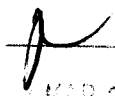


TEVIS REICH  
6 East Dale Avenue  
Flagstaff, Arizona 86001

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**TEVIS REICH**  
6 East Dale Avenue  
Flagstaff, Arizona 86001  
928-213-1800  
928-779-0447 (fax)  
SBA #022658  
Tevis@TReichLaw.com  
*Attorney for Plaintiffs/Counter Defendants*

DEBORAH YOUNG, CLERK  
BY  DEPUTY  
MAR 30 PM 4:02  
**FILED**

**SUPERIOR COURT OF ARIZONA  
COCONINO COUNTY**

ROBERT R. HAWK and CECELIA J. )  
HAWK, husband and wife, )  
 )  
Plaintiffs/Counter Defendant, )  
 )  
vs. )  
 )  
PC VILLAGE ASSOCIATION INC., an )  
Arizona Corporation, )  
 )  
Defendant/Counter Plaintiffs. )

Case No.: CV 2011-00775

**AFFIDAVIT OF ATTORNEY'S FEES  
AND STATEMENT OF COSTS**

Pursuant to the Court's Under Advisement Ruling dated March 26, 2012, and its award of Plaintiffs' reasonable Attorney's fees and costs pursuant to A.R.S. § 12-341.01(A), the Plaintiffs, through the undersigned counsel, submits this affidavit supporting its request and award for Plaintiffs' reasonable attorney's fees and costs:

1. I make this affidavit on my own personal knowledge and I am competent to testify to the things stated herein.
2. I am the attorney of record in the above-captioned matter and was retained by the Plaintiffs to represent them in this matter. I submit this affidavit in response to the Court's Ruling dated March 26, 2012 and in support of Plaintiffs' request for attorney's fees and costs as granted by the Court in this matter.

1 3. In connection with my practice, I am responsible for the billing of attorney's fees  
2 (including costs and case related expenses) and I am familiar with the fees and charges  
3 customarily charged by other attorneys for similar matters and services.

4 4. Throughout this litigation I have been the responsible attorney for client  
5 communications, decisions and the management of this litigation.

6 5. At all times, I delegated responsibility for performing necessary work on behalf of my  
7 clients in a manner that would avoid duplication of effort and would be most economical.

8 6. Exhibit 1 attached hereto sets forth in detail the services that were rendered in  
9 connection with this litigation.

10 7. The following is a summary of Exhibit 1, set forth the time expended by the legal  
11 personnel and their respective hourly rates. The time and amounts set forth below was billed to  
12 and paid by the client.

| ATTORNEY                | RATE     | HOURS | AMOUNT   |
|-------------------------|----------|-------|----------|
| Tevis Reich             | \$200.00 | 92.30 | \$18,460 |
| <b>LEGAL ASSISTANTS</b> |          |       |          |
| Carol Smith             | \$95.00  | 0.50  | \$47.50  |
| Nicole Grohmann         | \$85.00  | 11.40 | \$969.00 |

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21 8. All times set forth in Exhibit 1 are directly related to this case and the matters and  
22 issues before this Court. Matters which are deemed unrelated or unreasonable have been  
23 removed. Certain privileged matters in Exhibit 1 have been redacted to protect and preserve  
24 the attorney-client privilege.

25 9. I am familiar with the guidelines for determining reasonableness of attorney's fees and  
26 billing rates provided in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927

1 (App. 1983) and have considered these guidelines in determining a reasonable fee for the  
2 services performed by myself as the lead attorney and the legal assistants in connection with  
3 this case.

4 10. Under Arizona law, the prevailing party is entitled to fees for time expended by lawyers  
5 and legal assistants. *Continental Townhouse East Unit One Ass'n v. Brockbank*, 152 Ariz. 537,  
6 544-45, 733 P.2d 1120, 1127-78 (App. 1986).

7 11. The records in Exhibit 1 were generated from entries that were recorded in the law  
8 office's computerized time entry and billing program. The entries were made  
9 contemporaneously with the service being rendered or cost being assessed and was made by a  
10 person with first hand knowledge, and in most cases by the person rendering the service.  
11 Statements are generated on a monthly basis and sent to the client who is expected to pay the  
12 monthly invoices. These practices and procedures are standard and are within the law office's  
13 normal business operations.

14 12. Plaintiffs are entitled to recover a reasonable attorney's fee for every item of service  
15 which would have been undertaken by a reasonable and prudent lawyer to advance or protect  
16 his client's interest. See *McDowell Mountain Ranch Community Association, Inc. v. Simons*,  
17 216 Ariz. 266 ¶21 n.6, 165 P.3d 667 (App. 2007); *Schweiger v. China Doll Restaurant*, 138  
18 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983).

19 20  
21 13. In support of establishing that the fee requested herein is reasonable, and in accordance  
22 with the factors set forth in *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144 (Ariz. 1959), I  
23 state the following:

24 a. I was originally admitted to practice law in 2002 and have practiced law full time  
25 since being admitted. I currently hold an active license to practice in Arizona and  
26 Florida and I am admitted to practice before *all* the Federal District Courts within

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those jurisdictions. I am also admitted to practice before the 9<sup>th</sup> Circuit and 11<sup>th</sup> Circuit U.S. Court of Appeals. I opened my own law office in 2005 in Flagstaff. My area of practice is exclusively business and civil law with an emphasis and focus on real estate law and construction law. The issues in this case fall within my area of practice and expertise. I am familiar with the rates charged by other attorney's within the legal community and the rates I charge are reasonable and commensurate with the rates of other attorneys and law offices with similar experience and skills.

