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7 Attorneys for Defendants

8 **SUPERIOR COURT OF ARIZONA**

9 **YAVAPAI COUNTY**

10 HARVARD SIMON I, LLC, an
11 Arizona limited liability company; THE
12 PRESERVE AT THE RANCH, LCC,
13 an Arizona limited liability company;
14 OLD CAPITOL INVESTMENTS,
15 LLC, an Arizona limited liability
16 company; and WHISPERING
17 CANYON DEVELOPMENT, LLC, an
18 Arizona limited liability company,

19 Plaintiffs,

20 v.

21 INSCRIPTION CANYON RANCH
22 SANITARY DISTRICT, an Arizona
23 sanitary district; GENE LEASURE,
24 District Board Member; CHARLIE
25 TURNER, District Board Member; and
26 DAYNE TAYLOR, District Board
27 Member,

28 Defendants.

No. P1300-CV-2010-01855

ANSWER

21 For its Answer to the Complaint filed by Plaintiffs Harvard Simon I, LLC, The
22 Preserve at the Ranch, LCC, Old Capitol Investments, LLC, and Whispering Canyon
23 Development, LLC, (collectively "Plaintiffs"), Defendants Inscription Canyon Ranch
24 Sanitary District, Gene Leasure, Charlie Turner, and Dayne Taylor (collectively,
25 "Defendants"), allege:

26 **JURISDICTION, PARTIES AND VENUE**

27 1. In answer to paragraph 1 of Plaintiffs' Complaint, Defendants admit that
28 Harvard Simon I, LLC ("Harvard") is an Arizona limited liability company doing

1 business in Yavapai County and owns land within the boundaries of the Inscription
2 Canyon Ranch Sanitary District (the “District”). Defendants are without knowledge or
3 information with which to form a belief as to the remaining allegations in paragraph 1,
4 and, therefore, deny same.

5 2. In answer to paragraph 2 of Plaintiffs’ Complaint, Defendants admit that
6 The Preserve at the Ranch, LLC (the “Preserve”) is an Arizona limited liability company
7 doing business in Yavapai County and owns land within the boundaries of the District.
8 Defendants are without knowledge or information with which to form a belief as to the
9 remaining allegations in paragraph 2, and, therefore, deny same.

10 3. In answer to paragraph 3 of Plaintiffs’ Complaint, Defendants admit that
11 Old Capitol Investments, LLC (“Old Capitol”) is an Arizona limited liability company
12 doing business in Yavapai County and owns land within the boundaries of the District.
13 Defendants are without knowledge or information with which to form a belief as to the
14 remaining allegations in paragraph 3, and, therefore, deny same.

15 4. In answer to paragraph 4 of Plaintiffs’ Complaint, Defendants admit that
16 Whispering Canyon Development, LLC (“Whispering Canyon”) is an Arizona limited
17 liability company doing business in Yavapai County and owns land within the boundaries
18 of the District.

19 5. In answer to paragraph 5 of Plaintiffs’ Complaint, Defendants admit that the
20 District is a political subdivision of the State of Arizona that was established under *A.R.S.*
21 § 48-2001 *et seq.*¹

23 ¹ The District was established under Title 48, Chapter 14, Article 1 of the *Arizona Revised*
24 *Statutes*. The District is “a body corporate with the powers, privileges and immunities
25 generally granted to municipal corporations by the constitution and laws of this state for the
26 purposes prescribed by this chapter.” *A.R.S.* § 48-2001 (D). The purposes of the District,
27 among other things, include: “. . . regulating, purchasing, establishing, constructing and
28 operating a sewerage system or a sewage sludge or by-product processing and disposal
system which is owned by the district or any person and which provides for sewage
collection, treatment and disposal in the district.” *A.R.S.* § 48-2001 (B)(1). Among the
powers of the District, they include adoption of rules and require permits for any and all
connections, and the authority to “[m]anage and conduct the business and affairs of the
district, and do all things incidental to exercising the powers granted by this article, . . .”
A.R.S. § 48-2011 (18); see *A.R.S.* § 48-2011 (16).

