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SUPERIOR COURT
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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 R. L. WHITMER,

CV2016-055080

11 Petitioner/Plaintiff.

12 v.

**EXHIBITS FOR
EVIDENTIARY HEARING**

13 HILTON CASITAS HOMEOWNERS
14 ASSOCIATION, also known as
15 HILTON CASITAS COUNCIL OF
16 HOMEOWNERS, also known as
17 COUNCIL OF CO-OWNERS, also
18 known as HILTON CASITAS
19 COUNCIL OF CO-OWNERS,

(Assigned to the
Hon. Lisa Flores)

20 Respondent/Defendant.

EXHIBIT LIST FOR CV2016-055080

Exhibit No.	Identified By	Description	Stipulated in Evidence/ Objection
1	Plaintiff	The Declaration of Horizontal Property Regime for Hilton Casitas	
2	Plaintiff	Administrative Law Judge Decision No. 14F-H1415004-BFS	
3	Plaintiff	August 22, 2016 Hilton Casitas Board Email (Safeguard)	
4	Plaintiff	2006 Safeguard Security Agreement	
5	Plaintiff	2016 Board Meeting Notices and Agendas	
6	Plaintiff	Hilton Casitas' Financial Worksheets from Fiscal Years June 30, 2015 to 2007	

1	7	Plaintiff	February 20, 2017 Potocki Email with 2016 Financial Worksheet	
2	8	Plaintiff	2016 Billing Records for Legal Services of Robert Anderson from Clark Hill Law Firm	
3	9	Plaintiff	2016 Unadopted Annual Budget for Hilton Casitas with Plaintiff's handwritten analysis	
4	10	Plaintiff	Emailed February 16, 2016 Board Meeting Notice & Agenda	
5	11	Plaintiff	January 5, 2017 M. Bengson Email to R. L. Whitmer	
6	12	Plaintiff	Minutes/notes of the February 16, 2016 board meeting	
7	13	Plaintiff	March 24, 2016 Potocki Email for March 31, 2016 Annual Meeting	
8	14	Plaintiff	March 24, 2016 Notice of Annual Meeting	
9	15	Plaintiff	March 24, 2016 Annual Meeting Agenda	
10	16	Plaintiff	2015 Annual Budget for Hilton Casitas with Plaintiff's handwritten analysis	
11	17	Plaintiff	Robert Anderson Billing Records - Oct. 22, 2014 to Dec. 31, 2014	
12	18	Plaintiff	2015 Annual Meeting Minutes	
13	19	Plaintiff	Robert Anderson Billing Record – March 20, 2015, page two	
14	20	Plaintiff	Hilton Casitas Council of Co-Owners Bylaws	
15	21	Plaintiff	2016 Annual Meeting Minutes	
16	22	Plaintiff	2015 Annual Meeting Assessment Ballot	
17	23	Plaintiff	February 17, 2015 Bengson email to casita owners	
18	24	Plaintiff	ARS §33-551 et seq	
19	25	Plaintiff	December 2016 Larry Roberson Letter to Casita Owners	
20	26	Plaintiff	February 23, 2017 Annual Meeting Notice Letter and enclosures	

1	27	Plaintiff	April 5, 2017 Bengson Affidavit in CC20166164084-RC	
2	28	Plaintiff	April 27, 2017 HOA Objection to Supersedes Bond in CC20166164084-RC	
3				
4	29	Plaintiff	February 14, 2017 HOA Board Meeting Agenda and Minutes	
5				
6	30	Plaintiff	March 15, 2017 HOA Board Meeting Agenda and Minutes	
7				
8	31	Plaintiff	March 30, 2017 HOA Unit Owners Annual Meeting Agenda and Minutes	
9				
10	32	Plaintiff	March 30, 2017 HOA Unit Owners' Mail Ballot and Consent to Approve 2016 Expense Summary	
11				
12	33	Plaintiff	2016 HOA Statement of Revenues and Expenses	
13				
14	34	Plaintiff	January 15, 2019 Deposition of Michael Bengson	
15				
16	35	Plaintiff	January 22, 2019 Deposition of Jack Huston	
17				
18	36	Plaintiff	January 22, 2019 Deposition of Richard Walker	
19				
20	37	Plaintiff	Arizona Court of Appeals Opinion 1CA_CV 17-543 Whitmer v. Hilton Casitas	

Dated this 3rd day of July, 2019.



R. L. Whitmer

ORIGINAL filed this
3rd day of July, 2019, with the
Clerk of the Court;
and a COPY ^{mailed} ~~hand delivered~~ this same date to:
Augustus Shaw
Shaw & Lines Law Firm
4523 E. Broadway Rd.
Phoenix, AZ 85040

Plaintiff's Exhibit 1

When recorded return to :
Paul Wentworth
Snell & Wilmer
400 Security Building
Phoenix, Arizona

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DECLARATION OF HORIZONTAL PROPERTY REGIME

for

HILTON CASITAS

STATE OF ARIZONA } ss
County of Maricopa }

I hereby certify that the within instrument was filed and recorded at request of

TRANSAMERICA TITLE INSURANCE COMPANY

MAY 22 1972 - 10 10

Instrument 9448

Case 790-846

Witness my hand and official seal the day and date aforesaid.