- b. The legal issues in this case are ones that arose from new legislation which lacked any on-point legal precedent. In this respect, the character of work performed in this case amounted to a novel legal concept of state-wide importance without any binding precedent. The degree difficulty in analysing and briefing the legal concepts in this case was *above* average and required a degree of legal skills and expertise that was above average. It involved the analysis and briefing of more complex constitutional issues and their effect on enacted state laws.
- c. In the then end, the results obtained on behalf of the Plaintiffs in this matter were excellent and successful in all respects. In significant part, this is due to the experience of the Plaintiffs' attorney and the legal assistants. The case was able to be resolved in a relatively swift manner and this minimized the cost to the litigants and now, the cost for which Plaintiffs are requesting reimbursement for.

14. As additional support in demonstrating the reasonableness of the requested award, the Plaintiffs' offered and discussed a *reasonable* settlement with Defendant on several occasions. One of the factors this Court should consider is whether the litigation could have been avoided or settled and whether the Defendant rejected a reasonable settlement offer. *See, Associated*

1 *Indem. Corp. v. Warner*, 143 Ariz. 567, 694 P.2d 1181 (1985). *See also*, A.R.S. § 12-  
2 341.01(A) (“If a written settlement offer is rejected and the judgment finally obtained is equal  
3 to or more favorable to the offeror than an offer made in writing to settle any contested action  
4 arising out of a contract, the offeror is deemed to be the successful party from the date of the  
5 offer and the court may award the successful party reasonable attorney fees.”) In this case, the  
6 following settlement discussions occurred:

- 7 a. After the lawsuit was initiated, there was an open-ended extension provided,  
8 during which the time the parties discussed how to resolve the matter without  
9 resorting to litigation. The undersigned, on behalf of the Plaintiff, offered to  
10 resolve and dismiss the lawsuit if Plaintiffs were allowed to place a “for sale”  
11 sign on their property until it sold without interference by Defendant. The  
12 Defendant essentially counter-offered by allowing this, but with the caveat that  
13 the lawsuit would be placed on the inactive calendar until it was eventually  
14 dismissed and that this would be an unsigned and informal agreement. This was  
15 not acceptable to Plaintiffs because the Plaintiffs wanted a resolution that  
16 affirmatively resolved the legal issues and did not allow the Defendant to  
17 change its position later (unless the law changed or was decided on the area of  
18 dispute). If the Defendant changed its position at a later point it would put the  
19 parties back in the same position as they were and force litigation once again.  
20 Moreover, the change in position by Defendant could occur during a “selling”  
21 season when the Plaintiffs’ for sale sign would be most visible and effective.  
22 Ultimately, settlement negotiations broke down and the Plaintiffs requested that  
23 an Answer to the lawsuit be filed. A copy of Plaintiffs’ position at the time is  
24 more detailed on Exhibit 2.  
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b. Settlement negotiations nonetheless, continued. In October, 2011 the Defendant's attorney indicated that his client would resolve the matter by allowing a for sale sign to be posted on the property without the ability of the Defendant to later renege on its acquiescence (unless the law changed or was clarified). A settlement agreement with the terms as understood by Plaintiffs was prepared and provided to Defendant's attorney. *See Ex. 3*. In addition to the foregoing, it provided for the dismissal of the Plaintiffs' claim, each party to bear their own attorney's fees and costs. The Defendant ultimately refused to sign the agreement.

c. Around November, 2011, just after Plaintiffs filed their motion for summary judgment, Plaintiffs, by and through the undersigned, again orally offered settlement upon the same terms and conditions as the prior agreement (*See Ex. 3*), with the caveat that Defendant pay Plaintiff \$5,000 for it attorney's fees accrued to that point. Again, the Defendant rejected the offer.

15. I believe that every item of service taken on behalf of my client would have been undertaken by a reasonable and prudent lawyer to advance and protect his client's interest and therefore, request and award for the same. *See McDowell Mountain Ranch Community Association, Inc. v. Simons*, 216 Ariz. 266 ¶21 n.6, 165 P.3d 667 (App. 2007); *Schweiger v. China Doll Restaurant*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983).