1 6. In answer to paragraph 6 of Plaintiffs' Complaint, Defendants admit that
2 Gene Leasure is the chairperson of the District's Board of Directors but are without
3 sufficient knowledge or information with which to form a belief as to the truth or falsity
4 of the remaining allegations within paragraph 6 and, therefore, deny same.

5 7. In answer to paragraph of Plaintiffs' Complaint 7, Defendants admit that
6 Charlie Turner is a member of the District's Board but are without sufficient knowledge
7 or information with which to form a belief as to the truth or falsity of the remaining
8 allegations within paragraph 7 and, therefore, deny same.

9 8. In answer to paragraph 8 of Plaintiffs' Complaint, Defendants admit that
10 Dayne Taylor a member of the District's Board but are without sufficient knowledge or
11 information with which to form a belief as to the truth or falsity of the remaining
12 allegations within paragraph 8 and, therefore, deny same.

13 9. In answer to paragraph 9 of Plaintiffs' Complaint, Defendants admit the
14 allegations therein.

15 10. In answer to paragraph 10 of Plaintiffs' Complaint, Defendants deny the
16 allegations therein.

GENERAL ALLEGATIONS

The Parties

17
18
19 11. In answer to paragraph 11 of Plaintiffs' Complaint, Defendants admit that the
20 District operates a wastewater treatment plant (the "Existing Plant") within the District's
21 service area and deny that sanitary service is provided to approximately 450 occupied
22 residential lots in four communities in the District's annexed service area. The District
23 asserts that the current number of residents is irrelevant pursuant to Arizona Department of
24 Environmental Quality ("ADEQ") laws and regulations and the District's Ordinance.

25 12. In answer to paragraph 12 of Plaintiffs' Complaint, Defendants admit that
26 Plaintiffs developed certain communities within the District but are without sufficient
27 knowledge or information with which to form a belief as to the truth or falsity of the
28 remaining allegations within paragraph 6 and, therefore, deny same.

1 13. In answer to paragraph 13 of Plaintiffs' Complaint, Defendants admit that
2 Plaintiffs' development efforts have varied substantially and generally included certain
3 improvements but are without sufficient knowledge or information with which to form a
4 belief as to the truth or falsity of these specific development efforts identified in paragraph
5 13 and, therefore, deny same.

6 14. In answer to paragraph 14 of Plaintiffs' Complaint, Defendants are without
7 sufficient knowledge or information with which to form a belief as to the truth or falsity
8 of the allegations therein and, therefore, deny same.

9 15. In answer to paragraph 15 of Plaintiffs' Complaint, Defendants admit that
10 Plaintiffs have additional platted lots within the District boundaries but specifically deny
11 that, given the limitations of the Existing Plant and the Public Reports filed to date,
12 Plaintiffs may legally convey all of the platted lots to homebuilders or individual lot
13 buyers consistent with the Aquifer Protection Permit ("APP") issued by the Arizona
14 Department of Environmental Quality ("ADEQ"). Defendants are without sufficient
15 knowledge or information with which to form a belief as to the remaining allegations
16 within paragraph 15 and, therefore, deny same.

17 16. In answer to paragraph 16 of Plaintiffs' Complaint, Defendants admit that
18 Plaintiffs intended to finance the cost of necessary Existing Plant improvements with
19 monies collected from prospective lot purchasers rather than invest their own funds to
20 construct the improvements necessary to provide existing and prospective lot purchasers
21 with the required Existing Plant improvements. Defendants are without sufficient
22 knowledge or information with which to form a belief as to the truth or falsity of the
23 remaining allegations therein and, therefore, deny same.

24 17. In answer to paragraph 17 of Plaintiffs' Complaint, Defendants deny the
25 allegations therein and affirmatively alleged that the unavailability of sewer service is the
26 direct result of Plaintiffs' refusal to finance the cost of or provided financial guarantees
27 for the required Existing Plant improvements.

