used for driveway purposes by the owners of Lots 22 and 23. This is the location most convenient for Mr. Scali and for the owners of Lots 22, 23, 24, and 25. Indeed, it is the only possible location for access given the topography in the area.

The Private Roadway Easement to the Property Should Not Impact Neighboring Properties Vis-a-Via Disturbed Area Calculations or Setbacks.

Section 2207.III.G of the Town's zoning ordinance (a part of Article XXII-Hillside Development Regulations) provides that grading "within street rights-of-way or tracts of land for private roads is exempt from the disturbance calculations." There is no doubt that the Scali private roadway easement functions as a right-of-way or private road within the meaning of Section 2207—it provides access to a lot—and, for purposes of disturbed area calculations under the Town's Hillside Development Regulations, the disturbed area should not be charged against either Lot 22 or Lot 23 of Stone Canyon East.

There are many instances throughout the Town where roadway easements are not taken into account in determining setbacks. So as not to penalize Lot 22 and Lot 23, the setbacks for those lots should be measured from the common property line between Lot 22 and Lot 23, and not from the exterior line of the Scali private roadway easement.

Andrew Miller
Property Located at 5507 E. San Miguel Lane
August 5, 2013
Page 5

We hope you find this information useful and we look forward to hearing from you soon.

Sincerely,



Douglas A. Jorden

DAJ/ea

Enclosures

cc (w/encl.): Terry Scali

N:\Data\WPDOCS.DAJ\8410.001\Miller ltr 20130805.docx

WHEN RECORDED:
 Mail to Phoenix Title & Trust Co. Main Office
 Trust Dept
 Phoenix, Arizona

Trust Nos. 2643 & 2644

DKT 3178 PAGE 402

EASEMENT FOR ROADWAY

WHEREAS, the undersigned Phoenix Title and Trust Company, an Arizona Corporation, as Trustee, has subdivided under the name of Stone Canyon East, part of Tract 4, O'Brien's Camelback Lands, a subdivision recorded in Book 18 of Maps at page 36 thereof, in the office of the County Recorder of Maricopa County, Arizona, and

WHEREAS, in connection therewith said Phoenix Title and Trust Company has recorded a plat as and for the plat of said Stone Canyon East, and

WHEREAS, it is now desired to increase the width of San Miguel Avenue as shown on said plat and to provide for another roadway not shown in said plat,

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the said Phoenix Title and Trust Company, as Trustee, being fully instructed by the proper parties in interest so to do, does hereby grant to the County of Maricopa, State of Arizona, an easement for roadway purposes and for no other purpose, subject to all of the restrictions upon the use thereof, as contained herein and as set forth below, said easement to be over the following described premises:

A strip of land 25' wide on the S. side of the southerly line of San Miguel Avenue as shown in the plat, and a strip of land 25' wide on the N. side of said San Miguel Avenue as shown in the plat, said strips 25' wide to extend around the end of San Miguel Avenue so that the roadway is increased a total width of 50' over the width shown in the plat of said Stone Canyon East.

The easement granted above affects Lots 16, 20, 19, 21, 22, 23, 24 and 25.

Also the following:

A strip of land 25' wide along the N. side and a strip of land 25' wide along the S. line of the lot line separating Lots 22 and 23, and 25' wide N. of the S. border of said subdivision in Lots 24 and 25.

The easement hereby granted is for roadway purposes only and it is specifically intended that by granting the easement herein the County of Maricopa shall not have any right, either itself or to grant to others any right to maintain or place upon the premises covered hereby, any utilities, structures or maintain and erect any facilities upon said property, and that the only right granted hereby shall be to maintain a public way for vehicular or foot traffic thereon. However, it is specifically agreed that the said County may itself or grant to others the right to place under the surface of the property described above, any type of public utility facilities so long as said facilities do not show above the surface in any manner whatsoever.

Dated at Phoenix, Arizona this 24th day of February, 1960.



PHOENIX TITLE AND TRUST COMPANY, an Arizona corporation, TRUSTEE

By [Signature] Assistant Vice President

ATTEST: [Signature] Assistant Secretary

STATE OF ARIZONA COUNTY OF MARICOPA

On this the 29th day of February 1960 before me the undersigned officer personally appeared R. Brehmer and B. A. Vitek

Assistant and Secretary respectively of the PHOENIX TITLE AND TRUST COMPANY a corporation, and that they as such officers respectively being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as Trustee by themselves as such officers respectively

In witness whereof I have hereunto set my hand and official seal

My Commission Expires

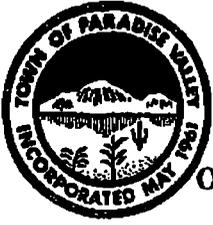
4/2/60 DKT 3178 PAGE 4(1)3

[Signature] Helen W. Kelly Notary Public

STATE OF ARIZONA, County of Maricopa; ss. I do hereby certify that the within instrument was filed and recorded at request of Phoenix Title & Trust Co. on MAR 1 1960 9:00 AM at DEED - M. Docket 3178 Page 4 of 3 Records of Maricopa County, Arizona. 35826

WITNESS my hand and official seal the day and year first above written. N. KELLY, Maricopa County Recorder, Deputy.

EXHIBIT 3



OFFICE OF THE TOWN ATTORNEY

August 13, 2013

Regular and Certified Mail

Joe and Teresa Zachariah
5505 E. San Miguel Ave
Paradise Valley, AZ 85253

David and Rosanne Appel
5511 E. San Miguel Ave
Paradise Valley, AZ 85253

and
5 Lynn Road
Cherry Hills Village, CO 80113

Ingrid Lenz Harrison Revocable Trust
5519 E. San Miguel Ave
Paradise Valley, AZ 85253

and
1410 Shoreline Drive
Wayzata, MN 55391

Jerry Smith
5525 E. San Miguel Ave
Paradise Valley, AZ 85253
and
4385 N. 75th Street, Ste 201
Scottsdale, AZ 85251

Re: Legal Access to a Parcel of Property Located at "5507" E. San Miguel Avenue,
Paradise Valley, Arizona 83253; Owner: TMS Ventures, LLC (Terry Scali)

To: Joe and Teresa Zachariah,
David and Rosanne Appel,
Ingrid Lenz Harrison,
Jerry Smith,

I have been asked to advise the Town staff on the current legal access to a parcel of property that is located adjacent to your properties, said parcel described in the deed that was recorded on November 9, 2012 (see attached warranty deed, hereinafter the "Scali Property"), deeding title to the parcel to TMS Ventures, LLC, which I believe to be owned or operated by Terry Scali. I have been contacted by an attorney, Douglas Jorden, representing TMS Ventures and Mr. Scali regarding the history of the division of the Scali Property, including a recorded document entitled "Easement for Roadway" (see attached, recorded with the Maricopa County Recorder on March 1, 1960, at Docket No. 3178, Page 36, hereinafter "Recorded Easement") that appears to have been recorded at a time when the Scali Property was owned in common with the area described in the Recorded Easement and each of your properties. Mr. Jorden has provided his legal

6401 East Lincoln Drive
Paradise Valley, Arizona
85253-4328

480-948-7411
480-951-3715 Fax
480-483-1811 TDD

TPV004491

opinion that although the Recorded Easement does not appear to have been accepted by Maricopa County at the time it was recorded (nor by the Town of Paradise Valley), the Recorded Easement does in fact constitute and describe an area where an "implied way of necessity" to the Scali Property would exist under Arizona law (see attached letter from Douglas Jorden dated August 5, 2013). In furtherance of the history of the division of the properties at issue, Mr. Jorden has supplied copies of the underlying deeds (copies not attached, but they can be supplied if you so request). I have reviewed the cases cited in Mr. Jorden's letter, and agree that it does appear that the Scali Property enjoys an implied way of necessity at the location shown on the Recorded Easement.

I am writing to each of you so that you are aware of the Scali property legal access request and my agreement that it does appear to be legally accurate. I am also writing because I believe that some of you may have spoken with former Town Engineer, Bill Mead, about the legal access issue, but some may not have done so. The implied way of necessity would basically run along the property line between 5505 E. San Miguel and 5511 E. San Miguel, approximately where the current shared driveway for these two properties exists, and then along the southern 25' of the 5519 E. San Miguel and 5525 E. San Miguel properties (I have roughly hand-drawn this area on a printout of the properties using the County Assessor's maps, it is not likely proportionately accurate).

Finally, I wanted to advise that although there may be concerns regarding the stability of the rocks or soils on the Scali Property and in the area of the new driveway/implied way of necessity (I have been provided a copy of the Zachariah's Preliminary Geotechnical Slope Review dated May 29, 2013), the Town's Hillside Development Regulations require that a seismic refraction study be prepared for all proposed cuts into a hillside development area. Thus, a thorough study will need to be prepared and submitted to the Town prior to any grading work on the Scali Property or the "implied way of necessity" area.

If you have any questions or concerns with the Scali Property legal access issue, please contact me directly, or have your legal counsel contact me, by August 27, 2013, as I anticipate Mr. Scali may be proceeding with development of the Scali Property soon.

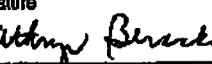
Sincerely,



Andrew M. Miller
Town Attorney

cc: Douglas Jorden
Eva Cutro, Community Development Director
Robert Lee, Building Safety Manager/Fire Marshall

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Joe and Teresa Zachariah 5505 E. San Miguel Ave Paradise Valley, AZ 85253	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article N (Transfer)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	7012 3460 0000 4116 4641	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
	B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to:	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Jerry Smith 4385 N. 75 th Street, Ste 201 Scottsdale, AZ 85251	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service to)	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	7012 3460 0000 4116 6133	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David and Rosanne Appel
5 Lynn Road
Cherry Hills Village, CO 80113

2. Article Number:
(Transfer from a)

7012 3460 0000 4116 4665

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ingrid Lenz Harrison Rev. Trust
1410 Shoreline Drive
Wayzata, MN 55391

2. Article Number

(Transfer from service)

7012 3460 0000 4116 6140

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

TPV004494

EXHIBIT 4



TOWN ATTORNEY

September 4, 2013

Douglas Jordan
Attorney at Law
7272 E. Indian School Road, Ste. 360
Scottsdale, AZ 85251-3951

Re: TMS Ventures, LLC – Terry Scali
5507 E. San Miguel Ave, Paradise Valley, AZ

Dear Mr. Jorden:

This letter responds to your letter dated August 5, 2013, regarding the property owned by TMS Ventures, LLC (Terry Scali) that is located at 5507 E. San Miguel Avenue, Paradise Valley, Arizona 83253 (the "Scali Property"). After reviewing the cases cited in your letter, the Town Attorney's Office agrees that there is legal access to the Scali Property by way of an implied way of necessity. The implied way of necessity (hereinafter the "Private Roadway Easement") would run from the Town's public road (San Miguel Avenue) to the Scali Property in the location of the "roadway" described in the Easement for Roadway that was recorded with the Maricopa County Recorder on March 1, 1960 at Docket No. 3178, Page 36 (along the lot line between Lots 22 and 23 of Stone Canyon East and then along the southern lot lines of Lots 24 and 25 of Stone Canyon East).

The Private Roadway Easement would function as a right-of-way or private road within the meaning of Section 2207 of the Town's Zoning Ordinance, thus grading within the area of the Private Roadway Easement is exempt from disturbance calculations so that the disturbed area associated with the Private Roadway Easement will not be charged against Lots 22 - 25 of Stone Canyon East or the Scali Property. Further, the Private Roadway Easement will not be taken into account when determining setbacks so that the setbacks for Lots 22 and 23 will be measured from the common property line between these lots, rather than from the line of the Private Roadway Easement, thus avoiding the creation of any nonconforming structures on these lots. Likewise, the setbacks for Lots 24 and 25 will be measured from the lot line rather than from the line of the Private Roadway Easement.

6401 East Lincoln Drive
Paradise Valley, Arizona
85253-4328

480-948-7411
480-951-3715 Fax
480-483-1811 TDD

TPV004495

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Andrew M. Miller
Town Attorney

AMM/dlw

cc: James C. Bacon, Town Manager
Eva Cutro, Planning and Building Director

EXHIBIT 5



Action Report

File #: 16-280

TO: Hillside Building Committee

DATE: September 8, 2016

FROM: George Burton, Planner

SUBJECT: Concept Review for TMS Ventures LLC Residence - 5507 E. San Miguel Ave (APN: 172-47-078D). Application to construct a new Single Family Residence, Driveway, Retaining Wall and Pool.

The owner of the property located at 5507 E. San Miguel Avenue submitted an application to construct a new residence. The property is undeveloped and this project consists of constructing a new house, driveway, retaining wall, and pool.

Background

The subject property is located in Tract 4 of O'Briens Camelback Lands subdivision. This subdivision was platted in 1928 and annexed into the Town in 1985. Per Docket 3178 Page 402, there is a roadway easement on the neighboring/southern lots which provides access to the subject property. The roadway easement is located on Lots 22, 23, 24 and 25 of the Stone Canyon East subdivision (5505, 5511, 5519 and 5525 E San Miguel Ave properties). The applicant represents that the private roadway by easement is the only means of ingress/egress to the subject property (which is the subject of currently litigation). However, the private roadway by easement is not part of the Hillside Committee review. The development of the roadway by easement will be reviewed for building code compliance during the building permit process.

New Single Family Residence

The subject property is a vacant lot that has never been developed. The property is zoned R-43 Hillside and is 149,856 square feet in size (3.44 acres). The lot is rectangular in shape, has a slope of approximately 53%, and is accessible via the private roadway by easement on the neighboring properties to the south. The driveway on the property will count as disturbed area (with 25% credit given for decorative driveways such as pavers or colored concrete). The private roadway by easement is not included in the disturbance calculation since it not located on the subject lot and since roads are exempt from the disturbed area calculation per Section 2207.III.G of the Town Zoning Ordinance. The proposed home will have a total floor area of 10,806 square feet, which results in a floor area ratio of 7.2% (the maximum allowable floor area ratio is 25%). According to the plans, the allowable disturbed area is 13,037 square feet and the proposed disturbance is 6,660 square feet.

Retaining Wall and Driveway

A retaining wall will be placed on the north side of the driveway. The retaining wall is 8' tall and 90' in length. Also, the driveway varies in width and slope, from 12' wide to 42' wide and from a 5% slope to a 30% slope.

Pool

A new pool is proposed in front of the house and will meet all setbacks. More detailed information will be provided with the formal hillside review process and evaluated for code compliance. If required, the pool barrier must maintain a minimum openness of 80%.

Grading & Drainage

There will be grading associated with the construction of the home as generally shown on the grading and drainage plan. The preliminary plan shows the house constructed on a series of buttresses and spanning two washes. Per the applicant's drainage narrative, the proposed design will allow storm water to pass under the residence. To the extent possible, on-site retention will be required to address run off from the roof and driveway. The applicant has provided a brief drainage narrative describing the flows. However, a detailed drainage plan and report will be required and fully reviewed with Formal Hillside Committee review. Also, the applicant will need to address general construction methods (such as excavating for the buttresses and driveway) by Formal review.

Conceptual Plan Review

The purpose of the conceptual review meeting is to discuss, review, and give suggestions and guidance to the applicant. A detailed set of plans will be submitted for formal review in accordance with Section 2206.II. The following criteria are sections of the Hillside Building Code that govern the conceptual review:

- Section 2205.I. Concept Plan Review Meeting:
The Applicant, along with their architect and engineer shall submit a completed application and the required fees, to the Town Engineer, at the time they request a concept plan review meeting (pre-hillside meeting) with the Hillside Building Committee. The purpose of this meeting is to discuss, review, and give suggestions and guidance to the Applicant regarding the proposed development including: the location of the building pad and accessory uses; how these relate to Significant Natural Features; the preservation of existing vegetation; grading concepts and their adaptation to the natural hillside topography; and how the requirements pursuant to these hillside regulations and purpose statement will guide the proposed Development.
- Section 2206.I. Concept Plan Review Meeting.
The applicant shall submit the following:
 - A. Seven (7) copies of a preliminary site plan that includes, but is not limited to, the building footprint, driveway, swimming pool, and accessory use locations along with topographic information for the lot.
 - B. A 3-dimensional representation of the general massing of all proposed structures (e.g. a mass model, a 3-D rendering or a computer generated model in relation to topography - not a detail model).
 - C. A recent aerial photo of the site (less than 3 years old), with topography, lot lines, and the building footprint superimposed on it, and identification of significant natural features as well as adjacent lots and structures within 100 feet of the perimeter of the subject property (min. 24"X 36").

File #: 16-280

D. Preliminary calculations on land disturbance and cut and fill methods.

CC: Vivian Ayala and Fred Fleet, Applicants

EXHIBIT 6

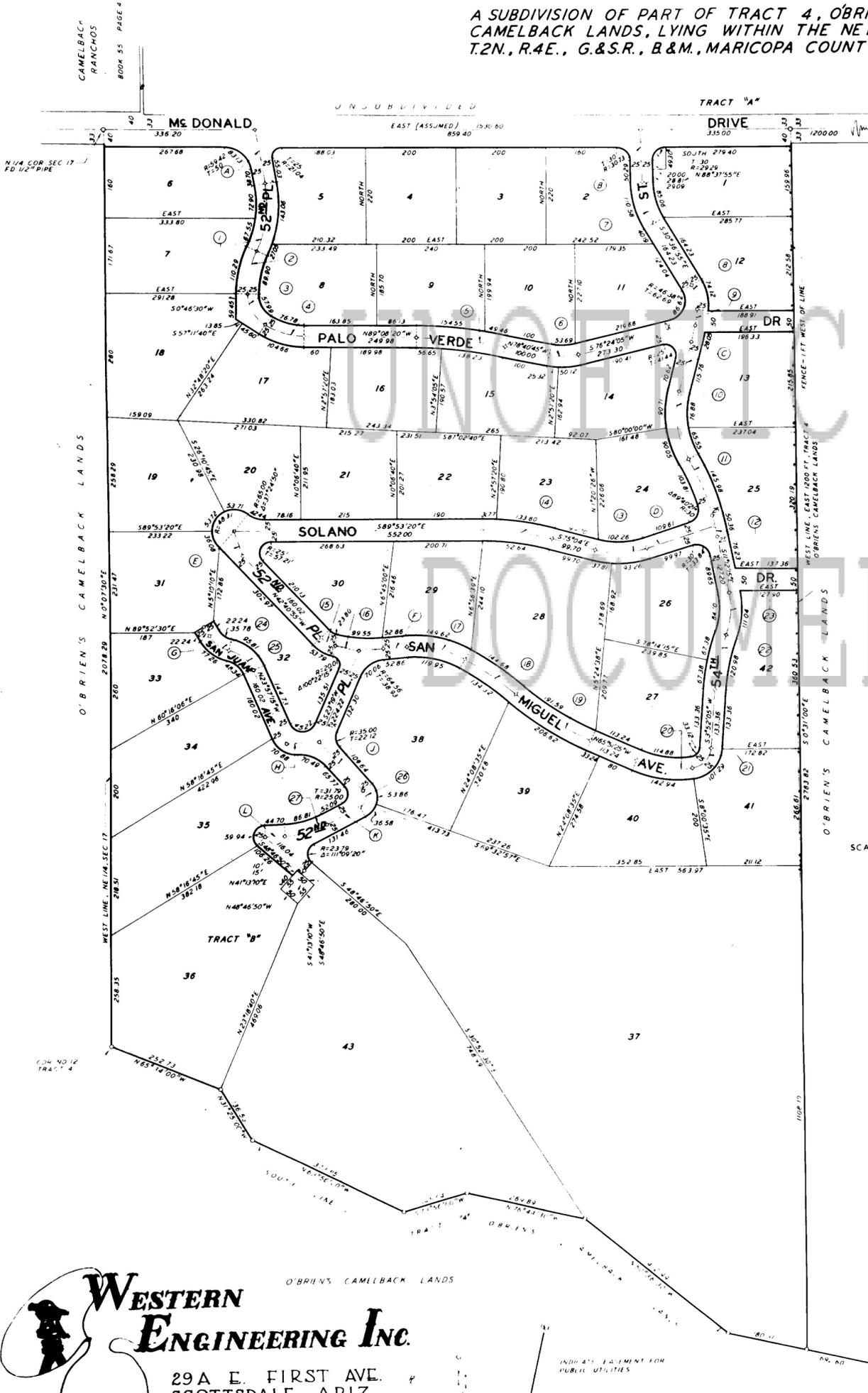
EXHIBIT 7

STONE CANYON

A SUBDIVISION OF PART OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, LYING WITHIN THE NE 1/4, SEC. 17, T.2N., R.4E., G.&S.R., B.&M., MARICOPA COUNTY, ARIZONA.

