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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF YAVAPAI**

12 **MARVIN L. KAISER, Trustee of the**
13 **Marvin L. Kaiser Revocable Trust;**
14 **SAWMILL TRUST COMPANY, Trustee**
15 **of the Marvin L. Kaiser 2009 Marital Trust**
16 **for the Benefit of Joyce E. Kaiser,**

17 **Plaintiffs,**

18 **vs.**

19 **INSCRIPTION CANYON RANCH**
20 **SANITARY DISTRICT, an Arizona**
21 **sanitary district; GENE LEASURE and**
22 **SHIRLEY LEASURE, husband and wife;**
23 **CHARLIE TURNEY and MICHELLE**
24 **TURNEY, husband and wife; DAYNE**
25 **TAYLOR and MARLESS TAYLOR,**
26 **husband and wife; JOHN and JANE DOES**
 1-X,

Defendants.

Civil Action No. _____

VERIFIED COMPLAINT
(Violations of Open Meeting Laws,
Special Action, Declaratory Judgment,
Arizona Property Rights Protection Act)

For their Verified Complaint, Plaintiffs Marvin L. Kaiser, Trustee of the Marvin L. Kaiser Revocable Trust (“Kaiser Trust”), and Sawmill Trust Company, Trustee of the Marvin L. Kaiser 2009 Marital Trust for the Benefit of Joyce E. Kaiser (“Sawmill”), through counsel undersigned, allege as follows:

JURISDICTION, PARTIES AND VENUE

1. Plaintiff Marvin L. Kaiser is a single man and an individual who is and was

1 at all relevant times a resident of Yavapai County, Arizona, and owns land within the
2 boundary of the Inscription Canyon Ranch Sanitary District. He is the Trustee of the
3 Marvin L. Kaiser Revocable Trust dated June 3, 2009.

4 2. Plaintiff Sawmill Trust Company is a South Dakota Trust Company and is
5 the Trustee of the Marvin L. Kaiser 2009 Marital Trust for the benefit of Joyce E. Kaiser,
6 under agreement dated November 16, 2009.

7 3. Defendant Inscription Canyon Ranch Sanitary District (“District”) is an
8 Arizona sanitary district established under A.R.S. § 48-2001 *et seq.*

9 4. Upon information and belief, Defendants Gene Leasure (“Leasure”) and
10 Shirley Leasure are a married couple. Leasure is the chairperson of the District’s Board of
11 Directors. Leasure is a defendant in his capacity as a Member of the District’s Board of
12 Directors and in his individual capacity pursuant to A.R.S. § 38-431.07(A). At all times
13 relevant, Leasure was acting on behalf of and for the benefit of his marital community and
14 separate estate.

15 5. Upon information and belief, Defendants Charlie Turney (“Turney”) and
16 Michelle Turney are a married couple. Turney is a member of the District’s Board of
17 Directors. Turney is a defendant in his capacity as a Member of the District’s Board of
18 Directors and in his individual capacity pursuant to A.R.S. § 38-431.07(A). At all times
19 relevant, Turney was acting on behalf of and for the benefit of his marital community and
20 separate estate.

21 6. Upon information and belief, Dayne Taylor (“Taylor”) and Marless Taylor
22 are a married couple. Taylor is a member of the District’s Board of Directors. Taylor is a
23 defendant in his capacity as a Member of the District’s Board of Directors and in his
24 individual capacity pursuant to A.R.S. § 38-431.07(A). At all times relevant, Taylor was
25 acting on behalf of and for the benefit of his marital community and separate estate.

26 7. Defendants John and Jane Does I-X are individuals and/or husbands and

1 wives whose true names are presently unknown to Plaintiffs, but who are or may be, liable
2 to Plaintiffs on their Complaint. John and/or Jane Does were acting on behalf of their
3 marital communities when they performed the acts alleged herein.

4 8. Jurisdiction and venue are proper pursuant to A.R.S. §§ 12-401, 38-431.07
5 and 12-2021, and Rules 1 and 3, *Arizona Rules of Procedure for Special Actions*.

6 **GENERAL ALLEGATIONS**

7 9. Pursuant to A.R.S. § 48-2001, the District was formed for the sole and
8 express purpose of “regulating, purchasing, establishing, constructing and operating a
9 sewage system.”