The District's Obligation to Provide Sewer Service

1
2 18. In answer to paragraph 18 of Plaintiffs' Complaint, Defendants deny that the
3 District has an absolutely duty to provide sewer service to constituents and affirmatively
4 allege that the District's duty is conditioned upon Plaintiffs' compliance with applicable
5 agreements, laws, and regulations to assure those owning land within the annexed boundary
6 or considering the purchase of land within the annexed boundary that the improvements
7 necessary to the preservation of their property values will be financed and completed in a
8 timely manner.

9 19. In answer to paragraph 19 of Plaintiffs' Complaint, Defendants deny the
10 allegations therein and specifically allege that the District was formed for a variety of
11 purposes including, but not limited to, those alleged within paragraph 19.

12 20. In answer to paragraph 20 of Plaintiffs' Complaint, Defendants are without
13 sufficient knowledge or information with which to form a belief as to the bases for the
14 Yavapai County Supervisors' determination and affirmatively allege that the Order of
15 Establishment speaks for itself. Defendants deny the remaining allegations within
16 paragraph 20.

17 21. In answer to paragraph 21 of Plaintiffs' Complaint, Defendants deny that they
18 expressly agreed to provide unconditional service to Plaintiffs through the execution of
19 various Sewer Service Agreements and affirmatively allege that said agreements speak for
20 themselves. Defendants further affirmatively allege that, by refusing to construct the
21 necessary Existing Plant improvements until the Existing Plant reaches 85% capacity,
22 Plaintiffs breached the express and/or implied intent of their agreements with the District.

23 22. In answer to paragraph 22 of Plaintiffs' Complaint, Defendants deny the
24 allegations therein and affirmatively allege that the Agreements speak for themselves.

25 23. In answer to paragraph 23 of Plaintiffs' Complaint, Defendants are without
26 sufficient knowledge or information with which to form a belief as to the truth or falsity of
27 the allegations of what Yavapai County relied upon in issuing various "approvals" and,
28 therefore, deny same.

1 24. In answer to paragraph 24 of Plaintiffs' Complaint, Defendants deny the
2 allegations therein and affirmatively allege that Plaintiffs failed to construct or guarantee
3 their financial ability to construct the necessary improvements to the Existing Plant.
4 Defendants further affirmatively allege that Plaintiffs relied upon their real estate market
5 projections and assumptions in calculating the anticipated return on investment.

6 25. In answer to paragraph 25 of Plaintiffs' Complaint, Defendants deny the
7 allegations therein.

8 **The District Enacted An Illegal Moratorium Prohibiting Additional Hook-Ups**
9 **To The Existing Plant.**

10 26. In answer to paragraph 26 of Plaintiffs' Complaint, Defendants deny the
11 allegations therein and affirmatively allege that District Resolution 2008-01, Section 204
12 speaks for itself.

13 27. In answer to paragraph 27 of Plaintiffs' Complaint, Defendants deny the
14 allegations therein.

15 28. In answer to paragraph 28 of Plaintiffs' Complaint, Defendants deny the
16 allegations therein and affirmatively allege that Resolution 2009-01 speaks for itself.

17 29. In answer to paragraph 29 of Plaintiffs' Complaint, Defendants deny the
18 allegations therein.

19 30. In answer to paragraph 30 of Plaintiffs' Complaint, Defendants deny the
20 allegations therein and affirmatively allege that the justification for the Moratorium is the
21 District's genuine concern that existing and prospective lot owners would not be provided
22 with an adequate wastewater treatment facility and that the three developments fail to
23 comply with the governing APP, laws and regulations.

24 31. In answer to paragraph 31 of Plaintiffs' Complaint, Defendants admit that the
25 Existing Plant has a design capacity of 62,500 gallons per day ("GPD") but deny the
26 remaining allegations therein.

27 32. In answer to paragraph 32 of Plaintiffs' Complaint, Defendants allege that the
28 APP speaks for itself and deny the allegations therein to the extent that they are

1 inconsistent with the APP.