Paul M. Albrecht

County Recorder

By *[Signature]*
County Recorder

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DECLARATION OF HORIZONTAL PROPERTY REGIME

for

HILTON CASITAS

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DECLARATION OF HORIZONTAL PROPERTY REGIME

for

HILTON CASITAS

THIS DECLARATION OF HORIZONTAL PROPERTY REGIME for HILTON CASITAS is made as of the 18th day of May, 1972 by W. J. SMALL and HAZEL M. SMALL, husband and wife, and LINCSCOTT HOTEL CORPORATION, an Arizona corporation.

W I T N E S S E T H :

Recitals:

W. J. SMALL and HAZEL M. SMALL, husband and wife ("Smalls"), as fee owners, leased approximately 20 acres of land (the "20 acres") to LINCSCOTT HOTEL CORPORATION, an Arizona corporation (the "Corporation"), pursuant to that certain Lease (the "Ground Lease") dated April 10, 1970, a memorandum of which was recorded on June 19, 1970 in Docket 8186, pages 741 to 743 inclusive, as amended by Amendment to Lease Agreement dated December 22, 1970, and recorded on December 23, 1970 in Docket 8454, pages 705 to 708 inclusive, records of Maricopa County, Arizona.

The Ground Lease provides that all or portions of the 20 acres may be subjected to a horizontal property regime (a condominium arrangement) under Arizona Revised Statutes,

§§ 33-551 through 33-561 (hereinafter called the "Horizontal Property Regime Act"), and the Corporation desires to develop and sell condominiums ("Casitas") on approximately 8 of the 20 acres leased to it (said 8 acres hereinafter being referred to as the "Property"). The Corporation subsequently also may desire to subject some additional lands to such horizontal property regime.

Accordingly, the Smalls and the Corporation desire to submit the Property, which is situated in Maricopa County, Arizona and is more specifically described as follows:

Hilton Casitas, according to the Plat thereof recorded in Book 149 of Maps, page 50, records of Maricopa County, Arizona

to a horizontal property regime and to certain easements, assessments, liens, covenants, conditions and restrictions (such easements, assessments, liens, covenants, conditions and restrictions hereinafter collectively being referred to as "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

Covenants:

NOW, THEREFORE, the Smalls and the Corporation hereby submit and subject the Property to a horizontal property regime pursuant to the Horizontal Property Regime Act, and in furtherance thereof make and declare the following Restrictions, and hereby declare and agree that the Property

is held and shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to said Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of all persons having or acquiring any interest in and to the Property, and their respective heirs, executors, administrators, successors and assigns.

ARTICLE I
DEFINITIONS

Section 1.1. "Building" shall mean and include all of the buildings erected or to be erected on the Property.

Section 1.2. "Casita" shall mean the entire estate in the Property held by an Owner, including the subleasehold estate of the space within which the Unit is or will be located (as shown on the Plat of Hilton Casitas and the Profile Elevation Schedule thereon), the Unit constructed or to be constructed within that space, the exclusive right to use and occupy the numbered tract (as shown on the Plat) on which the Unit is constructed, and an undivided fractional interest in the General Common Elements as provided in this Declaration.

Section 1.3. "Common Elements" shall mean the General and Limited Common Elements as defined in this Declaration.

Section 1.4. "Council" shall mean the Council of Co-owners as defined in the Horizontal Property Regime Act, and consists of all of the Owners of the Casitas.

Section 1.5. "Declaration" shall mean this Declaration of Horizontal Property Regime, and any and all amendments hereof or supplements hereto.

Section 1.6. "General Common Elements" shall consist of (a) Tracts 1 to 29 inclusive as shown on the Plat of Hilton Casitas, (b) the concrete foundations and concrete slabs of the Building and patio slabs situated on Tracts 1 to 29 inclusive, and (c) Tracts A through G, including any and all private roadways, guard house, walls, landscaped areas and other amenities located thereon. However, each Owner of a Unit shall have an easement for the exclusive use of the numbered tract on which his Unit is located.

Section 1.7. "Limited Common Elements" consist of the block work and partitions separating Units.

Section 1.8. "Owner" shall mean the record owner of a Casita. Except as otherwise indicated in this Declaration, the term "Owner" shall include the Corporation in its capacity as the owner of an unsold Casita (i.e., the owner of an unsold Unit located in a space which has not been subleased, together with a fractional interest in the General Common Elements).

An Owner does not include a person or entity who holds an interest in a Casita merely as security for the performance of an obligation.

Section 1.9. "Property" shall mean "property" as defined in the Horizontal Property Regime Act, and initially includes:

Hilton Casitas, according to the Plat thereof recorded in Book 147 of Maps, Page 50, records of Maricopa County, Arizona, and all improvements and structures now or hereafter situated thereon.

From and after the addition of each new parcel of land subjected to the Restrictions of this Declaration pursuant to Article II hereof, the term "Property" also shall include each such new parcel of land and the improvements and structures thereon.

Section 1.10. "Unit" shall mean "apartment" as defined in the Horizontal Property Regime Act, and shall consist of an entire dwelling unit situated on a numbered tract within the space subleased or to be subleased by the Corporation to an Owner. A Unit includes the exterior walls and roof, but excludes the concrete foundation, concrete slab and patio slab, and excludes any block wall or partition separating it from an adjoining Unit. Each space within which each Unit is located is more particularly shown on the Plat of Hilton Casitas and the Profile Elevation Schedule thereon.