10 10. The District was formed because the Yavapai County Board of Supervisors
11 made a legislative determination that the “public health, convenience, necessity or welfare
12 will be promoted by the establishment of the ICR Sanitary District” and that the property
13 “included within the ICR Sanitary District will be benefited by creation of the District.”
14 *See* Order of Establishment ICR Sanitary District, attached hereto without referenced
15 exhibits as **Exhibit 1**.

16 11. The District has a duty to provide sewer service to constituents owning land
17 within its annexed boundary, including Plaintiffs.

18 12. In 2008, the District adopted an ordinance stating “[a]ny building within the
19 District inhabited or used by human beings that discharges wastewater shall be connected
20 to the District’s wastewater system” (the “2008 Compulsory Connection Ordinance”).
21 *See* District Resolution 2008-01, Section 204, attached hereto as **Exhibit 2**. This
22 ordinance precludes the utilization of septic systems within the District.

23 13. The District operates a wastewater treatment plant (the “Existing Plant”)
24 that provides services to several hundred residents residing in four residential
25 communities within Yavapai County.

26 14. In or about July 2004, relying on the District’s obligation to provide sewer

1 service to the four residential communities, Kaiser Trust purchased a lot in one of those
2 communities called Talking Rock Ranch (“the TRR Lot”).

3 15. In or about May 2009, relying on the District’s obligation to provide sewer
4 service to the four residential communities, Kaiser Trust purchased a lot in one of those
5 communities called The Preserve (“The Preserve Lot”).

6 16. Kaiser Trust retained an architect and began the design process for a single-
7 family home on The Preserve Lot.

8 17. Kaiser Trust thereafter retained a builder and began the permitting and
9 construction processes on The Preserve Lot.

10 18. Only after construction began on The Preserve Lot was Kaiser Trust notified
11 for the first time that Defendant would not be providing sewer to either the TRR Lot or
12 The Preserve Lot.

13 19. Given the uncertainty regarding the availability of future sewer service,
14 Kaiser Trust was forced to expend significant funds to revise the design and deal with the
15 design and permitting for an on-site septic system at The Preserve Lot.

16 20. On or about November 29, 2009, Kaiser Trust conveyed, via warranty deed,
17 its interest in The Preserve Lot to Sawmill.

18 21. Sawmill is the successor in interest to Kaiser Trust related to The Preserve
19 Lot.

20 22. Upon information and belief, the existing water treatment plant has 62,500
21 gallons per day (“GPD”) of capacity and operates pursuant to the Arizona Department of
22 Environmental Quality (“ADEQ”) Aquifer Protection Permit (“APP”) No. P103119.

23 23. The Existing Plant is currently operating at approximately 53% of its design
24 capacity, as documented by the flow records on file with ADEQ.

25 24. As recently as June 1, 2009, the District acknowledged that the Existing
26 Plant was operating under 60% capacity. *See* District’s Newsletter dated June 1, 2009,

1 attached hereto as **Exhibit 3**.

2 25. The twenty-five month average daily flow (“ADF”) at the Existing Plant is
3 71 GPD per residential unit.

4 26. The ADF reflects an actual decline over recent years. *See* the District’s 25
5 Month Historical Average Daily Sewer Flows, attached hereto as **Exhibit 4**.

6 27. In anticipation of increased demand for plant service, the District began
7 working toward the design, permitting and construction of a new and expanded
8 wastewater treatment plant.

9 28. The permitting for the new plant has been delayed due to issues beyond
10 Plaintiffs’ control.

11 29. On September 28, 2009, the District wrote a letter to the Director of
12 Yavapai County Development Services seeking a County imposed building permit
13 moratorium. *See* Letter from Doug C. Nelson to Chad Daines dated September 28, 2009,
14 attached hereto as **Exhibit 5**.

15 30. The letter threatened that the District would impose a sewer moratorium if
16 Yavapai County refused to impose a building moratorium. *See id.*

17 31. As evidenced by Board meeting minutes from August and September 2009,
18 no prior public notice, meeting or discussion was had in advance of the District’s
19 determination to impose a sewer moratorium in the absence of a Yavapai County building
20 moratorium. *See* Minutes of the Regular Meeting of the District dated August 13, 2009,
21 August 26, 2009, September 9, 2009, and September 23, 2009, attached hereto as **Exhibit**
22 **6**.