2 33. In answer to paragraph 33 of Plaintiffs' Complaint, Defendants deny the
3 allegations therein.

4 34. In answer to paragraph 24 of Plaintiffs' Complaint, Defendants allege that the
5 District Letter to Members dated January 1, 2009 speaks for itself and deny the allegations
6 therein.

7 35. In answer to paragraph 35 of Plaintiffs' Complaint, Defendants deny the
8 allegations therein.

9 36. In answer to paragraph 36 of Plaintiffs' Complaint, Defendants deny the
10 allegations therein.

11 37. In answer to paragraph 37 of Plaintiffs' Complaint, Defendants deny the
12 allegations therein

13 38. In answer to paragraph 38 of Plaintiffs' Complaint, Defendants deny the
14 allegations therein and affirmatively allege that the District's adoption of similar
15 moratorium in 2006 and Plaintiffs' acceptance thereof acknowledge the District's right to
16 impose the Moratorium under the facts then in existence.

17 39. In answer to paragraph 39 of Plaintiffs' Complaint, Defendants allege that
18 A.R.S. § 9-463.06 speaks for itself and deny the allegations therein.

19 40. In answer to paragraph 40 of Plaintiffs' Complaint, Defendants allege that
20 A.R.S. § 48-2001(D) speaks for itself and deny the allegations therein.

21 41. In answer to paragraph 41 of Plaintiffs' Complaint, Defendants deny the
22 allegations therein.

23 42. In answer to paragraph 42 of Plaintiffs' Complaint, Defendants deny the
24 allegations therein and affirmatively allege that Plaintiffs' refusal to finance or provide
25 financial guarantees for the construction of the necessary Existing Plant improvements is
26 the direct cause of any diminution in the value of Plaintiffs' properties.

1 43. In answer to paragraph 43 Plaintiffs' Complaint, Defendants are without
2 sufficient knowledge or information with which to form a belief as to the truth or falsity
3 of the allegations therein and, therefore, deny same.

4 44. In answer to paragraph 44 of Plaintiffs' Complaint, Defendants deny the
5 allegations therein. Defendants affirmatively allege that both the District and Yavapai
6 County have jurisdiction over particular aspects of wastewater treatment systems within
7 Yavapai County's boundaries.

8 45. In answer to paragraph 45 Plaintiffs' Complaint, Defendants are without
9 sufficient knowledge or information with which to form a belief as to the truth or falsity
10 of the allegations therein and, therefore, deny same.

11 46. In answer to paragraph 46 of Plaintiffs' Complaint, Defendants admit that
12 Plaintiffs contend that the platted and unsold lots are unsuitable for sale and thus
13 essentially worthless for residential purposes. Defendants are without knowledge or
14 information with which to form a belief as to the truth or falsity of Plaintiffs' contentions
15 and, therefore, deny same.

16 47. In answer to paragraph 46 of Plaintiffs' Complaint, Defendants admit that
17 Plaintiffs mailed a Notice of Claim that was dated March 18, 2010 and further
18 affirmatively allege that the Notice of Claim speaks for itself. Defendants affirmatively
19 allege that the Notice of Claim fails to comply with the requirements of A.R.S. § 12-
20 821.01.

21 **The Development Agreement Between The District and Harvard**

22 48. In answer to paragraph 48 Plaintiffs' Complaint, Defendants are without
23 sufficient knowledge or information with which to form a belief as to the truth or falsity
24 of the allegations therein and, therefore, deny same.

25 49. In answer to paragraph 49 of Plaintiffs' Complaint, Defendants deny the
26 allegations therein and affirmatively allege that the primary purpose of the District's
27 agreements was to assure that all customers within the District boundaries were provided
28 with the required facilities consistent with all applicable laws, rules and regulations.

1 50. In answer to paragraph 50 of Plaintiffs' Complaint, Defendants allege that the
2 Development Agreement speaks for itself and deny the allegations therein.

