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10 Attorneys for Defendant PC Village  
11 Association, Inc.

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**SUPERIOR COURT OF THE STATE OF ARIZONA**  
**COUNTY OF COCONINO**

ROBERT R. HAWK and CECELIA J.  
HAWK, husband and wife,

Plaintiffs,

v.

PC VILLAGE ASSOCIATION, INC., an  
Arizona corporation,

Defendant.

NO. CV2011-00775

**ANSWER**

Defendant, PC Village Association, ("Defendant"), by and through undersigned counsel, for its separate Answer to the Complaint of Robert R. Hawk and Cecelia J. Hawk ("Plaintiff"), admits, denies, and alleges as follows:

1. This Defendant denies each and every, all and singular, of the allegations contained in Plaintiff's Complaint which are not hereafter admitted or otherwise plead to.

**COMMON ALLEGATIONS**

2. Defendant admits the allegations in paragraph 1.

3. Defendant admits the allegations in paragraph 2.

4. Defendant admits the allegations in paragraph 3.

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1           5. Defendant admits the allegations in paragraph 4 to the extent  
2 Defendant is charged with certain managerial responsibilities under the CC&R's.

3           6. Defendant admits the allegations in paragraph 5.

4           7. Defendant admits the allegations in paragraph 6.

5           8. Defendant admits the allegations in paragraph 7.

6           9. Defendant admits that the statutory language quoted in paragraph 8 is  
7 accurate.

8                           **COUNT I – DECLARATORY AND INJUNCTIVE RELIEF**

9           10. Defendant re-asserts and incorporates the responses and allegations  
10 of paragraphs 1 through 9 above as though fully set forth here.

11           11. Defendant is without sufficient information to determine whether the  
12 allegations in paragraph 9 are true or false and therefore denies same.

13           12. Defendant is without sufficient information to determine whether the  
14 allegations in paragraph 10 are true or false and therefore denies same.

15           13. Defendant is without sufficient information to determine whether the  
16 allegations in paragraph 11 are true or false and therefore denies same.

17           14. Defendant is without sufficient information to determine whether the  
18 allegations in paragraph 12 are true or false and therefore denies same.

19           15. Defendant is without sufficient information to determine whether the  
20 allegations in paragraph 13 are true or false and therefore denies same.

21           16. Defendant is without sufficient information to determine whether the  
22 allegations in paragraph 14 are true or false and therefore denies same.

23           17. Defendant admits the allegations in paragraph 15, but reserves the  
24 right to raise any other claims, counter claims and defenses that Defendant may deem  
25 proper, including but not limited to constitutional challenges of A.R.S. § 33-1808 and any  
26 other applicable statutes.

1           18. Paragraph 16 of Plaintiff's Complaint calls for a legal conclusion and  
2 therefore does not require an affirmative response. To the extent a response is warranted,  
3 Defendant denies the allegations in paragraph 16.

4           19. Defendant admits the allegations in paragraph 17.

5           20. Defendant denies the allegations in paragraph 18.

6           21. Responding to paragraph 19, Defendant admits that Plaintiff's claim  
7 arises out of contract, but Defendant denies that Plaintiff can be awarded attorney's fees  
8 and court costs.

9                           **DEFENDANT'S AFFIRMATIVE DEFENSES**

10           22. Defendant re-asserts and incorporates the responses and allegations  
11 of paragraphs 1 through 21 above as though fully set forth here.

12           23. As and for a separate defense and in the alternative, Defendant  
13 alleges that Plaintiff's Complaint fails to state a claim upon which relief may be granted.

14           24. As and for a separate defense and in the alternative, Defendant  
15 alleges that Plaintiff has failed to mitigate his damages, thus barring or reducing the  
16 recovery.

17           25. As and for a separate defense and in the alternative, Defendant  
18 alleges that another person/entity, not named in this lawsuit, is responsible for all or part  
19 of Plaintiff's damages.

20           26. As and for a separate affirmative defense, and in the alternative,  
21 Defendants wish to place Plaintiff and counsel for Plaintiff on notice that discovery may  
22 yield additional affirmative defenses that will necessitate seasonal supplementation of  
23 Defendants' Answer. Said affirmative defenses include, but are not necessarily limited to,  
24 those matters constituting an avoidance or other affirmative defenses set forth in Rule 8,  
25 Ariz.R.Civ.P.