95472

STATE OF ARIZONA
County of Maricopa
I hereby certify that the within instrument was filed and recorded as required of
PHOENIX TITLE AND TRUST CO.
MAR 2 1955 9:00 A.M.
BY *L. J. Taylor*
Witness my hand and official seal this day and year attached.
HUIER G. LAWREN
County Recorder
C. W. Allen
Deputy Recorder



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: That the Phoenix Title and Trust Company, an Arizona Corporation, Trustee, has subdivided under the name of, **STONE CANYON**, all of Tract 4, O'Brien's Camelback Lands, a subdivision recorded in Book 18 of Maps at Page 36 thereof, Maricopa County records, lying within the NE 1/4, Sec. 17, T.2N., R.4E., G.&S.R., B.&M., Maricopa County, Arizona, except the East 1200 feet thereof, and hereby publishes this plat as and for the plat of said **STONE CANYON**, and hereby declares that said plat sets forth the location and gives the dimensions of the lots, tracts and streets, constituting same, and that each lot, tract and street shall be known by the number letter or name given each respectively on said plat, and hereby dedicates to the public for use as such, the streets as shown on said plat and included in the above described premises. Easements are dedicated for the purposes shown.

IN WITNESS WHEREOF the Phoenix Title and Trust Company, as Trustee, has hereunto caused its corporate name to be signed and its corporate seal to be affixed and the same to be attested by the signatures of L. J. Taylor, its Vice President, and J. S. Hull, its Assistant Secretary, thereto duly authorized.

PHOENIX TITLE AND TRUST COMPANY, TRUSTEE

By *L. J. Taylor* VICE PRESIDENT ATTEST: *J. S. Hull* ASSISTANT SECRETARY

ACKNOWLEDGEMENT

STATE OF ARIZONA
COUNTY OF MARICOPA

On this, the 23rd day of MARCH, 1955, before me, the undersigned officer, personally appeared L. J. Taylor and J. S. Hull, who acknowledged themselves to be Vice President and Assistant Secretary, respectively, of the Phoenix Title and Trust Company, a corporation, and acknowledged that they, as such officers, respectively, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation, as Trustee, by themselves, as such officers, respectively.

IN WITNESS WHEREOF I hereunto set my hand and official seal:

My commission expires April 2, 1956 DATE
Helen W. ... NOTARY PUBLIC

APPROVAL

Approved by the Planning and Zoning Commission of Maricopa County, Arizona, this 23rd day of MARCH, 1955.

By *...* VICE CHAIRMAN

CERTIFICATE

This is to certify that the survey and subdivision of the premises described and plotted hereon were made under direction during the month of February, 1955.

...
REGISTERED LAND SURVEYOR

SCALE 1" = 100'

CENTER LINES OF ROADWAYS

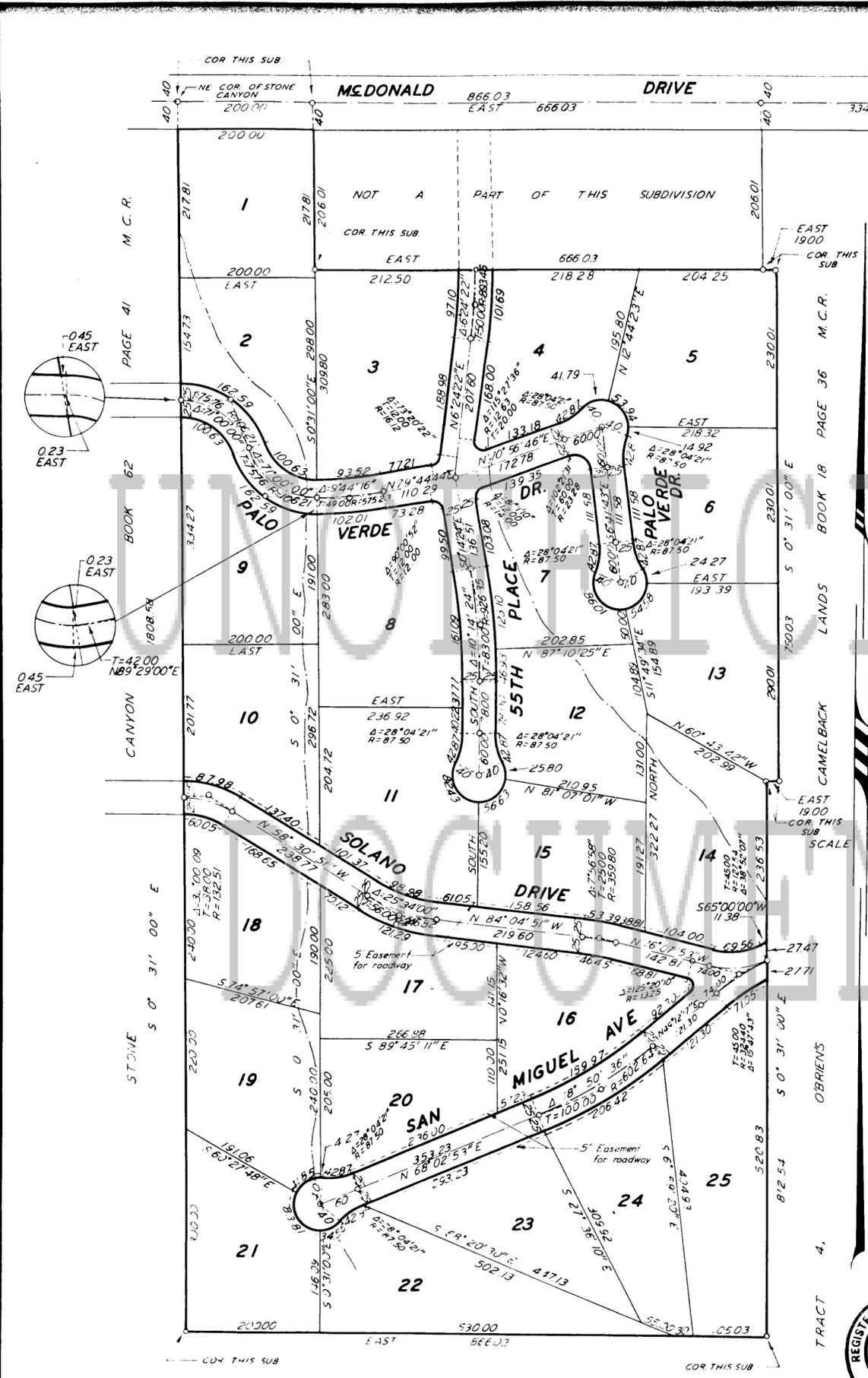
CURVES			
REV.	RADIUS	TANGENT	Δ
1	261.79	80.00	13°32'55"
2	243.44	50.75	17°15'55"
3	82.32	45.60	77°58'00"
4	162.7	46.57	1°56'40"
5	1092.51	100.00	10°27'35"
6	148.45	32.80	24°55'10"
7	191.63	50.00	29°4'50"
8	89.07	30.00	17°1'40"
9	569.19	37.75	7°35'20"
10	210.80	85.00	47°53'75"
11	522.71	70.00	15°17'15"
12	868.85	14.48	3°13'40"
13	200.46	60.00	33°00'55"
14	815.03	80.00	14°48'20"
15	64.67	20.00	34°22'20"
16	35.8	54.00	17°27'10"
17	227.15	64.43	33°59'50"
18	873.23	70.00	11°52'20"
19	662.57	100.31	17°13'10"
20	224.71	66.20	32°08'10"
21	49.29	40.00	78°07'20"
22	464.00	64.34	15°47'20"
23	181.15	50.00	30°51'40"
24	68.12	30.00	47°32'15"
25	75.91	39.01	54°24'00"
26	25.00	31.78	103°38'30"
27	214.72	50.00	26°12'30"

TANGENTS		
REV.	BEARING	DISTANCE
A	N 69°30'40"W	124.96
B	S 17°22'05"E	119.70
C	S 14°12'35"W	115.78
D	N 71°55'05"E	162.00
E	N 10°42'45"W	53.30
F	S 90°29'15"W	52.86
G	N 30°40'00"W	22.24
H	S 86°55'45"W	73.25
I	S 41°16'00"E	147.36
J	S 82°22'30"W	83.88
K	S 88°15'00"W	44.70

WESTERN ENGINEERING INC.
29A E. FIRST AVE.
SCOTTSDALE, ARIZ.
JOB NO. 541013-B

62-411

EXHIBIT 8



STONE CANYON EAST

A SUBDIVISION OF A PORTION OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, BK. 18, PG. 36, M. C. R.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS: That the Phoenix Title and Trust Company, an Arizona Corporation, Trustee, has subdivided under the name of STONE CANYON EAST, part of Tract 4, O'Brien's Camelback Lands, a subdivision recorded in Book 18 of maps on Page 36 thereof, office of the Maricopa County Recorder, as shown platted hereon, and hereby publishes this plat as and for the plat of said STONE CANYON EAST, and hereby declares that said plat sets forth the location and gives the dimensions of the lots and streets constituting same and that each lot and street shall be known by the number or name given each respectively, on said plat, and hereby dedicates to the public for use as such, the streets as shown on said plat and included in the above described premises. Easements are dedicated to the use shown.

IN WITNESS WHEREOF, the Phoenix Title and Trust Company, as Trustee has hereunto caused its corporate name to be signed and their corporate seal to be affixed and the same to be attested by the signatures of their officers thereunto duly authorized.

PHOENIX TITLE AND TRUST COMPANY — TRUSTEE
 BY: [Signature] ASST. VICE PRESIDENT ATTEST: [Signature] ASSISTANT SECRETARY

ACKNOWLEDGEMENT

STATE OF ARIZONA
 COUNTY OF MARICOPA
 On this the 28 day of Jan, 1959, before me the undersigned officer, personally appeared J. S. Hill and Bernard A. Ditsch, who acknowledged that they as such officers, respectively, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation, as Trustee, by themselves, as such officers, respectively.

IN WITNESS WHEREOF I hereunto set my hand and official seal. My commission expires Jan 3, 1960.
[Signature]
 NOTARY PUBLIC

APPROVAL

Approved by the Board of Supervisors of Maricopa County Arizona this 26 day of January, 1959.
 BY: [Signature] CHAIRMAN ATTEST: [Signature] CLERK
 Approved [Signature] SECRETARY CITY OF PHOENIX PLANNING COMM. DATE 1/22/59
 Approved [Signature] MAYOR OF SCOTTSDALE DATE 1/24/59
 Approved _____ COUNTY ENGINEER M.C.H.D. DATE _____
 Approved _____ MARICOPA COUNTY HEALTH DEPT. DATE _____

CERTIFICATE

This is to certify that the survey and subdivision of the premises described and platted hereon was made under my direction during the month of January, 1959.
[Signature]
 REGISTERED LAND SURVEYOR

Collar, Williams & White Engineering, Inc.

115 NORTH BROWN AVE.
 SCOTTSDALE, ARIZONA
 JOB NO. 581020



EXHIBIT 9

County of Maricopa

State of Arizona

Office of the Clerk

State of Arizona }
County of Maricopa } ss.

I, Rhea Averill, Clerk of the Board of Supervisors do hereby Certify That the attached is a true and correct extract from the minutes of the Board of Supervisors' meeting held May 24, 1961:

ORDER INCORPORATING TOWN OF PARADISE VALLEY

(ATTACHED)

County Recorder
County Assessor
County Treasurer
Sheriff
Planning & Zoning (2)
County Engineer (4)
Finance Director
County Auditor (4)
Council Members (5) ✓
Industrial Commission
Tax Commission
Mountain States Telephone & Telegraph
Santa Fe Railway Company
Southern Pacific Company
File

In Witness Whereof, I have hereunto set
my hand and affixed the Official Seal of the Board
of Supervisors. Done at Phoenix, the County Seat
this 25th day of May
A. D. 1961

Rhea Averill
Clerk of the Board of Supervisors

BEFORE THE BOARD OF SUPERVISORS, MARICOPA COUNTY

STATE OF ARIZONA

IN THE MATTER OF THE INCORPORATION OF)
THE TOWN OF PARADISE VALLEY, MARICOPA)
COUNTY, ARIZONA)

ORDER INCORPORATING
TOWN OF PARADISE VALLEY

More than two-thirds of the real property taxpayers residing in the town of Paradise Valley, Maricopa County, Arizona, containing a population of more than 500 inhabitants, having petitioned the Board of Supervisors setting forth the metes and bounds of such town and the name whereby such petitioners desire to be incorporated and praying for the incorporation of such town and the Board being satisfied that two-thirds of the real property taxpayers residing in such town have signed this petition.

Upon motion of Supervisor Burns and unanimously carried.

IT IS ORDERED that such town be and the same is hereby incorporated under the name of "TOWN OF PARADISE VALLEY."

IT IS FURTHER ORDERED that the metes and bounds of such town are designated as follows:

A parcel of land situated in Sections 8, 9, 10, 15, 16, and 17, T2N R4E, G5SRB&M, Maricopa County, Arizona, described by metes and bounds as follows:

Beginning at the Southwest corner of the E1/2 SW1/4 SW1/4 of Section 8; thence Northerly along the West line of the E1/2 SW1/4 SW1/4, Section 8 to the Northwest corner of the E1/2 SW 1/4 SW1/4 of Section 8, thence Easterly along the North line of the S1/2 SW1/4, Section 8 to the Northeast corner of the W1/2 SE1/4 SW1/4 of Section 8; thence Northerly along the West line of the E1/2 NE1/4 SW1/4, Section 8 to a point on the North line of the SW1/4 of Section 8; thence Easterly along the North line of the SW1/4 of Section 8 to the Northeast corner of the SW1/4 of Section 8; thence Southerly along the East line of the SW1/4 of Section 8 and along the West line of Lot 7, MacDonald Acres, reference being made to the plat of record in Book 45 of Maps, Page 5, Maricopa County records, to the Southwest corner of said Lot 7, MacDonald Acres; thence Easterly along the South line of Lot 7, MacDonald Acres to the Southeast corner thereof; thence Northerly along the East line of Lot 7, MacDonald Acres and a Northerly prolongation thereof to a point on the North line of the SE1/4 of Section 8; thence Easterly along the North line of the SE1/4 of Section 8 to the Northeast corner of the W1/2 SE1/4 of Section 8; thence Southerly along the East line of the W1/2 SE1/4 of Section 8 to the Southeast corner of the W1/2 SE1/4 of Section 8; thence Easterly along the South line of the SE1/4 of Section 8 to the Southeast corner of Section 8 (identical with the Southwest corner of Section 9); thence Northerly along the West line of the SW1/4 SW1/4 of Section 9 to the Northwest corner of the SW1/4 SW1/4 of Section 9; thence Easterly along the North line of the S1/2 SW1/4 of Section 9 to the Southeast corner of the W1/2 W1/2 NE 1/4 SW1/4 of Section 9; thence Northerly along the East line of the W1/2 W1/2 NE1/4 SW1/4 of Section 9 to a point on the North line of the SW1/4 of Section 9; thence Easterly along the North line of the SW1/4 of Section 9 to the Southwest corner of the E1/2 SE1/4 NW1/4 of Section 9; thence Northerly along the West line of the E1/2 SE1/4 NW1/4 of Section 9 to the Northwest corner of the E1/2 SE1/4 NW 1/4 of Section 9; thence Westerly along the South line of the W1/2 NE1/4 NW 1/4 of Section 9 to the Southwest corner of the NE1/4 NW1/4, Section 9; thence Southerly along the East line of the SW1/4 NW 1/4 of Section 9 to a point on the South line of the NW1/4 of Section 9; thence Westerly along the South line of the NW1/4 of Section 9 to the Southwest corner of the NW1/4 of Section 9; thence Northerly along the West line of the NW1/4 of Section 9

to the Northwest corner of Section 9; thence Easterly along the North line of the NW1/4 of Section 9 to the Northeast corner of the NW1/4 of Section 9; thence Easterly along the North line of the NE1/4 of Section 9 to the Northeast corner of Section 9; thence Southerly along the East line of the NE1/4 of Section 9 to the Southeast corner of the NE1/4 of Section 9; thence Easterly along the North line of the SW1/4 of Section 10 to the Northeast corner of the SW1/4 of Section 10; thence Easterly along the North line of the W1/2 SE1/4 of Section 10 to the Northeast corner of the W1/2 SE1/4 of Section 10; thence Southerly along the East line of the W1/2 SE1/4 of Section 10 to the Southeast corner of the W1/2 SE1/4 of Section 10; thence Easterly along the North line of the W1/2 E1/2 NE1/4 of Section 15 to the Northeast corner of the W1/2 E1/2 NE1/4 of Section 15; thence Southerly along the East line of the W1/2 E1/2 NE1/4 of Section 15 to the Southeast corner of the W1/2 E1/2 NE1/4 of Section 15; thence Westerly along the South line of the NE1/4 of Section 15 and along the South line of the NW1/4 of Section 15, and the South line of the NE1/4 of Section 16, and the South line of the NW1/4 of Section 16, and the South line of the NE1/4 of Section 17 to the center of Section 17; thence Northerly along the West line of the NE 1/4 of Section 17 to the Southeast corner of Mirador, a subdivision recorded in Book 67 of Maps, Page 15, Maricopa County records; thence Westerly along the South line of Mirador to the Southwest corner of Mirador; thence Northerly along the West line of Mirador to the Northwest corner of Mirador, said point being on the South line of the SW1/4 of Section 8; thence Westerly along the South line of the SW1/4 of Section 8 to the Southwest corner of the E1/2 SW1/4 SW1/4 of Section 8, the point of beginning.