3 51. In answer to paragraph 51 of Plaintiffs' Complaint, Defendants allege that the
4 Development Agreement speaks for itself and deny the allegations therein.

5 52. In answer to paragraph 52 of Plaintiffs' Complaint, Defendants deny the
6 allegations therein and affirmatively allege that the primary purpose of the District's
7 agreements was to assure that all customers within the District boundaries were provided
8 with the required facilities consistent with all applicable laws, rules and regulations.

9 53. In answer to paragraph 53 of Plaintiffs' Complaint, Defendants allege that the
10 Development Agreement speaks for itself and deny the allegations therein.

11 54. In answer to paragraph 54 of Plaintiffs' Complaint, Defendants deny the
12 allegations therein.

13 55. In answer to paragraph 55 of Plaintiffs' Complaint, Defendants allege that the
14 Development Agreement speaks for itself and deny the allegations therein.

15 56. In answer to paragraph 56 Plaintiffs' Complaint, Defendants are without
16 sufficient knowledge or information with which to form a belief as to the truth or falsity
17 of the allegations therein and, therefore, deny same.

18 57. In answer to paragraph 57 Plaintiffs' Complaint, Defendants are without
19 sufficient knowledge or information with which to form a belief as to the truth or falsity
20 of the allegations therein and, therefore, deny same.

21 58. In answer to paragraph 58 of Plaintiffs' Complaint, Defendants admit the
22 allegations therein.

23 59. In answer to paragraph 59 of Plaintiffs' Complaint, Defendants deny the
24 allegations therein and affirmatively allege that the entire transcript of the deposition of
25 Gene Leasure, a deposition taken in a different matter pending before the Yavapai County
26 Superior Court, speaks for itself.

27 60. In answer to paragraph 60 of Plaintiffs' Complaint, Defendants deny the
28 allegations therein and affirmatively allege that said allegations substantially distort the

1 language of the August 6, 2009 letter from ADEQ.

2 61. In answer to paragraph 61 of Plaintiffs' Complaint, Defendants allege that the
3 Development Agreement speaks for itself and deny the allegations therein.

4 62. In answer to paragraph 62 of Plaintiffs' Complaint, Defendants allege that the
5 Development Agreement speaks for itself and deny the allegations therein.

6 63. In answer to paragraph 63 of Plaintiffs' Complaint, Defendants admit that
7 they expressly refused to accept the Existing Plant but deny that the District is the reason
8 for Harvard's alleged financial woes and affirmatively allege that said refusal is based, in
9 part, upon Harvard's failure to follow the advice of the engineering firm with which it
10 contracted.

11 64. In answer to paragraph 64 of Plaintiffs' Complaint, Defendants deny the
12 allegations therein and affirmatively allege that the Development Agreement speaks for
13 itself. Defendants further affirmatively allege that Harvard has received a substantial
14 benefit from the use of the effluent for Harvard's Talking Rock golf course.

15 65. In answer to paragraph 65 of Plaintiffs' Complaint, Defendants deny the
16 allegations therein.

17 66. In answer to paragraph 66 of Plaintiffs' Complaint, Defendants deny the
18 allegations therein and affirmatively allege that the Development Agreement speaks for
19 itself.

20 67. In answer to paragraph 67 of Plaintiffs' Complaint, Defendants deny the
21 allegations therein.

22 68. In answer to paragraph 68 of Plaintiffs' Complaint, Defendants deny the
23 allegations therein.

24 69. In answer to paragraph 69 of Plaintiffs' Complaint, Defendants deny the
25 allegations therein.

26 70. In answer to paragraph 70 of Plaintiffs' Complaint, Defendants deny the
27 allegations therein.

28 71. In answer to paragraph 71 of Plaintiffs' Complaint, Defendants deny the

1 allegations therein.

2 ...

3
4 **COUNT ONE**

5 **(Arizona Property Rights Protection Act against the District)**

6 72. In answer to paragraph 72 of Plaintiffs' Complaint, Defendants incorporate
7 by reference the allegations of the preceding paragraphs as if fully set forth herein.

