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January 2, 2013

City of Scottsdale
City Clerk
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Re: Notice of Claim re Sereno Canyon

To Whom It May Concern:

I have been retained by Corn Investments LLC (the "**Resident**") to file suit against the City of Scottsdale to challenge the enforceability of Ordinance 4053, Ordinance 4001 and Resolution 9248 all passed and adopted by the Council of the City of Scottsdale on December 3, 2012 at its Regular Agenda, and alternatively, to pursue a claim for damages pursuant to Proposition 207 (ARS §12-1134). In anticipation of filing such lawsuit, pursuant to Article 6, §12 of the City Code and ARS §12-821.01 please accept this letter as Resident's Notice of Claim.

As you know, McDowell Mountain Back Bowl LLC (the "**Developer**") filed Applications 10-GP-2011 (seeking a Non-Major General Plan Amendment of 132 acres from Rural Neighborhoods to Resorts/Tourism), 1-ZN-2005#2 (seeking re-zoning to amend the prior zoning approval in Case #1-ZN-2005), and 16-ZN-2011 (seeking to re-zone 227 acres from R1-130 ESL to 95 acres of R1-43 ESL and 132 acres of R-4R ESL). These Applications were all defective and the City Council's purported action approving all of these Applications are unenforceable and in violation of the due process rights of the Resident and other citizens of the City of Scottsdale for the following reasons, among others:

10-GP-2011 Was Filed, Processed and Approved by the Council as a *Non-Major* General Plan Amendment Whereas in Fact it Seeks A *Major* General Plan Amendment

ARS §9-461.05(A) provides that: "The general plan shall include provisions that identify changes or modifications to the plan that constitute amendments and ***major amendments***." Scottsdale's General Plan provides at page 18:

An amendment to Scottsdale's General Plan shall be defined as a major amendment if it meets any one of the criteria outlined on the following pages:

1. **Change in Land Use Category**
   A change in the land use category on the land use plan that changes the land use character from one type to another as delineated in the following table

	To:	Group A	Group B	Group C	Group D	Group E
From:	Land Use Plan Category					
Group A	Rural Neighborhoods Natural Open Space		Yes	Yes	Yes	Yes

2a. Area of Change Criteria

A change in the land use designation that includes the following gross acreages:

* Planning Zones A1, A2, B — 10 acres or more
* Planning Zones C1, C2, C3, D, E1, E2, and E3 — 15 acres or more

4. Water/Wastewater Infrastructure Criteria

If a proposal to change the planned land use category results in the premature increase in the size of a master planned water transmission or sewer collection facility, it will qualify as a major amendment.

Although the Developer's Application is for a ***Non-Major*** General Plan Amendment, in reality, as shown above, the Application meets all three of the above "criteria" and thus constitutes a ***Major*** General Plan Amendment.

The Developer's Application meets Criteria "1" as it seeks a change in the Land Use Category from Group A "Rural Neighborhoods" to Group C "Resorts\Tourism".

The Developer's Application meets Criteria "2" as the subject property is in Planning Zone D, and the Application seeks a change in land use designation of 132 acres i.e. more than the required 15 acres.

The Developer's Application meets Criteria "4" as the following provision in the Developer's submittal found at page 38 acknowledges that the proposal results in a premature increase in the line sizes for segments in the project:

Water Master Plan
To provide an adequate source of potable and fire suppression water for the Sereno Canyon project several off-site projects were completed and dedicated to the City of Scottsdale with the initial phases of development. These improvements included the design and construction of a new Zone 13 Water Booster Pump Station, a 16-inch waterline along 118th Street and a 12-inch waterline along Ranch Gate Road. These improvements were all sized to benefit the proposed development area bounded by approximately 118th Street and the proposed Preserve boundary north and east of Sereno Canyon. With the proposed rezoning of the Sereno Canyon site to include a resort and resort residential units, there will be an increase in the water demand by the property. The Master Water System Report for Sereno Canyon has been updated to reflect this demand increase and will result in increases to line size designations for future on-site segments.

By reason of the above, there can be no doubt that the Developer's Application should have been submitted and processed as a ***Major*** General Plan Amendment. Unlike for a ***Non-Major*** General Plan Amendment, when a ***Major*** General Plan Amendment is proposed, the more extensive requirements of ARS §9-461.06 require:

> D. At least sixty days before the general plan or an element or ***major*** amendment of a general plan is noticed pursuant to subsection E of this section, the planning agency shall transmit the proposal to the planning commission, if any, and the governing body and shall submit a copy for review and further comment to:
>
> 1. The planning agency of the county in which the municipality is located.
>
> 2. Each county or municipality that is contiguous to the corporate limits of the municipality or its area of extraterritorial jurisdiction.
>
> 3. The regional planning agency within which the municipality is located.
>
> 4. The Arizona commerce authority or any other state agency that is subsequently designated as the general planning agency for this state.
>
> 5. The department of water resources for review and comment on the water resources element, if a water resources element is required.
>
> ***
>
> E. If the municipality has a planning commission, after considering any recommendations from the review required under subsection D of this section the planning commission shall hold at least one public hearing before approving a general plan or any amendment to such plan. When the general plan or any *major* amendment is being adopted, planning commissions in municipalities having populations over twenty-five thousand persons shall hold two or more public hearings at different locations within the municipality to promote citizen participation. Notice of the time and place of a hearing and availability of studies and summaries related to the hearing shall be given at least fifteen and not more than thirty calendar days before the hearing by:
>
> 1. Publication at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, the notice shall be posted in at least ten public places in the municipality.
>
> ***
>
> H. The adoption or readoption of the general plan or any amendment to such plan shall be by resolution of the governing body of the municipality, after notice as provided for in subsection E of this section. The adoption or readoption of or a ***major*** amendment to the

general plan shall be approved by affirmative vote of at least two-thirds of the members of the governing body of the municipality. All ***major*** amendments to the general plan proposed for adoption by the governing body of a municipality shall be presented at a single public hearing during the calendar year the proposal is made.

None of these statutory requirements were met by the Developer or the City, and thus the Application and processing of 10-GP-2011 were defective, and the passage and adoption of Resolution 9248 which purports to amend the General Plan is unenforceable.

10-GP-2011 Only Sought a General Plan Amendment of 132 Acres from Rural Neighborhoods to Resorts/Tourism; However, in Approving the Application, the Council Passed and Adopted Resolution 9248 Which Also Amended the Natural Open Space Land Use Category for the Subject Property

Page 70 of the General Plan defines one Land Use Category as "Rural Neighborhoods". Page 73 of the General Plan defines another Land Use Category as "Natural Open Space". The Developer's Application 10-GP-2011 only sought a "General Plan Amendment of 132 Acres from Rural Neighborhoods to Resorts/Tourism" and made no mention of a requested amendment to the Natural Open Space land use category. Attachment #6 (attached) to the Subject Item 20 of the December 3, 2012 City Council Report reflects the General Plan Use Designations for the Subject Property *before* the above purported General Plan Amendment. Attachment #8 (attached) to the Subject Item 20 reflects the proposed changes to the Land Use Designations. There are two: (1) Rural Neighborhoods to Resorts/Tourism; and (2) Natural Open Space to Resorts/Tourism. Although two different Land Use Categories are implicated, the Developer's Application only references one – Rural Neighborhoods, but fails to include the change of the Natural Open Space to Resorts/Tourism. Notwithstanding such limitation in the Application, the Council passed and adopted Resolution 9248 which also amended the Natural Open Space Land Use Category for the Subject Property in the General Plan. None of the statutory requirements for Notice [ARS §9-461.06(E)] of this additional change were satisfied, and thus for this independent reason, Resolution 9248 is unenforceable.

1-ZN-2005#2 SEEKS ZONING CHANGES TO THE RESIDENT'S PROPERTY WITHOUT ITS CONSENT

If a zoning application is not initiated by the City, the property owner whose property is affected by the zoning application must either bring or consent to the submittal of an application. On July 25, 2007 Resident purchased Lot 42 in Sereno Canyon Phase I (Deed attached). The Developer's Application for Case #1-ZN-2005#2 seeks a zoning change reducing the required Natural Area Open Space dedication within approximately 330 acres of land, including Resident's Lot 42, all without Resident's approval, and, in fact, against its wishes. Resident did not join in the zoning application and thus the Council's purported approval of the Application when it passed and adopted Ordinance 4053 is unenforceable.

1-ZN-2005#2 SEEKS ZONING CHANGES WHICH DO NOT CONFORM TO THE GENERAL PLAN

ARS §9-462.01(F) provides that:

> F. All zoning and rezoning ordinances or regulations adopted under this article shall be consistent with and conform to the adopted general plan of the municipality, if any, as adopted under article 6 of this chapter.

The approval in Ordinance 4053 in Stipulation Number 1 gives effect to a new site plan and zoning districts to be achieved in a future zoning case before proper amendment of the General Plan has been accomplished. Before any new site plan and references to new zoning districts may be approved in a zoning action, state law (ARS §9-462.01) requires a proper amendment of the General Plan. Also, as noted above, the Developer and the City failed to follow the statutory procedure required to amend the General Plan, with the result that the City's passage and adoption of Ordinance 4053 is unenforceable as it is not consistent with and fails to conform to the City's existing General Plan.