23 32. Kaiser Trust was not copied on the District’s letter to Yavapai County and
24 only recently obtained it.

25 33. The content of the District’s letter was shocking to Kaiser Trust, who had, in
26 good faith, purchased the TRR Lot and The Preserve Lot and had begun construction on

1 The Preserve Lot. Even more shocking was the recognition that the District had been
2 conducting a covert campaign for well over a month without discussion with any District
3 members.

4 34. Due to the severe and harmful nature of a moratorium, counties are required
5 to follow specific statutory provisions set forth in A.R.S. § 11-833 prior to imposing any
6 construction or land development moratorium.

7 35. There is no evidence that Yavapai County determined a building
8 moratorium was necessary and the County did not accede to the Board's demands.

9 36. Consequently, the District undertook subsequent efforts to impose its own
10 defacto building permit moratorium through the attempted adoption of a moratorium that
11 precludes any new or additional sewer hook-ups within the District.

12 37. A sewer moratorium in the District prevents any further development in the
13 District as well as the construction of homes by lot owners within the District. The
14 District is the only source of sewer service and the District recently adopted an ordinance
15 that mandates "[a]ny building within the District inhabited or used by human beings that
16 discharges wastewater shall be connected to the District's wastewater system." *See*
17 **Exhibit 2.**

18 38. The harm from the District's action is substantial. Kaiser Trust has
19 expended in excess of \$50,000 related to the change from sewer to septic, and the lack of
20 sewer service has necessarily diminished the value of the TRR Lot and The Preserve Lot.

21 39. On December 9, 2009, the District held a regularly scheduled meeting of the
22 Board (the "December Meeting") in which it purported to approve a sewer moratorium
23 through Resolution No. 2009-01. *See* Resolution No. 2009-01, attached hereto as **Exhibit**
24 **7.**

25 40. Leasure, Turney and Taylor attended the December Meeting as members of
26 the Board.

1 41. Upon information and belief, and as evidenced by the letter the District sent
2 to Yavapai County, the District had already concluded that it would adopt a moratorium
3 and the purported approval of Resolution No. 2009-01 was pre-ordained without any
4 public notice, meeting or discourse.

5 42. Although Resolution No. 2009-01 declares that a moratorium is needed to
6 address inadequate capacity at the Existing Plant, upon information and belief, the
7 District's moratorium was enacted solely to force the repayment of alleged outstanding
8 debts and to hurry construction of a new wastewater treatment plant. *See id.; see also*
9 **Exhibit 6** (Minutes of the Regular Meeting of the District dated August 13, 2009 in which
10 Board Member Leasure declared that a moratorium should be considered to prompt
11 payment of outstanding bills).

12 43. Specifically, Resolution No. 2009-01 states that the moratorium will not be
13 lifted until (i) "all outstanding invoices have been paid in full by Old Capitol [] and any
14 other developer-entity that owes monies to the District"; and (ii) "no sooner than one
15 hundred sixty (160) days of when the new and expanded wastewater treatment plant will
16 actually be in operation in the District." **Exhibit 7.**

17 44. Prior to the meeting, the District provided an agenda which purported to
18 include the matters to be discussed or decided at the December Meeting. *See* Agenda
19 dated December 9, 2009, attached hereto as **Exhibit 8.**

20 45. The agenda, however, did not provide the information reasonably necessary
21 to inform the public of the matters to be discussed or decided at the December Meeting.

22 46. Specifically, the only reference to the proposed moratorium was in the
23 section labeled "New Business" and merely stated "Resolution No. 2009-01 discussion
24 and possible action." *See id.* at 4(f).

25 47. The agenda did not provide any information regarding the substance of
26 Resolution No. 2009-01 or that it proposed a moratorium related to new or additional

1 sewer hook-ups. Accordingly, members of the public had no way of knowing that such a
2 drastic action was about to be taken. Common sense dictates on a matter of such import,
3 that the Board should have taken extraordinary steps to inform the public and seek input
4 on its decision making.