8 73. In answer to paragraph 73 of Plaintiffs' Complaint, Defendants admit the
9 allegations therein and affirmatively allege that the Arizona Property Rights Protection Act
10 ("the Act") specifically excludes from its ambit, limitations or prohibitions of uses that are
11 for the protection of the public's health and safety, including rules and regulations relating
12 to health and sanitation, solid or hazardous waste, and pollution control. (A.R.S. § 12-
13 1134(B)(1)) as well as those that do not directly regulate an owner's land. (A.R.S. § 12-
14 1134(B)(6)).

15 74. In Answer to paragraph 74 of Plaintiffs Complaint, Defendants allege that
16 A.R.S. § 12-1134(A) speaks for itself and deny the allegations therein.

17 75. In answer to paragraph 75 of Plaintiffs' Complaint, Defendants deny the
18 allegations therein and affirmatively allege that Plaintiffs' actions are the cause of the
19 Moratorium.

20 76. In answer to paragraph 76 of Plaintiffs; Complaint, Defendants are without
21 sufficient knowledge or information with which to form a belief as to the truth or falsity of
22 Plaintiffs' allegation that a substantial portion of the value of their property is based on
23 their ability to construct new homes on their properties and, therefore, deny same. With
24 respect to the remaining allegations within paragraph 76, Defendants allege that the
25 Moratorium is the direct result of Plaintiffs' actions and that, by their failure to provide the
26 necessary funding or financial guarantees, Plaintiffs have, themselves, imposed the very
27 conditions about which they complain.

28 77. In answer to paragraph 77 of Plaintiffs' Complaint, Defendants deny the

1 allegations therein.

2 78. In answer to paragraph 78 Plaintiffs' Complaint, Defendants are without
3 sufficient knowledge or information with which to form a belief as to the truth or falsity
4 of the allegations therein and, therefore, deny same.

5 79. In answer to paragraph 79 of Plaintiffs' Complaint, Defendants deny the
6 allegations therein.

7 80. In answer to paragraph 80 of Plaintiffs' Complaint, Defendants admit the
8 allegations therein.

9 81. In answer to paragraph 81 of Plaintiffs' Complaint, Defendants admit that
10 Plaintiffs mailed a Notice of Claim that was dated March 18, 2010 and further affirmatively
11 allege that the Notice of Claim speaks for itself. Defendants affirmatively allege that the
12 Notice of Claim fails to comply with the requirements of A.R.S. § 12-821.01.

13 82. In answer to paragraph 82 of Plaintiffs' Complaint, Defendants deny the
14 allegations therein.

15 83. In answer to paragraph 83 of Plaintiffs' Complaint, Defendants deny the
16 allegations therein.

17 **COUNT TWO**

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

19 84. In answer to paragraph 84 of Plaintiffs' Complaint, Defendants incorporate
20 by reference the allegations of the preceding paragraphs as if fully set forth herein.

21 85. In answer to paragraph 85 of Plaintiffs' Complaint, Defendants deny the
22 allegations therein.

23 86. In answer to paragraph 86 of Plaintiffs' Complaint, Defendants deny the
24 allegations therein.

25 87. In answer to paragraph 87 of Plaintiffs' Complaint, Defendants admit that
26 Plaintiffs are owners of platted lands within the District boundaries but deny the remaining
27 allegations therein.

28 88. In answer to paragraph 88 of Plaintiffs' Complaint, Defendants admit that

1 Plaintiffs are a “party beneficially interested” but deny that there is a public duty as
2 described in paragraph 88 of which Plaintiffs may seek enforcement.

3 89. In answer to paragraph 89 of Plaintiffs’ Complaint, Defendants deny the
4 allegations therein.

5 90. In answer to paragraph 90 of Plaintiffs’ Complaint, Defendants deny the
6 allegations therein.

7 **COUNT THREE**

8 **(District Breach of Contract)**

9 91. In answer to paragraph 91 of Plaintiffs’ Complaint, Defendants incorporate
10 by reference the allegations of the preceding paragraphs as if fully set forth herein.