RESIDENT IS A SUCCESSOR IN INTEREST TO THE DEVELOPMENT AGREEMENT ON THE SUBJECT PROPERTY, HOWEVER IT DID NOT CONSENT TO AN AMENDMENT TO THE DEVELOPMENT AGREEMENT

On or about April 4, 2006, Developer and the City entered into a Development Agreement (City of Scottsdale Agreement No. 2006-019-COS) whereby, among other things, the Developer agreed to maintain certain densities and Natural Open Space stipulations contained in Zoning Case 1-ZN-2005. ¶15 of the Development Agreement provides that the benefits and burdens of the Agreement shall inure to the benefit of the Developer's successors and assigns. By virtue of the Warranty Deed for Lot 42 from Developer to Resident, Resident is a successor of the Developer, at least as it relates to Lot 42. ¶11 of the Development Agreement only permits an amendment to the Agreement with the mutual written consent of the Parties or "their successors in interest". Ordinance 4001 and Ordinance 4053 have the effect of amending the Development Agreement, however, such amendment is unenforceable, as it was done without Resident's written consent, and in fact over its objection.

RESIDENT IS ENTITLED TO DAMAGES AGAINST THE CITY PURSUANT TO PROP 207

In the unlikely event that a Court of competent jurisdiction finds that the foregoing General Plan Amendment and Zoning Ordinances are valid and enforceable, Resident will be entitled to damages against the City pursuant to ARS §12-1134 which provides:

> 12-1134. Diminution in value; just compensation
>
> A. If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

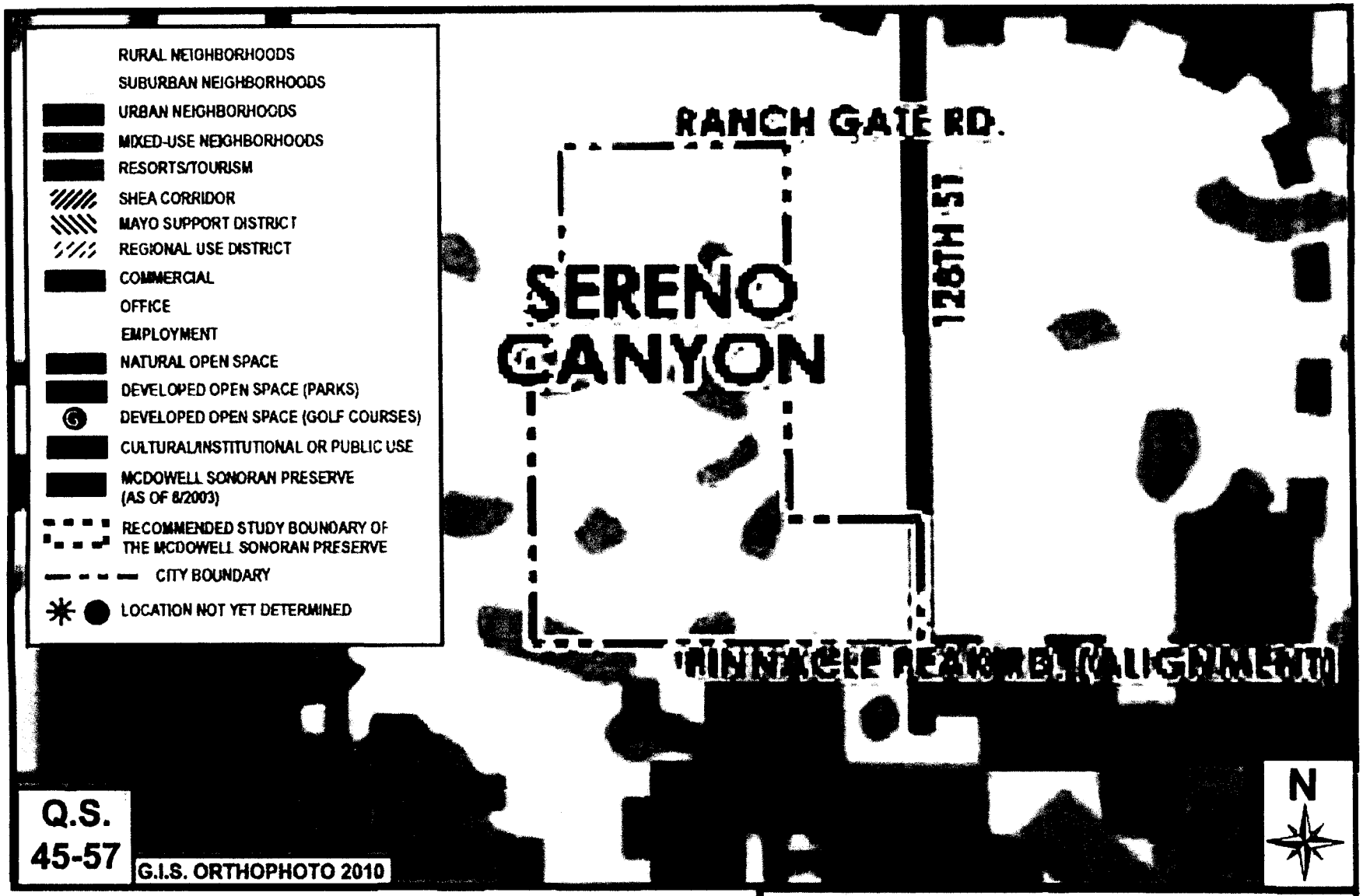
In that regard, Resident estimates that such just compensation damages will be at least $650,000.