The best information obtainable indicating the Town contains ~~more~~^{less} than 1500 inhabitants.

IT IS FURTHER ORDERED THAT Mrs. Harold Holcomb, Robert Temple, Sterling Hebbard, Patrick Downey and Irvin Miller, each of whom is over 21 years of age and a qualified elector and free holder residing within said town are hereby appointed as members of the Common Council of said town to hold office until their successors shall have been elected and qualified.

BOUNDARIES OF
TOWN OF PARADISE VALLEY
 AS OF NOVEMBER 1961
 SHOWN BY HEAVY BLACK LINE

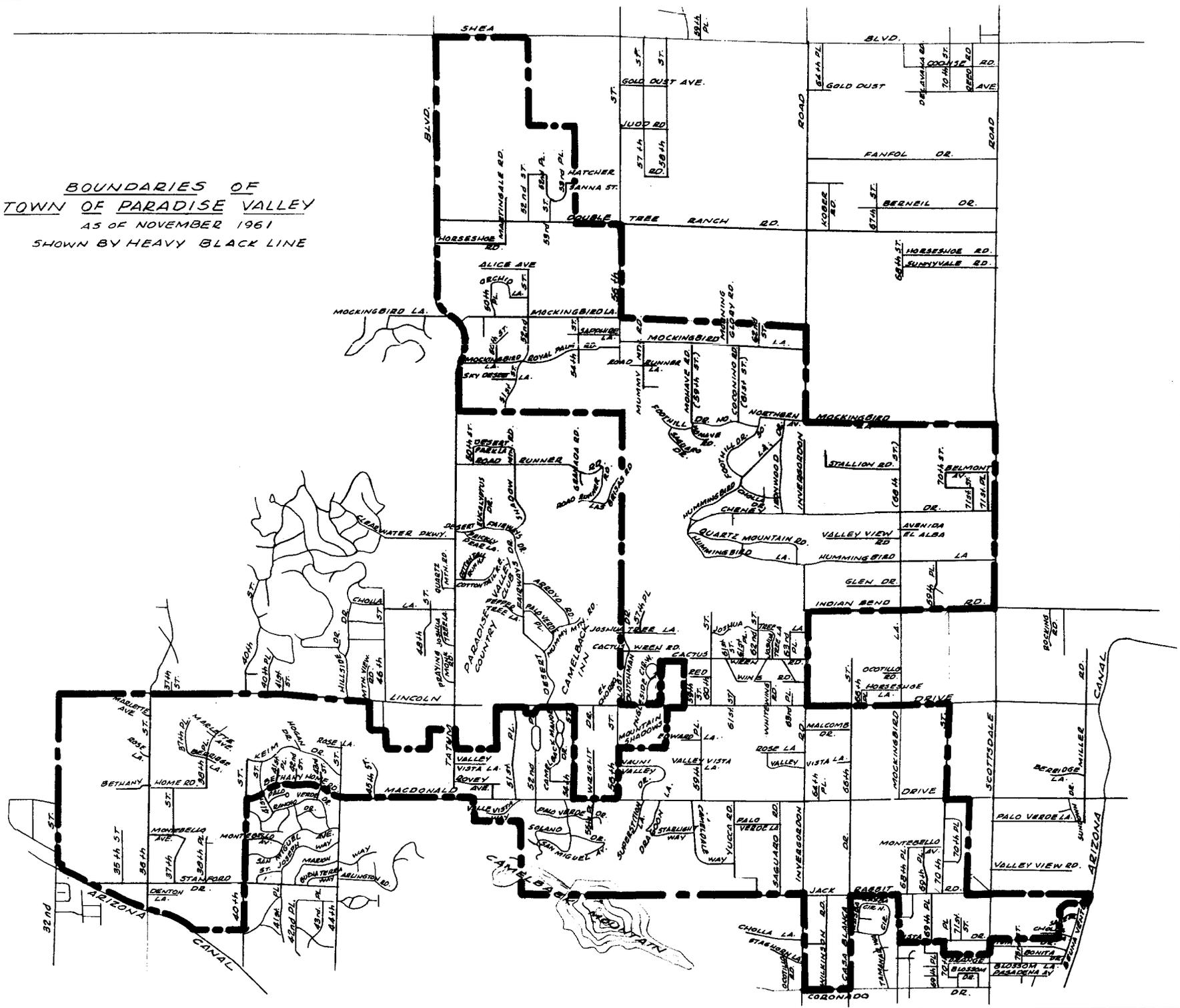


EXHIBIT 10

AN ORDINANCE ADOPTING A PUBLIC RECORD AND ESTABLISHING A PLAN FOR DIVIDING THE TOWN OF PARADISE VALLEY INTO DISTRICTS FOR THE PURPOSE OF REGULATING THE LOCATION OF TRADES AND INDUSTRIES, AND OF BUILDINGS AND STRUCTURES DESIGNED FOR DWELLINGS, APARTMENT HOUSES, TRADE, INDUSTRIES AND OTHER SPECIFIED USES, FOR REGULATING THE HEIGHT, VOLUMES, AND SIZE OF BUILDINGS AND STRUCTURES AND THE INTENSITY OF USE OF LOT AREAS, FOR DETERMINING BUILDING LINES, FOR CREATING A BOARD OF ADJUSTMENT, FOR CREATING A ZONING COMMISSION, PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, AS FOLLOWS:

Section 1. There is hereby adopted by the Town of Paradise Valley that certain public record known as Zoning Ordinance of the Town of Paradise Valley, Arizona, of which not less than three (3) copies have been and now are on file in the office of the Clerk of the Town of Paradise Valley, and the same are hereby adopted and incorporated as fully as if set out herein.

Section 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the public record adopted by reference 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.

Section 4. Any person, firm or corporation whether as principal, owner, agent, tenant, or otherwise who violates, disobeys, omits, neglects or refuses to comply with, or who resists enforcement of any of the provisions of this ordinance, shall upon conviction be punished by a fine of not more than Three Hundred (\$300.00) Dollars or by imprisonment in a designated place of confinement for a term not exceeding six (6)

months or by both fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 5. Whereas it is necessary for the preservation of the peace, health and safety of the Town of Paradise Valley, Arizona, an emergency is declared to exist and this ordinance is declared to be effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Paradise Valley, Arizona, this 16 day of October, 1961.

APPROVED this 16 day of October, 1961.

Patrick C. Lowrey
Mayor

ATTEST:

William E. Marston
Town Clerk

RESOLUTION NO. 111

OF THE TOWN OF PARADISE VALLEY, ARIZONA

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED ZONING ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA.

Be it resolved by the Mayor and Common Council of the Town of Paradise Valley, Arizona:

That certain document entitled Zoning Ordinance of the Town of Paradise Valley, Arizona, is hereby declared to be a public record, three (3) copies of which are on file in the office of the Town Clerk and the same are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED by the Mayor and Common Council this 16 day of October, 1961.

APPROVED this 16 day of October, 1961.

Patrick J. Downey
Mayor

ATTEST:

Helen C. Marston
Town Clerk

ZONING ORDINANCE
OF THE
TOWN OF PARADISE VALLEY, ARIZONA

TABLE OF CONTENTS

ARTICLE		Page
I.	PURPOSE AND TITLE	1
II.	DEFINITIONS	1
III.	DISTRICTS AND BOUNDARIES THEREOF	10
IV.	(R-43) SINGLE-FAMILY RESIDENTIAL DISTRICT	12
V.	(R-35) SINGLE-FAMILY RESIDENTIAL DISTRICT	16
VI.	(R-18) SINGLE-FAMILY RESIDENTIAL DISTRICT	20
VII.	(C-1) NEIGHBORHOOD COMMERCIAL DISTRICT	24
VIII.	PARKING AND LOADING REGULATIONS	27
IX.	NON-CONFORMING USES	30
X.	ADDITIONAL HEIGHT AND AREA REGULATIONS	32
XI.	ADDITIONAL USE REGULATIONS AND SPECIAL USES	37
XII.	ZONING COMMISSION-BOARD OF ADJUSTMENT	40
XIII.	ENFORCEMENT	44
XIV.	PERMITS	45
XV.	CERTIFICATES OF OCCUPANCY	49
XVI.	BOUNDARIES OF DISTRICTS	51
XVII.	INTERPRETATION, PURPOSE AND CONFLICT	52
XVIII.	AMENDMENTS	53
XIX.	VIOLATION AND PENALTY	55
XX.	REPEAL, VOID PARTS, SAVING CLAUSE, EFFECTIVE DATE	57

ORDINANCE NO. 10

AN ORDINANCE ESTABLISHING A PLAN FOR DIVIDING THE TOWN OF PARADISE VALLEY INTO DISTRICTS FOR THE PURPOSE OF REGULATING THE LOCATION OF TRADES AND INDUSTRIES, AND OF BUILDINGS AND STRUCTURES DESIGNED FOR DWELLINGS, APARTMENT HOUSES, TRADE, INDUSTRIES AND OTHER SPECIFIED USES, FOR REGULATING THE HEIGHT, VOLUMES, AND SIZE OF BUILDINGS AND STRUCTURES AND THE INTENSITY OF USE OF LOT AREAS, FOR DETERMINING BUILDING LINES, FOR CREATING A BOARD OF ADJUSTMENT, FOR CREATING A ZONING COMMISSION, PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES, PROVIDING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA:

ARTICLE I. PURPOSE AND TITLE

Section 101. Purpose. This ordinance is for the purpose of securing adequate light, pure air, and safety from fire and other dangers; conserving the values of land and buildings through the Town of Paradise Valley; lessening or avoiding congestion in the public streets; and promoting the public health, safety, comfort, morals and welfare of the Citizens of the Town of Paradise Valley, Arizona.

Section 102. Title. This ordinance may be cited as the "Zoning Ordinance of the Town of Paradise Valley."

ARTICLE II. DEFINITIONS

Section 201. For the purpose of this ordinance, certain terms and words are hereby defined. Words used in the present tense shall include the future; the singular number shall include the plural, the plural, the singular; the word "building" shall include the word "structure"; the word "lot" shall include the word "plot"; the word "shall" is mandatory.

1. Accessory Building: A subordinate building, the use of which is incidental to that of the dominant use of the main building, or premises, including bona fide servant quarters.
2. Alley: A public thoroughfare which affords only a secondary means of access to abutting property.
3. Apartment House: See "Dwelling, Multiple."
4. Basement: A story having part, but not more than one-half

(1/2) its height below grade. A basement is counted as a story for the purpose of height regulations, if subdivided and used for business or dwelling purposes by other than a janitor employed on the premises.

5. Building: Any structure for the shelter, support or enclosure of persons, animals, or property; and when separated by dividing walls without openings, each portion of such building, so separated, shall be deemed a separate building.

6. Building, Height of: The vertical distance from the grade to the highest point of the coping of a flat roof, or to the highest point of a mansard roof, or to the highest gable of a pitch or hip roof.

7. Carport: A porch with two (2) or more open sides under which a vehicle may be driven.

8. Cellar: A story having more than one-half (1/2) its height below grade.

9. Dwelling: Any building, or portion thereof, which is designed or used exclusively for residential purposes.

10. Dwelling, Single-Family: A building designed for occupancy by one (1) family.

11. Dwelling, Two-Family: A building designed for occupancy by two (2) families.

12. Dwelling, Multiple: A building or portion thereof designed for occupancy by three (3) or more families.

13. Dwelling Unit: One (1) or more rooms in a dwelling designed for occupancy by one (1) family for living purposes and having its own cooking and sanitary facilities.

14. Family: An individual or two (2) or more persons related by blood or marriage or a group of not more than five (5) persons, excluding servants, who need not be related by blood or marriage living together as a housekeeping unit.

15. Frontage: All the property on one (1) side of a street between two (2) intersecting streets (crossing or terminating) measured along the line of the street, or, if the street is dead end, then all of the property abutting on one (1) side between an intersecting street and the dead end of the street including property fronting on a cul-de-sac.

16. Garage, Private: Any accessory building designed or used for the storage of not more than three (3) motor-driven vehicles, provided that no private garage may be used or rented for the storage of commercial trucks having a capacity in excess of one (1) ton.

17. Garage, Public: A building or portion thereof, other than a private or storage garage, designed or used for servicing, repairing, equipping, hiring, selling or storing motor-driven vehicles.

18. Garage, Storage: A building or portion thereof designed or used exclusively for housing of four (4) or more motor-driven vehicles.

19. Grade:

(a) For buildings having walls adjoining one (1) street only the average of the elevation of the sidewalk, or if there be no sidewalk, then the average of the elevation of the roadway at the center of the wall adjoining the street,

(b) For buildings having walls adjoining more than one (1) street, the average of the elevation of the sidewalk, or if there be no sidewalk, the streets,

(c) For buildings having no wall adjoining the street, the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Any wall approximately parallel to and not more than five (5) feet from a street line is to be considered as adjoining

the street.

20. Guest Ranch: A building or group of buildings containing two (2) or more guest units, other than a hotel, motel or resort hotel, and having outdoor recreational facilities such as horseback riding, swimming, tennis courts, shuffleboard courts, barbecue and picnic facilities.

21. Guest Unit: A room or suite of rooms designed or intended for occupancy by, or which is occupied by not more than one (1) family for compensation, but in which no provision is made for cooking, and not including dormitories for sleeping purposes.

22. Heliport: An area that is used or intended to be used for the landing and takeoff of helicopters, and may include any or all of the areas or buildings which are appropriate to accomplish these functions.

23. Home Occupation: Any occupation or profession carried on by a member of the family residing on the premises; in connection with which there is used no sign other than a name plate not more than one (1) square foot in area or no display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; in which no person is employed other than a member of the family residing on the premises; in which no goods are sold except those prepared on the premises, and in which no equipment is used except such that is normally used for domestic or household purposes.

Home Occupation shall include the use of premises by a physician, surgeon, dentist, lawyer, clergyman, or other professional person for consultation or emergency treatment, but not for the general practice of his occupation or profession.

24. Hospital: Unless otherwise specified, the term "hospital" shall include "sanitarium", "preventorium", "clinic", "maternity home", or "rest home", and shall be deemed to mean a place for

treatment or other care of human ailments.

25. Hotel: A building in which lodging is provided and offered to the public for compensation and which is open to transient guests.

26. Institution: A building or buildings occupied by a non-profit corporation or a non-profit establishment for public use.

27. Loading Space: A permanently-maintained space on the same lot as the main building accessible to a street or alley and not less than ten (10) feet in width, twenty (20) feet in length, and fourteen (14) feet in height.

28. Lot: A parcel of land occupied or intended for occupancy by one (1) main building together with its accessory buildings, and uses customarily incidental to it, including the open spaces required by this ordinance and having its principal frontage upon a street as defined in this ordinance.

29. Lot Area: The area of the lot, not including any area in a public way.

30. Lot, Corner: A lot adjoining two (2) or more streets at their intersection.

31. Lot, Depth of: The mean horizontal distance between the front and rear lot lines.

32. Lot, Double Frontage: A lot having a frontage on two (2) non-intersecting streets, as distinguished from a corner lot.

33. Lot, Interior: A lot other than a corner lot.

34. Lot, Key: A lot adjacent to a corner lot having its side lot line in common with the rear lot line of the corner lot and facing on the street which forms the side boundary of the corner lot.

35. Lot Lines: The lines bounding a lot.

36. Lot of Record: A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Clerk of Maricopa County Recorder's office; or parcel of land, the deed of

which is recorded in the office of the County Recorder.

37. Lot Width: In the case of rectangular lots, lots having side lot lines not parallel, or lots on the outside of the curve of a street, the distance between side lot lines measured at the required minimum front setback line on a line parallel to the street or street chord; in the case of lots on the inside of the curve of a street, the distance between side lot lines measured thirty (30) feet behind the required minimum front setback line parallel to the street or street chord.

38. Mobile Home: Any vehicle, whether or not self-propelled, used, or which may be used, or designed for use as a conveyance upon the public streets or highways and designed or constructed in such a manner as to permit occupancy as a dwelling or sleeping place for one (1) or more persons.

39. Motel: Any building or group of buildings containing guest rooms or dwelling units, some or all of which have a separate entrance leading directly from the outside of the building with garage or parking space located on the lot and designed, used, or intended wholly or in part for the accommodation of automobile transients. Motel includes motor court, motor lodge and tourist court, but not trailer court, guest ranch or resort hotel.

40. Non-conforming Use: Any building or land lawfully occupied by a use at the time of passage of this ordinance or amendment thereto which does not conform after the passage of this ordinance or amendment thereto with the use regulations of the district in which located.

41. Parking Lot: A parcel of land devoted to unenclosed parking spaces.

42. Parking Space: A permanently surfaced area, enclosed or unenclosed, having an area of not less than one hundred eighty (180) square feet, together with a driveway connecting the parking space

with a street or alley and permitting ingress and egress of an automobile.

43. Resort Hotel: A building or group of buildings other than a motel designed for or containing apartments and individual guest rooms or suites of rooms and apartments, and which shall furnish services ordinarily furnished by hotels.

44. School: Unless otherwise specified, the term "school and college" shall be limited to private or public places of general instruction and shall not include nursery schools, dancing schools, riding academies, or trade or specialized vocational schools.

45. Service Station: Any building or premises used principally for the storing, dispensing or offering for sale at retail of automobile fuels or oils.

46. Shopping Center: A group of stores planned and designed for the site on which it is built, functioning as a unit, with off-street parking provided on the property as an integral part of the unit.

47. Sign: Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge, or insigne of any government or governmental agency, or of any civic, charitable, religious, patriotic, fraternal, or similar organization.

