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SHAPIRO LAW FIRM, P.C.
Jay L. Shapiro (No. 014650)
1819 E. Morten Avenue, Suite 280
Phoenix, Arizona 85020
Telephone (602) 559-9575

LIBERTY UTILITIES
Todd C. Wiley (No. 015358)
12725 W. Indian School Road
Suite D-101
Avondale, AZ 85392
Telephone: (623) 240-2087

Attorneys for Liberty Utilities (Black Mountain Sewer) Corp.

Arizona Corporation Commission
DOCKETED

MAY 23 2016

DOCKETED BY *[Signature]*

RECEIVED
MAY 23 2 4 12
ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF LIBERTY UTILITIES (BLACK
MOUNTAIN SEWER) CORP. FOR
APPROVAL OF AN EXTENSION OF A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WASTEWATER
UTILITY SERVICE IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO: SW-02361A-16-0067
RESPONSE TO STAFF REPORT

Liberty Utilities (Black Mountain Sewer) Corp. ("Liberty Black Mountain" or "Company") hereby submits this Response to Staff Report in the above-captioned matter.

Attached as **Exhibit 1** is Liberty Black Mountain's Operating Agreement (the "Agreement") with the Town of Carefree ("Town"), dated March 29, 2006. The Agreement was executed in compliance with Decision No. 64748 (April 17, 2002) approving an extension of Liberty Black Mountain's CC&N for the operation of sewage facilities in particular parcels,¹ and applies to any existing and future developments within the Town limits.²

¹ The PacWest, Ironwood, Partners, Canyon Creek and Morris parcels (the "extended CC&N service area").

² Agreement, ¶ 3 ("In consideration of [Liberty Black Mountain's] agreement to provide services to all residents and businesses of the extended CC&N service area, the Town

1 Attached as **Exhibit 2** is Figure 22 from the Town's General Plan 2030, in which
2 the Eastwood development is identified, illustrating that Eastwood is a part of Liberty
3 Black Mountain's current franchise with the Town.³

4 These documents evidence that the Company has received the required consent,
5 franchise or permit from the Town as required per A.R.S. § 40-282(B).

6 RESPECTFULLY SUBMITTED this 23rd day of May, 2016.

7 SHAPIRO LAW FIRM, P.C.

8
9 By _____

10 Jay L. Shapiro
11 Attorneys for Liberty Utilities (Black Mountain
Sewer) Corp.

12 and

13 LIBERTY UTILITIES
14 Todd C. Wiley
Assistant General Counsel

15
16 **ORIGINAL** and thirteen (13) copies
17 of the foregoing were filed
this 23rd day of May, 2016, with:

18 Docket Control
19 Arizona Corporation Commission
1200 W. Washington Street
20 Phoenix, AZ 85007

21
22
23
24 agrees to support any application filed by [Liberty Black Mountain] with the Commission
25 seeking to extend its existing CC&N to the extended CC&N area as well as any relief
[Liberty Black Mountain] seeks.”).

26 ³ Staff indicated that no documentation had been filed (Staff Report at 3), however, both
Exhibits 1 and 2 were provided to Staff upon request during the discovery period.

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COPY of the foregoing was hand-delivered
this 23rd day of May, 2016, to:

Sasha Paternoster, ALJ
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

COPY of the foregoing was emailed & hand-delivered
this 23rd day of May, 2016, to:

Robin Mitchell
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
rmitchell@azcc.gov

By: Whitney Birk

EXHIBIT 1

OPERATING AGREEMENT

This Operating Agreement is made this 21 day of March, 2006, by and between TOWN OF CAREFREE, an Arizona municipal corporation ("Town") and BLACK MOUNTAIN SEWER COMPANY, formerly The Boulders Carefree Sewer Corporation, an Arizona public service corporation ("Utility").

RECITALS:

A. Utility is currently providing wastewater services throughout significant portions of Town. Certain portions presently served or intended to be served by Utility are within an area for which the Utility obtained an extension of its Certificate of Convenience and Necessity ("CC&N") from the Arizona Corporation Commission ("Commission") on April 17, 2002 in Decision No. 64748 ("Order"), as more particularly described in the Order.

B. As a condition of approval, the Order requires Utility to obtain the required permit, license or franchise from the Town permitting Utility to provide wastewater service to the extension parcels approved by the Commission, and to file a copy of such permit, license or franchise with the Commission's Director of Utilities within 365 days of the effective date of the Order. The order further provides that failure to comply with this condition renders the CC&N null and void.

C. Utility has been asked by certain property owners to extend service to additional areas within the Town that are not currently within Utility's CC&N. Utility believes that in order to further extend its CC&N, it must first demonstrate compliance with the Order. Accordingly, Utility has agreed to reinstatement of the CC&N extension granted in the Order, and to seek to further extend its CC&N to include the additional areas within the Town where an extension of service has been requested (hereinafter collectively "extended CC&N service area")

as more particularly described in paragraph 3, *infra*), provided that the Town grants Utility certain rights to operate within the extended CC&N service area as more fully set forth in this Agreement. Utility will be obligated to provide wastewater service to these additional areas only after the Commission approves Utility's CC&N extension application to include such areas and such service shall be subject to the rules and regulations of the Commission applicable to public service corporations.

D. Town has agreed that Utility may use public streets and public rights-of-way within the extended CC&N service area for utility service during the term of this Agreement subject to the right of Town to review and inspect all trench construction, backfill, compaction and paving during construction. Town will also have the right to review and approve plans for all sewer mains, force mains, lift stations and all other facilities that may be placed in public rights-of-way within the extended CC&N service area subject to the terms and conditions herein.

Accordingly, the parties hereto desire to enter into this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** Utility and Town agree to the following definitions as to terms utilized herein:

A. "Town Administrator" shall mean Administrator for Town of Carefree, Arizona, who oversees the day-to-day conduct of Town business in accordance with the directions of the Mayor and Council as set forth in the Town Code of Town of Carefree, Arizona, Section 3-2-1.

B. "Town Facilities" shall mean all water and transportation, delivery facilities for water, all streets, drainage, curb, gutter and landscaping.

C. "Utility Facilities" or "facilities" shall mean facilities owned by utility and used in the provision of wastewater treatment and collection including, but not limited to, methods of manufacture, distribution, transmission, storage or supply of such wastewater treatment.

D. "Governmental purposes" shall include, but not be limited to, the following functions of Town: (1) any and all improvement to Town streets, alleys, and avenues; (2) establishing and maintaining storm drains and related facilities; (3) establishing and maintaining municipal parks, parking, parkways, pedestrian malls, or grass, shrubs, trees, and other vegetation for the purposes of landscaping any street or public property; (4) providing fire protection; and (5) other public services. "Governmental purposes" shall not include proprietary functions.

E. "Public Street" shall mean only a street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive that is owned by a public entity in fee or as to which a public easement has been dedicated for Street purposes, and with respect to which, and to the extent that, Town has a right to grant the use of the surface of, and space above and below in connection with a public utility or other compatible uses.

