

NOT APPROVED

TOWN OF PINETOP-LAKESIDE

ORDINANCE NO. 09-322

AN ORDINANCE OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, AMENDING THE OFFICIAL ZONING MAP OF THE TOWN TO REZONE APN(S) 311-47-132B, D, F AND G, 311-47-228D, 311-48-025A, AND A PORTION OF APN 311-47-091 AS IDENTIFIED IN THE LEGAL DESCRIPTION, LOCATED SOUTHWEST OF WHITE MOUNTAIN BLVD. AND SWEETWATER RANCH ROAD, NAVAJO COUNTY, ARIZONA, FROM R-LOW AND R1-4 TO PLANNED UNIT DEVELOPMENT (PUD).

WHEREAS, the Planning and Zoning Commission held a public hearing on the proposed amendment August 5, 2008, and

WHEREAS, the Planning and Zoning Commission has by official action made a recommendation for approval of the Zone Change to the Town Council, and

WHEREAS, the Town Council held a public hearing on ~~October 2, 2008~~ <sup>January 15, 2009</sup> and has considered comments regarding this proposed rezoning, and

WHEREAS, the Town Council has determined that the rezoning of the subject property is appropriate and not detrimental to the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Town of Pinetop-Lakeside as follows:

**Section 1:** The following described property is hereby rezoned from R-Low and R1-4 to Planned Unit Development (PUD), as per Chapter 17.72 of the Pinetop-Lakeside Town Code. The parcels are situated within a portion of Section 5, Township 8 North, Range 23 East, Gila and Salt River Meridian, Navajo County, Arizona, APN(s) 311-47-132B, B, D, F and G, 311-47-228D, 311-48-025A, and the portion of APN 311-47-0901 as identified in the legal description. See the Legal Description of the properties, Exhibit "A," and the Map showing the properties, Exhibit "B," both attached and incorporated herein by this reference.

**Section 2:** The PUD zoning amendment is conditioned upon submittal and Planning & Zoning Commission approval of a preliminary plat, which complies with all subdivision and PUD standards within one (1) year of the hearing date. If a preliminary plat is not submitted and no extension of time has been granted the PUD zoning may revert back to R-Low and R1-4 respectively.

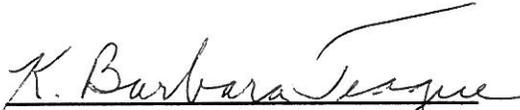
**Section 3:** The PUD zoning amendment is conditioned upon submittal by the Developer/Owner to the Town of a signed "Agreement to Waive Rights and Remedies under Arizona Revised Statutes Section 12-1134" in a form substantially similar to the Agreement attached as Exhibit "C."

**Section 4:** That the official Zoning Map of the Town of Pinetop-Lakeside is hereby amended and approved and shall reflect that these properties be included from the effective date of this Ordinance as Planned Unit

Development (PUD) Zoning designation in accordance with this Ordinance, three (3) copies of which shall be available for public review and inspection in the Office of the Clerk, Town of Pinetop-Lakeside. See Exhibit "D," attached and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, this 15<sup>th</sup> day of January 2009, by a vote of \_\_\_\_\_ ayes, \_\_\_\_\_ nays.

**TOWN OF PINETOP-LAKESIDE**

  
K. BARBARA TEAGUE, Mayor

**ATTEST:**

\_\_\_\_\_  
LU ANNE FROST, Town Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
ROSEMARY H. ROSALES, Town Attorney

## LEGAL DESCRIPTION OF THE PROPERTIES TO BE REZONED

A Parcel of land lying and being situated within a portion of Section 5, Township 8 North, Range 23 East, Gila and Salt River Meridian, Navajo County, Arizona, and being more particularly described as follows:

Commencing at a "T" Post marked "LS 11758" accepted as the Northwest corner of Section 5 and POINT OF BEGINNING;

Thence South  $00^{\circ}06'24''$  West a distance of 328.49 feet;

Thence North  $89^{\circ}58'03''$  East a distance of 499.95 feet to a Rebar with cap stamped "RLS 13013";

Thence South  $00^{\circ}10'20''$  West a distance of 755.98 feet to a Rebar with cap stamped "RLS 13013";

Thence North  $89^{\circ}58'42''$  West a distance of 500.08 feet to a 5/8" Rebar;