5 48. At the December Meeting, the members of the Board then attempted to pass
6 Resolution No. 2009-01 without any public discussion. Only after prompted by a
7 representative of Harvard Simon I, LLC (“Harvard”) did the Board address a single
8 question about the subject matter of Resolution No. 2009-01. No other public discussion
9 was had at the December meeting.

10 49. Following the December Meeting, the District failed to make available for
11 public inspection the minutes or recordings from the December Meeting within three
12 working days after the meeting.

13 50. On June 3, 2010, Plaintiffs, through counsel, put the District on notice that
14 the adoption of Resolution No. 2009-01 and the December Meeting violated the Open
15 Meeting Laws and that any actions taken with regard to Resolution No. 2009-01 were null
16 and void.

17 51. On January 6, 2010, the District held a special meeting of its Board (the
18 “January 06 Meeting”) in which it purported to ratify Resolution No. 2009-01.

19 52. Leasure, Turney and Taylor attended the January 06 Meeting as members of
20 the Board.

21 53. Public notice of the January 06 Meeting was not provided to the public.

22 54. Prior to the January 06 Meeting, the District provided an agenda, which
23 purported to include the matters to be discussed or decided at the January 06 meeting. *See*
24 *Agenda* dated January 6, 2010, attached hereto as **Exhibit 9**.

25 55. Once again the agenda failed to provide any information reasonably
26 necessary to inform the public of the matters to be discussed or decided.

1 56. Specifically, the only reference to Resolution No. 2009-01 was in the
2 section labeled “New Business” and only stated “Resolution No. 2009-01 moratorium on
3 sewer hook up.” *See id.* at 3(a).

4 57. The District failed to make available to the public any written description of
5 the action to be ratified or any deliberations, consultations or decisions by members of the
6 District that preceded and related to such action.

7 58. Despite these failures, the Board purported to ratify Resolution No. 2009-01
8 at the January 06 Meeting, which was tape recorded by the District and conducted with
9 the District’s counsel present.

10 59. Upon information and belief, the ratification motion at the January 06
11 Meeting was moved and seconded without any public discourse. In fact, upon
12 information and belief, the only opportunity provided for public discourse occurred after a
13 representative of The Preserve at the Ranch, LLC (“Preserve”) interrupted the Board prior
14 to the Board’s attempted ratification of Resolution No. 2009-01.

15 60. During the January 06 Meeting, a Preserve representative requested the
16 Board provide a copy or transcript of the recorded proceedings. Board members Leasure
17 and Taylor and their counsel, however, replied that the District had no such obligation to
18 provide any such copy or related transcript.

19 61. Following the January 06 Meeting, the District refused to make available for
20 public inspection the minutes or recordings of the January 06 Meeting within three
21 working days after the meeting.

22 62. Upon information and belief, immediately following the January 06
23 Meeting, all of the members of the Board and their counsel met with two lot owners in the
24 District behind closed doors for over two hours further deliberating about the moratorium.
25 Kaiser Trust was not given any advance notice of the meeting, nor was Mr. Kaiser asked
26 to participate in the post-meeting deliberations.

1 72. The District is a public body within the meaning of A.R.S. § 38-431.07 *et*
2 *seq.* (the “Open Meeting Laws”).

3 73. Defendants Leasure, Turney and Taylor are public officers as contemplated
4 under the Open Meeting Laws.

5 74. Plaintiffs are persons affected by the District’s violations of the Open
6 Meeting Laws, as Plaintiffs are the owners of platted lots within the District’s boundaries
7 that were previously approved for service from the Existing Plant.

8 75. The District transacted the actions described above in clear violation of the
9 Open Meeting Laws and the violations evidence a patter of deceptive behavior designed
10 to prevent public involvement.

11 76. Defendants Leasure, Turney and Taylor, as members of the Board, also
12 violated the Open Meeting Laws and/or knowingly aided, agreed to aid or attempted to
13 aid other persons in violating the Open Meeting Laws.

14 **I. Defendants Failed to Provide Proper Agendas in Accordance with the Open**
15 **Meeting Laws.**

16 77. A.R.S. § 38-431.02(h) provides:

17 Agendas required under this section shall list the **specific**
18 matters to be discussed, considered or decided at the meeting.
19 The public body may discuss, consider or make decisions **only**
20 on matters listed on the agenda and other matters related
21 thereto. (Emphasis added.)