2. **Operating Grant.** Town hereby grants Utility, its successors and assigns, the right and privilege to construct, maintain, and operate upon, over, along, across, and under the Public Streets within the extended CC&N service area, Utility Facilities for a wastewater collection system, together with any and all necessary or desirable appurtenances (including, but not limited to, pumping facilities, transmission mains, service lines, meters, force mains,

collection mains, cleanouts, manholes and equipment for its own use), for the purpose of providing wastewater collection services to individuals and entities within the extended CC&N service area. The grant of authority to Utility to operate a wastewater collection system in the extended CC&N service area and the right to use and occupy public streets and public rights-of-way for the purposes herein set forth shall not be exclusive. Town reserves the right, at its discretion, to grant its consent, franchise, permit or authority to other operators of wastewater collection and treatment systems to operate in Town, provided such grant does not conflict with any rules or regulations of the Commission. The rights granted to Utility to use the Public Streets of Town are in no way exclusive and shall, in all respects, be subject and subordinate to the rights of others to use the Public Streets within Town. Utility shall be subject to and comply with all requirements of Town's ordinances, rules, regulations, and specifications applicable to Utility facilities or operations heretofore or hereafter enacted or established, and shall comply with all applicable state and federal laws and regulations heretofore or hereafter enacted or established applicable to Utility facilities or operations.

3. **Duty to Serve.** In consideration of the grant of authority by Town, pursuant to Paragraph 2 hereof, Utility hereby agrees to provide wastewater collection and treatment services to all citizens and business now or hereafter located within those portions of Town described on the legal descriptions attached hereto as Exhibit "A" and incorporated herein by reference ("the extended CC&N service area") in accordance with its CC&N and the rules and regulations of the Commission governing the provision of sewer utility service by public service corporations. In consideration of Utility's agreement to provide services to all residents and businesses of the extended CC&N service area, Town agrees to support any application

filed by Utility with the Commission seeking to extend its existing CC&N to the extended CC&N area as well as any relief Utility seeks with respect to compliance with the Order.

4. **Rights Reserved to Town.** Nothing in this Agreement shall be deemed or construed to impair or affect in any way, or to any extent, the right of Town to acquire any property of Utility. There is hereby reserved to Town every right and power that is required to be herein reserved or provided by any provision of the Town Code or ordinance, and Utility shall comply with any reasonable action or requirements of Town in its exercise of such rights or power heretofore or hereafter enacted or established. This Agreement shall not be construed to prevent Town from granting any identical, or similar, consent, franchise, permit or agreement to any other person, firm or corporation within Town, subject to the rules and regulations of the Commission. Nothing contained in this Agreement shall constitute a waiver or bar to the exercise of any governmental right or power of Town, now existing or hereafter granted.

5. **Compliance with Town Practice; Map Submitted for Approval; Town Construction Near Utility Facilities.** All construction of Utility Facilities hereunder shall be performed in accordance with the Town Code, Town ordinances, rules, regulations and established practices of Town with respect to such public streets and public rights-of-way. Before Utility makes or authorizes any improvements in the public streets or public rights-of-way, Utility shall submit for approval a map and site plan showing the location of such proposed improvements to Town Administrator. Additionally, Utility shall submit at the same time a specific construction plan or reconstruction plan together with specifications which shall include an overall time schedule of any construction or reconstruction effort and system design criteria. Utility shall comply with the time schedule for construction set forth in such plan and shall, to the best of its ability and in good faith, construct such improvements in strict accordance with the

plans and specifications submitted to Town. In addition, Utility is aware that Town may require any landowner, developer or new customer entering into facilities extension agreements with Utility within the jurisdiction of Town to submit their plans for facilities construction for review and that Town may charge a reasonable fee for such review.

6. **Construction and Relocation of Utility's Facilities; Payment.** All facilities installed or constructed pursuant hereto shall be so located or relocated and so erected as to minimize the interference with traffic, or other authorized uses over, under or through Public Streets and public rights-of-way. Any and all phases of construction of Utility Facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of facilities herein provided for, shall be subject to the Town Code, Town ordinances and regulation by Town Council of Town. Utility shall keep accurate records of the location of all facilities in Public Streets and public right-of-way and furnish them to Town upon request. Upon completion of new or relocated Utility Facilities in Public Streets, Utility shall provide Town Administrator with corrected drawings showing the actual location of the Utility Facilities in those cases where the actual location differs by two (2) feet or more from the proposed location approved in the permit plans. In addition, Utility and Town agree that Town will have the right to inspect all trench construction, backfill, compaction and paving activities of Utility, and agree that Town may charge a fee for such review.

A. Utility shall bear the entire costs of relocating Utility Facilities located in Public Streets, the relocation of which is necessary for Town's carrying out of governmental purposes. Utility's right to retain its facilities in their original location is subject to the paramount right of Town to use its Public Streets for all governmental purposes. Town shall bear the entire cost of relocating Utility Facilities located in Public Streets, the relocation of

which is necessitated by the construction of improvements by or on behalf of Town in furtherance of a proprietary function.

B. Where any existing facilities conflict with any Utility Facilities, Utility shall bear the entire cost of relocating the existing facilities, irrespective of the function they served.

C. Construction, installation, and maintenance of the Utility Facilities will be performed in an orderly and professional manner in all areas of the extended CC&N service area, both public and private. Utility shall at all times and in all areas of the extended CC&N service area, both public and private, ensure that Utility Facilities constructed will comply with industry standards and will comply with all applicable Town ordinances, regulations of the Maricopa County Department of Environmental Services, the Commission and any other governmental authority having jurisdiction thereof and in addition will comply with applicable sections of: (1) the Uniform Building Code as may be adopted and amended by Town, together with applicable portions of all other Uniform Codes, as may be adopted and amended by Town, promulgated by the International Conference of Building Officials; (2) the Town Zoning Ordinance and any subdivision regulations, all as from time to time adopted, amended and revised, and all other applicable rules and regulations now in effect or hereinafter by Town; (3) the Town Code, including but not limited to, Sections 11-1-5 and 11-4 thereof requiring certain work to be performed in accordance with the Maricopa Association of Governments Uniform Standards Specifications for Public Works Contractors, including the latest Town supplement thereto; (4) Arizona Revised Statutes; (5) Maricopa County Department of Environmental Services regulations; and (6) all federal laws, rules and regulations applicable to Utility.

D. If Utility during construction, installation, or repair of any portion of Utility Facilities causes damage to any pavement, sidewalks, driveways, landscaping, or other public or private property, Utility or its authorized agent shall, at its own expense, and in a manner approved by Town, replace and restore such place or places. Such replacement and restoration shall comply with all applicable provisions of the Town Code, including but not limited to, Sections 11-1-5 and 11-4 thereof requiring certain work to be performed in accordance with the Maricopa Association of Governments Uniform Standard Specifications for Public Works Contractors, including the latest Town supplement thereto, or to such higher standard as Utility may elect and Town or property owner shall approve. Utility shall further warrant all such restoration related to Utility's activities for a period of one (1) year following such restoration.

E. Utility shall provide reasonable advance notice to all affected residents or businesses prior to system construction or upgrade crews working in the Public Streets in front of their property; provided that Utility shall not be required to provide such notice in emergencies or for minor system repair and maintenance work.