Thence South  $00^{\circ}11'37''$  West a distance of 564.85 feet to a "T" Post marked "LS 11758";

Thence South  $89^{\circ}50'12''$  East a distance of 1804.41 feet to a 5/8" Rebar with cap stamped "SGS RLS 28234";

Thence South  $00^{\circ}26'27''$  West a distance of 331.25 feet to a 5/8" Rebar with cap stamped "SGS RLS 28234";

Thence South  $89^{\circ}58'59''$  East a distance of 526.79 feet to a 5/8" Rebar;

Thence North  $00^{\circ}25'12''$  East a distance of 666.53 feet to a 5/8" Rebar with cap stamped "SGS RLS 28234";

Thence South  $89^{\circ}49'16''$  West a distance of 679.51 feet to a Rebar with cap stamped "PE 5047";

Thence North  $00^{\circ}07'53''$  West a distance of 806.66 feet to a Rebar with cap stamped "PE 5047";

Thence North  $89^{\circ}46'23''$  East a distance of 49.98 feet to a "T" Post marked "LS 11758";

Thence North  $00^{\circ}02'46''$  West a distance of 211.55 feet to a Rebar with cap stamped "PE 8418";

Thence North  $89^{\circ}48'00''$  West a distance of 49.87 feet to a Rebar with cap stamped "PE 8418";

Thence South  $00^{\circ}04'56''$  West a distance of 25.05 feet;

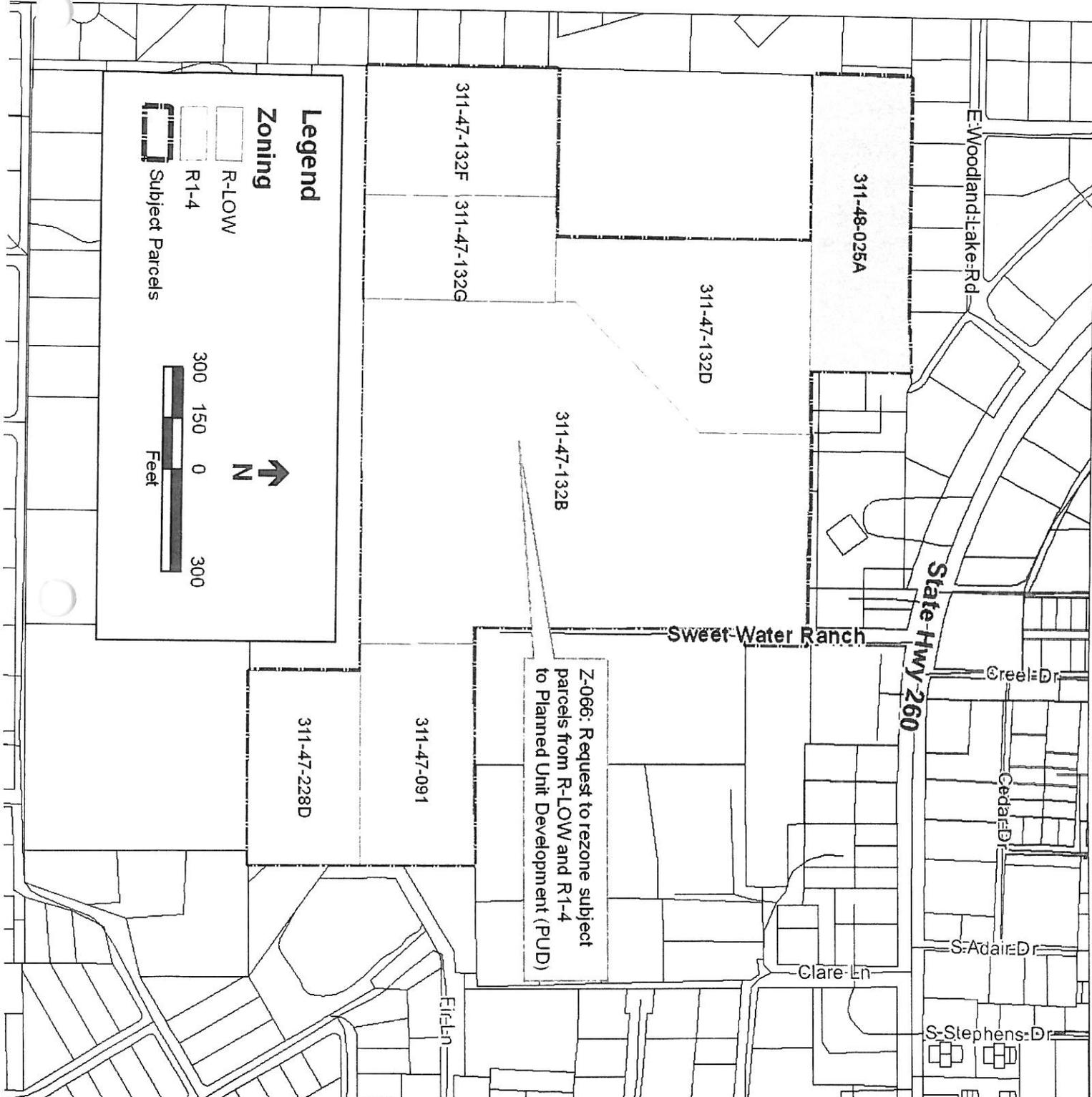
Thence North  $89^{\circ}49'07''$  West a distance of 768.73 feet;