Based on the foregoing, please advise if the City will voluntarily revoke its passage and adoption of Ordinance 4053, Ordinance 4001 and Resolution 9248. If not, the City should assume that Resident will immediately file a lawsuit against the City seeking a declaration that such Ordinances and Resolution are void and unenforceable, or alternatively, for damages. As part of such lawsuit, on behalf of my client, I will seek full discovery of all relevant documents, including, but not limited to, all emails and other communications between the Developer and its various representatives, including, but not limited to, its consultants, lobbyists, public relations personnel, and the City Council, Planning Department and any other municipal department's in house or contracted staff. Presumably, such discovery will reveal how and why the Ordinances and Resolution were passed and adopted notwithstanding the clear letter of the law to the contrary, and notwithstanding that the Developer's actions also constitute violations of the deed restrictions on the subject property, all as is explained in a letter to the Developer (attached) sent simultaneously herewith. If you have any questions regarding the above, please feel free to call me.

Very truly yours,

RAMRAS LAW OFFICES, P.C.
/s/
David N. Ramras

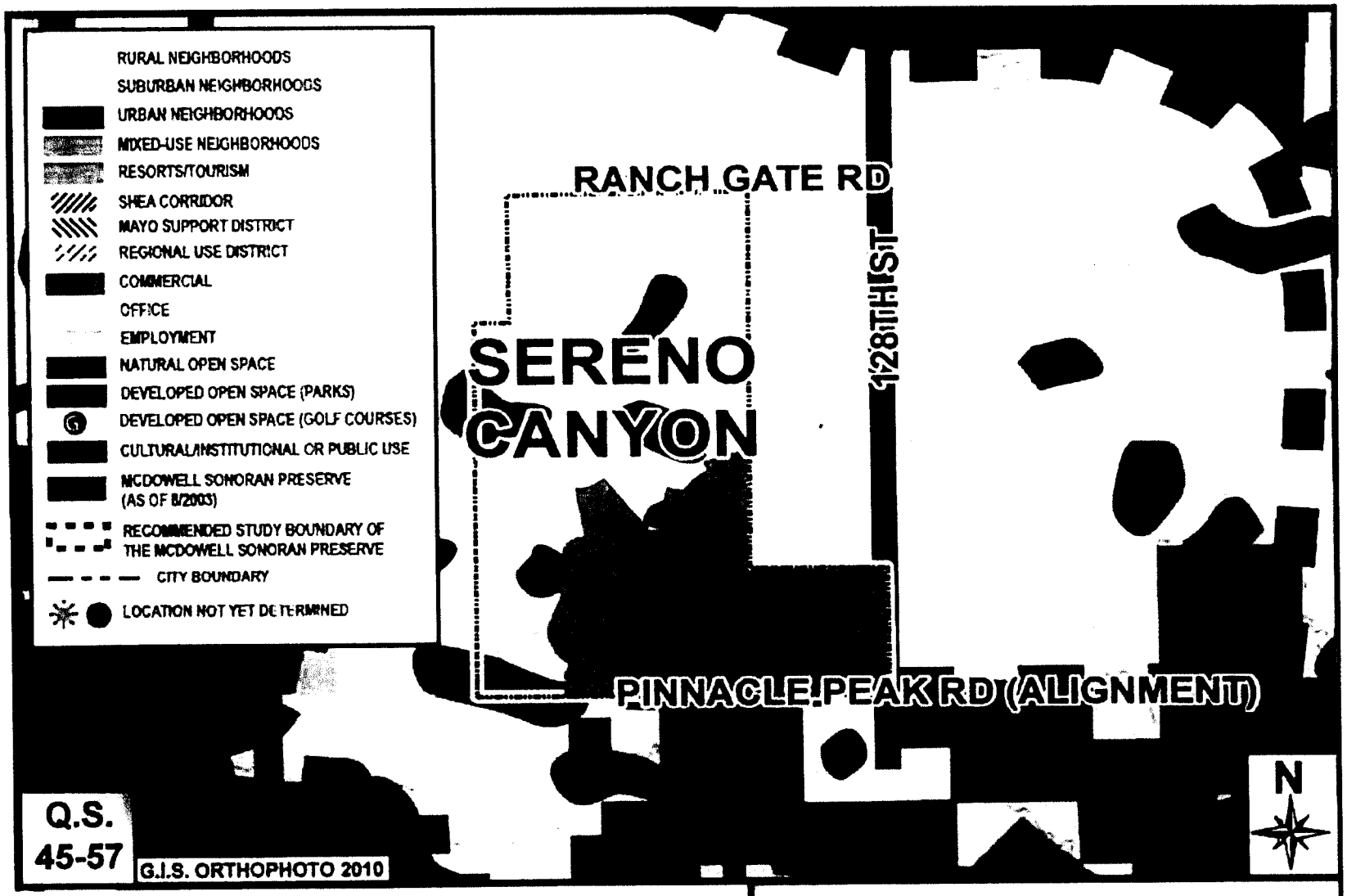
Enclosures
cc: Mayor W.J. "Jim" Lane (jlane@scottsdaleaz.gov)
Vice Mayor Dennis Robbins (drobbins@scottsdaleaz.gov)
Councilwoman Lisa M. Borowsky (lborowsky@scottsdaleaz.gov)
Councilwoman Suzanne Klapp (sklapp@scottsdaleaz.gov)
Councilman Robert Littlefield (rlittlefield@scottsdaleaz.gov)
Councilman Ron McCullagh (rmccullagh@scottsdaleaz.gov)
Councilwoman Linda Milhaven (lmilhaven@scottsdaleaz.gov)
Hugh Smeed (hsmeed@gmail.com)
Mike Corn (mike.j.corn@gmail.com)
John DiTullio (ditulliolaw@gmail.com)