**VERIFIED STATEMENT OF COSTS**

16. Exhibit 1 also reflects taxable costs incurred on behalf of Plaintiffs in this matter.

17. After reviewing the time sheets and evaluating the efforts necessary to conduct this litigation and considering the results obtained I believe that these amounts are reasonable and

1 appropriate, and therefore, I request on behalf of the Plaintiffs that the Court award the  
2 following:

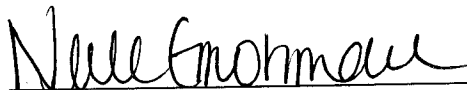
3 ATTORNEYS FEES \$ 19,476.50  
4 COSTS \$ 296.00  
5 TOTAL \$ 19,722.50



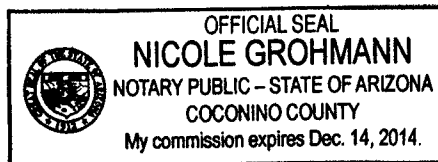
6  
7 Tevis Reich  
Attorney for Plaintiffs/Counter Defendants

8  
9 STATE OF ARIZONA )  
10 ) ss.  
11 County of Coconino )

12 SUBSCRIBED AND SWORN to before me this 30 day of March, 2012 by Tevis  
13 Reich.

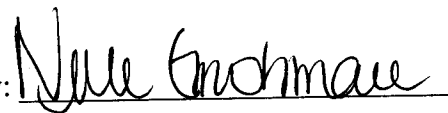
14   
15 Notary Public

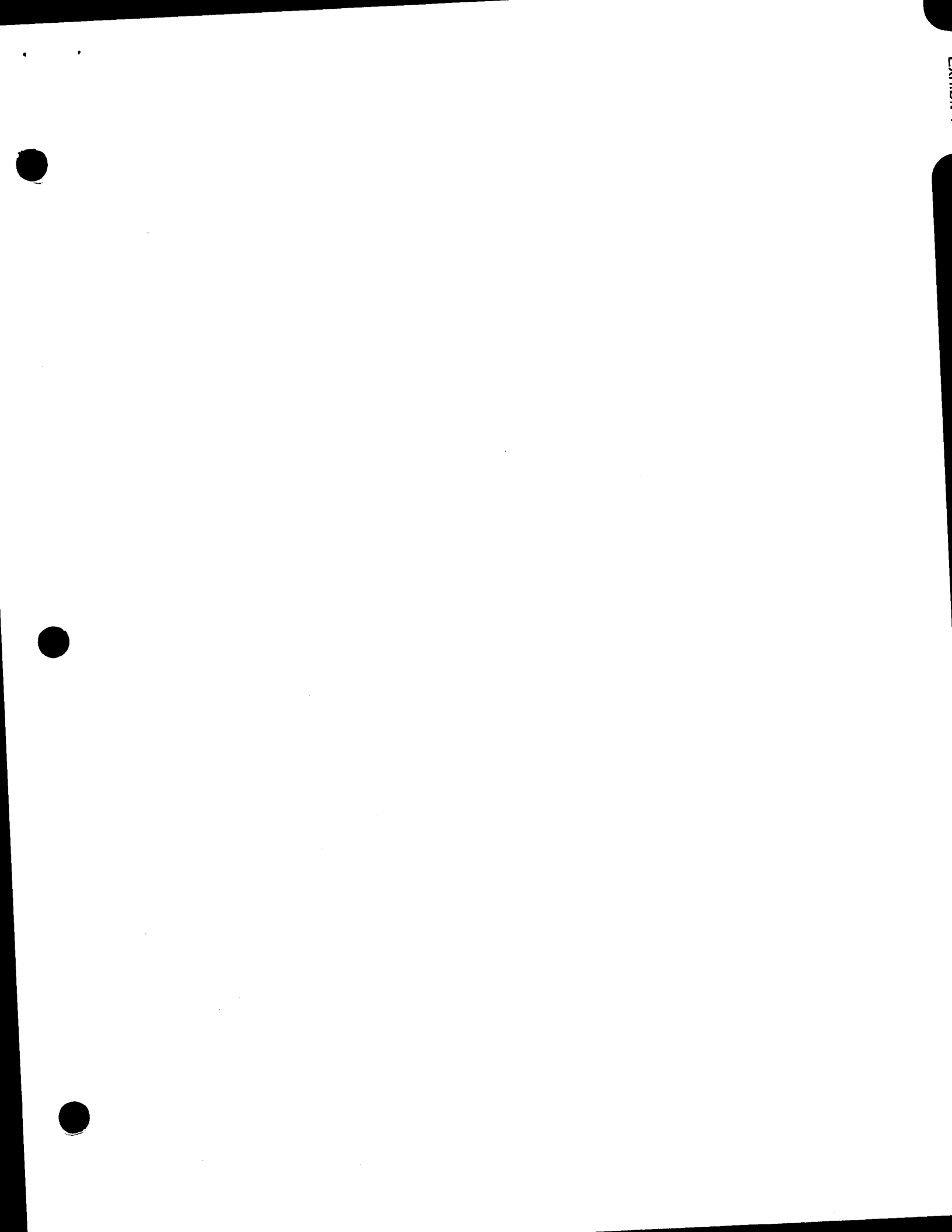
16 Commission Expiration Date:



17  
18 A copy of the foregoing  
19 mailed and emailed this  
30 day of March, 2012 to:

20 Edward G. Hochuli  
21 J. Gary Linder  
22 Jones, Skelton & Hochuli, P.L.C.  
2901 N. Central Ave., Suite 800  
Phoenix, AZ 85012

23  
24 By: 