Thence North  $00^{\circ}01'17''$  West a distance of 323.20 feet;

Thence North  $89^{\circ}52'53''$  West a distance of 879.10 feet to the POINT OF BEGINNING.

The above parcel of land contains 57.58 acres more or less.

**EXHIBIT "A"**



**EXHIBIT "B"**

*When Recorded Mail to:*  
Lu Anne Frost, Town Clerk  
Town of Pinetop-Lakeside  
1360 N. Niels Hansen Lane  
Lakeside, Arizona 85929

## AGREEMENT TO WAIVE RIGHTS AND REMEDIES UNDER ARIZONA REVISED STATUTES §12-1134

This Agreement to Waive Rights and Remedies under Arizona Revised Statutes § 12-1134 (hereinafter, the "Agreement") is made between LVI Properties, LLC (hereinafter, the "Owner") and the Town of Pinetop-Lakeside, an Arizona municipal corporation (hereinafter, the "Town"), Arizona, regarding the following property located southwest of White Mountain Boulevard and Sweetwater Ranch Road, APN(s) 311-47-132B, D, F and G, 311-47-228D, 311-48-025A, and the portion of APN 311-47-091 as identified in the legal description; all more fully described by the legal description, attached as Exhibit "C-1" (hereinafter, the "Property").

1. The Owner has requested the change of Zoning Classification, or Owner has requested the approval of a final plat for a subdivision called Fisher Project, or Owner has requested some other change of land use by the Town (hereinafter, the "Change of Land Use"). Owner agrees and consents to all of the requirements, conditions and stipulations imposed by the Town Council regarding the Change of Land Use for the Property. See Exhibit "C-2" which is a copy of the Zoning Ordinance or other Council action for the Change of Land Use.

2. Owner acknowledges that Owner's request for the Change of Land Use was voluntary, and that there are uses for the Owner's property which do not require a Change of Land Use. Owner also acknowledges that Owner has had the opportunity to give the Town Council the Owner's input on the requested Change of Land Use. Owner shall sign and deliver this Agreement to the Town Clerk within thirty (30) days of the Council Action which was taken at the public Town meeting held on January 15, 2009 (the "Council Action").

3. Owner has the right to withdraw Owner's request for the Change of Land Use for this Property (See Exhibits "C-1" and "C-2," attached) by not signing and delivering this Agreement to the Town Clerk within the time period required in paragraph 2, above. Owner further understands that if Owner has not signed and delivered this Agreement to the Town Clerk within the time period required in paragraph 2, above; Owner's request for the Change of Land Use shall be deemed withdrawn. The Change of Land Use granted by the Town Council is conditioned upon the execution and delivery of this Agreement and will not take effect unless and until Owner signs and delivers this Agreement to the Town Clerk within the time period set forth in paragraph 2, above. If this Agreement is not signed and delivered to the Town Clerk within the time period required in paragraph 2, above, Owner will have to reapply for the Change of Land Use for the Property.