Existing 2001 General Plan Land Use Designation

1-ZN-2005#2, 10-GP-2011, & 16-ZN-2011

ATTACHMENT #6



Proposed 2001 General Plan Land Use Amendment

1-ZN-2005#2, 10-GP-2011, & 16-ZN-2011

Exhibit 1
Resolution No. 9248
Page 1 of 1

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20070844371 07/25/2007 04:38
22009122-2-3-1--
ELECTRONIC RECORDING

FIDELITY NATIONAL TITLE

When Recorded Mail To:

Corn Investments, L.L.C.
11638 E. Four Peaks Road
Scottsdale, AZ 85262

Escrow No. 22009122-LCB
1/2

SPECIAL WARRANTY DEED

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

McDowell Mountain Back Bowl, LLC, an Illinois Limited Liability Company

does hereby convey to

Corn Investments, L.L.C., an Arizona Limited Liability Company

the following described real property situated in the County of Maricopa, State of Arizona:

Lot 42 of Final Plat For Sereno Canyon Phase 1, according to Book 910 of Maps, Page 16, records of Maricopa County, Arizona.

SUBJECT TO current taxes, assessments, reservations in patents and all easements, rights of way, encumbrances, liens, 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 its acts and none other, subject to the matters above set forth.

This LOT conveyed pursuant to this Special Warranty Deed is subject to (in addition to the matters set forth above) (a) that certain Declaration of Covenants, Conditions, and Restrictions for Sereno Canyon recorded April 17, 2007, with the Maricopa County Recorder as Instrument No.: 2007-0448214, which instrument, together with any and all amendments and supplements thereto, impose upon the property hereby conveyed and other property, under a general plan of development, certain covenants, conditions, restrictions, easements, servitudes and other provisions running with the land and binding title to the Lot and all owners of any portion thereof or interest therein, whether or not referenced in any future deed or instrument and (b) that certain Transfer Fee Agreement dated June 8, 2007 (the "Transfer Fee Agreement") between Grantor and Grantee providing for the payment of a transfer fee to Grantor or its designee if the Lot is sold or otherwise transferred prior to expiration of the Transfer Period. The "Transfer Period" shall mean the period of time commencing upon execution of this Special Warranty Deed by Grantor and expiring on the second anniversary of such execution. Upon expiration of the Transfer Period, the Transfer Fee Agreement shall automatically terminate and be of no further force or effect, and no further agreement or instrument shall be required for such termination. If the Lot is sold or otherwise transferred prior to expiration of the Transfer Period and the applicable transfer fee is paid pursuant to the Transfer Fee Agreement, Grantor will execute a release of the Transfer Fee Agreement upon Grantee's request.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this 24th day of July, 2007.

DATED: July 19, 2007

STATE OF Illinois
COUNTY OF DuPage
This instrument was acknowledged before me this 24th day of July, 2007 by Hugh Smeed, the authorized representative of Henry Crown and Company dba CC Industries, Inc., Manager of McDowell Mountain Back Bowl, L.L.C.