11 92. In answer to paragraph 92 of Plaintiffs’ Complaint, Defendants admit that the
12 Development Agreement is a contract between Harvard and the District and affirmatively
13 allege that, as the breaching party, Harvard is not entitled to enforcement of that
14 Agreement. Defendants further affirmatively allege that Harvard misled the District into
15 believing that Harvard would not compromise the 120,000 GPD plant and decommission it
16 for the sole purpose of obtaining the effluent necessary to provide water for Talking Rock’s
17 golf course.

18 93. In answer to paragraph 93 of Plaintiffs’ Complaint, Defendants deny the
19 allegations therein.

20 94. In answer to paragraph 94 of Plaintiffs’ Complaint, Defendants deny the
21 allegations therein.

22 95. In answer to paragraph 95 of Plaintiffs’ Complaint, Defendants deny the
23 allegations therein.

24 96. In answer to paragraph 96 of Plaintiffs’ Complaint, Defendants deny the
25 allegations therein.

26 97. In answer to paragraph 97 of Plaintiffs’ Complaint, Defendants deny the
27 allegations therein.

28 98. In answer to paragraph 98 of Plaintiffs’ Complaint, Defendants deny the

1 allegations therein.

2 99. In answer to paragraph 99 of Plaintiffs' Complaint, Defendants deny the
3 allegations therein.

4 100. In answer to paragraph 100 of Plaintiffs' Complaint, Defendants deny the
5 allegations therein.

6 101. In answer to paragraph 101 of Plaintiffs' Complaint, Defendants deny the
7 allegations therein.

8 102. In answer to paragraph 102 of Plaintiffs' Complaint, Defendants deny the
9 allegations therein.

10 **COUNT FOUR**

11 **(District Breach of Covenant of Good Faith and Fair Dealing)**

12 103. In answer to paragraph 103 of Plaintiffs' Complaint, Defendants incorporate
13 by reference the allegations of the preceding paragraphs as if fully set forth herein.

14 104. In answer to paragraph 104 of Plaintiffs' Complaint, Defendants admit the
15 allegations therein.

16 105. In answer to paragraph 105 of Plaintiffs' Complaint, Defendants deny the
17 allegations therein.

18 106. In answer to paragraph 106 of Plaintiffs' Complaint, Defendants deny the
19 allegations therein.

20 107. In answer to paragraph 107 of Plaintiffs' Complaint, Defendants deny the
21 allegations therein.

22 108. In answer to paragraph 108 of Plaintiffs' Complaint, Defendants deny the
23 allegations therein.

24 109. In answer to paragraph 109 of Plaintiffs' Complaint, Defendants deny the
25 allegations therein.

26 110. In answer to paragraph 110 of Plaintiffs' Complaint, Defendants deny the
27 allegations therein.

28 111. In answer to paragraph 111 of Plaintiffs' Complaint, Defendants deny the

1 allegations therein.

2 112. Defendants deny each and every allegation not specifically admitted herein.

3 **AFFIRMATIVE DEFENSES**

4 113. Plaintiffs' Complaint is barred by A.R.S. § 12-820.01 because the actions
5 taken by the Board of Directors of the District are acts involving fundamental
6 governmental policy and the exercise of their discretion. The District is a "public entity,"
7 which is defined as including "this state and any political subdivision of this state." A.R.S.
8 § 12-820 (6).

9 A.R.S. § 12-820.01 provides:

10 A. A public entity shall not be liable for acts and omissions of its
11 employees constituting either of the following:

12 * * *

13 2. The exercise of an administrative function involving the
14 determination of fundamental governmental policy.

15 B. The determination of a fundamental governmental policy
16 involves the exercise of discretion and shall include, but is not limited to:

17 1. A determination of whether to seek or whether to provide
18 the resources necessary for any of the following:

- 19 (a) The purchase of equipment.
- 20 (b) The construction or maintenance of facilities.
- 21 (c) The hiring of personnel.
- 22 (d) The provision of governmental services.