48. Story: That portion of a building, other than a cellar included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the floor and the ceiling next above it.

49. Story, Half: A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor is finished off for use. The half-story containing independent apartment or living quarters shall

be counted as a full story.

50. Street: All property dedicated or intended for public or private street purposes or subject to public easements therefor.

51. Street Line: A dividing line between a lot, tract or parcel of land and a contiguous street (right-of-way).

52. Structural Alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any complete rebuilding of the roof.

53. Structure: Anything constructed or erected, the use of which requires a location on the ground or attached to something having a location on the ground, but not including a tent, vehicle, trailer coach, house trailer or mobile home.

54. Use: The purpose of which land or building is occupied, or maintained, arranged, designed, or intended.

55. Use, Accessory: A subordinate use customarily incident to and conducted on the same lot with the principal use or building including bona fide servant quarters.

56. Yard: An open space at grade level between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or depth of a rear yard, the minimum horizontal distance between the lot line and the main building shall be used.

57. Yard, Front: A yard extending across the front width of a lot and being the minimum horizontal distance between the street line and the main building or any projection thereof, other than steps, unenclosed balconies and unenclosed porches. The front yard of a corner lot is the yard adjacent to the shorter street frontage.

58. Yard, Rear: A yard extending between the side yards of a lot and being the minimum horizontal distance between the rear lot

line and the rear of the main building or any projections other than steps, unenclosed balconies or unenclosed porches. On both corner lots and interior lots the rear yard shall in all cases be at the opposite end of the lot from the front yard.

59. Yard, Side: A yard between the building and the side lot line of a lot and extending from the front yard to the rear lot line as defined or along the full depth in absence of front or rear yards and being the minimum horizontal distance between a side lot line and the side of the main building or any projections thereof, other than steps, unenclosed balconies or unenclosed porches. An interior side yard is defined as the side yard adjacent to a common lot line.

ARTICLE III. DISTRICTS AND BOUNDARIES THEREOF

Section 301. In order to classify, regulate, and restrict the location of business, trades, industries, residences and other land uses, and the location of buildings designed for specified uses; to regulate and limit the height and bulk of buildings hereafter erected, reconstructed or structurally altered; to regulate and limit the intensity of the use of lot areas; and to regulate and determine the area of yards, courts and other open spaces within and surrounding such buildings, the Town of Paradise Valley, Arizona, is hereby divided into four (4) classes of "Districts". The use, height, and area regulations are uniform in each district, and said districts shall be known as:

R-43 Single-Family Residential District.

R-35 Single-Family Residential District.

R-18 Single-Family Residential District.

C-1 Neighborhood Commercial District.

Section 302. The boundaries of these districts are shown upon the map made a part of this ordinance, which map is designated as the "District Map." The district map and all the notations, references, and other information shown thereon are a part of this ordinance and have the same force and effect as if the district map and all the notations, references and other information shown thereon were all fully set forth or described herein, which district map is attached hereto and made a part of this ordinance by reference.

Section 303. All territory which may hereafter be annexed to the Town of Paradise Valley, Arizona, shall automatically be placed in the (R-43) Single-Family Residential District until otherwise changed by ordinance.

Section 304. Whenever any street, alley or other public way is vacated by official action of the Town Council, the zoning districts adjoining each side of such street, alley or public way shall

be automatically extended to the center of such vacation and all area included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts.

Section 305. Except as hereinafter provided:

1. No building shall be erected, converted, enlarged, reconstructed or structurally altered, nor shall any building or land be used except in conformity with use, height, area and parking regulations in the district in which the building or land is located.

2. The minimum yards and other open spaces, including lot area per family, required by this ordinance for each and every building existing at the time of passage of this ordinance, or for any building hereafter erected, shall not be encroached upon or considered as yard or open space requirements for any other building; nor shall any lot area be reduced beyond the district regulations of this ordinance.

3. Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one (1) main building on one (1) lot, except as otherwise provided in Article X hereof.

ARTICLE IV (R-43) SINGLE-FAMILY RESIDENTIAL DISTRICT

Section 401. Purpose: This district is intended to promote and preserve residential development associated with the desert landscape. Large lots are required to maintain a low density of population. The principal land use is single-family dwellings and uses incidental or accessory thereto together with required recreational, religious and educational facilities.

Section 402. Use Regulations: A building or premises shall be used only for the following purposes:

1. Single-family dwelling.
2. Park, playground and community buildings owned and operated by a public agency.
3. Church.
4. Public school, elementary and high, or private school having a curriculum equivalent to a public elementary school or public high school.
5. Golf course, except miniature course or practice driving tees operated for commercial purposes.
6. The keeping of horses for use of a family; provided, however, the number shall be limited to two (2) head for each acre of land. Lots used as such shall have an area of not less than one (1) acre, and buildings and enclosures for horses placed on any such lot shall not be located in the front yard and shall maintain the same side yards and rear yard required for the main building.
7. Accessory buildings and uses customarily incident to the above uses, including a private garage, guest house, and home occupations, but not involving any activity conducted on a commercial basis. Any accessory building not attached to the main structure shall be located not less than sixty (60) feet from the front lot line.

8. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work, or upon the expiration of a period of one (1) year from the time of erection of such temporary buildings, whichever is sooner.

9. Signs as indicated below in accordance with the regulations set forth herein:

(a) Name plate sign indicating the resident's name and title and address limited to one (1) on the premises; provided, however, such sign shall not exceed one (1) square foot in area.

(b) Temporary sign appertaining to the subdividing of land for sale as individual lots limited to two (2) on the premises; provided, however, such sign shall not exceed thirty-six (36) square feet in area and shall set back at least twenty-five (25) feet from any street line. Such sign shall be removed when eighty percent (80%) of the lots in the subdivision are sold or upon the expiration of a period of one (1) year from the time of erection, whichever occurs sooner.

(c) Temporary sign appertaining to lease, hire or sale of a structure or of an individual lot limited to one (1) on the premises; provided, however, such sign shall not exceed three (3) square feet in area. Such sign may be placed on individual lots in a subdivision if that subdivision has been recorded in the office of the Clerk of Maricopa County Recorder's Office.

(d) Church or public building bulletin board limited to one (1) on the premises and not exceeding twelve (12) square feet in area; provided, however, such bulletin board shall be located at least twelve (12) feet from any lot line. Such bulletin board may be illuminated, provided that the source of illumination shall not be visible and no flashing or intermittent illumination shall be employed.

(e) Directional sign not exceeding two (2) square feet in area.

10. Fences, or free standing walls not to exceed eight (8) feet in height.

11. Private swimming pool provided such pool shall be located not closer than twenty (20) feet to any property line nor shall the same occupy any front yard and provided such pool shall be screened from adjacent properties by a solid wall, or protective fence, or other permanent structure not to be less than four and one-half (4-1/2) feet in height.

12. Any occupation and profession when conducted under the same conditions as are prescribed under home occupations.

Sealed beam, flood beam or spot lighting shall be so placed to not direct or reflect the light upon adjoining lots.

Section 403. Parking Regulations: The parking regulations are as provided in Article VIII hereof.

Section 404. Height Regulations: No building shall exceed two (2) stories or thirty (30) feet in height, except as provided in Article X hereof.

Section 405. Area Regulations:

1. Front Yard:

(a) There shall be a front yard having a depth of not less than forty (40) feet, except as provided in Article X hereof.

(b) Where lots have a double frontage, front yard requirements shall be provided on both streets.

(c) Where a lot is located at the intersection of two (2) or more streets, there shall be a yard conforming to the front yard requirements on each street side of a corner lot; provided, however, the buildable width of a lot of record at the time of the passage of this ordinance need not be reduced to less than forty (40) feet. No accessory building shall project into yards required to conform with the front yard requirements.

2. Side Yard: Except as provided in Article X hereof, there

shall be a side yard on each side of a building having a width of not less than twenty (20) feet or ten (10) per cent of the width of the lot, whichever amount is larger.

3. Rear Yard: Except as provided in Article X hereof, there shall be a rear yard having a depth of not less than forty (40) feet.

4. Intensity of Use of Lot:

(a) In the (R-43) Single-Family Residential District every residential lot shall have an area of not less than forty-three thousand five hundred sixty (43,560) square feet and a width of not less than one hundred sixty-five (165) feet. If a lot of record has less area or width than herein required and has been duly recorded prior to the date of the passage of this ordinance, such lot may be used for any purposes permitted in this article.

(b) No residence shall have a ground floor area of less than two thousand (2,000) square feet including the walls proper of the structure, but exclusive of open porches, pergolas or attached garages or carports, if any, or other similar extension thereof.

ARTICLE V (R-35) SINGLE-FAMILY RESIDENTIAL DISTRICT

Section 501. Purpose: This district is intended to promote and preserve residential development associated with the desert landscape. The minimum lot size, although less than one acre, still results in a low density of population. The principal land use is single-family dwellings and uses incidental or accessory thereto, together with required recreational, religious and educational facilities.

Section 502. Use Regulations: A building or premises shall be used only for the following purposes:

1. Single-family dwelling.
2. Park, playground and community buildings owned and operated by a public agency.
3. Church.
4. Public school, elementary and high, or private school having a curriculum equivalent to a public elementary school or public high school.
5. Golf course, except miniature course or practice driving tees operated for commercial purposes.
6. Accessory buildings and uses customarily incident to the above uses, including a private garage, guest house and home occupations, but not involving any activity conducted on a commercial basis. Any accessory building not attached to the main structure shall be located not less than sixty (60) feet from the front lot line.
7. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work, or upon the expiration of a period of one (1) year from the time of erection of such temporary buildings, whichever is sooner.
8. Signs as indicated below in accordance with the

regulations set forth herein:

(a) Name plate sign indicating the resident's name, title and address limited to one (1) on the premises; provided, however, such sign shall not exceed one (1) square foot in area.

(b) Temporary sign appertaining to the subdividing of land for sale as individual lots limited to two (2) on the premises; provided, however, such sign shall not exceed thirty-six (36) square feet in area and shall set back at least twenty-five (25) feet from any street line. Such sign shall be removed when eighty percent (80%) of the lots in the subdivision are sold or upon the expiration of a period of one (1) year from the time of erection, whichever occurs sooner.

(c) Temporary sign appertaining to lease, hire or sale of a structure or of an individual lot limited to one (1) on the premises; provided, however, such sign shall not exceed three (3) square feet in area. Such sign may be placed on individual lots in a subdivision if that subdivision has been recorded in the office of the Clerk of Maricopa County Recorder's office.

(d) Church or public building bulletin board limited to one (1) on the premises and not exceeding twelve (12) square feet in area; provided, however, such bulletin board shall be located at least twelve (12) feet from any lot line. Such bulletin board may be illuminated, provided that the source of illumination shall not be visible and no flashing or intermittent illumination shall be employed.

(e) Directional sign not exceeding two (2) square feet in area.

9. Fences, or free standing walls not to exceed eight (8) feet in height.

10. Private swimming pool provided such pool shall be located not closer than twenty (20) feet to any property line nor shall the

same occupy any front yard and provided such pool shall be screened from adjacent properties by a solid wall, or protective fence, or other permanent structure not to be less than four and one-half (4-1/2) feet in height.

11. Any occupation and profession when conducted under the same conditions as are prescribed under home occupations.

Sealed beam, flood beam or spot lighting shall be so placed to not direct or reflect the light upon adjoining lots.

Section 503. Parking Regulations: The parking regulations are as provided in Article VIII hereof.

Section 504. Height Regulations: No building shall exceed two (2) stories or thirty (30) feet in height, except as provided in Article X hereof.

Section 505. Area Regulations:

1. Front Yard:

(a) There shall be a front yard having a depth of not less than forty (40) feet, except as provided in Article X hereof.

(b) Where lots have a double frontage, front yard requirements shall be provided on both streets.

(c) Where a lot is located at the intersection of two (2) or more streets, there shall be a yard conforming to the front yard requirements on each street side of a corner lot; provided, however, the buildable width of a lot of record at the time of the passage of this ordinance need not be reduced to less than forty (40) feet. No accessory building shall project into yards required to conform with the front yard requirements.

2. Side Yard: Except as provided in Article X hereof, there shall be a side yard on each side of a building having a width of not less than fifteen (15) feet or ten (10) percent of the width of the lot, whichever amount is larger.

3. Rear Yard: Except as provided in Article X hereof, there

shall be a rear yard having a depth of not less than forty (40) feet.

4. Intensity of Use of Lot:

(a) In the (R-35) Single-Family Residential District every residential lot shall have an area of not less than thirty-five thousand (35,000) square feet, and a width of not less than one hundred fifty (150) feet. If a lot of record has less area or width than herein required and has been duly recorded prior to the date of the passage of this ordinance, such lot may be used for any purposes permitted in this article.

(b) No residence shall have a ground floor area of less than one thousand eight hundred (1,800) square feet including the walls proper of the structure, but exclusive of open porches, pergolas or attached garages or carports, if any, or other similar extension thereof.

ARTICLE VI (R-18) SINGLE-FAMILY RESIDENTIAL DISTRICT

Section 601. Purpose: This district is intended to promote and preserve residential development associated with a semi-desert landscape. Lot size is such that a low density of population is still maintained. Land use is composed chiefly of individual homes, together with required recreational, religious and educational facilities as the basic elements of a balanced neighborhood.

Section 602. Use Regulations: A building or premises shall be used only for the following purposes:

1. Single-family dwelling.
2. Park, playground and community buildings owned and operated by a public agency.
3. Church.
4. Public school, elementary and high, or private school having a curriculum equivalent to a public elementary school or public high school.
5. Golf course, except miniature course or practice driving tees operated for commercial purposes.
6. Accessory buildings and uses customarily incident to the above uses, including a private garage and home occupations, but not involving any activity conducted on a commercial basis. Any accessory building not attached to the main structure shall be located not less than sixty (60) feet from the front lot line.
7. Temporary buildings for uses incidental to construction work, which buildings shall be removed upon the completion or abandonment of the construction work, or upon the expiration of a period of one (1) year from the time of erection of such temporary buildings, whichever is sooner.
8. Signs as indicated below in accordance with the regulations set forth herein:
 - (a) Name plate sign indicating the resident's name,

title and address limited to one (1) on the premises; provided, however, such sign shall not exceed one (1) square foot in area.

(b) Temporary sign appertaining to the subdividing of land for sale as individual lots limited to two (2) on the premises; provided, however, such sign shall not exceed thirty-six (36) square feet in area and shall set back at least twenty-five (25) feet from any street line. Such sign shall be removed when eighty percent (80%) of the lots in the subdivision are sold or upon the expiration of a period of one (1) year from the time of erection, whichever occurs sooner.

(c) Temporary sign appertaining to lease, hire or sale of a structure or of an individual lot limited to one (1) on the premises; provided, however, such sign shall not exceed three (3) square feet in area. Such sign may be placed on individual lots in a subdivision if that subdivision has been recorded in the office of the Clerk of Maricopa County Recorder's office.

(d) Church or public building bulletin board limited to one (1) on the premises and not exceeding twelve (12) square feet in area; provided, however, such bulletin board shall be located at least twelve (12) feet from any lot line. Such bulletin board may be illuminated, provided that the source of illumination shall not be visible and no flashing or intermittent illumination shall be employed.

(e) Directional sign not exceeding two (2) square feet in area.

9. Fences, free standing walls, or hedges not to exceed six (6) feet in height in any side or rear yard or three (3) feet, six (6) inches in any front yard.

10. Private swimming pool provided such pool shall be located not closer than twenty (20) feet to any property line nor shall the same occupy any front yard and provided such pool shall be screened from adjacent properties by a solid wall, or protective fence, or

other permanent structure not to be less than four and one-half (4-1/2) feet in height.

11. Any occupation and profession when conducted under the same conditions as are prescribed under home occupations.

Sealed beam, flood beam or spot lighting shall be so placed to not direct or reflect the light upon adjoining lots.

Section 603. Parking Regulations: The parking regulations are as provided in Article VIII hereof.

Section 604. Height Regulations: No building shall exceed two (2) stories or thirty (30) feet in height, except as provided in Article X hereof.

Section 605. Area Regulations:

1. Front Yard:

(a) There shall be a front yard having a depth of not less than thirty-five (35) feet, except as provided in Article X hereof.

(b) Where lots have a double frontage, front yard requirements shall be provided on both streets.

(c) Where a lot is located at the intersection of two (2) or more streets, there shall be a yard conforming to the front yard requirements on each street side of a corner lot; provided, however, the buildable width of a lot of record at the time of the passage of this ordinance need not be reduced to less than thirty-five (35) feet. No accessory building shall project into yards required to conform with the front yard requirements.

2. Side Yard: Except as provided in Article X hereof, there shall be a side yard on each side of a building having a width of not less than ten (10) feet or ten (10) percent of the width of the lot, whichever amount is larger.

3. Rear Yard: Except as provided in Article X hereof, there shall be a rear yard having a depth of not less than thirty-five (35) feet.

4. Intensity of Use of Lot:

(a) In the (R-18) Single-Family Residential District every residential lot shall have an area of not less than eighteen thousand (18,000) square feet, and a width of not less than one hundred twenty (120) feet. If a lot of record has less area or width than herein required and has been duly recorded prior to the date of the passage of this ordinance, such lot may be used for any purposes permitted in this article.

(b) No residence shall have a ground floor area of less than one thousand five hundred (1,500) square feet including walls proper of the structure, but exclusive of open porches, pergola or attached garages or carports, if any, or other similar extension thereof.

ARTICLE VII. (C-1) NEIGHBORHOOD COMMERCIAL DISTRICT

Section 701. Purpose: This district is intended to promote and preserve neighborhood shopping areas wherein retail and service establishments supply convenience goods and services to meet the local needs.

Section 702. Use Regulations: A building or premises shall be used only for the following purposes:

1. Bank.
2. Barber shop or beauty parlor.
3. Delicatessen store.
4. Drug store.
5. Grocery store and meat market provided there shall be no slaughtering of animals or poultry on the premises.

6. Liquor store.

7. Accessory buildings and uses customarily incident to the above uses, including parking lots and including signs not exceeding one (1) square foot in area for each four (4) linear feet of street frontage, relating only to service, articles and products offered within the building to which the sign is attached; provided, however, such sign shall project not more than one (1) foot from the building. Such sign shall front on a street and no part shall extend beyond the corner of the building nor above the height of the building.

Temporary sign not exceeding thirty-six (36) square feet in area pertaining to the lease, hire, sale or offering for sale of a building or premises; provided, however, such sign shall be located on the premises for a period not exceeding six (6) months from the time of erection.

Directional sign not exceeding two (2) square feet in area.