F. As required by Town Administrator or other appropriate departments, Utility or its authorized contractors will obtain permits prior to any physical work being performed within Town. All work will be done in accordance with Town's technical and permitting specifications.

G. Town reserves the right to move any portion of Utility's Facilities, at Town's expense, that may be required in any emergency as determined by Town without liability for interruption of service. However, prior to taking any actions pursuant to this

provision, Town shall provide, if feasible, reasonable notice to Utility of the emergency to allow Utility the opportunity to protect or repair the facilities involved in the emergency.

7. **Restoration of Rights-of-Way.**

A. If Utility during construction, installation, or repair of any portion of its Utility Facilities causes damage to pavement, sidewalks, driveway, landscaping or other public or private property, Utility or its authorized agent shall, at its own expense and in a manner approved by Town, replace and restore such place or places. Such restoration shall be in compliance with all applicable provisions of the Town Code, including but not limited to, Sections 11-1-5 and 11-4 thereof requiring certain work to be performed in accordance with the Maricopa Association of Governments Uniform Standard Specifications for Public Works Contractors, including the latest Town supplement thereto, or to such higher standard as Utility may elect and Town shall approve. Utility shall further warrant all such restoration related to Utility's activities for a period of one (1) year following such restoration.

B. Upon failure of Utility to complete any work required by law, or by the provisions of this Agreement, to be done in any Public Street, within fifteen (15) days after written notice from Town, Town may, at its option, cause such work to be done through its own forces or through a hired contractor, and Utility shall pay to Town the cost thereof within ten (10) days after receipt of an invoice from Town. Alternatively, Town may demand of Utility prior to performing such work, the cost of such work as estimated by Town Administrator and such shall be paid by Utility to Town within ten (10) days of such demand. Upon award of any contract, or contracts therefor, Utility shall pay to Town, within ten (10) days of demand, any additional amount necessary to provide for costs of such work. Upon completion of such work, Utility shall pay to Town or Town shall refund to Utility such sums so that the total received and

retained by Town shall equal the cost to Town of such work. "Cost" as used herein shall include fifteen percent (15%) of all other costs to compensate Town for its overhead, including inspection and supervision, and interest at the rate of ten percent (10%) per annum of any past due payments to Town under this paragraph.

8. **Term.** This Agreement shall continue and exist for fifteen (15) years. Upon expiration of its term, if this Agreement has not renewed, this Agreement shall continue in full force and effect for successive periods of one (1) year each unless terminated at the end of the period by notice or at such time as a franchise agreement has been entered between Town and Utility.

9. **Nature of Agreement.** This Agreement is not exclusive, and nothing herein contained shall be construed to prevent Town from granting other like or similar grants or privileges to any other person, firm or corporation. Utility may not assign this Agreement to any other person, firm or corporation without the prior written consent of Town, which consent shall not be unreasonably withheld, provided, however, that Utility may assign this Agreement to an affiliate of Utility, or to a third party in connection with a sale of utility or of substantially all its assets, and shall not be required to obtain Town's consent in connection with such an assignment.

10. **Independent Provisions.** If any section, paragraph, clause, phrase or provision shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional.

11. **Condemnation; Right Reserved by Town.** Town reserves the right and power to purchase and condemn the Utility Facilities as provided by law.

12. Indemnification and Hold Harmless.

A. Utility shall fully indemnify, defend and hold harmless Town, its Council, officers, boards, commissions, elected officials, agents, attorneys, representative, servants, and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities, and judgments for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, and disbursements and liabilities incurred or assumed by Town in connection with:

1. Damage to persons or property, in any way arising out of or through the acts or omissions of Utility, its servants, officials, agents, attorneys, representatives, or employees;

2. Requests for relief arising out of any Utility action or inaction that results in a claim for invasion of right of privacy, for defamation of any person, firm or corporation, for the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other right of any person, firm or corporation.

3. Any claims arising out of Utility's failure to comply with the provisions of this Agreement or any federal, state, or local law, or regulation applicable to this Agreement or the Utility's facilities.

4. Any and all disputes arising out of a claim by any other party other than Town wherein damages or other relief is sought: (a) as a result of this Agreement: or (b) as a result of any renewal or non-renewal of this Agreement.

B. If a lawsuit covered by the provision of this paragraph be brought against Town, either independently or jointly with Utility, or with any other person or municipality, the Utility upon notice given by Town, shall defend Town at the costs of the

Utility. If final judgment is obtained against Town, either independently or jointly with Utility or any other defendants, Utility shall indemnify and hold harmless Town and pay such judgment with all costs and attorneys' fees and satisfy and discharge same.

C. Town shall cooperate with Utility and reserves the right to participate in the defense of any litigation.

D. Town is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives and/or employees.

E. Utility shall make no settlement in any matter identified above without Town's written consent, which shall not be unreasonably withheld. Failure to inform Town of settlement shall constitute a breach of this Agreement and Town may seek any redress available to it against Utility whether set forth in this Agreement or under any other municipal, state, or federal laws.

F. All rights of Town, pursuant to indemnification, insurance, letter of credit, or performance bond(s), as provided for by the Town Code and other Town Ordinances, are in addition to all other rights Town may have under this Agreement or any other code, rule, regulation, ordinance or law.

G. Town's exercise or failure to exercise all rights pursuant to any paragraph of this Agreement, shall not affect in any way the right of Town subsequently to exercise any such rights or any other right of Town under this Agreement or any other code, rule, regulation, or law.

H. Notwithstanding anything contained herein to the contrary, Town shall have a right of action separate and independent of any action citizens of the Town or

customers of Utility may have to enforce the obligations of Utility under this Agreement or obligations Utility may otherwise have to Town or citizens of Town by virtue of its status as a Public Utility.

I. It is the purpose of this paragraph to provide maximum indemnification to Town under the terms and conditions expressed and, if there is a dispute, this paragraph shall be construed (to the greatest extent permitted by law) to provide for the indemnification of Town by the Utility, and is intended to be in addition to and not in lieu of the indemnity provision of the Town Code, including but not limited to Section 11-1-9 thereof.

J. The provisions of this paragraph shall not be dependent or conditioned upon the validity of this Agreement or the validity of any of the procedures or agreements involved in the grant or renewal of this Agreement, but shall be and remain a binding right and obligation of Town and Utility even if part or all of this Agreement, or the grant or renewal of this Agreement, is declared null and void in a legal or administrative proceeding. It is expressly agreed that it is the intent of Utility and Town that the provisions of this paragraph survive any such declaration and shall be a binding obligation of and inure to the benefit of Utility and Town and their respective successors and assigns, if any.

K. Town shall hold Utility harmless from Town's negligent actions and omissions directly resulting in loss or damage to all or any portion of the Utility Facilities.

13. Liability Insurance and Bonds.

A. Utility shall obtain and maintain at all times during the term of this Agreement general liability insurance and automobile liability insurance protecting Utility in an amount not less than TWO MILLION Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than TWO

MILLION Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. When an umbrella or excess coverage is in effect, coverage shall be provided in following form. Such insurance shall not be canceled or materially altered to reduce the policy limits until Town has received at least thirty (30) days' advance written notice of such cancellation or change. Utility shall be responsible for notifying Town of such change or cancellation. The insurance obligations hereunder are in addition to and not in lieu of the insurance provisions of the Town Code, including but not limited to, Sections 11-1-9 and 11-4 thereof.