ARTICLE II

ANNEXATION

Section 2.1. Corporation's Right to Annex New Lands: The Corporation, in its sole discretion and at its election, shall have the exclusive right to extend from time to time, in the manner set forth in Section 2.2, the area of the Property subjected to this Declaration. Any and all new lands annexed and added to the Property, and the Owners thereof, shall be subject to and bound by the Restrictions in this Declaration. The lands annexed to the Property may be anywhere within the following described area situated in Maricopa County, Arizona:

The northerly 1353.80 feet of the West half of the Southwest Quarter of Section 11, T2N, R4E, G&SRB&M, EXCEPT the northerly 678.64 feet thereof (which area consists of approximately 20 acres south of the Property).

Section 2.2. Procedure for Annexing New Lands: The procedure for annexing new lands to the Property shall be as follows: The Corporation shall give written notice to the Council of such election to annex new lands and shall record in the office of the County Recorder of Maricopa County, Arizona, a supplement to this Declaration (hereinafter called "Supplemental Declaration") signed by the Corporation (and signed by any other persons whose signatures may be required by law); the Supplemental Declaration

shall (i) describe the new land being annexed to and made part of the Property, (ii) state that such land and the improvements and structures thereon, and the owners and others having an interest in such land, shall be subject to and bound by all of the Restrictions in this Declaration, and (iii) set forth the necessary adjustments in fractional interest of ownership of the General Common Elements appurtenant to each of the Units within the Property (i.e., including both the newly added Units and the previously covered Units). Upon recordation by the Corporation of such Supplemental Declaration, the annexation of such additional land to the Property shall be automatically effective.

ARTICLE III

THE PROPERTY

Section 3.1. Number of Units. At the time of recordation of this Declaration the Property consists solely of Hilton Casitas, according to the Plat thereof in Book 149 of Maps, page 50, including the twenty-nine (29) Units to be located thereon. (It is understood that the Property and total number of Units may be increased in accordance with the Corporation's right to annex additional lands as set forth in Article II). Units are more specifically

described in Section 3.4 hereof, and are located in the spaces set forth on the Plat of Hilton Casitas and the Profile Elevation Schedule thereon.

Section 3.2. Location: The location of the Building (and each of the individual buildings which in the aggregate comprise the Building) and Units and the description of the land utilized for each of them is set forth on the recorded Plat.

Section 3.3. Cubic Content Space of Building: The cubic content space of the Building shall consist of and be measured by the entire space between the following boundaries:

Horizontal Boundaries

The upper boundary shall be the plane of the top elevations of each of the individual buildings as shown on the Profile Elevation Schedule, and the lower boundary shall be the top of the concrete slab of each of the individual buildings as shown on the Plat and Profile Elevation Schedule.

Vertical Boundaries

The vertical boundaries shall be the exterior of the outside walls of each of the individual buildings, as shown on the Plat and Profile Elevation Schedule.

Section 3.4. Cubic Content Space of Unit: The cubic content space of each Unit located within the Building shall consist of and be measured by the entire space between the following boundaries:

Horizontal Boundaries

The upper boundary shall be the plane of the top elevation of the individual building in which the Unit is located, as shown on the Profile Elevation Schedule, and the lower boundary shall be the top of the concrete slab of the individual building as shown on the Plat and Profile Elevation Schedule.

Vertical Boundaries

The vertical boundaries shall be the exterior of the outside walls, and the interior surface of any walls separating Units in an individual building, the lines of which are shown on the Plat and Profile Elevation Schedule.

Section 3.5. General Common Elements: The General Common Elements consist of Tracts 1 to 29 inclusive, the concrete foundation and concrete slab of the Building and patio slabs, and Tracts A through G and the improvements, landscaping and other amenities located on Tracts A through G.

Section 3.6. Fractional Ownership: (a) The fractional interest which each Unit bears to the Property, subject to the provisions set forth in Article II regarding the annexation of additional land, is one twenty-ninth (1/29). The sum of all such fractional interests in the Property is one. (b) The fractional interest in any Limited Common Elements (as defined in Sections 1.7 and 20.1) shall be an undivided one-half with respect to each of the adjoining Units.

Section 3.7. Ownership of Common Elements: Each Owner of a Unit shall have a subleasehold of the space in which the Unit is situated, together with an undivided subleasehold interest in and to the General Common Elements in the Property in the fractional proportion specified in Section 3.6, subject to the adjustments contemplated in Article II.

ARTICLE IV

EASEMENTS

Section 4.1. In Favor of Individual Owners: There is hereby reserved and created an easement in favor of each Casita Owner upon, across, over and under the numbered tract (which is part of the General Common Elements) on which each such Owner's Unit is situated for such Owner's exclusive use and occupancy of said numbered tract. It is further declared and agreed that any improvements, structures, landscaping or other items (except those defined as General Common Elements in Section 3.5)

constructed, erected or placed upon, across, over or under each such numbered tract shall be deemed to be owned solely by the Owner of the Unit on such tract, and no other Owner shall have any right, title or interest therein.

Section 4.2. In Favor of the Corporation, Its Agents, Contractors and Employees: There is hereby reserved and created a blanket easement in favor of the Corporation, its agents, contractors and employees, upon, across, over and under all of the Property for all reasonable acts necessary to be undertaken by the Corporation, its agents, contractors and employees in constructing the Units and other improvements on the Property.