**Tevis Reich, Attorney at Law**

6 East Dale Avenue  
Flagstaff, AZ 86001

Robert Hawk  
2868 S. Greenside Pl.  
Green Valley, AZ 85614

March 30, 2012


In Reference To: Pine Canyon

Professional Services

|              |   | <u>Hrs/Rate</u>   | <u>Amount</u> |
|--------------|---|-------------------|---------------|
| 8/22/2011 TR | Review documents (CC&R's) and legal review of statute concerning posting for sale sign on property; memo to file. Attempted contact with client to try to explain findings.   | 0.60<br>200.00/hr | 120.00        |
| 8/23/2011 TR | Telephone call to Robert Hawk - discuss findings in relation to display of signage on vacant lot.   | 0.20<br>200.00/hr | 40.00         |
| 8/24/2011 TR | Return telephone call regarding bill sponsor's interpretation regarding signage. Research legislative history for intent of governing statute.  | 1.10<br>200.00/hr | 220.00        |
| 8/25/2011 TR | Continued legal research and review of legislative history and law which was enacted to prevent and override HOA from prohibiting for sale signs; prepare and draft letter to HOAMCO regarding their illegal/unauthorized practice. | 2.10<br>200.00/hr | 420.00        |
| NG           | Prepare initial demand letter to PC Village Association Inc. regarding the removal of the for sale sign on vacant lot.  | 0.80<br>85.00/hr  | 68.00         |
| 8/26/2011 TR | Receive and review letter from PC HOA; review statutes; legal research regarding ex post facto argument; amend and revise letter and finalize the same.   | 1.40<br>200.00/hr | 280.00        |
| 8/29/2011 TR | Review proposed letter from client addressed to HOA; make suggestions and comments per client's request and return to client.   | 0.30<br>200.00/hr | 60.00         |
| 9/6/2011 TR  | Receive email from Warren Smith - PC president regarding their position on signs. Receive emails from client. Prepare email requesting contact for update on meeting and further direction.   | 0.30<br>200.00/hr | 60.00         |
| 9/7/2011 TR  | Telephone call with Robert regarding result of meeting/conversation with PC president; discuss options for proceeding; receive authority to proceed and file lawsuit.   | 0.30<br>200.00/hr | 60.00         |

Robert Hawk

|            |  | <u>Hrs/Rate</u>   | <u>Amount</u> |
|------------|--|-------------------|---------------|
| 9/8/2011   | NG Prepare Verification pages for both Robert and Cecilia to sign.   | 0.40<br>85.00/hr  | 34.00         |
| 9/9/2011   | TR Meet with clients; discuss strategy for lawsuit.  | 0.20<br>200.00/hr | 40.00         |
| 9/13/2011  | TR Telephone call with Robert; answer questions concerning collateral lawsuit and effect on this matter.   | 0.20<br>200.00/hr | 40.00         |
| 9/14/2011  | TR Research cause of action; legal research and review of public records regarding governing documents; prepare and draft complaint; prepare email to client for final approval.   | 2.60<br>200.00/hr | 520.00        |
| 9/15/2011  | NG Prepare Summons for PC Village Association, Civil Case Cover Sheet and Certificate Regarding Arbitration. Finalize Complaint and all other documents to be filed with Coconino County Superior Court.   | 0.60<br>85.00/hr  | 51.00         |
| 9/16/2011  | NG Prepare request for service to Palmer Investigative Services in Prescott to serve the Summons and Complaint.  | 0.20<br>85.00/hr  | 17.00         |
| 9/26/2011  | TR Telephone conference with Larry Rollin, who introduced himself as opposing counsel; discuss his offer for allowing sign to be re-posted in exchange for open ended extension to Answer Complaint.   | 0.40<br>200.00/hr | 80.00         |
| 9/27/2011  | TR Receipt and review certificate of service for lawsuit; direct filing and payment.   | 0.20<br>200.00/hr | 40.00         |
| 9/29/2011  | TR Prepare email to client regarding offer of settlement.  | 0.20<br>200.00/hr | 40.00         |
| 10/3/2011  | TR Telephone call from Robert; discuss PC's quasi settlement offer and implications of the same; answer questions and receive direction. Telephone call to Larry Rollin - discuss proposal for settlement and method for achieving the same.   | 0.70<br>200.00/hr | 140.00        |
| 10/7/2011  | TR Telephone call from counsel for insurance now representing PC. Discuss facts and settlement previously arranged.  | 0.20<br>200.00/hr | 40.00         |
| 10/10/2011 | TR Meet with client; discuss status. Prepare draft of settlement agreement. Prepare, draft and finalize 1st initial draft of settlement agreement; transmit to opposing counsel for review and comment and copy client. Telephone call from Larry Rollin - discuss non-authority of josh to conduct any business on behalf of HOA; forward emails and settlement agreement prepared to Mr. Rollin. | 2.40<br>200.00/hr | 480.00        |
| 10/11/2011 | TR Receipt and review email concerning settlement agreement and items for revision; make brief notation to file and respond to the email.  | 0.20<br>200.00/hr | 40.00         |
| 10/12/2011 | TR Telephone call from Gary Linder (Jones Skelton) - discuss internal controversy with representation between two law firms; discuss Rollins vision of settlement contrasted with Mr. Hawks; discuss firm term of settlement as a condition of resolving matter. Prepare email to Linder   | 1.10<br>200.00/hr | 220.00        |