B. Filing of Certificates and Endorsements. Within thirty (30) days following execution of this Agreement and prior to the commencement of any work pursuant to this Agreement, Utility shall file with Town the required original certificates of insurance, with endorsements, which shall clearly state all of the following:

- (a) The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts;
- (b) That Town shall receive thirty (30) days' prior notice of cancellation; and
- (c) That Utility's insurance is primary as respects any other valid or collectible insurance that Town may possess, including any self-insured retention Town may have; and any other insurance Town does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

C. Workers' Compensation Insurance. Utility shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and

employer's liability insurance in an amount not less than Two Hundred Fifty Thousand Dollars (\$250,000) and shall furnish Town with a certificate showing proof of such coverage.

D. **Insurer Criteria.** Any insurance provider of Utility shall be admitted and authorized to do business in the State of Arizona and shall be rated at least A- in *A.M. Best & Company's Insurance Guide*. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

E. **Bonds.** Utility shall comply with the bonding obligations as set forth in the Town Code, including but not limited to, Section 11-1-8 thereof.

14. Notice. Unless specifically directed otherwise by another section of this Agreement, all notices that Town may give to Utility or that Utility may give to Town shall be given in writing and shall be sent by certified mail, postage fully prepaid, addressed to Utility's most recent address on file with Town and addressed to Town c/o Town Administrator at P. O. Box 740, 100 Easy Street, Carefree, Arizona 85377, with a copy to Town Attorney at P. O. Box 740, 100 Easy Street, Carefree, Arizona 85377. All notices shall be deemed received two (2) days after deposit in the U.S. Mail.

15. Miscellaneous.

A. Town and Utility hereby expressly agree that the following provisions shall survive the termination or expiration hereof:

B. Utility by acceptance of this Agreement acknowledges that it has not been induced to enter into this Agreement by any understanding or promise or other statement whether verbal or written by or on behalf of Town or by any other third person concerning any term or condition of this Agreement not expressed herein.

C. Utility represents and warrants that it has the power and authority to enter into this Agreement by and through the representative who has signed this Agreement on its behalf, and that it has the power and ability to do all the acts required of it.

D. Utility represents and warrants that it accepts this Agreement willingly and without coercion, undue influence, or duress. Utility has not misrepresented or omitted material facts, has not accepted this Agreement with intent to act contrary to the provisions herein, and represents and warrants that, so long as it operates the facilities, it will be bound by the terms and conditions of this Agreement or a renewal agreement.

E. Utility further acknowledges that it was represented throughout the negotiations of this Agreement by its own attorneys and had the opportunity to consult with its own attorneys about its rights and obligations regarding this Agreement.

F. Town and Utility hereby expressly agree that this Agreement shall not be effective, or enforceable on either party, until approved by the Town Council.

16. **Governing Law.** This Agreement is to be governed by and construed with the laws of the State of Arizona. Any action brought to interpret, enforce or concerning any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona, Maricopa County. All parties irrevocably consent to this jurisdiction in venue and agree not to transfer or move any action commenced in accordance with this Agreement.

17. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties pertaining to the subject matter of this Agreement and all prior agreements, representations and understandings of the parties, whether oral or written, are superseded and merged into this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by the parties. No waiver of any provisions of this

Agreement will be binding unless executed in writing by the party making the waiver. Time is of the essence of the performance of each and every term of this Agreement.

18. **Severability.** If any one or more of the provisions of this Agreement or the applicability of any provision to a specific situation is held invalid or unenforceable, the provision will be modified to the benefit of the extent necessary to make it or its applicable valid and enforceable in a manner consistent with the intent of this Agreement and the validity and enforceability of all other provisions of this Agreement and all other applications of the enforceable provisions will not be affected by the invalidity or the unenforceability of any provision, so long as this Agreement may still be enforced in a manner consistent with the intent of the parties.

19. **Counterparts.** This Agreement may be executed in any number of counterparts by original or facsimile signature, each of which, when executed and delivered, will be deemed an original, all of which will constitute one binding agreement.

20. **Attorneys' Fees.** In the event either party shall institute an action or arbitration proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including, without limitation, reasonable attorneys' fees, expert witness fees, costs of tests and analyses, architect, engineering and other professional fees and costs, travel and accommodation expenses, costs of deposition and trial transcript copies, duplication fees, costs of court and all other costs and expenses, whether incurred in negotiation, preparation of documents at trial or on appeal or whether incurred in the establishment of fees and costs or the collection thereof.

21. **Captions/Headings.** Are intended only for convenience and shall not be construed as a limitation under the scope of any provision of this Agreement, and shall not, in

any manner, amplify, limit or modify or otherwise be used in the interpretation of any such provision.

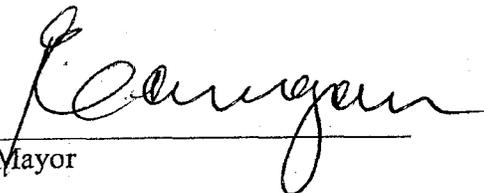
22. Gender and Tense. Whenever required by the context hereof, the singular shall include the plural, and the plural shall include singular and the masculine, feminine and neuter gender shall each be deemed to include the other.

23. Amendment. This Agreement shall not be amended, modified, terminated or rescinded except by written instrument duly executed and acknowledged by both of the parties.

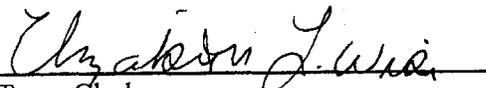
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

TOWN

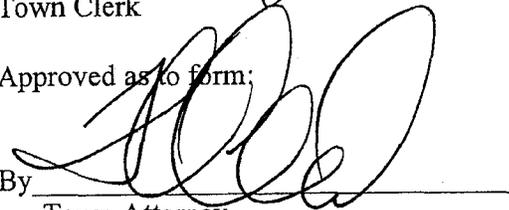
**TOWN OF CAREFREE,
an Arizona municipal corporation**

By 
Its Mayor

ATTEST:


Town Clerk

Approved as to form:

By 
Town Attorney

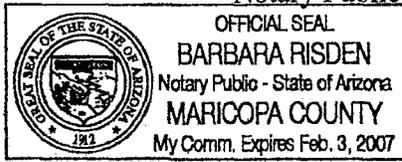
IN WITNESS WHERE, I hereunto set my hand and official seal.