23 2. A determination of whether and how to spend existing resources,
24 including those allocated for equipment, facilities and personnel.

25 * * *

26 114. Plaintiffs' Complaint is barred by A.R.S. § 12-820.02, because the three
27 Directors of the District are "employees" of the District. "Employee" is defined as
28 including an officer "who is authorized to perform any act or service, except that employee
does not include an independent contractor." A.R.S. § 12-820 (1). "Public employee"
means "an employee of a public entity," as defined under A.R.S. § 12-820(5).

1 A.R.S. § 12-820.02 provides:

2 Unless a public employee acting within the scope of his employment
3 intended to cause injury or was grossly negligent, neither a public entity nor
4 a public employee is liable for:

5 * * *

6 5. The issuance of or failure to revoke or suspend any permit,
7 license, certificate, approval, order or similar authorization for which
8 absolute immunity is not provided pursuant to § 12-820.01.

9 115. Plaintiffs' Complaint is barred by A.R.S. § 48-187. The District's Board of
10 Directors are immune from civil liability under A.R.S. § 48-187 because their conduct
11 were discretionary acts for which the rational bases have been documented in District
12 meeting minutes and other documents, including the exhibits hereto, and such actions are
13 protected from judicial action.

14 A.R.S. § 48-187 provides:

15 A person who serves on the governing body of a district is immune
16 from civil liability and is not subject to suit directly or by contribution
17 for any act or omission resulting in damage or injury if such person
18 was acting in good faith and within the scope of his official capacity,
19 unless the damage or injury was caused by willful and wanton or
20 grossly negligent conduct of duties of such person. Nothing in this
21 section limits or modifies the duties of such person to the district. As
22 used in this section "official capacity" means any decision, act or
23 event undertaken by the district in furtherance of the purpose or
24 purposes for which the district was formed or any ancillary or
25 additional purposes authorized by law.

26 116. Defendants failed to comply with A.R.S. § 12-821.01.

27 117. Plaintiffs' claims are barred by Plaintiffs' unclean hands in misappropriating
28 and failing to account for monies collected from lot purchasers or otherwise set aside for
said purchasers for the purpose of constructing the Existing Plant Improvements that
Plaintiffs now refuse to fund and perform.

118. Plaintiffs are estopped from recovering the amounts sought herein as a result
of the actions taken by the District in reliance upon Plaintiff Harvard's representations and
assurances.

119. As an affirmative defense, Defendants affirmatively allege that facts may

1 come to light which support any or all of the affirmative defenses set forth in Rule 8(c),
2 Arizona Rules of Civil Procedure, and, therefore, Defendants plead accord and satisfaction,
3 arbitration and award, assumption of risk, discharge in bankruptcy, duress, estoppel, fraud,
4 illegality, *laches*, license, release, *res judicata*, statute of frauds, statute of limitations,
5 waiver and any other matter constituting an avoidance or affirmative defense within the
6 contemplation of said Rule.

7 WHEREFORE, having fully answered Defendants' Complaint, Plaintiffs
8 respectfully pray for the following relief:

9 A. That Plaintiffs' Complaint be dismissed and that Plaintiffs take nothing
10 thereby;

11 B. That Defendants recover their reasonable attorneys' and costs pursuant to the
12 terms of the Development Agreement or such other agreement as this Court may determine
13 to govern or, alternatively, pursuant to A.R.S. §§ 12-341.01 and 12-341, respectively; and

14 C. For such other and further relief as the Court may find just and proper.

15 DATED this 12th day of January, 2011.

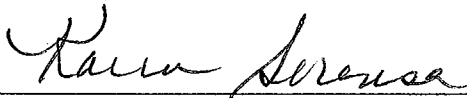
16 SACKS TIERNEY P.A.

17
18
19 By: 

20 Julianne C. Wheeler
Attorneys for Defendants

21 COPY OF THE FOREGOING
22 MAILED this 12 day of January, 2011, to:

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