|            |  | <u>Hrs/Rate</u>   | <u>Amount</u> |
|------------|--|-------------------|---------------|
|            | regarding intentions to withdraw open-ended answer period if settlement progress is not made. Telephone call to Robert and provide update.   |                   |               |
| 10/20/2011 | TR Briefly discuss status with Robert; prepare and draft letter requesting that Answer be filed and matter progressed.   | 0.40<br>200.00/hr | 80.00         |
|            | NG Prepare dictated letter to Larry Rollin, Jonathan Confer, Brandi Blair and Gary Linder regarding filing their Answer to the lawsuit.  | 0.60<br>85.00/hr  | 51.00         |
| 10/24/2011 | TR Telephone call from Gary Linder; discuss potential settlement; discuss involvement of HOA/Linder/Rollin and potential legal theories and outcomes. Telephone call with client; relay information and client's position to Gary Linder   | 1.40<br>200.00/hr | 280.00        |
| 10/27/2011 | TR Receipt and review email from Gary Linder requesting extension to file an Answer; telephone call with client; prepare response to email according to client's wishes. Telephone call from Mansfield regarding background and thoughts on legal issues.  | 0.70<br>200.00/hr | 140.00        |
| 11/1/2011  | TR Receipt and review Answer (and unlabeled counterclaim) along with certificate of Arbitration and demand for jury trial; direct preparation of draft to unlabeled counterclaim and copy client on items received.  | 1.20<br>200.00/hr | 240.00        |
|            | NG Prepare draft of Answer to Defendant's Counterclaim.  | 0.80<br>85.00/hr  | 68.00         |
| 11/3/2011  | TR Meet with Robert; discuss implications and meaning of counterclaim; discuss response;   | 0.60<br>200.00/hr | 120.00        |
| 11/4/2011  | TR Finalize and direct filing of Answer to MSJ; initial research on timing for earliest date for filing MSJ; begin work on MSJ. Review file and begin preparation of MSJ; prepare statement of facts; research legislative history of 33-441; begin preparation of legal memorandum.                             | 2.80<br>200.00/hr | 560.00        |
| 11/8/2011  | TR Continued preparation of MSJ; research and draft legal enforceability of CC&R's after legislature and preempted them; discuss invalidity and illegality of contract provisions; discuss policy considerations and legislative intent; legal research (nation wide) on similar cases involving for sale signs. | 3.80<br>200.00/hr | 760.00        |
| 11/14/2011 | TR Review and finalize draft of MSJ; prepare email and send to client for review and comment.  | 1.70<br>200.00/hr | 340.00        |
| 11/15/2011 | TR Receive email from client regarding MSJ; telephone call with client and answer questions; finalize MSJ and direct filing of the same.   | 1.30<br>200.00/hr | 260.00        |
|            | NG Finalize Motion for Summary Judgment and prepare copies of all exhibits.  | 0.70<br>85.00/hr  | 59.50         |

|            |  | <u>Hrs/Rate</u>   | <u>Amount</u> |
|------------|--|-------------------|---------------|
| 11/17/2011 | TR Telephone call from Gary Linder - discuss his client's newest proposed response to settlement. Telephone call to Robert Hawk - discuss conversation with Mr. Linder; discuss counter.   | 0.60<br>200.00/hr | 120.00        |
| 12/8/2011  | TR Telephone call from Gary Linder - discuss his client's request for an extension and PC's rejection of counteroffer for settlement. Telephone call with in house counsel for Arizona Association of Realtors, Michelle Lind (AAR was main proponent and advocate for enactment of legislation being litigated); advise of case and status for purposes of potential future consulting and assistance with common position. | 1.10<br>200.00/hr | 220.00        |
| 12/12/2011 | TR Receipt and review legal research and material from consulting AAR on point to issue at hand; copy client; telephone call with Robert Hawk - provide update on status.  | 0.60<br>200.00/hr | 120.00        |
| 12/19/2011 | TR Receipt and review stipulation to continue response time to MSJ; copy client and calendar the same; provide brief explanation correspondence explaining the same.   | 0.20<br>200.00/hr | 40.00         |
| 12/20/2011 | NG Telephone call to Gary Linder regarding our need to continue the Case Management Conference on January 10, 2012. Prepare Motion to Continue Case Management Conference and proposed Order. Finalize Motion to Continue and proposed Order. Prepare dictated email to Client regarding the Defendant's Initial Disclosure Statement and also prepare email to Michelle Lind regarding the same.                            | 0.80<br>85.00/hr  | 68.00         |
|            | TR Receipt and review Defendant's initial disclosure statement; copy client and copy AAR.  | 0.80<br>200.00/hr | 160.00        |
|            | TR Legal review of some authority cited in disclosure statement. Research retroactivity argument and legal effect on contractual rights in existence; preemption of those rights; review when acts and cause of action accrues after effective date and generally research defense to arguments made concerning the same.  | 2.40<br>200.00/hr | 480.00        |
|            | TR Direct staff to contact opposing counsel regarding rescheduling CMC due to conflict and to prepare draft motion for the same; finalize and direct filing of motion and proposed order.  | 0.40<br>200.00/hr | 80.00         |
|            | TR Receipt and review email from advisory AAR; respond to the same regarding Linder's involvement.   | 0.30<br>200.00/hr | 60.00         |
| 12/28/2011 | NG Begin preparing Initial Disclosure Statement.   | 1.00<br>85.00/hr  | 85.00         |
|            | TR Receipt and review order extending response time for MSJ; review file and direct staff to being preparation of draft disclosure statement.  | 0.30<br>200.00/hr | 60.00         |
| 1/3/2012   | TR Receipt and review Order continuing CMC; copy client; prepare short email regarding the same.   | 0.20<br>200.00/hr | 40.00         |