Signature Linda Mendrala
Notary Public

My Commission Expires: 12/03/07

Official Seal
Linda Mendrala
Notary Public State of Illinois
My Commission Expires 12/03/07

Linda Mendrala

McDowell Mountain Back Bowl, L.L.C., an Illinois LLC
by: Henry Crown and Company, A Delaware Corp., dba CC Industries, Inc., a Delaware Corporation, its Manager

By _____
Hugh Smeed, authorized representative

RAMRAS LAW OFFICES, P.C.

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David N. Ramras
E-Mail: david@ramraslaw.com

January 2, 2013

Via Fax (#630-898-0480) & Federal Express
McDowell Mountain Back Bowl, LLC
Attention: Hugh Smeed
1751A West Diehl Road
Naperville, Illinois 60563

Re: **Seller:** McDowell Mountain Back Bowl, LLC
Buyer: Corn Investments LLC
Property: Lot 42 Sereno Canyon Phase I

Dear Mr. Smeed:

I have been retained by Corn Investments LLC to represent its interests with regard to the recent Applications (the "**Applications**") filed by McDowell Mountain Back Bowl, LLC (the "**Developer**") with the City of Scottsdale seeking a Non-Major General Plan Amendment to allow the Developer to change the Scottsdale General Plan "land use" category for 132 acres of its land from Rural Neighborhoods to Resorts/Tourism (Case #10-GP-2011); seeking re-zoning of 330 acres to Amend the current Natural Area Open Space Stipulation in Case #1-ZN-2005 (Case #1-ZN-2005#2), (the prior original zoning case which approved the subdivision) in order to reduce the natural area open space by 29 acres; and seeking to re-zone 227 acres from R1-130 ESL to 95 acres of R1-43 ESL and 132 acres of R-4R ESL (Case #16-ZN-2011).

In that regard, as you know, on or about June 8, 2007 Corn Investments, as buyer, entered into a Purchase Contract with Developer, as seller, of Lot 42 in Sereno Canyon Phase I, according to the subdivision plat recorded in Book 910 of Maps, Page 16, Maricopa County, Arizona (the "**Plat**"). The sale transaction closed on or about July 25, 2007, at which time Corn Investments paid the purchase price of $778,500 to Developer. Pursuant to the Purchase Contract the parties agreed at ¶5 that the rights and obligations of Corn Investments in acquiring Lot 42 will be controlled by and subject to the Declaration of Covenants, Conditions and Restrictions for Sereno Canyon recorded on April 17, 2007 at Document #2007-0446214 in the Office of the Maricopa County Recorder (the "**Declaration**"). ¶13 of the Purchase Contract provides that "Each lot in Sereno Canyon will contain a maximum building construction envelope. The area outside the building construction envelope is designated as NAOS and shall be permanently maintained as natural desert open space." ¶9.2 of the Declaration provides for the same maximum building construction envelope which is also on the Plat.

Corn Investments was induced to purchase Lot 42 because, among other reasons, Sereno Canyon Phase I was represented to consist of "high end" custom homesites averaging 2.5 acres in size, zoned R1-130 ESL (Single-Family Residential Low density single family neighborhood uses (minimum 130,000 sq. ft. lot) 1 single-family dwelling unit per lot), with over 60% of the subdivision preserved as open space with dramatic 360 degree views and boulder outcroppings, and connecting hiking trails to McDowell Mountain Park. Instead of maintaining these unique features for the benefit of lot buyers such as Corn Investments, who relied upon the forgoing when it purchased the Lot, you (the Developer) have embarked upon a course of action which will destroy the value of Lot 42.

Over Corn Investments objections, the Developer illegally processed the Applications in violation of State Law and local ordinances and regulations, all as is set forth in a Notice of Claim which I recently sent to the City (attached). Over Corn Investments' objections, on December 3, 2012 at its Regular Agenda meeting, the Scottsdale City Council approved the Applications and passed and adopted Ordinance 4054, Ordinance 4001 and Resolution 9248. By seeking and obtaining the passage of the Ordinances and Resolution, the Developer has breached its covenant of good faith and fair dealing as the Ordinances and Resolution provide for the following:

- 95 acres within and around the first Phase of the subdivision in which my client purchased property has been re-zoned from R1-130 ESL -Environmentally Sensitive Land (minimum 130,000 sq. ft. lot) to R1-43 (minimum 43,000 sq.ft. lot) a zoning district change from approximately 2 ½ acre lots to 1 acre lots. Instead of 46 Lots as originally platted for the entire subdivision, the Zoning Stipulations permit 54 detached villas on these 95 acres alone.
- 132 acres of the 350 acre property has been re-zoned from R1-130 ESL (Single-Family Residential Low density) to R-4R ESL (Resort/Townhouse Residential) which allows various nonresidential uses such as commercial lodging and resort accommodations which include recreational amenities and services customarily furnished at such commercial facilities as well as medium density residential neighborhoods with multi-family structures. The maximum density has increased from 128 units total to 397 units total and the allowance of various commercial uses at all hours of the day and night traveling over the same road network as homes in the residential areas.
- The Developer will now utilize the road running through the subdivision from East Ranch Gate Road on the North side of the subdivision from 125th Place to North 128th Street on the South side of the subdivision in order to provide access to the various commercial uses allowed by right in the R-4R ESL zoning district and the more dense housing scheme allowed in the R4-R district. Pursuant to a Traffic Impact study, "The approval of the zoning district change for the proposed resort hotel will result in an estimated 3,196 trips generated per day to and from the project site. The facility is estimated to generate 261 a.m. peak hour trips, and 328 p.m. peak hour trips. This represents an increase of 1,970 daily trips over the existing approved single family subdivision." (See City Council Report, Item 20, p.8).
- The Natural Area Open Space set forth in the Purchase Contract and the Declaration will be reduced by approximately 29 acres.

The end result of the Developer's recent actions is to dramatically increase the density of the subdivision and to more than double the traffic and to add commercial users on the same road network not compatible with the serene residential neighborhood environment purchased by my client. That scenario is not what Corn Investments intended or what was promised when it purchased its Lot in what was supposed to remain as a high end, low density, low traffic subdivision.

Presumably, the Developer believes it can ignore its implied covenant of good faith and fair dealing by using ¶¶7.4 and 8.6 of the Declaration to attempt to amend the Declaration and the Plat to implement its planned redevelopment. Since the Developer still owns most of the Lots, apparently it believes it may completely change the nature of the subdivision as it controls more than the 67% vote of lot owners required for such an amendment. Fortunately, the law in Arizona will not permit the Developer to first profit from its Lot sale to Corn Investments, and then, because of "business necessities" allow the Developer to take away the benefit of the Corn Investment's bargain.

In determining the intent of the parties to the Purchase Contract, a Court will also look to the terms of the Declaration which was incorporated into the sale transaction. The opening paragraph of the Declaration states that it "shall be interpreted to be for the purpose of enhancing and protecting the value and attractiveness of the Project and all Lots therein". Although the Developer managed to persuade the City Council to materially re-zone the subdivision, ¶7.1 of the Declaration expressly provides that "...if any of the provisions of this Declaration, the Design Guidelines or the Construction Guidelines conflict with any land use or zoning ordinances of the City as applicable to the Project, ***the more restrictive provisions shall control***".

This is not the first time that a Developer tried this stunt. In Multari v. Richard D., 214 Ariz. 557, 155 P. 3d 1081 (Ariz. App., 2007), a "Declaration of Deed Restrictions" (the "1973 Declaration") encumbered the lots in a subdivision with certain covenants running with the land. One covenant stated, "No structure(s), other than residences and *accessory buildings* thereto, shall be placed upon any of the lots." There were no limitations in the 1973 Declaration as to the size and/or dimensions of the accessory building. Later, the Developer unilaterally attempted to restrict the size of such buildings *on some but not all of the lots* by recording another Declaration (the "1976 Declaration") which prohibited placement of any structure less than 1400 square feet or higher than 13 feet on the property. One affected homeowner who wanted to build a smaller accessory building challenged the enforceability of the 1976 Declaration. The Court found it unenforceable and held:

> The covenants and restrictions in the 1973 Declaration were provided explicitly "for the benefit of each and every one" of the lots in the subdivision. The next question is whether the developer may alter uniform covenants and restrictions through a private deed restriction. In La Esperanza Townhome Ass'n, Inc., v. Title Security Agency of Arizona, 142 Ariz. 235, 689 P.2d 178 (App. 1984), this court discussed the purpose of uniform covenants and restrictions:
>
> Historically, restrictive covenants have been used to assure uniformity of development and use of a residential area to give the owners of lots within such an area some degree of

> environmental stability. To permit individual lots within an area to be relieved of the burden of [restrictive] covenants, in the absence of a clear expression in the instrument so providing, would destroy the right to rely on restrictive covenants which has traditionally been upheld by our law of real property. Id. at 238, 689 P.2d at 181 (quoting Montoya v. Barreras, 473 P.2d 363, 365 (N.M. 1970)). In Riley v. Boyle, 6 Ariz. App. 523, 526, 434 P.2d 525, 528 (1967), this court declined to adopt a certain interpretation of a declaration of uniform covenants and restrictions because doing so "could easily result in a patchwork quilt of different restrictions... and completely upset the orderly plan of the subdivision."