4. **By signing and delivering this Agreement to the Town Clerk, Owner acknowledges that Owner waives any right to claim diminution in value or pursue a claim for just compensation for diminution in value under Arizona Revised Statutes § 12-1134 relating to the Change of Land Use for the Property set forth in Exhibits "C-1" and "C-2."**

1  
EXHIBIT "C"

5. The Owner warrants and represents that Owner is the Sole Owner of fee title to the Property, and that no other person has an ownership interest in the Property. The Owner further warrants and acknowledges that Owner has reviewed and understands this Agreement and the exhibits and attachments, including the requirements, conditions and stipulations imposed by the Town Council regarding the Change of Land Use for the Property. The person(s) who sign on behalf of Owner personally warrants and guarantees to the Town that he or she has the legal power to bind Owner to this Agreement.

6. This Agreement, any exhibits attached hereto, and any addenda, constitute the entire understanding and agreement between the Owner and the Town and shall supersede all prior Agreements or understandings between the Owner and Town regarding the Property or the Change of Land Use of the Property. This Agreement may not be modified or amended except by written agreement, approved and signed by both the Owner and the Town.

7. This Agreement shall run with the land and is binding upon all present and future owners of the Property. This Agreement is subject to the cancellation provisions of Arizona Revised Statutes § 38-511.

8. Within ten (10) days after the signing of this Agreement, the Town Clerk shall file the original Agreement in the Official Records of the Navajo County Recorder's Office, Navajo County, Arizona.

DATED and SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**Town of Pinetop-Lakeside**

**LVI Properties, LLC.**

\_\_\_\_\_  
**K. Barbara Teague, Mayor**

\_\_\_\_\_  
**Mark Kahlich**

**ATTEST:**

\_\_\_\_\_  
**Lu Anne Frost, Town Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Rosemary H. Rosales, Town Attorney**

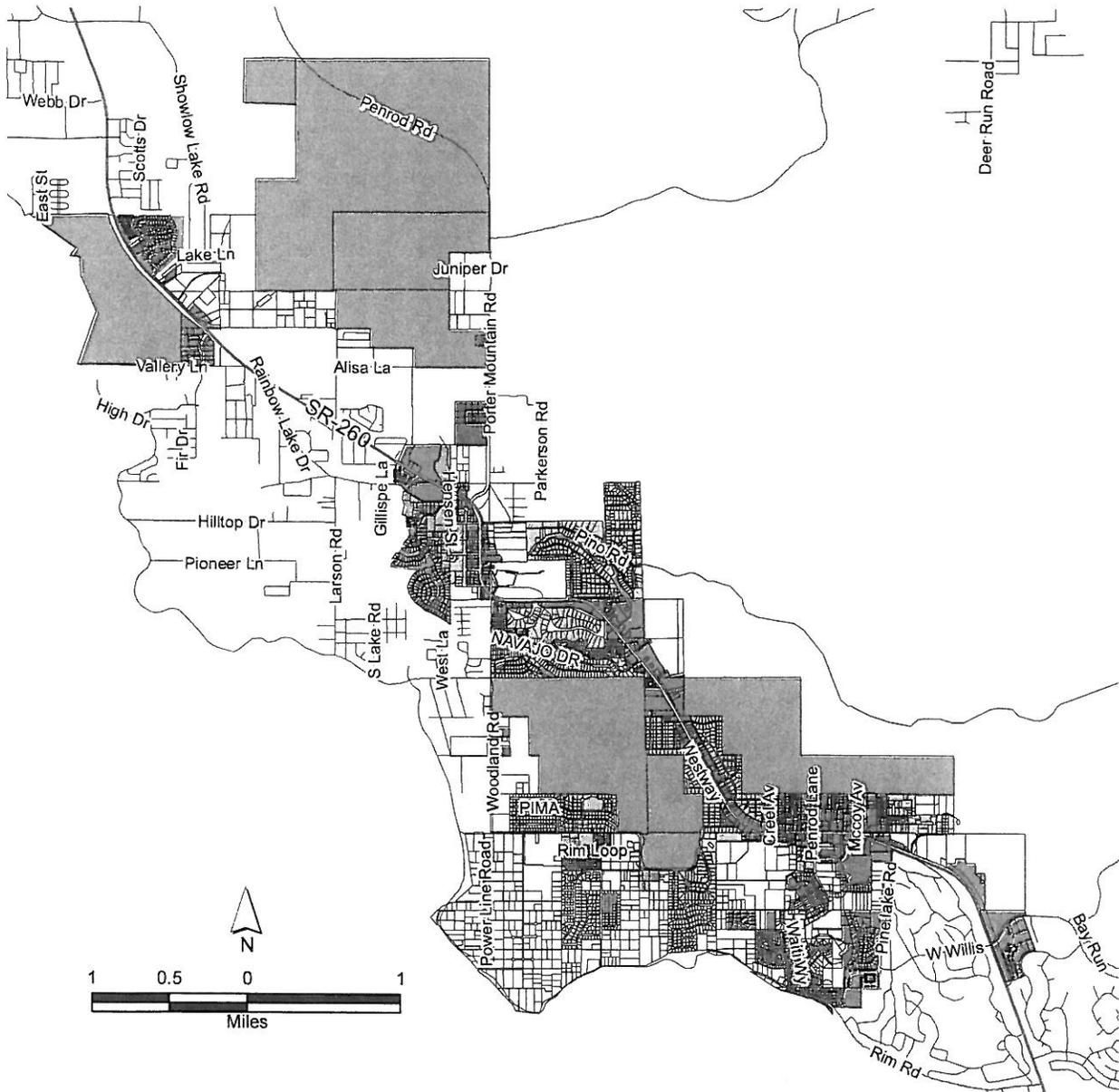
State of Arizona            )  
  ) ss  
County of Navajo         )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2009 by MARK KAHLICH, Owner or authorized representatives of the Owner(s), and  
who is either known to me or has shown satisfactory identification.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_