|           |    | <u>Hrs/Rate</u>   | <u>Amount</u> |
|-----------|----|-------------------|---------------|
| 1/3/2012  | NG | 0.30<br>85.00/hr  | 25.50         |
|           |    |                   |               |
| 1/4/2012  | TR | 1.30<br>200.00/hr | 260.00        |
|           |    |                   |               |
| 1/5/2012  | TR | 2.30<br>200.00/hr | 460.00        |
|           |    |                   |               |
| 1/6/2012  | TR | 3.30<br>200.00/hr | 660.00        |
|           |    |                   |               |
| 1/10/2012 | TR | 1.80<br>200.00/hr | 360.00        |
|           |    |                   |               |
|           | TR | 2.80<br>200.00/hr | 560.00        |
|           |    |                   |               |
|           | NG | 0.80<br>85.00/hr  | 68.00         |
|           |    |                   |               |
| 1/11/2012 | TR | 6.30<br>200.00/hr | 1,260.00      |
|           |    |                   |               |
| 1/12/2012 | TR | 6.70<br>200.00/hr | 1,340.00      |
|           |    |                   |               |
| 1/13/2012 | TR | 3.60<br>200.00/hr | 720.00        |
|           |    |                   |               |
| 1/16/2012 | TR | 5.20<br>200.00/hr | 1,040.00      |

Robert Hawk

|              |  | <u>Hrs/Rate</u>   | <u>Amount</u> |
|--------------|--|-------------------|---------------|
|              | argument regarding substantial impairment of contractual relationship argument; discuss and develop argument that if the law does substantially impair a contract, does it have a significant and legitimate public purpose - and if so, is the adjustment reasonable to further the public purpose. Discuss final argument regarding weighing against commercial free speech. |                   |               |
| 1/17/2012 TR | Prepare for and attend CMC; request date for oral argument of MSJs.  | 0.60<br>200.00/hr | 120.00        |
| TR           | Finalize draft version of response/reply; email to constitutional consultants for review and comment. Review record and brief and prepare affidavit; email to client for review and execution.   | 3.10<br>200.00/hr | 620.00        |
| 1/19/2012 TR | Telephone conference with Robert; discuss affidavit and substance of brief; modify as needed and re-send.  | 0.40<br>200.00/hr | 80.00         |
| 1/20/2012 TR | Review and revise response/reply; research and add additional authority concerning constitutional claims; research and verify that reasonable expectations remain an issue of law - not an issue of fact; integrate authority regarding the same. Finalize arguments regarding fee speech.   | 2.20<br>200.00/hr | 440.00        |
| 1/23/2012 CS | review and proof reply and response to motion for summary judgment;  | 0.50<br>95.00/hr  | 47.50         |
| NG           | Proof Reply to Motion for Summary Judgment and Cross Motion for Summary Judgment. Make corrections to motion as directed.  | 0.90<br>85.00/hr  | 76.50         |
| 1/24/2012 TR | Finalize response/reply to MSJ; integrate compare and contrast with Aranda and Anderson; legal research and cite remaining principals and authorities; prepare exhibits and direct staff to prepare for filing.  | 2.30<br>200.00/hr | 460.00        |
| NG           | Review and final proof and revise Reply to Motion for Summary Judgment and Cross Motion for Summary Judgment.  | 0.60<br>85.00/hr  | 51.00         |
| 1/25/2012 NG | Finalize Reply to Motion for Summary Judgment and Cross Motion for Summary Judgment. Make copies of all exhibits and prepare original to be filed with the Court. Make complete copies of motion and exhibits to be filed with opposing counsel and the Judge.   | 0.70<br>85.00/hr  | 59.50         |
| 2/1/2012 TR  | Prepare correspondence regarding disclosure deficiency; finalize and direct transmission of the same.  | 0.40<br>200.00/hr | 80.00         |
| NG           | Prepare dictated letter to Gary Linder regarding a deficiency with PC Village's Initial Disclosure Statement.  | 0.50<br>85.00/hr  | 42.50         |
| 2/6/2012 TR  | Receipt and review reply to cross motion for summary judgment; copy client; receive email from client with questions about reply and respond to the same.  | 0.90<br>200.00/hr | 180.00        |