Church or public building bulletin board limited to one (1) on the premises and not exceeding twelve (12) square feet in

area; provided, however, such bulletin board shall be located at least twelve (12) feet from any lot line.

Illumination of all signs and bulletin boards shall not be intermittent, flashing or scintillating, nor shall the source of illumination be visible. Signs shall not be moving, animated or audible in any manner.

Any building used primarily for any of the above enumerated purposes may not have more than forty (40) percent of the floor area devoted to storage purposes incidental to such primary use and goods sold shall consist primarily of new merchandise.

All uses except signs shall be restricted to closed buildings. Any lighting shall be so placed to not direct or reflect the light upon lots in residential districts.

Section 703. Parking Regulations: The parking regulations are as provided in Article VIII hereof.

Section 704. Height Regulations: No building shall exceed two (2) stories or thirty (30) feet in height, except as otherwise provided in Article X hereof.

Section 705. Area Regulations:

1. Front Yard:

(a) There shall be a front yard having a depth of not less than twenty (20) feet except as provided in Article X hereof.

(b) Where lots have double frontage, front yard requirements shall be provided on both streets.

(c) Where a lot is located at the intersection of two (2) or more streets, there shall be a yard conforming to the front yard requirements on each street side of a corner lot; provided, however, the buildable width of a lot of record at the time of the passage of this ordinance need not be reduced to less than twenty-eight (28) feet. No accessory building shall project into yards required to conform with the front yard requirements.

2. Side Yard: No side yard shall be required except on the side of a lot adjacent to a residential district, in which case there shall be a side yard of not less than fifteen (15) feet. In all other cases, if a side yard is provided, it shall not be less than three (3) feet in width.

3. Rear Yard: No rear yard shall be required except where a lot abuts upon a residential district, in which event there shall be a rear yard of not less than twenty (20) feet. No accessory building or buildings, shall be allowed in the required rear yard area of any lot occupied by any building containing business uses.

ARTICLE VIII. PARKING AND LOADING REGULATIONS

Section 801. Parking for Residential Dwellings: For all residential dwellings hereafter erected, or for any buildings converted to such use or occupancy, provision shall be made on the premises to provide one (1) parking space for each dwelling unit.

Section 802. Parking for Places of Public Assembly: For every structure or part thereof hereafter erected, or for any building converted to such uses or occupancy to be used principally as a place of public assembly or for any addition thereto, there shall be provided on the premises accessible off-street parking space as indicated below:

1. Churches: One (1) parking space for every four (4) persons for which seating is provided in the main auditorium exclusive of the seating capacity of Sunday School and other special rooms.

2. Funeral Homes: One (1) parking space for each five hundred (500) square feet of floor space in the building.

3. Private Clubs and Lodges, and Fraternal Organizations: One (1) parking space for each two hundred (200) square feet of floor space in the building.

4. Other Places of Public Assembly: One (1) parking space for each three hundred (300) square feet of floor space in the building.

Section 803. Parking for Guest Ranches and Resort Hotels: For each guest ranch or resort hotel hereafter erected or for any building converted to such use or occupancy, at least one (1) parking space shall be provided for each individual guest room or suite. The location of the parking facilities shall be on the same site as the guest ranch or resort hotel.

Section 804. Parking for Schools, Colleges, Universities, and other similar insitutions of learning: For all schools, colleges, universities, and other similar institutions of learning hereafter

erected, or for any buildings converted to such use or occupancy, provision shall be made on the premises to provide one (1) parking space for each three (3) employees including administrators, teachers and building maintenance personnel, plus one (1) parking space for each ten (10) high school, college or university students predicated upon the design capacity of the physical plant.

Section 805. Parking for Hospitals: For each hospital hereafter erected, or for any building converted to such use or occupancy, provision shall be made on the premises to provide one (1) parking space for each three (3) hospital beds in the structure, plus one (1) parking space for each three (3) employees other than staff doctors, plus one (1) parking space for each doctor assigned to the staff.

Section 806. Parking for Institutions of a Religious, Charitable, or Philanthropic Nature: For each institution of a religious, charitable, or philanthropic nature hereafter erected, or for any buildings converted to such use or occupancy, provision shall be made on the premises to provide one (1) parking space for each five (5) beds in the structure, plus one (1) parking space for each three (3) employees.

Section 807. Parking for Clinics: For all clinics hereafter erected, or for any building converted to such use or occupancy, provision shall be made on the premises to provide one (1) parking space for each one hundred (100) square feet of floor space in the building.

Section 808. Parking for Commercial Buildings: All commercial buildings hereafter erected, and all buildings converted to such use or occupancy, shall provide on the premises one (1) parking space for each two hundred (200) square feet of floor space in the building, provided, however, that two (2) or more establishments may provide necessary parking spaces upon a single parcel of land within a (C-1) Neighborhood Commercial District.

Section 809. Off-Street Loading Regulations: One (1) loading space shall be provided on the lot for buildings having a floor area of twenty-five thousand (25,000) square feet or less devoted to commercial uses. Buildings having in excess of twenty-five thousand (25,000) square feet devoted to commercial uses shall provide on the lot one (1) loading space for each twenty-five thousand (25,000) square feet of floor area or fraction thereof.

ARTICLE IX. NON-CONFORMING USES

Section 901. The lawful use of land existing at the time of the passage of this ordinance, although such does not conform to the provisions hereof for said land, may be continued, but if such non-conforming use is discontinued for a period of three (3) months, any future use of said land shall be in conformity with the provisions of this ordinance.

Section 902. The lawful use of a building existing at the time of the passage of this ordinance may be continued, although such use does not conform with the provisions hereof for such building and such use may be continued providing no structural alterations, except those required by law or ordinance or permitted under this ordinance are made herein. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of a building which is for the same or more restricted classification in the opinion of the Planning Commission as evidenced by a resolution of record. The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed. Whenever a non-conforming use of a building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

Section 903. Whenever the use of a building becomes non-conforming through a change in the zoning ordinances or district boundaries, such use may be continued and, if no structural alterations are made, it may be changed to another non-conforming use of the same or of a more restricted classification.

Section 904. In the event that a non-conforming use of any building is discontinued for a period of three (3) months any future use of said building or premises shall be in conformity with the provisions of this ordinance.

Section 905. No existing building designed, arranged, or

intended for or devoted to a use not permitted under the regulations of this ordinance for the district in which such building or premises is located shall be enlarged, extended, reconstructed or structurally altered unless such building and such enlargement, extension, reconstruction and structural alterations, and further use hereof conform in every respect with the regulations specified by this ordinance for such district in which said building is located, provided nothing herein shall prevent reasonable repair or alteration in a building or premises used for such existing purpose.

Section 906. If at any time any building in existence or maintained at the time of the adoption of this ordinance which does not conform to the regulations for the district in which it is located shall be destroyed by fire, explosion, act of God or act of the public enemy to the extent of fifty (50) percent of its assessed value, then and without further action by the Town Council the said building and the land on which said building was located or maintained shall from and after the date of such destruction be subject to all the regulations specified by this ordinance for the district in which such land and building are located.

Section 907. Nothing in this article shall be interpreted as authorization for or approval of the continuance of the use of a building or premises in violation of zoning regulations in effect at the time of the effective date of this ordinance.

ARTICLE X. ADDITIONAL HEIGHT AND AREA REGULATIONS

Section 1001. The district regulations hereinafter set forth in this article qualify or supplement, as the case may be, the district regulations appearing elsewhere in this ordinance.

Section 1002. Public, semi-public or public service buildings, hospitals, institutions, or schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy-five (75) feet if the building is set back from each yard line at least one (1) foot for each two (2) feet of additional building height above the height limit otherwise provided in the district in which the building is located.

Section 1003. Chimneys, church steeples, cooling towers, elevator bulkheads, fire towers, monuments, stacks, stage towers or scenery lofts, tanks, water towers, ornamental towers and spires, wireless towers, grain elevators or necessary mechanical appurtenances, may be erected to a height not exceeding one hundred (100) feet in accordance with existing ordinances of the Town of Paradise Valley, Arizona.

Section 1004. No building or structure or any portion thereof which exceeds a height of twenty (20) feet shall be erected or structurally altered within five hundred (500) feet of the projected center line of an existing or proposed runway or landing strip for a distance of one thousand (1,000) feet from the end of the existing or proposed runway or landing strip. Beyond a distance of one thousand (1,000) feet from the end of the existing or proposed runway or landing strip no building or structure or any portion thereof shall be erected to exceed a height that would interfere with the takeoff or landing of a plane with a glide angle of one (1) foot vertical for every forty (40) feet horizontal, such glide angle to be computed as beginning at a point on the extended center line of the runway two

hundred (200) feet beyond and at the same elevation as the end of the runway pavement; or, if runway pavement is not provided, one hundred (100) feet beyond and at the same elevation as the end of the landing strip.

Section 1005. Accessory buildings may be built in a rear yard but such accessory buildings shall not occupy more than thirty (30) percent of a rear yard and shall not be nearer than two (2) feet to any side or rear lot line, except that when a garage is entered from an alley, it shall not be located closer than ten (10) feet to the alley line and except that a garage that is located closer than ten (10) feet to the main building shall provide the side and the rear yards required for the main building.

Section 1006. No accessory building shall be constructed upon a lot until the construction of the main building has been actually commenced, and no accessory building shall be used for dwelling purposes other than by domestic servants employed on the premises or as otherwise permitted herein.

Section 1007. Mobile homes and trailers shall be parked in the side or rear yards, provided, however, that they are kept within a completely enclosed structure, or carport which is attached to the main building.

Section 1008. Every part of a required yard shall be open to the sky unobstructed, except for accessory building in a rear yard, plant material, and except for the ordinary projections of sills, belt courses, cornices and ornamental features projecting not to exceed twenty-four (24) inches.

Section 1009. No basement or cellar shall be occupied for residential purposes until the remainder of the building has been substantially completed, but in no event for more than two (2) years from time of completion of the basement.

Section 1010. Open lattice-enclosed fire escapes, fire-proof

outside stairways, and balconies opening upon fire towers, and the ordinary projections of chimneys and flues into the required rear yard not more than five (5) feet are permitted.

Section 1011. An open unenclosed porch not more than one (1) story in height or paved terrace may project into the required front yard. An enclosed vestibule containing not more than forty (40) square feet may project into the required front yard.

Section 1012. Terrace, uncovered porches, platforms and ornamental features which do not extend more than three (3) feet above the floor level of the ground (first) story may project into a required yard, provided these projections be distant at least five (5) feet from the adjacent side lot line.

Section 1013. For the purpose of the side yard regulations, a two-family dwelling or a multiple-dwelling, shall be considered as one (1) building occupying one (1) lot.

Section 1014. Temporary buildings that are used in conjunction with construction work only may be permitted in any district during the period that the building is being constructed, but such temporary buildings shall be removed upon completion of the construction work.

Section 1015. Where a lot or tract is used for a commercial purpose, more than one (1) main building may be located upon the lot or tract but only when such buildings conform to all open space requirements around the lot for the district in which the lot or tract is located.

Section 1016. In the event that a lot is to be occupied by a group of two (2) or more related buildings to be used for institutional, or hotel purposes, there may be more than one (1) main building on the lot; provided, however, that open spaces between buildings shall have a minimum dimension of thirty (30) feet.

Section 1017. Where an open space is more than fifty (50)

percent surrounded by a building, the minimum width of the open space shall be at least forty (40) feet.

Section 1020. Buildings that are to be used for storage purposes only may exceed the maximum number of stories that are permitted in the district in which they are located, but such buildings shall not exceed the number of feet of building height permitted in such districts.

Section 1021. The front yards heretofore established shall be adjusted in the following cases:

1. Where forty (40) percent or more of the frontage on one (1) side of a street between two (2) intersecting streets is developed with buildings that have observed (with a variation of five (5) feet or less) a front yard greater in depth than herein required, new buildings shall not be erected closer to the street than the average front yard so established by the existing buildings.

2. Where forty (40) percent or more of the frontage on one (1) side of a street between two (2) intersecting streets is developed with buildings that have not observed a front yard as described above, then:

(a) Where a building is to be erected on a parcel of land that is within one hundred (100) feet of existing buildings on both sides, the minimum front yard shall be a line drawn between the two closest front corners of the adjacent buildings on the two (2) sides; or,

(b) Where a building is to be erected on a parcel of land that is within one hundred (100) feet of an existing building on one (1) side only, such building may be erected as close to the street as the existing adjacent building.

Section 1022. As an aid to freer safe movement of vehicles at and near street intersections and in order to promote more adequate protection for the safety of children, pedestrians, operators

of vehicles and for property, for proposed construction hereafter, there shall be limitations on the height of fences, walls, gateways, ornamental structures, hedges, shrubbery and other fixtures, construction and planting on corner lots in all districts where front yards are required.

1. Such barriers to clear unobstructed vision at corners of intersection streets shall be limited to a height of not over two (2) feet above the established elevation of the nearest street line, for a distance of fifty (50) feet along both the front and side lot lines, measured from the point of intersection, of the said intersecting lot lines.

2. Within the isosceles triangle formed as required in paragraph 1 of this section, by connecting the ends of the respective fifty (50) foot distances, all the fixtures, construction, hedges, shrubbery and other planting shall be limited to a height not over two (2) feet above the elevation of the street line level at the said intersecting streets.

3. Within the said triangle, and in cases where front yards are terraced, the ground elevation of such yards shall not exceed two (2) feet above the established street line elevation at the said intersecting streets.

ARTICLE XI. ADDITIONAL USE REGULATIONS AND SPECIAL USES

Section 1101.

1. The Town Council may, by special permit after public hearing, authorize the location of any of the following buildings, structures or uses in a district from which they are prohibited by this ordinance when found to be in the interest of the public health, safety and general welfare of the community.

(a) Airport, heliport or landing field.

(b) Community building or recreation field.

(c) Guest ranch, provided that the building site contains at least ten (10) acres, provided that the building coverage does not exceed fifteen (15) percent of the gross site area exclusive of any perimeter streets, provided that there are not more than two (2) guest units per acre of gross site area, provided that there are no outside business displays, provided that there is not more than one (1) identification sign which does not exceed twenty (20) square feet in area and provided further that the guest ranch is under unified ownership and management. Not more than twenty (20) percent of the guest units of the guest ranch shall be used for dwelling units. There shall be no public bar or public restaurant in connection with a guest ranch.

(d) Funeral home.

(e) Hospital or medical clinic.

(f) Non-profit religious, educational, or philanthropic institution, but not penal or mental treatment institution.

(g) Privately and commercially operated recreational lake, swimming pool or tennis court.

(h) Private clubs, fraternity, sorority and lodge excepting those the chief activity of which is a service, customarily carried on as a business.

(i) Public or government buildings.

(j) Public utilities or public service uses, buildings, structures or appurtenances thereto.

(k) Resort hotel, provided that the building site contains at least twenty (20) acres, provided that the building coverage does not exceed twenty (20) percent of the gross site area exclusive of any perimeter streets, provided that there are no outside entrances for appurtenant business purposes, provided that there are no outside business displays, and provided that there is not more than one (1) identification sign which does not exceed twenty (20) square feet in area.

(m) Signs.

(n) Stable.

2. Before issuance of any special permit for any of the above buildings, structures or uses; or before any change of use of the premises existing at the time of the effective date of this ordinance or as permitted herein provided, is made, preliminary plans in sufficient detail and a statement as to the proposed use of the buildings, structures and premises shall be submitted to the Town Council. These plans and statement shall be referred to the Planning and Zoning Commission for study and report and for public hearing. Notices and public hearings shall conform to the procedures prescribed in Article XVIII of this ordinance. The Commission shall review such plans and statement and shall, after a careful study thereof and the effect that such buildings, structures or uses will have upon the surrounding territory, recommend such buildings, structures, or uses where requested be permitted provided the public health, safety, morals, and general welfare will not be adversely affected, that ample off-street parking facilities will be provided and that necessary safeguards will be provided for the protection of surrounding, persons and neighborhood values.

3. Any building structures or uses listed in Paragraph I of

this section, existing at the effective date of this ordinance shall be considered a non-conforming use unless it has qualified as provided above, and has secured a special use permit, or has secured a use permit from the Board of Adjustment.

4. When found to be in the interest of the public health, safety, morals and general welfare, the Board of Adjustment is hereby authorized to approve any and all additions or structural alterations to Special Uses after they have qualified and have been approved by the Town Council.

ARTICLE XII. ZONING COMMISSION - BOARD OF ADJUSTMENT

Section 1201. Creation of Zoning Commission and Membership:

A Zoning Commission as hereinafter established shall consist of seven (7) members, each of whom shall be appointed for a term of three years, except that the first members of such commission shall be appointed for the following terms: One for one year, one for two years, one for three years, one for four years, one for five years, one for six years, and one for seven years. The Zoning Commission as herein created may be referred to as the Planning and Zoning Commission. Members of the said Commission shall be appointed by the Town Council. The Town Council shall have the power to remove any member of the said Zoning Commission for cause and after public hearing. Vacancies shall be filled for the unexpired term of the member whose place has become vacant. One of the members of said Commission shall be named as Chairman by the Town Council at the time of his appointment and shall hold office as Chairman until his successor is appointed. The successor to each member so appointed shall serve for a term of three (3) years.

Section 1202. Zoning Commission Meetings, Administration of Oaths and Compelling Attendance of Witnesses: All meetings of the Zoning Commission shall be held at the call of the Chairman and at such other times as the Commission may determine. All meetings of the Commission shall be open to the public. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.

Section 1203. Zoning Commission Rules, Regulations and Records: The Commission shall have power to make and publish rules and regulations to govern its proceedings and to carry into effect the provisions of this ordinance. The Commission shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and

shall also keep records of its examinations and other official actions. Every rule, regulation or every amendment or repeal thereof, and every order, requirement, decision or determination of the Commission shall immediately be filed in the office of the Commission and in the office of the Town Clerk and shall be a public record.

Section 1204. Creation and Membership: A Board of Adjustment as hereinafter established shall consist of five (5) members, each of whom shall be appointed for a term of three (3) years, except that the first members of such board shall be appointed for the following terms: One for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, and one for five (5) years. The word "Board" when used in this article shall mean the Board of Adjustment. Members of said Board shall be appointed by the Mayor subject to confirmation by majority vote of the Town Council. The Town Council shall have the power to remove any member of the said Board for cause and after public hearing. Vacancies shall be filled for the unexpired term of the member whose place has become vacant. One of the members of said Board shall be named as Chairman by the Mayor at the time of his appointment and shall hold office as Chairman until his successor is appointed. The successor to each member so appointed shall serve for a term of three (3) years.