**Legend**

- |               |   |        |
|---------------|---|--------|
| <b>Roads</b>  |   | R-2    |
| — State Route | — | R-3    |
| — Local       | — | PUD    |
| <b>Zoning</b> |   | MH-4   |
| ■ C-1         | ■ | OS     |
| ■ C-2         | ■ | PUD-OS |
| □ R-LOW       | □ | R1-2   |
| □ R1-4        |   |        |

# Zoning Map



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**Town of Pinetop-Lakeside**

**LVI Properties, LLC.**

\_\_\_\_\_  
**K. Barbara Teague, Mayor**

\_\_\_\_\_  
**Mark Kahlich**

**ATTEST:**

\_\_\_\_\_  
**Lu Anne Frost, Town Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Rosemary H. Rosales, Town Attorney**

State of Arizona            )  
  ) ss  
County of Navajo            )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_  
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who is either known to me or has shown satisfactory identification.

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EXHIBIT "C-1"

**TOWN OF PINETOP-LAKESIDE**

**ORDINANCE NO. 09-322**

**AN ORDINANCE OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, AMENDING THE OFFICIAL ZONING MAP OF THE TOWN TO REZONE APN(S) 311-47-132B, D, F AND G, 311-47-228D, 311-48-025A, AND A PORTION OF APN 311-47-091 AS IDENTIFIED IN THE LEGAL DESCRIPTION, LOCATED SOUTHWEST OF WHITE MOUNTAIN BLVD. AND SWEETWATER RANCH ROAD, NAVAJO COUNTY, ARIZONA, FROM R-LOW AND R1-4 TO PLANNED UNIT DEVELOPMENT (PUD).**

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**WHEREAS**, the Planning and Zoning Commission has by official action made a recommendation for approval of the Zone Change to the Town Council, and

**WHEREAS**, the Town Council held a public hearing on October 2, 2008 and has considered comments regarding this proposed rezoning, and

**WHEREAS**, the Town Council has determined that the rezoning of the subject property is appropriate and not detrimental to the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Town Council of the Town of Pinetop-Lakeside as follows:

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**Section 4:** That the official Zoning Map of the Town of Pinetop-Lakeside is hereby amended and approved and shall reflect that these properties be included from the effective date of this Ordinance as Planned Unit

EXHIBIT "C-2"

Development (PUD) Zoning designation in accordance with this Ordinance, three (3) copies of which shall be available for public review and inspection in the Office of the Clerk, Town of Pinetop-Lakeside. See Exhibit "D," attached and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, this 15<sup>th</sup> day of January 2009, by a vote of \_\_\_\_\_ ayes, \_\_\_\_\_ nays.

**TOWN OF PINETOP-LAKESIDE**

\_\_\_\_\_  
**K. BARBARA TEAGUE, Mayor**

**ATTEST:**

\_\_\_\_\_  
**LU ANNE FROST, Town Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**ROSEMARY H. ROSALES, Town Attorney**