Section 4.3. In Favor of Public Utilities and the Council, Its Agents, Contractors and Employees: There is hereby reserved and created a blanket easement in favor of public utilities and the Council, its agents, contractors and employees, upon, across, over and under all of the General Common Elements within the Property, for ingress, egress, installation, replacing, repairing and maintaining (1) all utilities, including but not limited to water, gas, telephones and electricity, (2) all sewer facilities, (3) a master television antenna system, (4) any air conditioning and heating conduits, lines and ducts (except the numbered tracts and improvements thereon), and (5) all other facilities, equipment and structures which are located on such General Common Elements (except the numbered tracts and improvements

thereon) for the general use and benefit of the Owners. By virtue of this easement, it shall be expressly permissible for the utility companies or any other entities furnishing any of the aforesaid services to erect and maintain the necessary poles, lines, conduits and ducts and other necessary equipment on such General Common Elements and to affix and maintain the same on, above, across and under such General Common Elements, whether the same are now or hereafter erected and existing, including replacements thereof. The foregoing easement is not intended to permit the interference with the Owner's use and enjoyment of any numbered tract or the Unit or other improvements thereon. Notwithstanding anything to the contrary in this Section 4.3, all such installations, alterations, additions, replacements and maintenance in, upon, under or over such General Common Elements shall be subject to the provisions of Article V. This easement shall in no way affect any other recorded easements on the Property.

Section 4.4. Encroachments: Each numbered tract and the Unit thereon, and the General Common Elements shall be subject to an easement for encroachments (in favor of adjacent Owners or the Council, whichever is appropriate) created by construction, fireplaces and chimneys, exterior decorative

walls and structures, settling and overhangs and the like, as designed, constructed or permitted by the Corporation. An easement in favor of the same persons (and including the agents, contractors or employees of the Council, when the easement is in favor of the Council) exists for purposes of repair and maintenance of any such encroaching construction. In the event any Unit or other structure is partially or totally destroyed, and then rebuilt, minor encroachments due to construction (as described above) shall be permitted, and a valid easement in favor of the Owners or the Council, its agents, contractors and employees for said encroachments, and the repair and maintenance of such encroaching construction, shall exist.

ARTICLE V

ARCHITECTURAL CONTROL

Section 5.1. Submission of Plans for Construction: Except as hereinbelow set forth, no building, Unit, fence, wall, antenna, tower or structure of any kind or character shall be commenced, erected, placed or maintained on the Property unless and until plans and specifications (including but not limited to grading and landscape plans) showing the location kind, material, approximate cost, area, height, color, shape and design thereof first shall have been submitted to and approved by the Corporation, and a copy thereof as finally

approved is lodged permanently with the Corporation. Failure of the Corporation to reject in writing said plans and specifications within thirty (30) days from the date the same were submitted shall constitute approval of said plans and specifications, provided the building, Unit or other structure to be built or placed on the Property shall be governed by all of the Restrictions in the Declaration and that each such building, Unit or other structure shall be in harmony with existing buildings, Units and structures within the Property. The Corporation shall have the right to deny or refuse approval of any plans or specifications which, in its opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard the Corporation shall have the right to take into consideration all matters mentioned above (i.e., location, kind, material, etc.), as well as the effect any proposed building, Unit or structure may have upon the site where it is proposed to be constructed or placed, and the suitability of the same with respect to the surrounding area and the effect thereof (including but not limited to harmony of external design and location) upon adjacent areas and Casitas as a whole. The restrictions and conditions set forth in this Section shall not be applicable to the Corporation or to any original construction or landscaping undertaken by the Corporation within the Property. The restrictions and conditions set forth in

this Section 5.1 shall be applicable to the Council and to all Casita Owners.

Section 5.2. Installations, Alterations, Additions, Replacements and Maintenance: All exterior additions, changes, alterations or redecorations (including but not limited to painting of exterior surfaces and all such activities by utility companies or any other entities furnishing services to the Property) of any building, Unit, fence, wall, landscaping, antenna, tower or structure of any kind or character on the Property shall be subject to the prior approval of the Corporation under the same conditions set forth in Section 5.1 above.

ARTICLE VI

COUNCIL OF CO-OWNERS

Section 6.1. Function: Unless otherwise specifically provided in this Declaration, the function of the Council shall be limited to the maintenance, repair, management, operation and administration of the General Common Elements pursuant to the provisions of this Declaration. For the purposes of this Article VI, and particularly but not necessarily limited to Section 6.8 hereof, the term "General Common Elements" shall include only Tracts A through G and the improvements, landscaping and other amenities thereon, and the front yards of

Tracts 1 through 29 (any side and rear yards and the concrete foundations, building slabs and patio slabs on the numbered tracts are excluded).

Section 6.2. Membership: Membership in the Council shall consist of all the Casita Owners. The Corporation shall be deemed the Owner of each Casita until each such Casita is sold (i.e., the Unit is sold and the space occupied by such Unit is subleased). Any person, upon acquiring and recording a Sublease, and Deed for the Unit, and/or other instrument-establishing title to a Casita, shall be the Owner of such Casita and shall automatically become a member of the Council and shall remain a member thereof until such time as his ownership of such Casita ceases for any reason, at which time his membership in the Council shall automatically cease.