Barbara Riden

Notary Public

My Commission Expires:

Feb. 3, 2007



1751317.2

EXHIBIT "A"
To
Operating Agreement
by and between TOWN OF CAREFREE,
an Arizona municipal corporation
and
BLACK MOUNTAIN SEWER COMPANY,
formerly The Boulders Carefree Sewer Corporation,
an Arizona public service corporation

PacWest Parcel consisting of the following 20 acres:

RAY & ALMA SCHOOL PROPERTY
15 ACRES

A part of the Southeast quarter of the Southeast quarter of Section 5, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; and more particularly described as follows:

COMMENCING at the Southeast corner of said Section 5;

Thence South 89 degrees 48 minutes 49 seconds West, along the South line of said Section, 1327.69 feet;

Thence North 00 degrees 16 minutes 59 seconds East, 65.00 feet to the TRUE POINT OF BEGINNING;

Thence continuing North 00 degrees 16 minutes 59 seconds East, 1151.00 feet;

Thence South 60 degrees 13 minutes 01 seconds East, 210.00 feet;

Thence North 88 degrees 22 minutes 00 seconds East, 160.00 feet;

Thence South 71 degrees 18 minutes 00 seconds East, 155.00 feet;

Thence South 86 degrees 18 minutes 00 seconds East, 250.00 feet;

Thence South 62 degrees 18 minutes 00 seconds East, 142.50 feet to a point on the West right of way line of CAVE CREEK ROAD;

Thence South 27 degrees 36 minutes 43 seconds West along said line 999.00 feet;

Thence South 58 degrees 54 minutes 02 seconds West, 68.37 feet to a point on the North right of way line of CAREFREE HIGHWAY;

Thence South 89 degrees 48 minutes 49 seconds West, along said line 348.35 feet to the POINT OF BEGINNING;

107th AND INDIAN SCHOOL
5 ACRES

A part of the Southeast quarter of the Southeast quarter of Section 5, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; and more particularly described as follows:

COMMENCING at the Southeast corner of said Section 5;

Thence South 89 degrees 48 minutes 49 seconds West, along the South line of said Section, 1327.69 feet;

Thence North 00 degrees 16 minutes 59 seconds East, 1216.00 feet to the TRUE POINT OF BEGINNING;

Thence continuing North 00 degrees 16 minutes 59 seconds East, 105.00 feet;

Thence South 89 degrees 49 minutes 10 seconds East, 1038.06 feet to a point on the West right of way line of CAVE CREEK ROAD;

Thence South 27 degrees 36 minutes 53 seconds West along said line 379.19 feet;
Thence North 62 degrees 18 minutes 00 seconds West 142.05 feet;
Thence North 86 degrees 18 minutes 00 seconds West 250.00 feet;
Thence North 71 degrees 18 minutes 00 seconds West, 155.00 feet;
Thence South 88 degrees 22 minutes 00 seconds West, 160.00 feet;
Thence North 60 degrees 13 minutes 01 seconds West, 210.00 feet to the POINT OF BEGINNING.

Ironwood:

IRONWOOD ESTATES – MONTEREY HOMES

The Southwest quarter of the Southwest quarter of Section 4, Township 5 North, Range 4 East, of the Gila and Salt River Base Meridian, Maricopa County, Arizona;

EXCEPT the Southwest quarter of the Southwest quarter of the Southwest quarter.

Partners:

CAVECREEK-CAREFREE PARTNERS

A portion of the Southeast quarter of the Southeast quarter of Section 5, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 5;

thence North 00 degrees, 03 minutes, 37 seconds East and along the East line of said Section 5, a distance of 55 feet to the TRUE POINT OF BEGINNING of the herein described parcel;

thence continuing North 00 degrees, 03 minutes, 37 seconds East along the East line of said Section 5, a distance of 1,267.72 feet to the Northeast corner of the Southeast quarter of the Southeast quarter of said Section 5;

thence South 89 degrees, 59 minutes, 35 seconds West along the North line of the Southeast quarter of the Southeast quarter of said Section 5, a distance of 176.72 feet to a point on the East right of way line of CAVE CREEK ROAD;

thence South 27 degrees, 27 minutes, 57 seconds West along the East right of way line of CAVE CREEK ROAD, 1,428.78 feet to a point 55 feet North of the South line of said Section 5, said point lies on the North right of way of CAREFREE HIGHWAY;

thence North 89 degrees, 59 minutes, 56 seconds East along a line parallel to and 55 feet North of the South line of said Section 5, and along the North right of way line of CAREFREE HIGHWAY, a distance of 834.35 feet to a point on the East line of said section 5 and the TRUE POINT OF BEGINNING.

BLACK MOUNTAIN ESTATES

The Southwest quarter of the Southwest quarter of the Southwest quarter of Section 4, Township 5 North, Range 4 East, of the Gila and Salt River Base Meridian, Maricopa County, Arizona.

Containing 10.0 acres, more or less.

Morris consisting of Tracts A and B

TRACT "A"

That portion of Section 3, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

Commencing at a one half inch rebar, being the center of said Section 3 per survey found in Book 599 of Maps, Page 17 in the Records of the Recorder of Maricopa County; Thence along the West line of the Northeast Quarter of said Section 3, North 00 degrees 44 minutes 41 seconds East a distance of 716.58 feet to a one half inch iron pipe; Thence South 81 degrees 31 minutes 53 seconds West a distance of 590.00 feet to a one half inch rebar with tag, LS # 12216, being the Southwest corner of Lot 671 of Carefree Plat 3B according to Book 98 of Maps, Page 37, Records of said County and the POINT OF BEGINNING; Thence South 09° 56' 23" East along the westerly line of Lot 670 of said Carefree Plat 3B a distance of 310.66 feet (309.94 feet, record) to the northwest corner of Lot 669 of said Carefree Plat 3B; thence South 22° 20' 01" West along the westerly line of Lots 668 and 669 of said Carefree Plat 3B a distance of 218.74 feet (219.44 feet, record) to the northwest corner of Lot 667 of said Carefree Plat 3B; thence South 42° 39' 57" West along the westerly line of Lots 666 and 667 of said Carefree Plat 3B a distance of 380.00 feet to the northeast corner of Lot 665 of said Carefree Plat 3B; thence departing said Carefree Plat 3B North 11° 57' 39" West along the east line of the property described in the Warranty Deed recorded in Instrument 98-1104894, records of said County, 200.00 feet; thence North 88° 53' 27" West along the north line of the property described in said Warranty Deed 264.00 feet to the northwest corner of the property described in said Warranty Deed; thence South 00° 44' 41" West a distance of 42.66 feet to the northeast corner of Lot 3 of Carefree Grand View Estates Unit 1, according to Book 224 of Maps, Page 26, records of said County; thence North 89° 17' 18" West along the north line of said Lot 3 a distance of 350.00 feet to the northwest corner of said Lot 3; thence North 00° 42' 42" East along the east line of Lots 4 and 6 of said Carefree Grand View Estates Unit 1 a distance of 425.00 feet to the southeast corner of Lot 7 of said Carefree Grand View Estates Unit 1; thence North 24° 24' 25" East along the east line of said Lot 7 a distance of 318.82 feet (315.79 feet, record) to the southwest corner of Lot 3 of said Carefree Grand View Estates Unit 1 marked with a one half inch iron pipe; thence South 89° 30' 39" East along the south line of said Lot 8 a distance of 224.52 feet (225.00 feet, record) to the southeast corner of said Lot 8; South 81° 31' 53" East 590.00 feet to the POINT OF BEGINNING.

Containing 14.51 acres; more or less.