Section 1205. Board of Adjustment, Meeting, Administration of Oaths and Compelling Attendance of Witnesses: All meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.

Section 1206. Board of Adjustment, Rules, Regulations and Records: The Board shall have power to make and publish rules and regulations to govern its proceedings and to carry into effect the provisions of this ordinance. The Board shall keep minutes of its

proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every rule, regulation or every amendment or repeal thereof, and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Board and in the office of the Town Clerk and shall be a public record.

Section 1207. Appeals to Board of Adjustment may be taken when persons are aggrieved or by any officer, department, board or bureau of the Town of Paradise Valley affected by a decision of an administrative official, within a reasonable time, filing with the officer from whom the appeal is taken and with the Board a notice of the appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit all papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in the matter appealed from, unless the officer from whom the appeal is taken certifies to the Board that, by reason of the facts stated in the certificate, the stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed, except by a restraining order granted by the Board or by a court of record on application and notice to the officer from whom the appeal is taken. The board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties in interest and the public.

Section 1208. Variations and Exceptions: The Board may authorize such variances and exceptions of the strict application of the terms of this ordinance as are in harmony with its general purpose and intent when the Board finds that the granting of such variations and exceptions will serve not merely as a convenience to the applicant but is necessary to alleviate some demonstrable hardship or difficulty so great as to warrant a variation or exception

from the ordinance created and set forth in the following instances:

1. Hear and decide appeals when there is error in an order, requirement or decision made by an administrative official in the enforcement of this ordinance.

2. Hear and decide special exceptions to the terms of this ordinance upon which the board is required to act.

3. Authorize in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where due to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship.

4. Reverse or affirm, wholly or partly, or modify the order or decision appealed from and make such order or decision as ought to be made, and to that end shall have the powers of the officer from whom the appeal is taken. The concurring vote of the majority of the Board shall be necessary to reverse an order or decision of an administrative official, or to decide in favor of the applicant, on any matter upon which it is required to pass under such ordinance, or to effect any rights in the ordinance. A person aggrieved by a decision of the Board, or a taxpayer, or municipal officer may, at any time, within thirty (30) days after the filing of the decision in the office of the Board, petition a writ of certiorari for review of the Board's decision. Allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and for good cause shown, grant a restraining order, and on final hearing may reverse or affirm, wholly or partly, or may modify the decision reviewed.

ARTICLE XIII. ENFORCEMENT

Section 1301. Duties: It shall be the duty of the Chief Building Inspector to enforce this ordinance. The Chief Building Inspector shall receive application required by this ordinance, issue permits and furnish the prescribed certificates. He shall examine premises for which permits have been issued, and shall make necessary inspections to see that the provisions of this ordinance are complied with. He shall, when requested by the Mayor, or when the interests of the municipality so require, make investigations in connection with matters referred to in this ordinance and render written reports on the same. For the purpose of enforcing compliance with law, he shall issue such notices or orders as may be necessary.

Section 1302. Inspections: Inspections shall be made by the Chief Building Inspector or a duly appointed assistant.

Section 1303. Rules: For carrying into effect its provisions, the Chief Building Inspector may adopt rules consistent with this ordinance.

Section 1304. Records:

1. The Chief Building Inspector shall keep careful and comprehensive records of applications, or permits issued, of certificates issued, of inspections made, of reports rendered, and of notices or orders issued. He shall retain on file copies of all papers in connection with building work so long as any part of the building or structure to which they relate may be in existence.

2. All such records shall be open to public inspection at reasonable hours, but shall not be removed from the office of the Chief Building Inspector.

Section 1305. Reports: The Chief Building Inspector shall make a report to the Mayor once each month, or more often if requested including statement of permits and certificates issued and orders promulgated.

ARTICLE XIV. PERMITS

Section 1401. When Required: It shall not be lawful to construct, alter, repair, remove or demolish, or to commence the construction, alteration, removal or demolition of a building or structure without first filing with the Chief Building Inspector an application in writing and obtaining a formal permit.

Section 1402. Form:

1. An application for a permit shall be submitted in such form as the Chief Building Inspector may prescribe.
2. Such application shall be made by the owner or lessee, or agent of either, or the architect, engineer, or builder employed in connection with the proposed work. If such application is made by a person other than the owner in fee, it shall be accompanied by a duly verified affidavit of the owner in fee or the person making the application that the proposed work is authorized by the owner in fee and that the person making the application is authorized to make such application as agent of the owner.
3. Such application shall contain the full names and addresses of the applicant and of the owner, and, if the owner is a corporate body, of its responsible officers.
4. Such application shall describe briefly the proposed work and shall give such additional information as may be required by the Chief Building Inspector for an intelligent understanding of the proposed work.

Section 1403. Plans: Application for permits shall be accompanied by such drawings of the proposed work, drawn to scale, including floor plans, sections, elevations and structural details, as the Chief Building Inspector may require.

Section 1404. Plot Diagram: There shall also be filed a plot diagram in a form and size suitable for filing permanently with the permit record, drawn to scale, with all dimensions figured,

showing accurately the size and exact location of all proposed new construction, or, in the case of demolition, of such construction as is to be demolished, and of all existing buildings and structures that are to remain.

Section 1405. Amendments: Nothing in this section shall prohibit the filing of amendments to an application or to a plan or other accompanying same, at any time before the completion of the work for which the permit was sought. Such amendments, after approval, shall be filed with and be deemed a part of the original application.

Section 1406. Completion of Existing Buildings: Nothing in this ordinance shall require changes in the plans, construction or designated use of a building for which a lawful permit has been heretofore issued or which has been otherwise lawfully authorized, and the construction of which shall have actually begun within sixty (60) days after this ordinance becomes effective and which entire building shall be completed, as authorized, within one (1) year thereafter.

Section 1407. Action on Applications: It shall be the duty of the Chief Building Inspector to examine applications for permits within a reasonable time after filing. If, after examination, he finds no objection to the same and it appears that the proposed work will be in compliance with the laws and ordinances applicable thereto, he shall approve such application and issue a permit for the proposed work as soon as practicable. If his examination reveals otherwise, he will reject such application, noting his findings in a report to be attached to the application and deliver a copy to the applicant.

Section 1408. Approval in Part: Nothing in this article shall be construed to prevent the Chief Building Inspector from issuing a permit for the construction of part of a building or structure before the entire plans and detailed statements of said building or

structure have been submitted or approved, if adequate plans and detailed statements have been presented for the same and have been found to comply with this ordinance.

Section 1409. Conditions of the Permit:

1. All work performed under a permit issued by the Chief Building Inspector shall conform to the approved application and plans, and approved amendment thereof.

2. Location of all new construction as shown on the approved plot diagram or an approved amendment thereof, shall be strictly adhered to.

3. It shall be unlawful to reduce or diminish the area of a lot or plot of which a plot diagram has been filed and has been used as the basis for a permit, unless a revised plot diagram showing the proposed change in conditions shall have been filed and approved; provided that this shall not apply when the lot is reduced by reason of a street opening or widening or other public improvement.

Section 1410. Signature to Permit: Every permit issued by the Chief Building Inspector under the provisions of this ordinance shall have his signature affixed thereto; but this shall not prevent him from authorizing a subordinate to affix such signature.

Section 1411. Limitation: A permit under which no work is commenced within six (6) months after issuance shall expire by limitation.

Section 1412. Posting of Permit:

1. A copy of the permit shall be kept on the premises open to public inspection during the prosecution of the work and until the completion of the same.

2. The Chief Building Inspector may require a certified copy of the approved plans to be kept on the premises at all times from the commencement of the work to the completion thereof.

3. The Chief Building Inspector shall be given at least

twelve (12) hours written notice of the starting of work under a permit.

Section 1413. Revocation: The Chief Building Inspector may revoke a permit or approval issued under the provisions of this ordinance in case there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

ARTICLE XV. CERTIFICATES OF OCCUPANCY

Section 1501. Certificate of Occupancy for a Building:

Certificate of Occupancy for a new building or the reconstruction or alteration of an existing building shall be applied for coincident with the application for a building permit and said certificate shall be issued within three (3) days after the request for same shall have been made in writing to the Chief Building Inspector after the erection or alteration of such building or part thereof shall have been completed, in conformity with the provisions of these regulations. Pending the issuance of a regular certificate, a temporary certificate of occupancy may be issued by the Chief Building Inspector for a period not exceeding one (1) year, during the completion of alterations or during partial occupancy of a building pending its completion. Such temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owners or of the town relating to the use or occupancy of the premises or any other matter covered by this ordinance, and such temporary certificate shall not be issued except under such restrictions and provisions as will adequately insure the safety of the occupants.

Section 1502. Certificate of Occupancy for Land: Certificate of Occupancy for the use of vacant land or the change in the character of the use of land as herein provided, shall be applied for before any such land shall be occupied or used, and a certificate of occupancy shall be issued within three (3) days after the application has been made, provided such use is in conformity with the provisions of these regulations.

Section 1503. Certificate of Occupancy shall state that the building or proposed use of a building or land complies with all the building and health laws and ordinances and with the provisions of these regulations. A record of all certificates shall be kept on file in the office of the Chief Building Inspector and copies shall

be furnished, on request, to any person having a proprietary or tenancy interest in the building affected. No fee shall be charged for a Certificate of Occupancy.

Section 1504. No permit for excavation for any building shall be issued before application has been made for Certificate of Occupancy.

ARTICLE XVI. BOUNDARIES OF DISTRICTS

Section 1601. Rules Where Uncertainty May Arise: Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of this ordinance, the following rules apply:

1. The district boundaries are either street or alleys unless otherwise shown, and where the districts designated on the map accompanying and made a part of this ordinance are bounded approximately by street or alley lines, the street or alley shall be construed to be the boundary of the district.

2. Where the district boundaries are not otherwise indicated, and where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts designated on the map accompanying and made a part of this ordinance are bounded approximately by lot lines, the lot lines shall be construed to be the boundary of the districts unless the boundaries are otherwise indicated on the map.

3. In unsubdivided property, the district boundary lines on the map accompanying and made a part of this ordinance shall be determined by use of the scale appearing on the map.

ARTICLE XVII. INTERPRETATION, PURPOSE AND CONFLICT

Section 1701. In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, morals, prosperity and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any ordinances, rules, regulations or permits previously adopted or issued, and not in conflict with any of the provisions of this ordinance, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises and likewise not in conflict with this ordinance; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, except that if this ordinance imposes a greater restriction, this ordinance shall control.

ARTICLE XVIII. AMENDMENTS

Section 1801. The Town Council may from time to time, upon the recommendation of the Planning and Zoning Commission, amend, supplement or change the zoning district boundaries or the regulations herein or subsequently established. Recommendations for such amendment may be initiated by the Council or the Commission on their own motion, or by petition as hereinafter set forth.

Section 1802. Application for Amendment: Applications for amendment of the ordinance shall be made on a form provided therefor and shall be signed by the real property owner or owners in the area for which the amendment is applied for. Said amendment shall be filed and checked for authenticity of ownership before an application may be accepted.

Section 1803. Public Hearing. Every application for amendment of the ordinance shall be considered by the Planning and Zoning Commission at a public hearing. Said public hearing shall be held only after the publication of a public notice of the time, place and date of such hearing is given in an official newspaper or a newspaper of general circulation in the Town of Paradise Valley at least fifteen (15) days prior to such hearing. The Commission may, upon its own motion, after such public hearing, submit to the Council a report of its hearing and a recommendation for amendment of the ordinance, whereupon the Council shall arrange to hold its public hearing at which final action in regard to the amendment shall be decided. At least fifteen (15) days notice of the time, place and date of such Council hearing shall be published in an official newspaper, or a newspaper of general circulation in the Town of Paradise Valley. The time, place and date of the Council hearing shall be posted on the affected property at least seven (7) days prior to said hearing.

Section 1804. Reconsideration of Denied Amendments: In the event that an application is denied by the Commission and/or the

Council, the Commission shall not reconsider the application nor consider another application for amendment of the zoning applying to the property described in the original application or any part thereof for a period of at least one (1) year from the date of said denial action.

Section 1805. Protests Against Amendment: If the owners of twenty (20) percent or more either of the area of the lots included in a requested amendment, or of the lots abutting to the rear and within one hundred fifty (150) feet of the area, or of the lot fronting on the opposite side of a street and within one hundred fifty (150) feet of the opposite street line, file a protest in writing against a requested amendment, said amendment shall not be approved except by the favorable vote of three-fourths (3/4) of the members of the Council.

Section 1806. Fees: A fee of thirty-five dollars (\$35.00) shall accompany each application for amendment of the ordinance. No part of said fee shall be returnable. Said fee shall cover the cost of advertising and posting and shall be paid to the Town Clerk to be credited to the general fund of the Town of Paradise Valley.

ARTICLE XIX. VIOLATION AND PENALTY

Section 1901. Any person, firm or corporation whether as principal, owner, agent, tenant, or otherwise who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance shall, upon conviction be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment in a designated place of confinement a term not exceeding six (6) months or by both fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 1902. In case any building or structure is constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this ordinance, the town, or any owner or tenant of real property in the same contiguous zoning district as the building or structure in question, in addition to other remedies, may institute any appropriate action or proceedings (1) to prevent the unlawful construction, reconstruction alteration, repair, conversion, maintenance, or use; (2) to prevent the occupancy of the building structure or land; (3) to prevent any illegal act, conduct, business or use in or about the premises; or, (4) to restrain, correct or abate the violation. When any such action is instituted by an owner or tenant, notice of such action shall be served upon the municipality at the time suit is begun, by serving a copy of the complaint on the chief executive officer of the municipality, no such action may be maintained until such notice has been given.

In any such action or proceeding, the court with jurisdiction thereof has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction, upon such terms and under such conditions as will do justice and enforce the purposes of this ordinance. If a permanent injunction is

decreed in any such action or proceeding, the court in its decree may, in its discretion, allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such.

ARTICLE XX. REPEAL, VOID PARTS, SAVING CLAUSE, EFFECTIVE DATE

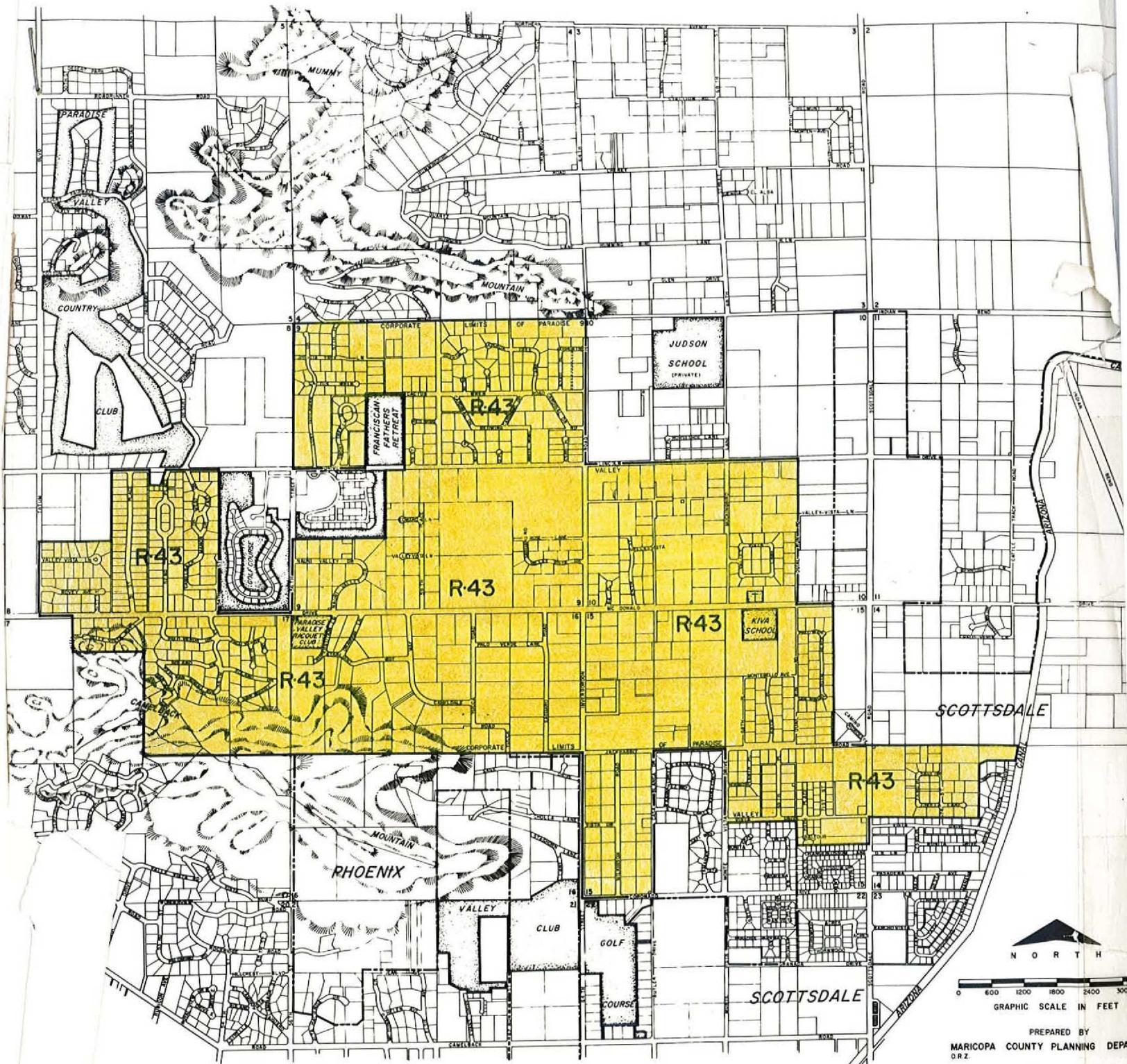
Section 2001. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 2002. The invalidity of any section of this ordinance shall not affect the validity of the remainder of said section or the remainder of this ordinance.

Section 2003. This ordinance shall be in full force and effect from and after its passage, approval and publications, as required by law.

Section 2004. The repeal of the ordinances or parts thereof specified in Section 2001 of this article shall not (1) affect suits pending or rights existing immediately prior to the effective date of this ordinance; (2) impair, avoid, or affect any grant or conveyance made or right acquired or cause of action now existing under any such repealed ordinance or amendment thereto; or, (3) affect or impair the validity of any bond or other obligation issued or sold in constituting a valid obligation of the issuing authority immediately prior to the effective date of this ordinance.