|   |   | <u>Hrs/Rate</u>   | <u>Amount</u>      |
|---|---|-------------------|--------------------|
| 2/15/2012                                 | TR Additional nationwide-research look for support and authority against argument raised in Reply asserting that rights are immediately vested upon formation of contract.  | 1.80<br>200.00/hr | 360.00             |
| 2/21/2012                                 | TR Telephone call with client regarding status; telephone call with opposing counsel regarding whereabouts of Insurance documents requested in 2/1/12 letter; prepare confirming letter memorializing telephone conversation with opposing counsel.   | 0.90<br>200.00/hr | 180.00             |
| 2/22/2012                                 | NG Prepare dictated letter to Gary Linder regarding our request for insurance policy documents and other related documents.   | 0.40<br>85.00/hr  | 34.00              |
| 2/27/2012                                 | TR Begin preparation of outline for oral argument; legal research on certain areas that are expected to be raised at hearing and prepare responses for the same; prepare and print authority and cases for citing to anticipated areas of discussion. Review and re-read cases expected to be discussed and argued.                           | 4.30<br>200.00/hr | 860.00             |
| 2/28/2012                                 | TR Final preparation for oral argument; final review of case authority and oral argument outline; travel to and from court and present oral argument; confer with opposing counsel afterwards; prepare update correspondence to client providing status update and result of oral argument.   | 2.70<br>200.00/hr | 540.00             |
| 3/5/2012                                  | TR Receive ME from 2/28/12; copy client.  | 0.20<br>200.00/hr | 40.00              |
| 3/26/2012                                 | TR Receive under advisement ruling and review the same. Prepare email to client and inform of the decision. Review certain matters and facts referenced in decision.  | 0.80<br>200.00/hr | 160.00             |
| 3/27/2012                                 | NG Begin preparing draft of Affidavit of Attorney's Fees and Statement of Costs.  | 0.70<br>85.00/hr  | 59.50              |
|   | TR Telephone conversation with Robert; discuss decision and implications of the same; discuss posting of sign and agreed process for the same.  | 0.30<br>200.00/hr | 60.00              |
| 3/28/2012                                 | TR Prepare, revise and draft affidavit for fees and costs; integrate necessary legal authority and Schwartz factors of reasonableness; integrate and reference attempted settlements in support of reasonableness claim.  | 1.80<br>200.00/hr | 360.00             |
| 3/29/2012                                 | NG Review and revise draft of affidavit of attorney's fees, perform calculations and update entries; proofread and finalize.  | 0.60<br>85.00/hr  | 51.00              |
|   | TR Telephone call to Gary Linder - regarding arrangements to post a sign. Research regarding relevance of settlement offers as to reasonableness for fee request; prepare and integrate the same into affidavit. Telephone call from Gary Linder; discuss ruling and posting of sign; discuss generally what his clients intentions might be. | 1.60<br>200.00/hr | 320.00             |
| <b>For professional services rendered</b> |   | <b>105.00</b>     | <b>\$19,636.50</b> |

Additional Charges :

|   | <u>Amount</u>                    |
|---|----------------------------------|
| 9/15/2011 Coconino County Superior Court - lawsuit filing fee                         | 246.00                           |
| 9/27/2011 Palmer Investigative Service - Service of lawsuit on PC Village Association | 50.00                            |
| <b>Total additional charges</b>   | <u>\$296.00</u>                  |
| <b>For professional services rendered</b>   | <u>105.00</u> <u>\$19,932.50</u> |

## **Tevis Reich Atty**

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**From:** Tevis Reich Atty <Tevis@TReichLaw.com>  
**Sent:** Wednesday, October 12, 2011 4:33 PM  
**To:** 'glinder@jshfirm.com'  
**Subject:** Hawk v. Pine Canyon

Mr. Linder – in follow up to our conversation, and recognizing that there is somewhat of a disagreement on your side of the table about what PC is willing to do, I would like to put you on alert as to my client's intentions.

As you know, I have currently provided an open-ended extension to answer the Lawsuit which is revocable with 10 days notice. This was provided so that settlement could be explored. I further recognize your willingness to try and resolve this lawsuit but also recognize that it may not be possible given the competing interests at hand. To this extent, we will allow one week (until 10/19/11) to allow the settlement concepts we have exchanged to develop and progress. If at that time we have not reached a settlement, or at least made significant enough progress to where we feel that settlement is possible, I intend to ask that your client prepare and file an Answer within 10 days.

As I indicated to you on the phone, my client wants the matter resolved and is willing to settle it. However, he is not willing to allow this matter to stall. We are insisting on a final and clear resolution, either by settlement or through the court. A resolution which is unclear or which allows PC to later change their mind is not acceptable. This is tantamount to the approach which turns the blind eye and sweeps the matter under the rug is not something my client is willing to consider. I hope you understand and would be happy to discuss it further, if needed.

I await your client's response.

***Tevis Reich***

**Attorney at Law**  
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## SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement ("Agreement") is effective as of the date that each party fully executes this Agreement. This Agreement is by and among Robert and Cecelia Hawk ("Hawk") and PC Village Association ("Pine Canyon"), an Arizona non-profit corporation;

### RECITALS

1. The Hawks own Lot 197 in the Estates at Pine Canyon, Unit Two as shown on the plat thereof, recorded in Case 9, Maps 28, 28A and 28B, records of Coconino County Arizona ("Lot").
2. On two separate occasions in August, 2011, Hawk caused a "for sale" sign of appropriate size, as designated in A.R.S. § 33-1808(F), to be erected on their Lot in the Pine Canyon subdivision.
3. On both occasions, Pine Canyon caused the "for sale" signs to be removed from the Lot. Pine Canyon is currently has possession of the signs
4. Pursuant to A.R.S. 33-1808(F) Hawk filed a lawsuit in Coconino County Superior Court, (CV # 2011-00775) generally alleging that the Hawks are legally entitled to display a "for sale" sign on their Lot regardless of what the CC&R's say ("Lawsuit").
5. Pine Canyon argues that the CC&R's supersede A.R.S. § 33-1808(F) and that the statute is not retroactive and therefore, does not control.