22 78. Additionally, A.R.S. § 38-431.09(A) provides:

23 It is the public policy of this state that meetings of public
24 bodies be conducted openly and that notices and agendas be
25 provided for such meetings which contain **such information**
26 **as is reasonably necessary to inform the public of the**
 matters to be discussed or decided. Toward this end, any
 person or entity charged with the interpretations of this
 article shall construe this article in favor of open and
 public meetings. (Emphasis added.)

27 79. Defendants violated A.R.S. §§ 38-431.02(h) and 38-431.09(A) by, among
28 other actions: (i) failing to provide specific information reasonably necessary to inform

1 the public regarding its consideration of Resolution No. 2009-01 in the agenda for the
2 December Meeting; (ii) failing to provide specific information reasonably necessary to
3 inform the public regarding its purported ratification of Resolution No. 2009-01 in the
4 agenda for the January 06 Meeting; and (iii) failing to provide specific information
5 reasonably necessary to inform the public regarding the second attempt to ratify
6 Resolution No. 2009-01 at the upcoming January 13 Meeting.

7 **II. Defendants Failed to Comply with Statutory Ratification Procedures on**
8 **Multiple Occasions When Attempting to Ratify Resolution No. 2009-01 in**
9 **Violation of the Open Meeting Laws.**

10 80. A.R.S. § 28-431.05(B) provides:

11 A public body may ratify legal action taken in violation of this
12 article in accordance with the following requirements: 1. Ratification shall take place at a public meeting within thirty
13 days after discovery of the violation or after such discovery
14 should have been made by the exercise of reasonable
15 diligence. 2. **The notice of the meeting shall include a
16 description of the action to be ratified, a clear statement
17 that the public body proposes to ratify a prior action and
18 information on how the public may obtain a detailed
19 written description of the action to be ratified. 3. The
20 public body shall make available to the public a detailed
21 written description of the action to be ratified and all
22 deliberations, consultations and decisions by members of
23 the public body that preceded and related to such action.**
24 The written description shall also be included as part of the
25 minutes of the meeting at which ratification is taken. 4. The
26 public body shall make available to the public the notice and
detailed written description required by this section at least
seventy-two hours in advance of the public meeting at which
the ratification is taken. (Emphasis added.)

21 81. Defendants violated A.R.S. § 38-431.95(B) by, among other actions,
22 entirely failing to provide notice of its January 06 Meeting. Moreover, the agenda for the
23 January 06 Meeting could not serve as sufficient notice as, among other failures, the
24 agenda: (i) did not contain a clear statement that the Board proposed to ratify a prior
25 action; (ii) did not contain information on how the public may obtain a detailed written
26 description of the action to be ratified; and (iii) did not make available to the public a
detailed written description of the action to be ratified and all deliberations, consultation

1 and decisions by members of the District that preceded and related to such action.

2 82. Defendants also violated A.R.S. § 38-431.05(B)(3) on multiple occasions by
3 failing to make available any of the District’s deliberations, consultations and decisions
4 that preceded such action at both the January 06 Meeting and in advance of the January 13
5 Meeting.

6 **III. Defendants Failed to Make Minutes or Recordings Available for Public**
7 **Inspection in Violation of the Open Meeting Laws.**

8 83. A.R.S. § 28-431.01(D) provides that “[t]he minutes or a recording of a
9 meeting shall be available for public inspection three working days after the meeting
10 except as otherwise specifically provided by this article.”

11 84. Defendants violated A.R.S. § 38-431.01(D) by, among other actions, failing
12 to make the minutes or recordings of the December Meeting or the January 06 and
13 January 13 Meetings available for public inspection.

14 **IV. The Court Should Impose the Penalties Set Forth in A.R.S. § 38-431.07.**

15 85. Pursuant to A.R.S. § 28-431.07(A), as a result of the above violations of the
16 Open Meeting Laws, and others, “the court may impose a civil penalty not to exceed five
17 hundred dollars” against each Defendant, including the District and Defendants Leasure,
18 Turney and Taylor.