TRACT "B"

That portion of the east half of Section 3, Township 5 North, Range 4 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at a one half inch rebar, being the center of said Section 3 per survey found in Book 599 of Maps, Page 17 in the Records of the Recorder of Maricopa County; Thence along the West line of the Northeast Quarter of said Section 3, North 00 degrees 44 minutes 41 seconds East a distance of 716.58 feet to a one half inch iron pipe; Thence South 81 degrees 31 minutes 53 seconds West a distance of 590.00 feet to a one half inch rebar with tag, LS # 12216, being the Southwest corner of Lot 671 of Carefree Plat 3B according to Book 98 of Maps, Page 37, Records of said County and the POINT OF BEGINNING; Thence North 81°31'53" West 590.00 feet to the southeast corner of Lot 8 of Carefree Grand View Estates Unit 1 according to Book 224 of Maps, Page 26, records of said County, marked with one half inch iron pipe; thence, along the east line of said lot 8, North 00°44'41" East a distance of 480.67 feet to a cross on a boulder; thence, South 79°08'40" East a distance of 775.87 feet (South 79°10'19" East 776.42 feet record) to southwest corner of Lot 672 of said Carefree Plat 3B marked with a one half inch rebar with tag LS 12216; thence South 70°29'31" East along the south line of said Lot 672 a distance of 329.14 feet to the southeast corner of said Lot 672 and a point on the westerly line of Stage Coach Pass, a roadway having a width of 60.00 feet marked with a one half inch iron pipe; thence South 44°34'47" West along said westerly line 101.16 feet (101.26 feet, record) to the beginning of a curve concave to the southeast having a radius of 493.54 feet; thence southwesterly along said curve through a central angle of 05°48'01" a distance of 49.96 feet (50.00 feet, record) to the northeast corner of Lot 671 of said Carefree Plat 3B marked with a one half inch iron pipe; thence departing the westerly line of said Stage Coach Pass North 84°56'58" West along the north line of said Lot 671 a distance of 326.30 feet (330.00 feet, record) to the north west corner of said Lot 671 marked with a one half inch iron pipe, thence South 15°52'35" West along the westerly line of said Lot 671 a distance of 240.01 feet to the POINT OF BEGINNING.

Containing 8.32 acres, more or less.

CANYON CREEK ESTATES.

LEGAL DESCRIPTION:

A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS EAST, 471.87 FEET, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 4 TO A POINT ON THE MONUMENT LINE OF CAVE CREEK ROAD, SAID POINT BEING THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 57 MINUTES 40 SECONDS, EAST 891.05 FEET, ALONG SAID NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE SOUTH 00 DEGREES 02 MINUTES 45 SECONDS EAST, 799.71 FEET, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4;

THENCE SOUTH 89 DEGREES 57 MINUTES 40 SECONDS WEST, 1266.55 FEET TO A POINT ON THE MONUMENT LINE OF CAVE CREEK ROAD;

THENCE NORTH 27 DEGREES 24 MINUTES 39 SECONDS EAST, 901.17 FEET, ALONG SAID MONUMENT LINE, TO THE POINT OF BEGINNING.

PARCEL 2:

A PORTION OF THE NORTH HALF OF SECTION 4, TOWNSHIP 5 NORTH., RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS EAST ALONG THE EAST-WEST MID SECTION LINE OF SAID SECTION 4, A DISTANCE OF 471.87 FEET TO A POINT ON THE CENTERLINE OF CAVE CREEK ROAD - CAMP CREEK - PHOENIX ROAD RECORDED IN BOOK 3 OF ROAD MAPS, PAGE 20, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE NORTH 27 DEGREES 24 MINUTES 39 SECONDS EAST, 278.65 FEET TO A POINT ON SAID CENTERLINE;

THENCE NORTH 27 DEGREES 26 MINUTES 42 SECONDS EAST, 299.43 FEET TO A POINT ON SAID CENTERLINE;

THENCE SOUTH 62 DEGREES 33 MINUTES 18 SECONDS EAST ALONG THE SOUTHERN BOUNDARY OF CAREFREE SENTINEL ROCK ESTATES, RECORDED IN BOOK 243 OF MAPS, PAGE 12, RECORDS OF MARICOPA COUNTY, ARIZONA, A DISTANCE OF 365.92 FEET;

THENCE SOUTH 41 DEGREES 56 MINUTES 04 SECONDS EAST, 462.19 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 40 SECONDS WEST ALONG THE EAST-WEST MID SECTION LINE OF SAID SECTION 4, 899.91 FEET TO THE TRUE POINT OF BEGINNING.

NOTES:

1. CONSTRUCTION WITHIN EASEMENTS EXCEPT BY PUBLIC AGENCIES AND

NGS ID: AJ3733
NAVQ'88 ELEVATION: 2288.55
PROVIDED BY THE MARICOPA COUNTY
DEPARTMENT OF TRANSPORTATION.

CAREFREE
VISTA

SITE LEGAL DESCRIPTION:

PARCEL NO. 1:

THE NORTH HALF OF THE MORMON GIRL MINE NO. 2 (SOMETIMES IDENTIFIED AS MORMON NO. 2) AND THAT PART OF MAMIE MAUDE LYING WITHIN THE NORTH HALF OF MORMON GIRL MINE NO. 2, IN SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING SHOWN ON MINERAL SURVEY NO. 2878 A AND B ON FILE IN THE BUREAU OF LAND MANAGEMENT, AS GRANTED BY PATENT RECORDED APRIL 11, 1912 AS BOOK 99 OF DEEDS, PAGE 107, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

MORMON GIRL LOOSE MINING CLAIM IN CAVE CREEK MINING DISTRICT, BEING SHOWN ON MINERAL SURVEY NO. 2878A ON FILE IN THE BUREAU OF LAND MANAGEMENT, AS GRANTED BY PATENT RECORDED AS BOOK 99 OF DEEDS, PAGE 107, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

THAT PART OF RED CROSS LOOSE MINING CLAIM ACCORDING TO THAT CERTAIN SURVEY AND PLAT FILED WITH AND APPROVED AND ACCEPTED BY THE U.S. DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT ON JANUARY 14, 1935, DESCRIBED AS FOLLOWS:

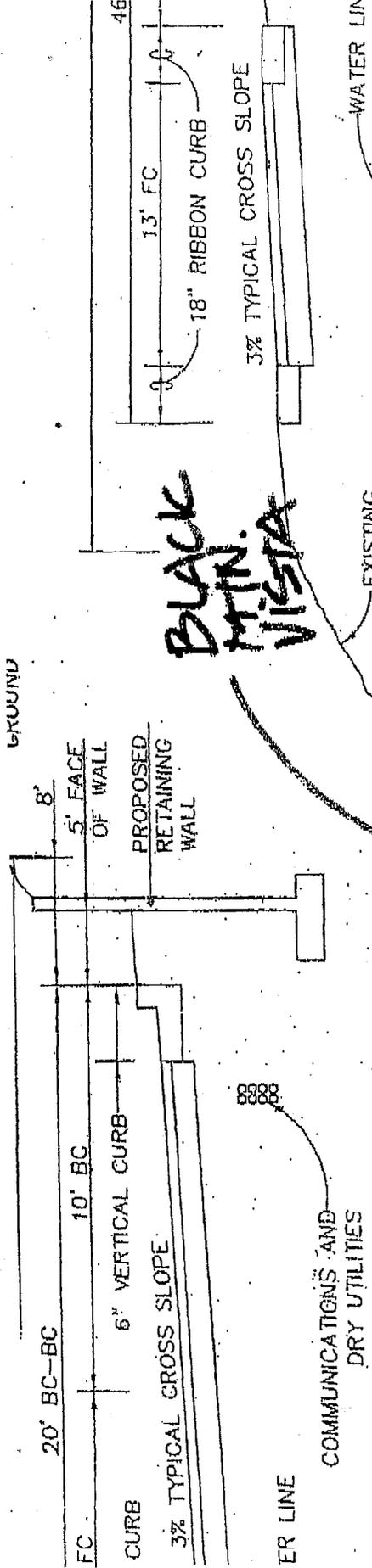
DESIGNATED BY THE SURVEYOR GENERAL AS SURVEY NO. 4472 IN THE CAVE CREEK MINING DISTRICT, LYING WITHIN SECTION 3 AND SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND BEING MORE FULLY DESCRIBED IN PATENT RECORDED NOVEMBER 18, 1980 AS DOCKET 3487, PAGE 391, RECORDS OF MARICOPA COUNTY, ARIZONA, TO WIT:

BEGINNING AT CORNER NO. 1, RED CROSS CLAIM;

THENCE NORTH 21 DEGREES 42 MINUTES WEST ALONG THE WEST SIDE LINE OF SAID CLAIM, 1022.70 FEET TO A POINT APPROXIMATELY 100 FEET NORTH OF CORNER NO. 4;

THENCE NORTH 88 DEGREES 18 MINUTES EAST ALONG PARALLEL TO LINE 4-3 HENRY W. GRADY CLAIM M.S. NO. 2678 TO THE EAST LINE OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 88 DEGREES 18 MINUTES WEST ALONG SAID LINE 2-3 TO CORNER NO. 3 AND THE PLACE OF BEGINNING.



**ROW STREET CROSS-SECTION
(NORTH OF ENTRY)**

LEGAL DESCRIPTION NTS

That part of the LITTLE HOPE LODE MINING CLAIM in the northwest quarter of the northeast quarter and the southwest quarter of the northeast quarter of Section 4, Township 5 North, Range 4 East of the Gila and Salt River Base and Meridian, being shown on Mineral Survey No. 4473, on file in the Bureau of Land Management, as granted by Patent recorded October 20, 1960, in Docket 3480, page 406 of the Maricopa County, Arizona.

BENCHMARK

**BRASS CAP AT THE NORTHWEST CORNER OF THE PROPERTY.
ELEVATION = 2258.00**

ENGINEER
Pinnacle Engineering, Inc.
8712 East Vista Bonita Drive
Scottsdale, AZ 85255
480-585-6013
480-585-1717 Fax

OWNER/DEVELOPERS

Derald Ulmer
P.O. BOX 999
Fairview, OR 97024

DEVELOPERS

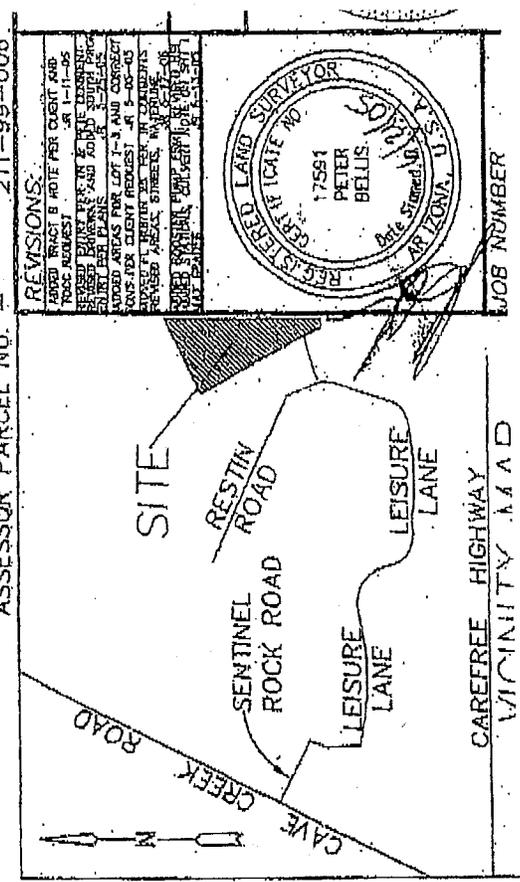
Land Development Services, LLC
4413 North Saddlebag Trail #5
Scottsdale, AZ 85251
(480)946-5020

BLACK MTN. VISTA

TYPICAL STREET AT TI

PROJECT DATA

PROJECT AREA - 9.14 Acres
EXISTING ZONING - R1-35
TOTAL LOTS - 5 Lots
MINIMUM LOT SIZE - 35,000 square feet
ASSESSOR PARCEL NO. - 211-99-006