The Court also rejected the argument that the 1976 Declaration did not purport to amend the 1973 Declaration, and held:

> The 1976 Private Deed Restrictions did not purport to amend the original covenants and restrictions; however, ***they effectively altered the terms pertaining to accessory buildings*** in the 1973 Declaration. Permitting developers to use private deed restrictions to bypass the formal amendment process would "destroy the right to rely on restrictive covenants" and "completely upset the orderly plan of the subdivision." La Esperanza, 142 Ariz. at 238, 689 P.2d at 181; Riley, 6 Ariz. App. at 526, 434 P.2d at 528.... Our opinion in Riley, in which ***we characterized an amendment as "any action taken by property owners to alter, extend, or revoke existing restrictions,***" further supports our decision.

As in Multari, supra, the actions taken by the Developer of Sereno Canyon in filing the Applications and obtaining the passage of the Ordinances and Resolution constitute an unlawful amendment to the Declaration. Other attempts to alter Declarations in a way which do not uniformly apply to all lots in a subdivision have been routinely found unenforceable.

In Camelback Del Este Homeowners Ass'n v. Warner, 749 P.2d 930, 156 Ariz. 21 (Ariz. App., 1987) the Deed Restrictions (the "Declaration") provided that "No structure shall be erected, altered, placed or permitted to remain on any of said lots other than one detached single-family dwelling..." but the Declaration permitted amendments by a majority of the lot owners. Warner filed an application for a zoning change with the City of Phoenix *in connection with the nine lots* in which he had an interest. He sought to have his 9 lots re-zoned to commercial use, and circulated a petition among the homeowners seeking an amendment to the Declaration to allow the change of use. The home owner association filed a complaint seeking declaratory and injunctive relief to enforce the restrictive covenants, and *also sought a declaratory judgment that any changes had to apply to all lots uniformly unless 100% of the homeowners agreed to non-uniform amendment.* The Court of Appeals agreed with the association and held:

> "The issue of severing certain lots from operation of restrictive covenants governing a subdivision is not a matter of first impression in this state. In Continental Oil Company v. Fennemore, 38 Ariz. 277, 299 P. 132 (1931), our supreme court held that where the residential character of the entire neighborhood remains substantially intact, the court will not engage in a lot-by-lot analysis to consider the release of a portion of the neighborhood from restrictive covenants.
> ***

> In Continental Oil, the supreme court wrote: ***The policy of the courts of this state should be to protect the home owners who have purchased lots relying upon, and have maintained and abided by, restrictions, from the invasion of those who attempt to break down these guaranties of home enjoyment under the claim of business necessities.***

This expressed "public policy" was also followed in Riley v. Boyle, 434 P.2d 525, 6 Ariz.App. 523 (Ariz. App., 1967), an action brought by the plaintiffs against the defendants for an injunction and other relief by reason of an alleged violation of building restrictions in Westridge Estates, a subdivision in a high-class residential district. The Declaration in that case prohibited the construction of a two story dwelling and required the homes to be built out of brick. The Declaration permitted amendments if approved by 51% of the lot owners. 5 years after the Plat and Declaration for the subdivision were recorded, 51% of the lot owners purported to amend the Declaration to eliminate these prohibitions as to one of the lots. The Court found the amendment unenforceable and held:

> It would appear that any action taken by property owners to alter, extend, or revoke existing restrictions ***must apply to all of the properties which are subject to them.*** In one case the court held invalid an attempt to retain restrictions as to part of a subdivision while releasing them as to another part.'...This court is satisfied that this is a sound principle...Paragraph 19 of the restrictions, as stated above, *gives the power to 51 per cent of the lot owners to change completely the restrictions applicable to the entire subdivision but it does Not give the power to change the restrictions as to one or more but less than all the lots.* The restrictions imposed pertain to All lots in the subdivision and *a fair construction of the words permitting amendments indicate that the power to amend is only as to restrictions for all lots in the subdivision.*
>
> Taking these words to mean that particular lots could be excepted permits the obviously unintended result that 51 per cent of the owners could exempt their own property and leave the other 49 per cent encumbered or could even impose more strict restrictions upon certain lots. Certainly such an interpretation could easily result in a patchwork quilt of different restrictions according to the views of various groups of 51 per cent and completely upset the orderly plan of the subdivision.
>
> ***
>
> The rights of the parties are contractual and each owner has a right to have all restrictions enforced against all lots unless the restriction is changed as to the entire subdivision by the action of 51 per cent of the owners....We hold that the purported amendment attempting to exempt Lot 46 from the restrictions is null and void.

As in Riley, supra, the Developer of Sereno Canyon cannot effectively amend the Declaration and the Plat as to some but not all of the lots in order to reduce the natural open space restrictions in §9.2 of the Declaration, and to allow the lots to be used for other than single family residential use as required by §5.1(a) of the Declaration.

In La Esperanza Townhome Ass'n, Inc. v. Title Sec. Agency of Arizona, 689 P.2d 178, 142 Ariz. 235 (Ariz. App., 1984), the developer recorded a plat creating 30 townhome lots.