19 86. Additionally, A.R.S. § 38-431.07 provides:

20 If the court determines that a public officer with intent to
21 deprive the public of information violated any provision of
22 this article the court **may remove the public officer from**
23 **office** and shall assess the public officer or a person who
24 knowingly aided, agreed to aid or attempted to aid the public
25 officer in violating the article, or both, with all of the costs and
26 attorney fees awarded to the plaintiff pursuant to this section.

27 87. Defendants Leasure, Turney and Taylor violated the Open Meeting Laws
28 with intent to deprive the public of information on multiple occasions indicating a pattern
29 of deception. This fact is evidenced by: (i) the numerous and repeated violations of the
30 Open Meeting Laws; (ii) the failure to comply with the Open Meeting Laws even after

1 being apprised of their applicability and contents; and (iii) the pre-ordained decision
2 making at Board meetings.

3 88. Consequently, Plaintiffs are entitled to an order from the Court removing
4 Defendants Leasure, Turney and Taylor from office.

5 89. Plaintiffs are also entitled to an award of their attorneys' fees under A.R.S. §
6 38-431.07(A).

7 **V. The Court Should Declare Resolution No. 2009-01 Null and Void.**

8 90. A.R.S. § 38-431.05(A) provides “[a]ll legal action transacted by any public
9 body during a meeting held in violation of any provision of this article is **null and**
10 **void[.]**” (Emphasis added.)

11 91. As set forth above, the Board adopted Resolution No. 2009-01 in violation
12 of the Open Meeting Laws at the December Meeting.

13 92. The Board also failed to ratify the adopted Resolution No. 2009-01 in
14 accordance with the Open Meeting Laws at the January 06 Meeting.

15 93. Any attempt to ratify Resolution No. 2009-01 at the January 13 Meeting
16 will not be in accordance with the Open Meeting Laws.

17 94. As a result, the Board's adoption of Resolution No. 1009-01 is null and void
18 and cannot be effectively ratified at the January 13 Meeting.

19 **COUNT II**
20 **(Special Action Related to District's Ratification of Resolution No. 2009-01)**

21 95. Plaintiffs incorporate their allegations above as if fully set forth herein.

22 96. The District and its Board have no discretion to proceed arbitrarily or
23 capriciously.

24 97. The District's purported adoption of Resolution 2009-01 is arbitrary and
25 capricious, and thus, an abuse of discretion.

26 98. The District is the sole source of sewer service to the residential
communities within its annexed boundaries and has a duty to provide adequate service.

1 108. The District is the sole source of sewer services to the residential
2 communities within its annexed boundaries and has a duty to provide adequate service.

3 109. Kaiser Trust purchased the TRR Lot and The Preserve Lot with the
4 expectation of service to those lots.

5 110. Because the District had previously adopted an ordinance mandating
6 connection to its system thereby foreclosing the use of any alternative wastewater system
7 (i.e., septic), the adoption of Resolution No. 2009-01 significantly increased Plaintiffs'
8 construction costs on The Preserve Lot and has diminished the value of the TRR Lot and
9 The Preserve Lot.

10 111. The reasons set forth in Resolution No. 2009-01 for imposing a moratorium
11 (i.e., inadequate capacity) are erroneous. To the extent Defendants contend otherwise,
12 Plaintiffs assert any potential limitations are due to the District's improper plant operation.

13 112. Specifically, the Existing Plant is operating at approximately 53% of its
14 design capacity and there are no existing or threatened permit violations related to
15 capacity or pollution constituent exceedences.

16 113. Resolution No. 2009-01's stated conditions for lifting the moratorium
17 evidence its enactment solely to cure a monetary dispute with Old Capitol and to obtain
18 expedited completion of a new plan that is not necessary at the current time.

19 114. As a result, Plaintiffs are entitled to an expeditious ruling by this Court that
20 the adoption of Resolution No. 2009-01 is arbitrary and capricious and is an abuse of
21 discretion.

22 115. An actual controversy exists between Plaintiffs and Defendants as to the
23 respective rights, obligations, relationships and/or legal relations with respect to
24 Resolution No. 2009-01.

25 116. Plaintiffs are entitled to declaratory relief in this action pursuant to A.R.S. §
26 12-1832.

1 available), the Moratorium significantly reduces the value of Plaintiffs' property.