26                           **DEFENDANT'S COUNTER CLAIMS**

27           27. Defendant re-asserts and incorporates the responses and allegations  
28 of paragraphs 1 through 26 above as though fully set forth here.

1           28. A genuine controversy exists as to whether Plaintiff has the right to  
2 post a "for sale" sign on his real property within Pine Canyon according to Section 12.3 of  
3 the CC&R's.

4           29. Plaintiff violated Section 12.3 of the CC&R's when he caused a "for  
5 sale" sign to be erected on real property subject to the CC&R's.

6           30. Section 12.3 of the CC&R's was valid and enforceable against  
7 Plaintiff prior to the passage of A.R.S. § 33-1808(F).

8           31. Pursuant to Section 12.18 of the CC&R's, Defendant had a right to  
9 "enter any Lot, Tract or Condominium Property in which a violation of [Section 12]  
10 restrictions exists and . . . correct the violation at the expense of the Owner of the Lot,  
11 Tract or Condominium Property."

12           32. Under Section 16.3 of the CC&R's, Defendant is entitled to recover  
13 "[a]ll expenses, if any, . . . in connection with any action or proceeding . . . including court  
14 costs and reasonable attorneys' fees and other fees and expenses."

15           33. Defendant is also entitled to recover its reasonable attorneys' fees  
16 from Plaintiff pursuant to A.R.S. § 12-341.01.

17           **DEFENDANT'S REQUEST FOR PRELIMINARY INJUNCTION**

18           34. Defendant re-asserts and incorporates the responses and allegations  
19 of paragraphs 1 through 33 above as though fully set forth here.

20           35. If Plaintiff is not enjoined from displaying a "for sale" sign, others  
21 will likely display for sale signs during the pendency of this suit.

22           36. The display of "for sale" signs will cause real property values in Pine  
23 Canyon to decline.

24           37. Defendant's counter claims have a strong likelihood of success on the  
25 merits.

26           38. Defendant will likely suffer irreparable harm if relief is not granted.

27           39. A balance of hardships favors Defendant.

28           40. Public policy favors granting an injunction.

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41. Presently, the status quo is that no "for sale" signs are displayed in Pine Canyon.

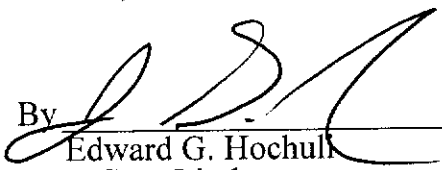
42. Defendant is entitled to a preliminary injunction preventing Plaintiff from posting any "for sale" signs on his lot during the pendency of this suit.

**WHEREFORE**, Defendant respectfully requests that this Court enter Judgment in favor of Defendant and against Plaintiff as follows:

- A. Declaring Section 12.3 of the CC&R's valid and enforceable;
- B. Declaring that A.R.S. § 33-1808(F) does not apply retroactively to CC&R's enacted prior to the statute's effective date;
- C. Declaring that, even if A.R.S. § 33-1808(F) does apply retroactively, it is unconstitutional under A.R.S. Const. Art. II, § 25 and USCS Const. Art. I, § 10, Cl 1;
- D. Enjoining Plaintiff from posting any "for sale" sign in Pine Canyon during the pendency of this suit;
- E. Ordering Plaintiff to pay to Defendant all costs and reasonable attorney's fees incurred herein;
- F. Awarding Defendant such other and further relief as this Court deems just and proper.

DATED this 31~~st~~ day of October, 2011.

JONES, SKELTON & HOCHULI, P.L.C.

By 

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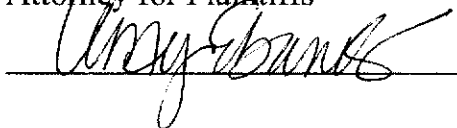
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ORIGINAL of the foregoing mailed for filing this 31<sup>st</sup> day of October, 2011 via Federal Express to:

Clerk of the Court  
Coconino County Superior Court  
200 N. San Francisco St. (Courthouse)  
Flagstaff AZ. 86001

COPY of the foregoing mailed this 31<sup>st</sup> day of October, 2011, to:

Tevis Reich  
Attorney at Law  
6 East Dale Avenue  
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