Section 6.3. Additional Provisions: Membership in the Council shall be subject to all of the provisions of this Declaration and the Council's Bylaws, as the same may be amended from time to time.

Section 6.4. Voting: Each Owner of a Casita shall have one vote. In the event any Casita is owned by two or more persons, whether by joint tenancy, tenancy in common, community property, or otherwise, the membership as to such Casita shall be

joint and a single membership for such Casita shall be in the names of all, and they shall designate to the Council, in writing, one of their number who shall hold the membership and have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board at any time, or from time to time, shall make such designation.

Section 6.5. Suspension of Voting Rights: In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions in this Declaration or any amount legally imposed by the Council upon the Owners for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) days, said Owner's right to vote as a member of the Council shall be suspended and shall remain suspended until all payments are brought current and all defaults cured.

Section 6.6. Council's Rights and Powers as Set Forth in Bylaws: In addition to the rights and powers of the Council set forth in this Declaration, the Council shall have such rights and powers as are set forth in its Bylaws and any Articles of Incorporation which may be adopted. Such rights and powers may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law,

provided such Bylaws (and/or Articles) are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. A copy of the Bylaws of the Council (and Articles of Incorporation, if the Council is incorporated) shall be available for inspection at the office of the Council during reasonable business hours.

Section 6.7. Council's and Corporation's Rights of Enforcement: The Council (as the agent and representative of the Casita Owners) and the Corporation, or either of them, shall have the right to enforce the Restrictions set forth in this Declaration.

Section 6.8. Operation and Maintenance of the General Common Elements: Operation and maintenance, including but not limited to repair, replacement, and restoration of the General Common Elements, and any additions and alterations thereto, shall be the responsibility and expense of the Council, and shall be in accordance with the provisions of the Horizontal Property Regime Act, this Declaration and the Articles of Incorporation (if any), Bylaws, and rules and regulations of the Council. Specifically, but without limitation, the Council or its agents shall:

(1) Keep all General Common Elements within the Property in a neat, clean and sanitary condition and observe and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority for the time being applicable to the Property or the use thereof.

(2) Restore, rebuild and repair the General Common Elements and all defects therein, and preserve and maintain said General Common Elements in good and attractive condition.

(3) Provide for the installation and maintenance of a security system or systems, in a form approved and desired by the Council, which system may (but need not) include a gate to the Property and/or a guardhouse.

Section 6.9. Construction of Additional General Common Elements: Upon the affirmative vote of 75% or more of the Owners, the Council may erect and construct on the General Common Elements of the Property, subject to the architectural control provisions of Article V hereof, such additional buildings and structures as are desired and contemplated by the Council.

Section 6.10. Surety Bond: Before commencing or permitting any rebuilding, restoration or repairs of existing General

Common Elements, and before commencing or permitting the construction of new General Common Elements, the Council shall obtain and deposit with the Corporation herein a bond or certificate thereof naming as obligees the Corporation and collectively all other Casita Owners as their interests may appear, in a sum equal to 100% of the estimated cost of such construction and with a corporate surety authorized to do business in Arizona, guaranteeing completion of such construction free and clear of all mechanics' and materialmen's liens, or, at the discretion of the Corporation, provide for other guaranteeing arrangements mutually satisfactory to the Corporation and the Council.

ARTICLE VII

INSURANCE

Section 7.1. Duty to Purchase: Except as otherwise may be required or permitted by the Corporation, the Council shall purchase all insurance policies upon or with respect to the Property and/or the Casitas for the benefit of the Corporation, the Casita Owners and their respective mortgagees, as their respective interests may appear, such insurance policies to include, without limitation, the following coverage:

(1) Casualty. All structures and improvements upon the Property, including but not limited

to the Units, shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Council with the approval and concurrence of the insurer or insurers. Such coverage shall afford protection against (i) loss or damage by fire and other hazards covered by a standard form of extended coverage endorsement and (ii) such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use as those on the Property, including, but without limitation, vandalism and malicious mischief coverages.

(2) Public Liability. Public liability and property damage in such amounts and with such coverages as shall be determined by the Council.

(3) Workmen's Compensation. Such workmen's compensation insurance as may be necessary.

(4) Other Insurance. Such other insurance as the Council shall from time to time determine to be desirable.

Section 7.2. Premiums: Premiums on all insurance policies purchased by the Council shall be paid in accordance with

the provisions set forth in Section 8.3 herein. Any Casita Owner may obtain, at his own expense, such additional insurance coverage as he may deem necessary or appropriate.

ARTICLE VIII

COMMON EXPENSES

Section 8.1. Personal Obligation: All charges, costs and expenses whatsoever incurred by the Council for or in connection with the administration of the Property, including but not limited to operation of the Property and maintenance, repair, replacement and restoration of the General Common Elements, any additions and alterations thereto, all labor, services, materials, supplies and equipment therefor, and all liability whatsoever for loss or damage arising out of or in connection with the General Common Elements or any accident or fire on the General Common Elements or any nuisance thereon shall constitute common expenses of the Property. The Casita Owners shall be personally and severally liable for their respective proportionate shares (as determined in accordance with Section 3.6 hereof) of the common expenses.