2 126. The Moratorium is a "land use law" within the meaning of A.R.S. § 12-
3 1136(3).

4 127. The Moratorium was enacted after the date Kaiser Trust took ownership of
5 the TRR Lot and The Preserve Lot.

6 128. The Moratorium reduces Plaintiffs' rights to use, divide, sell or possess
7 private property, thereby substantially diminishing the value of those properties.

8 129. The Moratorium does not fall within any of the exceptions set forth in
9 A.R.S. § 12-1134(B).

10 130. On June 3, 2010, Plaintiffs submitted to the District a claim letter seeking
11 compensation for additional construction costs and diminution in the value of the TRR
12 Lot and The Preserve Lot caused by the Moratorium.

13 131. As of the date of this filing, the Moratorium continues to apply thus ripening
14 the cause of action in accordance with A.R.S. § 12-1134(E).

15 132. For the foregoing reasons, Plaintiffs have a right to just compensation under
16 the Arizona Property Rights Protection Act.

17 **COUNT V**
18 **(Special Action Relating to the District's Failure to Provide Sewer Services)**

19 133. Plaintiffs incorporate the above allegations as if fully set forth herein.

20 134. The District has a non-discretionary duty to provide sewer services to
21 Plaintiffs, as evidenced by A.R.S. § 48-2001, and by agreements with the developers of
22 the residential communities referenced in Paragraph 13, above.

23 135. The District failed to perform this duty by imposing the Moratorium.

24 136. Plaintiffs are the owners of platted lots within the District's boundaries that
25 were previously approved for sewer service.

26 137. Plaintiffs are therefore parties beneficially interested in procuring the
enforcement of this public duty pursuant to mandamus relief.

1 138. Plaintiffs are entitled to an expeditious ruling by this Court that the District
2 failed to perform a non-discretionary duty by enacting the Moratorium.

3 139. Plaintiffs have no equally plain, speedy and adequate remedy in this matter.

4 WHEREFORE, Plaintiffs requests the following relief:

5 A. An order from the Court imposing civil penalties not to exceed five hundred
6 dollars each against the District and Defendants Leasure, Turney and Taylor.

7 B. An order from the Court removing Defendants Leasure, Turney and Taylor
8 from office.

9 C. An order from the Court declaring that the Board's adoption of Resolution
10 2No. 2009-01 is null and void and was not effectively ratified at the January 13 Meeting.

11 D. An order from this Court accepting jurisdiction of this special action.

12 E. An order from the Court that the District and its Board acted arbitrarily and
13 capriciously and abused their discretion by attempting to adopt Resolution No. 2009-01.

14 F. A declaratory judgment from the Court that Defendants acted arbitrarily and
15 capriciously by adopting Resolution No. 2009-01 and thus the adoption is an abuse of
16 discretion.

17 G. An award of compensatory damages in excess of the jurisdictional limits in
18 an amount to be proven at trial.

19 H. An award of the reasonable attorneys' fees and costs incurred by Plaintiffs
20 in bringing this action.

21 I. Pre-judgment and post-judgment interest.

22 J. Any other relief this Court deems just or proper.

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DATED, January 12, 2011.

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

By _____
Andrew Q. Everroad
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Attorneys for Plaintiffs

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VERIFICATION

Pursuant to Rule 80(i), Arizona Rules of Civil Procedure, Marvin L. Kaiser declares that he is the Trustee of the Marvin L. Kaiser Revocable Trust dated June 3, 2009 and is the representative of one of the Plaintiffs in this action; that he has read the foregoing Verified Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to those matters stated on information and belief and, as to those matters, he believes them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of January, 2011.

Marvin L. Kaiser, Trustee

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VERIFICATION

Pursuant to Rule 80(i), Arizona Rules of Civil Procedure, Jane Kiker is the representative of Sawmill Trust Company, Trustee of the Marvin L. Kaiser 2009 Marital Trust for the benefit of Joyce E. Kaiser, under agreement dated November 16, 2009 and is the representative of one of the Plaintiffs in this action; that she has read the foregoing Verified Complaint and knows the contents thereof; and that the same is true to her own knowledge, except as to those matters stated on information and belief and, as to those matters, she believes them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this ____ day of January, 2011.

Jane Kiker
Sawmill Trust Company, Trustee