TOWN OF PARADISE VALLEY ARIZONA



DISTRICT MAP

- L E G E N D -

- | | |
|--|--|
|  R-43 (RESIDENTIAL) |  R-18 (RESIDENTIAL) |
|  R-35 (RESIDENTIAL) |  C-1 (COMMERCIAL) |

PREPARED BY
MARICOPA COUNTY PLANNING DEPT.
D.R.Z.

SOURCE OF INFORMATION: COUNTY ASSESSOR AND
HOLMQUIST ENGINEERS

18 | 19 SECTION CORNERS
22 | 23

--- CORPORATE LIMITS
--- ZONING DISTRICT BOUNDARIES

EXHIBIT 11

DKT 3895 PAGE 476

STATE OF ARIZONA

ss. I hereby certify that the within instrument was filed and recorded

COUNTY OF MARICOPA
OCT 25 '61 - 8 00 AM

DKT 3895 PAGE 476 and indexed in DEEDS

01-DEED
Fee No.
184333

at the request of Phoenix Title & Trust Co.

Witness my hand and official seal.

When recorded, mail to:
Theodore A. Rehm
P.O. Box 367
Scottsdale, Ariz.

N. C. "KELLY" MOORE, County Recorder,
[Signature] Deputy Recorder

Compared
Photostated
Fee: 1 15

Special Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, the undersigned PHOENIX TITLE AND TRUST COMPANY, an Arizona corporation, as Trustee, the Grantor herein, does hereby convey to FRANK RILEY and CATHERINE D. RILEY, his wife, an undivided one-third interest; THEODORE A. REHM and MARIANNA REHM, his wife, an undivided one-third interest; and C. TIM RODGERS and MILDRED JANE RODGERS, his wife, an undivided one-third interest; the Grantee, the following real property situated in Maricopa County, Arizona:

PARCEL NO. 1: That part of the East 1200 feet of Tract Four (4), O'BRIEN'S CAMELBACK LANDS, according to the plat of record in the office of the Maricopa County Recorder in Book 18 of Maps, page 36, lying South of the South Line of STONE CANYON EAST, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 81 of Maps, page 34.

EXCEPT therefrom the East 334 feet thereof.

PARCEL NO. 2: The South 50 feet of the West 234 feet of the East 334 feet of Tract Four (4), O'BRIEN'S CAMELBACK LANDS, according to the plat of record in the office of the Maricopa County Recorder in Book 18 of Maps, page 36.

PARCEL NO. 3: The South 100 feet of the East 100 feet of Tract Four (4), O'BRIEN'S CAMELBACK LANDS, according to the plat of record in the office of the Maricopa County Recorder in Book 18 of Maps, page 36.

SUBJECT TO RESERVATIONS IN PATENTS AND ALL EASEMENTS, RIGHTS OF WAY, ENCUMBRANCES, COVENANTS, CONDITIONS AND RESTRICTIONS AS MAY APPEAR OF RECORD.

And the Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of the Grantor herein and no other, subject to the matters above set forth.

IN WITNESS WHEREOF, the PHOENIX TITLE AND TRUST COMPANY, as Trustee, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 20th day of October A. D., 1961.

Deed from Trustee to Cestui que Trust
No Internal Revenue Stamps Required

PHOENIX TITLE AND TRUST COMPANY, as Trustee

By Virginia Quackenbush
Trust Officer

STATE OF ARIZONA
County of Maricopa

Before me this 20th day of October, 1961, personally appeared Virginia Quackenbush who acknowledged himself to be a Trust Officer of the PHOENIX TITLE AND TRUST COMPANY and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation as Trustee, by himself as such officer.

My commission will expire: 6-15-63

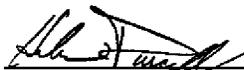
Georgia M. Peet
Notary Public

19610079517
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 06/28/2016 05:10:28 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=163897>

EXHIBIT 12

STATE OF ARIZONA
County of Maricopa

I hereby certify that the within instrument was filed and recorded

JUN 5 84-3 00 In DOCKET **5080** PAGE **17**
at the request of **Phoenix Title & Trust Co.**

and indexed in deeds

Fee No.

110508

Compared
Photostated
Fee:

01-DEED

1/25

When recorded, mail to:
STONE CANYON EAST PROPERTIES, INC.
7401 East Chapparal Rd.
Scottsdale, Arizona

Witness my hand and official seal.

Clifford H. Ward County Recorder.

By *J. Indenter* Deputy Recorder

Escrow #05000081

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, **THEODORE A. REHM AND MARIANNA REHM, HIS WIFE AND C. TIM RODGERS AND MILDRED JANE RODGERS, HIS WIFE, THEIR RESPECTIVE UNDIVIDED ONE-THIRD INTEREST IN AND TO THAT PROPERTY DESCRIBED AS FOLLOWS:** hereafter called the Grantor, whether one or more than one, hereby conveys to

STONE CANYON EAST PROPERTIES,

AN ARIZONA CORPORATION.

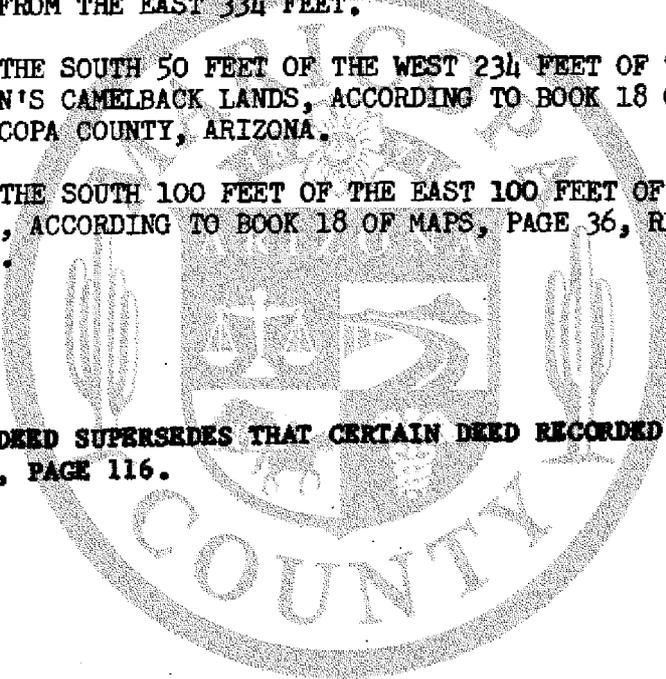
the following real property situated in **MARICOPA** County, Arizona, together with all rights and privileges appurtenant thereto, to wit:

PARCEL NO. 1: THAT PART OF THE EAST 1200 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA, LYING SOUTH OF THE SOUTH LINE OF STONE CANYON EAST, ACCORDING TO BOOK 81 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA;
EXCEPT THEREFROM THE EAST 334 FEET.

PARCEL NO. 2: THE SOUTH 50 FEET OF THE WEST 234 FEET OF THE EAST 334 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3: THE SOUTH 100 FEET OF THE EAST 100 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA.

THIS DEED SUPERSEDES THAT CERTAIN DEED RECORDED IN DOCKET 3951, PAGE 116.



Subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

Dated this 27th day of May, 1964

Theodore A. Rehm
Marianna Rehm
Theodore A. Rehm
Marianna Rehm

C. Tim Rodgers
Mildred Jane Rodgers
C. Tim Rodgers
Mildred Jane Rodgers

STATE OF ARIZONA
County of Maricopa } ss.

This instrument was acknowledged before me this 27th day of May, 1964, by

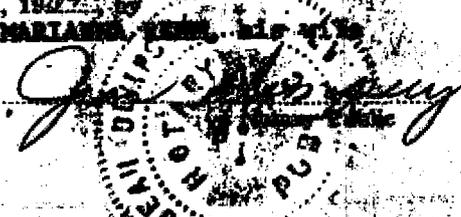
C. TIM RODGERS and MILDRED JANE RODGERS, his wife

Leona M. Gasa
Notary Public

My commission will expire May 12, 1967

STATE OF Arizona
County of Maricopa } ss.

This instrument was acknowledged before me this 27th day of May, 1964, by
THEODORE A. REHM and MARIANNA REHM, his wife



My commission will expire
FORM 100-10 REV 6/63

My Commission Expires Nov. 21, 1965

DKT 5080 PAGE 17

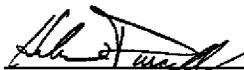
No Revenue Stamp Required

19640213411
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 06/28/2016 05:10:29 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=163900>

STATE OF ARIZONA

County of Maricopa

I hereby certify that the within instrument was filed and recorded

JUN 5 64-8 00

IN DOCKET

DKT 5080

PAGE 19

and indexed to deeds

at the request of Phoenix Title & Trust Co.

When recorded, mail to:

JOHN RATLIFF
1000 East Apache Blvd.
Tempe, Arizona

Witness my hand and official seal.

Clifford H. Ward
County Recorder

By J. M. Denton
Deputy Recorder

See No.

RECORDED
INDEXED

Comptroller
of Public Accounts
Fee:

12

Escrow #05000081

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, **STONE CANYON EAST PROPERTIES, AN ARIZONA CORPORATION AND FRANK RILEY, husband of Connie Riley, who acquired title dealing with his sole and separate property /also known as H. Francis Riley** hereafter called the Grantor, whether one or more than one, hereby conveys to **JOHN D. RATLIFF, HUSBAND OF DELLAMAE RATLIFF, AS HIS SOLE AND SEPARATE PROPERTY.**

the following real property situated in **Maricopa** County, Arizona, together with all rights and privileges appurtenant thereto, to wit:

PARCEL NO. 1: THAT PART OF THE EAST 1200 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA, LYING SOUTH OF THE SOUTH LINE OF STONE CANYON EAST, ACCORDING TO BOOK 81 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA;
EXCEPT THEREFROM THE EAST 334 FEET.

PARCEL NO. 2: THE SOUTH 50 FEET OF THE WEST 234 FEET OF THE EAST 334 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS. ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3: THE SOUTH 100 FEET OF THE EAST 100 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA.



Subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

Dated this 27th day of May, 1964

Frank R. Riley

STONE CANYON EAST PROPERTIES

BY: C. Tim Rodgers
President
Thos. A. Keller
Secretary-Treasurer

STATE OF ARIZONA
County of Maricopa

This instrument was acknowledged before me this 27th day of May, 1964, by C. TIM RODGERS, who

acknowledged himself to be the President of **STONE CANYON EAST PROPERTIES**, an Arizona Corporation

My commission will expire May 12, 1967

Leona M. Jass
Notary Public

STATE OF Arizona
County of Maricopa

This instrument was acknowledged before me this 27th day of May, 1964, by Thos. A. Keller who

acknowledged himself to be the Secretary-Treasurer of **STONE CANYON EAST PROPERTIES**, an Arizona Corporation

My commission will expire Nov. 21, 1965

FORM 100-10 REV 5/53 This instrument was acknowledged before me this 27th day of May, 1964, by **STATE OF ARIZONA, FRANK RILEY, husband of Connie Riley, who acquired title with Frank Riley, aka County of Maricopa) H. F. Riley, Jr. aka H. Francis Riley.**

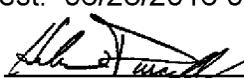
http://recorder.maricopa.gov/recorddata/verifycert.aspx?id=163901 [19640213415] 2 Pages

19640213415
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 06/28/2016 05:10:30 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=163901>

DKT 5110 PAGE 314

STATE OF ARIZONA, County of <u>Maricopa</u> } ss.	I hereby certify that the within instrument was filed and recorded <u>JUN 30 '64 - 11 10</u> 19 <u>64</u> , at _____ M.	Fee No.: 126787
In Docket No. <u>5110</u> , Page <u>314</u> DKT <u>5110</u> at the request of <u>Camelback Mountain Properties</u>	Witness my hand and official seal.	Indexed: 01-DEED
When recorded mail to: Ratliff-Miller Development Co. 1000 E. Apache Blvd. Tempe, Arizona	CLIFFORD H. WARD County Recorder By <u>Dee-nee H. Deyle</u> Deputy Recorder	Compared: Photostated: Fee: \$ <u>1.75</u> I. R. S.: \$ _____

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we, JOHN D. RATLIFF, husband of Dellamae Ratliff, dealing with his sole and separate property

do hereby convey to CAMELBACK MOUNTAIN PROPERTIES, a limited partnership

the following described property situated in Maricopa County, Arizona:

PARCEL NO. 1: THAT PART OF THE EAST 1200 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA, LYING SOUTH OF THE SOUTH LINE OF STONE CANYON EAST, ACCORDING TO BOOK 81 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA;
EXCEPT THEREFROM THE EAST 334 FEET.

PARCEL NO. 2: THE SOUTH 50 FEET OF THE WEST 234 FEET OF THE EAST 334 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3: THE SOUTH 100 FEET OF THE EAST 100 FEET OF TRACT 4, O'BRIEN'S CAMELBACK LANDS, ACCORDING TO BOOK 18 OF MAPS, PAGE 36, RECORDS OF MARICOPA COUNTY, ARIZONA.

And I or we do warrant the title against all persons whomsoever, subject to the matters above set forth.

Dated this 26 day of June, 1964.

John D. Ratliff
John D. Ratliff

STATE OF <u>Arizona</u> County of <u>Maricopa</u> } ss.	This instrument was acknowledged before me this <u>29th</u> day of <u>June</u> , 19 <u>64</u> , by
<u>John D. Ratliff</u>	

My commission will expire 8/6-1966 Margie Pumas Notary Public

STATE OF _____ County of _____ } ss.	This instrument was acknowledged before me this _____ day of _____, 19____, by
---	--

My commission will expire _____ Notary Public

19640100583
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 06/28/2016 05:10:29 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=163899>

EXHIBIT 13

DKT 8083 PAGE 449

269754

WARRANTY DEED
64398 01-DEED

For the consideration of Ten Dollars (\$10.00), and other valuable consideration, CAMELBACK MOUNTAIN PROPERTIES, a limited partnership, does hereby convey to the CITY OF PHOENIX, a municipal corporation, all of its right, title and interest, past, present and future, in the following described real property situated in Maricopa County, Arizona:

PARCEL "M-2"PART NO. 1:

That part of the East 1200 feet of Tract 4, O'Brien's Camelback Lands, according to the plat of record in Book 18 of Maps, at Page 36 in the records of Maricopa County, Arizona, lying South of the South line of Stone Canyon East, according to the plat of record in Book 81 of Maps at Page 34 in the records of said County, and lying West of the West line of the East 334 feet of said Tract 4;

EXCEPT that part thereof described as follows: BEGINNING at the Southeast corner of said Stone Canyon East; thence Southerly, parallel with and 334 feet West of the East line of said Tract 4; a distance of 270 feet; thence Northwesterly to a point in the West line of the East 1000 feet of said Tract 4 which is 180 feet Southerly of the Southwest corner of Lot 22 in Stone Canyon East; thence Northwesterly, along said West line, to said Southwest corner; thence East, along the South line of Stone Canyon East, to the point of beginning.

PART NO. 2:

The South 50 feet of the West 234 feet of the East 334 feet of Tract 4, O'Brien's Camelback Lands, according to the plat of record in Book 18 of Maps at Page 36 in the records of Maricopa County, Arizona.

PART NO. 3:

The South 100 feet of the East 100 feet of Tract 4, O'Brien's Camelback Lands, according to the plat of record in Book 18 of Maps, at Page 36 in the records of Maricopa County, Arizona.

SUBJECT TO:

1. 1970 taxes, a lien, not yet payable.
2. All matters of record.
3. Use of the property herein conveyed is restricted to public recreational purposes.

8083 PAGE 450

Grantor hereby warrants the title against all persons whomsoever, including all of the Grantor's past, present or future interest, subject to the matters above set forth.

DATED this 6 day of April, 1970.

CAMELBACK MOUNTAIN PROPERTIES, a limited partnership, by SUN VENTURES, INC., an Arizona corporation, as General Partner

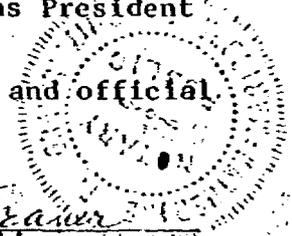
By John D. Ratliff
John D. Ratliff, President

STATE OF ARIZONA }
County of Maricopa } ss.

The foregoing instrument was acknowledged before me this 6 day of April, 1970, by JOHN D. RATLIFF as President of SUN VENTURES, INC., an Arizona corporation.

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

Richard F. Graver
Notary Public



My Commission Expires:

My Commission Expires Feb. 23, 1974

STATE OF ARIZONA }
County of Maricopa } ss.

I hereby certify that the within instrument was filed and recorded at request of

ARIZONA TITLE

APR 10 70-2 40

in Docket 8083

on page 449-450

Witness my hand and official seal the day and year aforesaid.

Paul A. Manton

By Paul A. Manton
County Recorder
Deputy Recorder

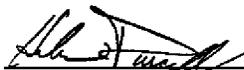
100

19700063288
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.

Attest: 06/28/2016 05:10:30 PM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=163903>

EXHIBIT 14

AN ORDINANCE ADOPTING A PUBLIC RECORD AND ESTABLISHING A PLAN FOR REGULATING SUBDIVISIONS IN THE TOWN OF PARADISE VALLEY FOR THE PURPOSE OF REGULATING THE PROCEDURE FOR THE PREPARATION AND FILING OF PLATS, FOR REGULATING STANDARDS OF DESIGN, FOR REGULATING MINIMUM IMPROVEMENT REQUIREMENTS, FOR REGULATING INFORMATION REQUIRED ON THE PRELIMINARY AND FINAL PLATS, AND FOR REGULATING VARIANCES; PROVIDING PENALTIES FOR VIOLATION THEREOF, AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, AS FOLLOWS:

Section 1. There is hereby adopted by the Town of Paradise Valley that certain public record known as Subdivision Regulations of the Town of Paradise Valley, Arizona, of which not less than three (3) copies have been and now are on file in the office of the Clerk of the Town of Paradise Valley, and the same are hereby adopted and incorporated as fully as if set out herein.

Section 2. All Ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the public record adopted by reference 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.

Section 4. Any person, firm or corporation whether as principal, owner, agent, tenant, or otherwise who violates, disobeys, omits, neglects or refuses to comply with, or who resists enforcement of any of the provisions of this ordinance, shall upon conviction be punished by a fine of not more than Three Hundred (\$300.00) Dollars or by imprisonment in a designated place of confinement for a term of not more than six (6)

months or by both fine and imprisonment. Each day that a violation is permitted to exist shall constitute a separate offense.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Paradise Valley, Arizona, this 27 day of September, 1962.

APPROVED this 27 day of September, 1962.