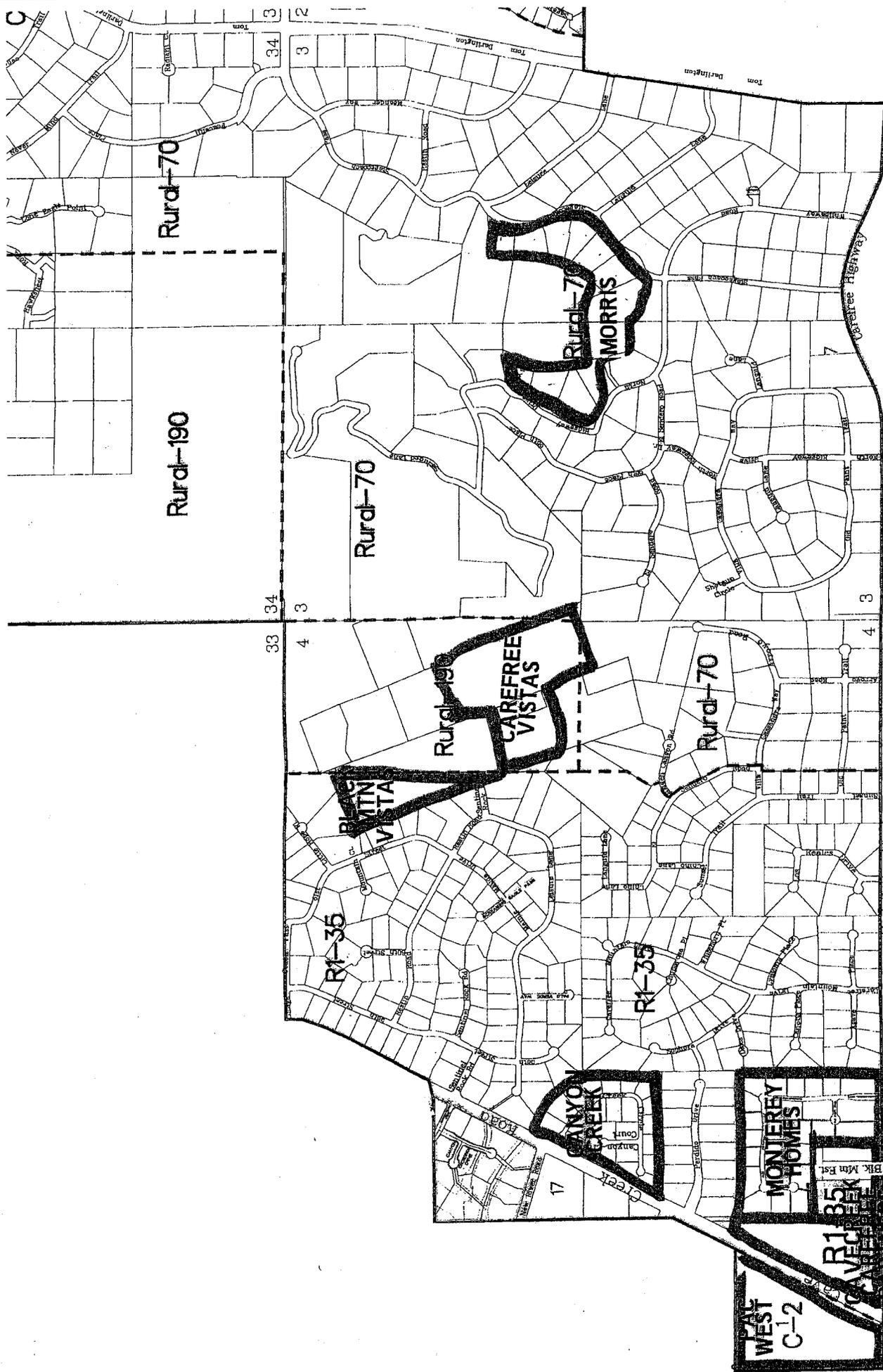


REVISIONS:

1. ADD TRACT B NOTE FOR CLIENT AND TOOLS REQUEST ON 1-11-05
2. REVISED PLANS TO SHOW ADJUSTED PROPERTY LINES AND TOOLS REQUEST ON 1-11-05
3. REVISED PLANS TO SHOW ADJUSTED PROPERTY LINES AND TOOLS REQUEST ON 1-11-05
4. REVISED PLANS TO SHOW ADJUSTED PROPERTY LINES AND TOOLS REQUEST ON 1-11-05
5. REVISED PLANS TO SHOW ADJUSTED PROPERTY LINES AND TOOLS REQUEST ON 1-11-05



JOB NUMBER



Rural-70

Rural-190

Rural-70

Rural-90
CAREFREE VISTAS

Rural-70
MORRIS

R1-35

Rural-70

R1-35

MONTEREY HOMES

R1-35
AVENUE

WEST C-1-2

Carefree Highway

BERKELEY Highway

33 34

4 3

4 3

17

Tom Darlington

Eric Men Est

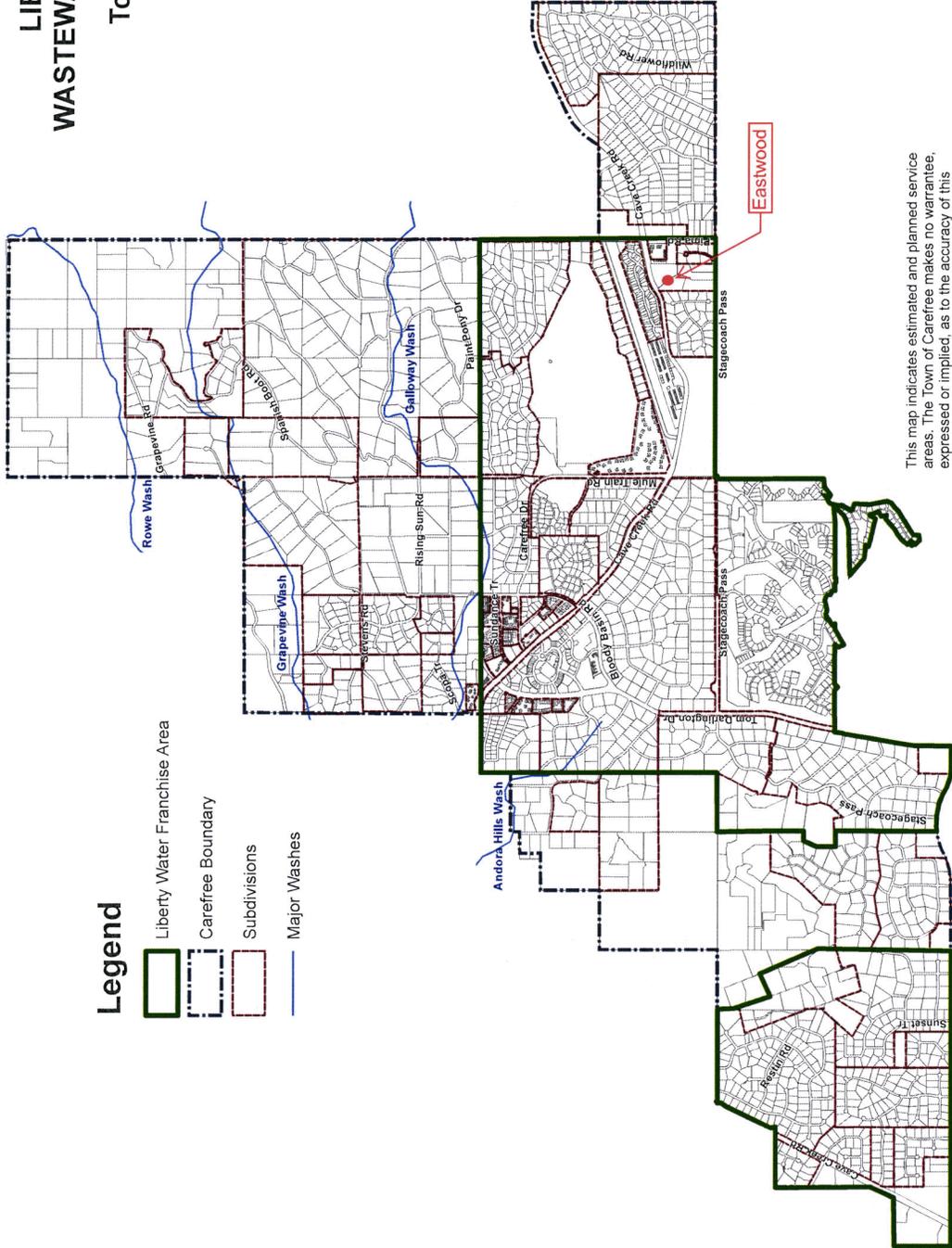
PARTNERS

EXHIBIT 2

Figure 22.

LIBERTY WATER WASTEWATER SERVICE AREA

Town of Carefree General Plan



Legend

- Liberty Water Franchise Area
- Carefree Boundary
- Subdivisions
- Major Washes

This map indicates estimated and planned service areas. The Town of Carefree makes no warranty, expressed or implied, as to the accuracy of this information and expressly disclaims liability for the accuracy thereof.

Source: Town of Carefree (2012)