Section 8.2. Establishment and Basis of Common Expenses:

The Owner of each Casita, for himself, his heirs, executors,

administrators, successors and assigns covenants and agrees that each Casita shall be subject to an annual assessment in an amount to be determined by the Council, which shall be such Casita's pro rata share (as determined in Section 3.6 hereof) of the following aggregate costs:

(1) The actual cost to the Council of all taxes, insurance, repairs, maintenance, management and related charges and expenses necessary to carry out the purposes of the Council as set forth in this Declaration, the Bylaws, and any Articles of Incorporation.

(2) Such sum as the Council shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, management and administrative costs and other charges as specified herein.

(3) The actual cost to the Council of all expenses and related charges necessary to carry out any construction of additional buildings and structures pursuant to Section 6.9 herein.

The pro rata share of the annual common expenses chargeable to each Casita shall be collected by the Council at monthly, semi-annual or such other regular intervals (but not less than once a year) as may be fixed by the Council.

Section 8.3. Insurance Premiums and Expenses:

(a) Except only as provided in Section 8.3(b) herein, all charges, costs and expenses whatsoever incurred by the Council for or in connection with the purchase of all insurance policies provided for in Section 7.1 herein shall constitute common expenses of the Property (as provided in Section 8.1 herein) to be collected by the Council from each Casita Owner in the manner provided for in Section 8.2 herein.

(b) Notwithstanding any other provision in this Declaration, the Council shall have the authority to allocate such expenses attributable to the cost of insurance among the Owners on such other basis that the Council determines will result in fair and equitable treatment of the Owners. Any such allocation of insurance costs (which allocation may be unequal among the Owners) shall be computed solely by the Council, and the Council may rely upon the insurable values established by the insurer in making its determination for equitable allocation among all the Owners.

(c) If the Council shall be unable to make a determination as contemplated in Section 8.3(b)

herein, then the expenses attributable to the cost of insurance shall be allocated by the Council among the Owners in the manner provided in Section 8.2 herein.

Section 8.4. Refund Obligation: The Council shall not be obligated to spend in any year all the assessments received by it in such year, and may carry forward as surplus any balances remaining. Nor shall the Council be obligated to apply any such surpluses to the reduction of the amount of the annual assessment in the succeeding year, but may carry forward from year to year such surplus as the Council in its discretion may determine to be desirable for the greater financial security of the Council and the effectuation of its purposes.

Section 8.5. Waiver of Use: No Owner may exempt himself from liability for his contribution toward the common expenses, or except himself from membership in the Council, by waiver or abandonment of the use or enjoyment of any of the General Common Elements or his Unit.

ARTICLE IX

COMMON EXPENSES CONSTITUTE LIEN

Section 9.1. Creation of Lien: All sums assessed by the Council and all expenses incurred in enforcing the collection

of such sums as set forth in Section 11.3 herein shall be a charge on the land and shall be a continuing lien (hereinafter called the "Assessment Lien") upon the Casita against which such assessment is made. Such Assessment Lien on the Casita shall be a lien prior to all other liens except (1) liens for taxes and assessments lawfully imposed by governmental authority against such Casita, and (2) liens of mortgages (or deeds of trust) of bona fide lending institutions against such Casita.

Section 9.2. Enforcement of Payment of Common Expenses:

If any Owner fails to pay any sums assessed by the Council against his Casita, the Council may enforce payment by taking either or both of the following actions, concurrently or separately (and by exercising either of the remedies hereinbelow set forth, the Council does not prejudice or waive its right to exercise the other remedy):

(a) Bring an action at law against the Owner for a money judgment for his share of the common expenses;

(b) Foreclose the Assessment Lien against the Casita in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including any right to recover any deficiency); the

Council shall have the power to bid on the Casita at the foreclosure sale and to acquire, hold, lease, mortgage, sell or convey the same; and the Casita may be redeemed after foreclosure sale as provided by law. Anything hereinabove to the contrary notwithstanding, the remedies above set forth for the Council are not exclusive, and the Council may take any and all other remedies available to it at law or in equity.

ARTICLE X

LIABILITY FOR ASSESSMENTS AND COMMON EXPENSES AFTER CONVEYANCE

Section 10.1. Voluntary Conveyance: In a voluntary conveyance and/or assignment, the grantee (and assignee of a sublessee's interest) of a Casita shall be jointly and severally liable with the grantor (and assignor of a sublessee's interest) for all unpaid assessments and common expenses against the grantor for the grantor's share of such assessments and expenses up to the time of the grant, conveyance and/or assignment. Such liability of the grantee shall be without prejudice to his right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Council setting forth the amount of unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the Casita conveyed

be subject to a lien for, any unpaid assessments against the grantor in excess of the amount herein set forth.

Section 10.2. Foreclosure: Where the mortgagee of a mortgage of record, beneficiary under a deed of trust, or other purchaser of any Casita obtains title to such Casita as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses and assessments by the Council chargeable to such Casita which became due prior to the acquisition of title to such Casita by such acquirer. Such unpaid shares of common expenses and assessments shall be deemed to be common expenses collectible from all of the Casita Owners including such acquirer, his successors and assigns. The acquirer shall be liable, however, for the share of the common expenses and assessments charged by the Council to such Casita which become due after the acquisition of title to such Casita by such acquirer.