To avoid the costs of litigation, and without admitting liability, the parties desire to settle and compromise this dispute between them.

### AGREEMENT

NOW, THEREFORE, in consideration of the parties entering into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby acknowledge and expressly agree as follows:

1. The Recitals are agree to be true and correct and are hereby incorporated herein by reference.

2. Pine Canyon shall resurrect and cause the "for sale" sign to be replaced on Hawk's Lot within three days from the effective date of this Agreement. The sign shall be erected in substantially the same location and in substantially the manner it was before it was removed by Pine Canyon. Pine Canyon shall allow a "for sale" sign of suitable size as set forth by A.R.S. 33-1808(F) (as amended) to be displayed on the Lot at all times as long as Hawk continues to own the Lot or until Hawk decides to remove it. Hawk shall be entitled to enforce this covenant and the display of a "for sale" sign by injunction or any other lawful means and the parties agree to waive the requirement of any bond in connection with said injunction.

3. It is agreed that *if* A.R.S. § 33-1808(F) is subsequently amended by the legislature or clarified by binding judicial case precedent, and that the amendment or case precedent prohibits Hawk from displaying the "for sale" sign, then the sign may be removed. In other words, nothing in this Agreement shall override or supersede A.R.S. § 33-1808(F) as subsequently amended or clarified.

4. Upon execution of this Agreement Hawk shall dismiss the pending Lawsuit, *without prejudice*. Each party agrees to pay their own attorney's fees and costs in connection with the Lawsuit and all actions leading up to the Lawsuit unless subsequent enforcement of this agreement requires another lawsuit, in which case the prevailing party shall be entitled to an award of their reasonable attorney's fees, costs and expenses in connection with this Lawsuit and the matters reasonably related to this Agreement and this Lawsuit. The parties shall attempt to resolve any conflict, in good faith, which shall be documented by written instrument, before initiating subsequent legal action.

5. This Agreement does not constitute an admission of liability on the part of either party, all liability having been denied, at all relevant times, and which continues to be denied.

6. In the event any action is filed to enforce or defend this Agreement, the prevailing party in such action shall be entitled to, in addition to any other damages or relief available to them, an award of reasonable attorneys' fees and costs incurred in connection with such action.

7. In executing this Agreement, each party hereto acknowledges that it has consulted with and had the advice of counsel of its own choosing in negotiations for and preparation of this Agreement and was fully advised by counsel with respect to all rights which are affected by this Agreement.

8. For purposes of construction and interpretation, this Agreement shall be deemed to have been jointly drafted by counsel for the parties hereto, and any

ambiguities, if any, shall not be construed for or against any party.

9. This Agreement shall be enforced and governed by the laws of the State of Arizona. Any dispute with respect to the performance or enforceability of this Agreement shall be filed in the Superior Court for the County of Coconino, State of Arizona.

10. This is the entire agreement among the parties with respect to the subject matter hereof. It includes all of the terms, promises, representations and understandings made by the parties, and it supersedes any earlier written or oral understandings or agreements between the parties concerning this Agreement. No party hereto nor its respective attorneys or advisors or agents have made any promise, representation or warranty, whether expressed, implied or statutory, not contained herein, concerning the subject matter of this Agreement in order to induce the parties hereto to execute this Agreement, and each signatory acknowledges that such party has not executed this instrument in reliance on any promise, representation or warranty not contained herein.

11. Each party to this Agreement certifies that it has read all of this Agreement and fully understands all of the same.

12. Each of the parties represents warrants and covenants that it is not under duress, and signs this Agreement freely and voluntarily.

13. Each party to this Agreement will cooperate and diligently perform any further acts, deeds and things and execute and deliver any documents that may from time to time be reasonably necessary or otherwise reasonably required to consummate, evidence, confirm and/or carry out the intent and provisions of this Agreement, all without undue delay or expense and without further consideration.

14. This Agreement may be executed in counterparts and via facsimile with the same force and effect as if executed in one complete document. Any party executing this Agreement by facsimile shall provide the other party with an originally executed Agreement within 5 days.

15. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Agreement shall not be affected thereby.

16. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors, affiliates, directors, officers, members and assigns; provided, however, the foregoing shall not be deemed or construed to confer any right, title, benefit, cause of action or remedy upon any person or entity not

a party hereto, which such party would not nor did not otherwise possess.

17. The waiver by any party of any right granted to it hereunder shall not be deemed a waiver of any other right.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date shown above.

**PC Village Association**

**PC Village Association**

By : \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: *President*

By : \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: *Vice President / Secretary / Treasurer  
or Exec. Dir. (circle one)*

\_\_\_\_\_  
**Robert Hawk**

\_\_\_\_\_  
**Cecilia Hawk**

EDMS Barcode Cover Page

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Category

CV



Case Number

S0300CV201100775



Filing Date

3/30/2012



Event Code

10163



Sequence

1



Party Type

P



Party Number

P-1



Document Id

814536



Sealed Flag

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Restricted Flag

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