Jack B. Hunter
VICE Mayor

ATTEST:

Milice E. Marston
Town Clerk

**SUBDIVISION REGULATIONS
OF THE TOWN OF PARADISE VALLEY, ARIZONA**

**PARADISE VALLEY PLANNING AND ZONING COMMISSION
AND
TOWN COUNCIL**

1961

SUBDIVISION REGULATIONS OF THE TOWN PARADISE VALLEY, ARIZONA

TABLE OF CONTENTS

	Page
Section 1 Procedure for the Preparation and Filing of Plats . . .	2
Section 2 Definitions	4
Section 3 Standards of Design	7
Section 4 Minimum Improvements Required	12
Section 5 Information Required on the Preliminary Plan	15
Section 6 Information Required on the Final Plat	17
Section 7 Variances	20

Telephone + electrical lines in sub-divisions placed underground - Admin - # 16 - passed Sept 27, 1962

AN ORDINANCE ADOPTING AND PROMULGATING RULES AND REGULATIONS GOVERNING THE PLATTING OF LAND INTO SUBDIVISIONS IN THE TOWN OF PARADISE VALLEY AND REQUIRING PLATS TO CONFORM TO SUCH RULES AND REGULATIONS IN ORDER TO OBTAIN APPROVAL OF THE PLANNING COMMISSION AND TOWN COUNCIL.

WHEREAS it is necessary for the purposes of promoting the health, safety, and general welfare of the citizens of the Town of Paradise Valley, and promoting the safe, orderly, and healthful development of the Town of Paradise Valley, and to provide adequate light and air, and to prevent overcrowding of land, to avoid undue concentration of population and to facilitate provision of water, sewerage, and utilities, parks and other public requirements that a platting ordinance be promulgated for the Town of Paradise Valley; therefore, the rules and regulations as herein set forth governing the platting of land into subdivisions in the Town of Paradise Valley are adopted.

Adopted by the Planning Commission

By _____ Date _____
Chairman

Adopted by the Town Council

By _____ Date _____
Mayor

SECTION 1

PROCEDURE FOR THE PREPARATION AND FILING OF PLATS

A. Pre-application conference

Prior to presentation of a preliminary plat, the subdivider is invited to discuss with the Planning Commission any problem involved in the development of a particular tract of land concerned as pertains to requirements of the Zoning Ordinance, the master plan and subdivision regulations as these apply to the area. It is further suggested that the subdivider confer with the Town Engineer, County Engineer and the County Health Department regarding matters of streets, drainage, flood control, sanitation and public health.

B. Preliminary Plat

Following the pre-application conference the subdivider shall present to the Commission six (6) copies of the preliminary plat, together with a completed application form and a twenty-five (\$25) dollar application fee. The preliminary plat shall be presented at least twenty-eight (28) days prior to a meeting of the Commission in order that reasonable time is obtained for study of the plat by the Planning Commission and other officials and agencies concerned. The Commission shall act on the preliminary plat within forty (40) days.

Following action of the Commission one copy of the preliminary plat, together with a written report, shall be returned to the subdivider or plat engineer describing any recommended changes and stating the action of the Commission. Reconsideration of a plat may

be requested by the subdivider. Approval of the preliminary plat shall be authorization for the subdivider to proceed with the preparation of the final plat, grading, and installation of required improvements.

D. Record Plat

The record plat (final) and six (6) paper prints thereof shall be presented to the Planning Commission for consideration within twelve (12) months from date of Planning Commission action on the preliminary plat; otherwise, such preliminary approval shall become null and void unless an extension of time is applied for and granted by the Planning Commission.

It is suggested that subdividers or plat engineers obtain final plat review by the Town Engineer and other officials and agencies concerned prior to presentation to the Planning Commission in order to expedite final plat review.

The Commission will review the final plat for comparison with the preliminary plat as approved. The approval of the final plat by the Commission shall not be deemed to constitute or effect an acceptance by the public of the dedication of any street, or other proposed public way or space shown on the plat. A recommendation concerning approval will be adopted and transmitted to the Town Council.

SECTION 2

DEFINITIONS

AERIAL EASEMENT: A grant by a property owner for the use of a strip four (4) feet wide for the specific purpose of extending wires for street lighting.

ALLEY: A passage or way open to public travel, affording generally a secondary means of vehicular access to abutting lots or upon which service entrances of buildings abut, and not intended for general traffic circulation.

BUILDING LINE: A line between which line and street line no building or structure or portion thereof, may be erected, constructed and/or established.

COMMISSION: Shall mean the Town Planning Commission.

CUL-DE-SAC: As distinguished from the unplanned dead-end street, the Cul-de-sac is a short minor street having but one end open for motor traffic, the other being permanently terminated by a vehicular turnaround.

EASEMENT: A grant by a property owner of the use of a strip of land for a specific purpose or purposes, by the general public, a corporation, or a certain person or persons.

DOUBLE FRONTAGE (Through Lot): A lot which extends from one street to another or proposed street.

LOT: A portion of a subdivision or other parcel of land having frontage on a street and intended for transfer of ownership or intended or used for building development.

LOT, DOUBLE FRONTAGE: A lot which extends from one street to another street, existing or proposed.

MASTER PLAN: The comprehensive plan or parts thereof adopted by the Town Council indicating the general locations recommended for streets and highways, parks, playgrounds, schools, public building sites and other physical improvements.

PLAT, FINAL: A plat drawn in ink upon tracing cloth and conforming to the requirements of Section 6 and which must be approved by the Town Council before it can be filed for record with the Recorder of Deeds.

PLAT, PRELIMINARY: The preliminary plat of the layout of the proposed subdivision.

STREET: For the purposes of these regulations a street includes road, highway, drive, lane, avenue, boulevard, easement for access, right-of-way, parking or any other way whether public or private, which affords the principal means of access to abutting property.

SUBDIVIDER: A subdivider shall be deemed to be the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that files the application and initiates proceeding for the subdivision of land in accordance with the provisions of this ordinance;

and said subdivider need not be the person or persons holding title by deed to land, or holding title as vendees under land contract or holding any other title of record.

SUBDIVISION: The division for lease or sale to the public of a tract or parcel of land into five or more lots, tracts or parcels of land, or, if a new street is involved, any division of a parcel of land; or, the division of any residential lot, the boundaries of which have been fixed by a recorded plat; provided, that a partitioning or division of land into tracts or parcels of land of five acres or more and not involving a new street, or the sale or exchange of parcels of land to or between adjoining property owners where such sale or exchange does not create additional lots, shall not be deemed a subdivision. The partitioning of land in accordance with State Statutes regulating the partitioning of land held in common ownership shall not be deemed a subdivision.

SECTION 3

STANDARDS OF DESIGN

A. Relation to adjoining street systems

The arrangement of streets in new subdivisions shall make provision for the continuation of the principal existing streets in adjoining areas or their proper projection where adjoining land is not subdivided insofar as they may be deemed necessary for public requirements. The width of streets in new subdivisions shall be not less than the minimum width established by the Town Engineer and Planning Commission.

Wherever a subdivision adjoins a major thoroughfare, the Commission may require that access to all residential lots be provided from other than the major thoroughfare in conformance with good subdivision practice.

The street and alley arrangement shall be such as not to cause a hardship to owners of adjoining property when they plat their own land and seek to provide for convenient access thereto. Residential streets shall be so designed as to discourage through traffic, but off-set streets should be avoided.

B. Street and Alley width

The width of all major thoroughfares shall conform to the width designated on the adopted Master Plan and in the absence of an adopted master plan minimum right-of-way widths shall be provided as determined by the Town Engineer and Planning Commission.

(1) Cul-de-sac. A dead-end street not to exceed 500 feet in length may be established, but there shall be provided a turnaround, at the closed end, having a right-of-way radius of not less than 45 feet with an improved traffic turning circle having a radius of 40 feet.

(2) Half Streets. Dedication of half streets shall be discouraged. Where there exists a dedicated or platted half street or alley adjacent to the tract being subdivided, the other half shall be platted unless deemed unnecessary by the platting authority.

(3) Alleys. Where alleys are required to serve residential lots a minimum width of 24 feet shall be provided. All half alleys shall have a minimum width of 12 feet. Alleys are required in the rear of all commercial lots if no other provisions are made for adequate service access or for parking and the rights-of-way of such alleys shall not be less than 30 feet and dead-end alleys shall not be permitted.

C. Easements. Private easements for utilities shall be provided as follows:

- (a) Where alleys are provided: four (4) feet for aerial overhang on each side of an alley may be provided by dedication but need not be delineated on the plat.
- (b) Where no alley is provided and adjoining land is a part of the subdivision: eight (8) feet on each side of rear lot line.
- (c) Where no alley is provided and adjoining land is unplatted: eight (8) feet adjacent to the tract boundary.

(d) Along side lot lines: six (6) feet on each side of 10th lines for distribution facilities and one (1) foot on each side of lot lines for street lighting as may be designated.

(e) Guy and anchor easements: one (1) foot wide on each side of a lot line and approximately thirty-five (35) feet in length measured from rear lot line as designated.

D. Blocks.

(1) No block shall be longer than 1500 feet. Where a subdivision adjoins a major thoroughfare, the greater dimension of the block shall front or back upon such major thoroughfare to avoid unnecessary ingress or egress.

(2) When blocks are over 1000 feet in length, a cross walk easement not less than 8 feet wide may be required if necessary to provide proper access to schools, playgrounds and other facilities.

E. Lots.

(1) The lot arrangement and design shall be such that all lots will provide satisfactory and desirable building sites, properly related to topography and to the character of surrounding development.

(2) All side lines of lots shall be at right angles to straight street lines and radial to curved street lines except where a variation to this rule will provide a better street or lot layout.

(3) No lot shall have less area or width than required by the zoning regulations applying to the area in which it is located.

(4) Corner lots for residential use shall have adequate width to permit appropriate building orientation to and setbacks from both streets.

(5) Each lot shall have adequate access to a public street.

(6) Double frontage, and reverse frontage lots, should be avoided except where essential to provide separations of residential development from major thoroughfares or to overcome specific disadvantages of topography and orientation.

F. Building Lines.

Minimum building lines should be shown on all lots intended for residential use of any character and on commercial or industrial lots immediately adjoining residential areas. Such setback lines shall not be less than required by any zoning ordinance or building line regulation applying to the property. Whenever minimum building lines are shown, a statement of restrictions requiring buildings to be located on or in back of such minimum building lines shall be shown on the plat.

G. Public Reservations.

Where the subdivision contains a park, school, or other public area which is shown upon the Master Plan of the Town of Paradise Valley or as recommended by the Commission such area shall either be dedicated to the proper public agency or it shall be reserved for acquisition thereby within a specified period of time. An agreement should be entered within a reasonable period of time between the subdivider and the proper public agency regarding the time and method of acquisition

and the cost thereof. In the event the Commission determines that an agreement has not been reached within a reasonable period of time then the Commission may make a determination that the requirements of this section have been met.

H. Easement Along Streams.

Whenever any stream or important surface drainage course is located in the area being subdivided, provision shall be made for an adequate easement along each side of the stream or drainage course for the purpose of widening, deepening, relocating, improving or protecting the stream for drainage purposes.

I. Land Subject to Flooding or Containing Poor Drainage Facilities.

The right is reserved to disapprove any subdivision which is subject to periodic flooding or which contains extremely poor drainage facilities. However, if the subdivider agrees to make improvements which will in the opinion of the County Health Department make the area completely safe for residential occupancy, the subdivision may be approved.

J. Character of Development.

The subdivider should confer with the Commission regarding the type and character of development that will be permitted in the subdivision and may agree as to certain minimum restrictions to be placed upon the property to prevent the construction of sub-standard buildings, control the type of structure or the use of the lots, which, unless so controlled, would clearly depreciate the character and value of the proposed subdivision and of adjoining property.

These deed restrictions or covenants should include provision for the creation of a Property Owner's Association or Board of Trustees for the proper protection and maintenance of the subdivision in the future, provided, however, that such deed restrictions or covenants shall not contain reversionary clauses wherein any lot shall return to the subdivider because of a violation thereof of the terms of the restrictions or covenants.

SECTION 4

MINIMUM IMPROVEMENTS REQUIRED

No final or record plat of any subdivision shall be approved unless (a) the improvements listed in the following subsections have been completed prior to such approval, or (b) the subdivider shall have petitioned and secured the approval of the Town upon a bonding procedure which places the Town in an assured position to do or to contract to be done all or any part of the improvements listed in the following sub-sections, the cost of which may be assessed against the owners of the property within the subdivision.

A. Street Improvements.

All streets shall be paved and curbs or combined curbs and gutters shall be constructed along all streets in accordance with the standard specifications of the Town.

B. Water Lines.

Every subdivision shall be provided with a complete water distribution system, which will adequately and safely serve the area platted in the opinion of the agency having jurisdiction.

C. Sanitary Sewers.

(1) Where public sanitary sewers are within reasonable access of the subdivision in the opinion of the County Health Department each lot therein shall be provided with a connection to such sanitary sewer.

(2) Whenever a public sanitary sewer is not accessible, in

the opinion of the County Health Department, proper provision shall be made for the disposal of sanitary wastes in accordance with standards and requirements of said department.

D. Drainage.

All necessary facilities, as determined by the Town Engineer including underground pipe, inlets, catch basins, or open drainage ditches, shall be installed to provide for the adequate disposal of surface water and to maintain any natural drainage course.

E. Reference Monuments.

Permanent reference monuments shall be installed in accordance with current Town standards at all corners, angle points and point of curves and at all street intersections. After all improvements have been installed, a registered surveyor or engineer shall check the location of monuments and certify their accuracy.

Lot corners: iron pipe shall be set at all corners, angle points, and points of curve for each lot within the subdivision prior to the recording of the plat.

F. Street Name Signs.

Street name signs, of a type meeting the approval of and in locations designated by the Town shall be erected at all highways, thoroughfares, and street intersections.

G. Miscellaneous

Electrical service, gas mains and other utilities, as well as street tree planting should be provided within each subdivision.

Whenever such facilities are reasonably accessible, they may be required to be installed within the area prior to the approval of the final plat. Telephone and electrical lines may be required to be located underground.

H. Plans, Specifications and Supervision.

All of the improvements required in this section shall be installed in accordance with the specifications and under the supervision of the appropriate public official.

I. Provisions for Maintenance and Operation.

Where the subdivision is to contain sewers, sewage treatment plants, park areas, street trees or other physical facilities necessary or desirable for the welfare of the area and which are of common use or benefit and which are of such character that the Town does not desire to maintain them, then provision shall be made by trust agreement, which is a part of the deed restrictions and which are acceptable to the proper agencies having jurisdiction over the location and improvement of such facilities, for the proper and continuous maintenance and supervision of such facilities by the lot owners in the subdivision.

SECTION 5

INFORMATION REQUIRED ON THE PRELIMINARY PLAN

The preliminary plan shall be drawn at a scale of not more than one hundred feet to the inch and shall show the following information:

(1) The proposed street and lot layout showing the names and location of all existing streets, roads, alleys, parks, parkways, tree masses, public spaces, easements, sewers, utilities and utility easements, buildings, streams, washes, ditches, political and zoning district boundaries and similar features in the subdivision and adjacent to the property where such features would affect the design of the subdivision.

(2) The elevation and description of the bench mark used.

(3) The name and address of the subdivider.

(4) The date, north point, scale and title under which the proposed subdivision is to be recorded.

(5) The name, address and license number of the engineer, surveyor, landscape architect or land planner who prepared the plan.

(6) The name and address of all owners and the location of unsubdivided property adjoining the property to be subdivided.

(7) The names and adjoining boundaries of all adjoining subdivisions showing the name, book and page of recording and existing dedications adjacent to the preliminary plan.

(8) Topography by contours related to USGS survey datum, or other datum approved by the Town or County Engineer, and shown on the same map as the proposed subdivision layout. The contour interval shall be such as to adequately reflect the character and drainage of the land.

(9) Indications to show areas which are subject to frequent or periodic inundation.

(10) Indication to show the proposed use of all the land in the subdivision including reservations and exceptions.

SECTION 6

INFORMATION REQUIRED ON THE FINAL (RECORD) PLAT

- (1) The name and address of the subdivider.
- (2) The title of the subdivision, date, north point, scale and name of the registered professional engineer or land surveyor who prepared the plat.
- (3) The boundaries of the property fully balanced and closed showing all bearings, angles and dimensions, determined by an accurate survey in the field. Also show relative location to nearest existing street.
- (4) The location and description of all permanent monuments, and a reference bench mark set at such critical points and so interconnected and dimensioned that any surveyor can lay out lots or streets in the subdivision correctly by referring to the plat alone without any additional information.
- (5) The names, locations and widths of all parkways or easements and any other portions intended to be dedicated to public use or provided for the installation of utilities, fully dimensioned showing the angles of intersection of streets and the radii, chords, points of tangency and central angles for all curvilinear streets and the radii of all rounded corners and with notations concerning their dedication, reservation and use.

(6) Lot and block numbers, lot lines and setback lines, fully dimensioned.

(7) The location of all immediately adjoining property lines and the location, name and width of all roads, street alleys, parkways and easements.

(8) All dimensions shall be expressed in feet or decimals thereof.

(9) Any private restrictions and/or trusteeships and their period of existence shall be shown on the plat or reference to them made thereon. If such restrictions are too long to be shown on the plat, a copy of same shall be filed with the Commission together with the record plat.

(10) The record plat is to be drawn at a scale of not more than 100 feet to the inch from an accurate survey. If more than two sheets are required, an index sheet of the same dimensions shall be filed showing the entire subdivision on one sheet together with all areas shown on other sheets.

(11) The following certificates shall be placed on the plat:

(a) Dedications: Statement of dedication of all streets, alleys crosswalks, and other easements for public use by the person holding title by deed to the lands, by persons holding any other title of record, by persons holding title as vendees under land contract, and by wives of said parties. If lands dedicated are mortgaged, the mortgagee shall also sign the plat. Dedication shall include a written location by section, township, and range of the tract.

If the plat contains private streets, the public should be reserved the right to install and maintain utilities in the street rights-of-way.

(2) Certification by the registered professional engineer or land surveyor making the plat that the plat is correct and accurate and that the monuments described in it have been located as described.

(3) Such other certificates as may be required for the enforcement of these regulations.

SECTION 7

A. Hardship

Where the Planning Commission and Town Council finds that extraordinary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of the Master Plan or these regulations.

B. Large Scale Development

The standards and requirements of these regulations may be modified by the Planning Commission and Town Council in the case of a plan and program for a neighborhood unit, which in the judgment of the Planning Commission provide adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated, and which also provide such covenants or other legal provisions as will assure conformity to and achievement of the plan.

C. Conditions

In granting variances and modifications, the Planning Commission and Town Council may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied or modified.