ARTICLE XI

COMPLIANCE WITH DECLARATION, BYLAWS AND DECISIONS

Section 11.1. Compliance: All Casita Owners, their tenants, families, servants and guests, or any other person who may in any manner use the Property or any part thereof, shall be bound by and comply strictly with the provisions of this

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Declaration, the Bylaws and any Articles of Incorporation of the Council, and all agreements, decisions, determinations, rules and regulations of the Council, as lawfully made or amended from time to time. Failure to comply with any of the same shall be grounds for an action for damages or injunctive relief, or both, and to the extent the same constitute a first and prior lien (except as provided in Section 9.1) on the interest of such Owner in the Casita and should any obligation of an Owner not be paid or performed when due, such lien shall be subject to foreclosure as provided in Section 9.2.

Section 11.2. Maintenance of Legal Action: All actions requiring such compliance shall be maintained by the Council, or if it fails to act or perform its obligations within fifteen (15) days after written notice from the Corporation to the Council, then the Corporation may maintain any such action, or, in a proper case, an aggrieved Casita Owner may maintain an action.

Section 11.3. Expenses of Enforcement: Any Owner against whom the Council takes any enforcement action shall pay to the Council (regardless of whether suit is brought) promptly on demand all costs and expenses (including reasonable attorneys' fees) incurred by or on behalf of the Council in collecting any delinquent assessments against such Casita, foreclosing its Assessment Lien therefor or enforcing any provisions of this Declaration, or

Bylaws of the Council, or enforcing any agreements, decisions, determinations, rules or regulations against any such Owner or any occupant of such Casita. If for any reason the Council is unable to collect any or all of such costs and expenses incurred in any enforcement action against an Owner, such costs and expenses shall be divided among all the Casita Owners, who shall pay such costs and expenses in proportion to their fractional ownership in the Property as set forth in Section 3.6. In the event the Corporation takes any enforcement action against an Owner, the Corporation shall be entitled to collect from the Owner the same costs and expenses as are permitted to be collected by the Council pursuant to this Section.

ARTICLE XII

PROPERTY RIGHTS

Section 12.1. Owners' Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the General Common Elements (which in this Article exclude the numbered tracts), and such easement shall be appurtenant to and shall pass with the title to each and every Casita. Such right and easement of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by the Council which rules and regulations may include but shall not be limited to:

(a) The right of the Council to limit the number of guests of Owners using or enjoying any recreational facilities on the General Common Elements;

(b) The right of the Council to control and regulate use of any private roadways and/or parking areas included in the General Common Elements; and

(c) The right of the Council to regulate and change the type, nature and extent (including the hours) of use of the General Common Elements.

It is understood that each Owner also has an easement for the exclusive use of the numbered tract on which his Unit is located, and that such easement is and shall be appurtenant to and shall pass with the title to each such Casita.

Section 12.2. Delegation of Use: Subject to the Bylaws and rules and regulations of the Council, any Owner may delegate his right of enjoyment to the General Common Elements to members of his family, his tenants or other persons who reside in his Unit.

ARTICLE XIII

USE RESTRICTIONS

Section 13.1. Residential Use: All of the Casitas in the Property shall be known and described as, and limited in use to, residential use; provided, however, that nothing herein shall prevent such Casitas, or any part or parts thereof, from being rented.

Section 13.2. Construction: All buildings, Units and other structures on the Property shall be of new construction (and then only as may be acceptable to the Corporation pursuant to Article V hereof). No buildings, Units or structures shall be moved from any other location onto the Property, nor shall any buildings, Units or structures be removed from the Property.

Section 13.3. Temporary Structures: No structures of a temporary character (except a temporary construction shed and/or sales office, acceptable to the Corporation, used for the original construction and sale of Casitas on the Property) shall be permitted on the Property, and no trailers, tents, shacks or barns shall be permitted on the Property either temporarily or permanently.

Section 13.4. Business or Offensive Activities: No noxious or offensive activity may be carried on or permitted on any part of the Property, nor shall anything be done thereon

which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the Property be used by an Owner for business (except for rental of his Casita), professional, commercial, rest home (including but not limited to care or treatment of the physically or mentally sick or disabled), religious or institutional purposes. This Section does not apply to the construction or business activities of the Corporation, or the activities of the Council in furtherance of its powers and purposes as set forth in this Declaration.

Section 13.5. Animals; Pets: Only commonly accepted household pets may be kept in the Units, provided that such commonly accepted household pets are not kept, bred or maintained for any commercial purposes. No other animals, fish or birds of any kind shall be raised, bred, or kept on any part of the Property.

Section 13.6. Trash; Unsightly Items: All clothes lines, garbage cans, equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Casitas, property and streets. All rubbish, trash, or garbage shall be removed from the Property and shall not be

burned on, or allowed to accumulate on, the Property. No incinerators, except those approved in writing by the Corporation, shall be permitted on the Property.

Section 13.7. Trucks, Boats, Cycles, Campers: Except for trucks or vans belonging to persons doing work on the Property during daylight hours (or at other times during emergencies), cars, station wagons, trucks, buses, vans, trailers, boats, cycles, antique cars, campers, and similar type vehicles or equipment shall be kept or parked only in parking areas designated by the Corporation for such vehicles or equipment, unless specific written approval is first obtained from the Corporation with respect to some other place and/or manner of keeping or parking such vehicles or equipment. If the Corporation or Council determines that a vehicle (including but not limited to a motorbike or motorcycle) is creating loud or annoying noises by virtue of its operation within the Property, such determination shall be conclusive evidence that such operation of the vehicle is a nuisance to the neighborhood and such operation shall, upon notice by the Corporation or Council to the owner or operator thereof, be prohibited within the Property.

Section 13.8. Signs: No sign (other than an address sign) of any nature whatsoever shall be permitted on any building, Unit

or the General Common Elements, unless specific written approval for a particular sign is first obtained from the Corporation.

Section 13.9. Antennas: Except as otherwise expressly approved in writing by the Corporation, all radio, television and other antennas of every kind or nature shall be placed and maintained upon the Property (or the improvements located thereon) so that no portion thereof shall be visible from the neighboring property or the streets.

Section 13.10. Renting: Each Casita, or any portion or portions thereof, may be rented.

Section 13.11. Other Unlawful Use: No activity or use of any part of the Property shall be undertaken or permitted by an Owner which will increase the rate of insurance upon the Property.

Section 13.12. Rebuilding or Restoration: If any Unit is damaged or destroyed, the Owner of such Unit shall forthwith proceed to rebuild, repair or restore the same, or cause the same to be rebuilt, repaired or restored, to as good a condition as formerly. If the Owner fails to rebuild, repair or restore his Unit promptly, then the Corporation and/or the Council shall have the right to do so pursuant to all of the terms and conditions set forth in Article XXII hereof.

ARTICLE XIV

PARTITION

Section 14.1. Partition Disallowed: No right shall exist to partition or divide any part of the Property except as provided in the Horizontal Property Regime Act.

ARTICLE XV

RESTRAINT UPON ASSIGNMENT OF SHARES IN ASSETS

Section 15.1. Separate Assignment Prohibited: The share of a Casita Owner in the funds and assets of the Council cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Casita.

ARTICLE XVI

CONVEYANCES SUBJECT TO A RIGHT OF FIRST REFUSAL

Section 16.1. Corporation's and Council's Rights: The sale, lease, transfer or assignment of a Casita by the Owner shall be subject to a right of first refusal in the Corporation, and if the Corporation fails to exercise such right, then the Council shall have the right to exercise such right of first refusal, all as more specifically set forth in the Bylaws. Such right of first refusal shall be exercised (if at all) pursuant to procedures established by the Council in its Bylaws.

Section 16.2. Mortgages Not Affected by Right of First Refusal: In the event of any default on the part of any

Casita Owner under any first mortgage held by an institutional lender, which entitled the holder thereof to foreclose the same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Section 16.1, and the purchaser (or grantee under such deed in lieu of foreclosure) of such Casita shall be thereupon and thereafter subject to the provisions of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Casita free and clear of the provisions of Section 16.1, but its grantee shall thereupon and thereafter be subject to all of the provisions thereof. The foregoing references to "mortgage" shall include a deed of trust, and references to "foreclosure sale" shall, in the context of a deed of trust, be deemed to refer to a sale by the trustee.

ARTICLE XVII

MANAGER

Section 17.1. Employment: The Council may employ a responsible individual, corporation, partnership or other entity as Manager to manage and control the General Common Elements, with all the administrative functions and such other powers and

duties and for such fees as the Council may establish, subject to prior approval of any such management contract by a majority of the Owners. No Manager shall be employed without prior written consent of the Corporation. In any event, the Council may grant to the Manager in any such contract, for such term as the Council deems appropriate, all or any portion or portions of the rights, powers, duties and obligations of the Council set forth in this Declaration and/or the Bylaws.

ARTICLE XVIII

SUBSTITUTION OF CORPORATION IN PLACE OF COUNCIL

Section 18.1. Procedure: In the event the Council at any time shall fail to perform the obligations set forth in this Declaration, and such failure shall continue for fifteen (15) days after written notice thereof to the Council by the Corporation, the Corporation, at its option, shall have the right to assume all or any part of the rights, powers and duties (including but not limited to levying the annual assessment) given to the Council in this Declaration, and if the Corporation elects to assume all or any part of said rights, powers and duties, the Council thereupon shall have no further rights, powers and duties, except those thereafter expressly released by the Corporation to the Council. The Corporation shall have the right to either employ a Manager pursuant to Article XVII, or, at the Corporation's sole discretion, assume all rights, powers and duties of the Council,

charging the individual Owners a management fee equal to the fee normally charged by a Manager. Should the Corporation elect to exercise the rights, powers and duties of the Council without the employment of a Manager, the management fee charged by the Corporation shall constitute part of the common expenses of the Property.

ARTICLE XIX

LIABILITY OF THE CORPORATION

Section 19.1. Limitation on Liability: The Corporation shall be held harmless from all fines, suits, claims, demands and actions of any kind or nature of anyone whomsoever, by reason of any breach or violation of any law on the part of any Owner, or any agents, servants, employees or tenants of Owner.

The Corporation shall not be liable for any theft, vandalism, disturbance, riot, unauthorized entrance or other similar occurrence which may take place on or about the Property. The Corporation in no event shall be liable for any accident or injury (including death) to any person or damage to property which shall occur in any manner whatsoever on or about the Property or arise out of the condition, maintenance, repair or use of the Property, except for any accident, injury or damage resulting solely from acts of the Corporation, its agents or employees. The Owners, through the Council, and as a common expense, shall indemnify and hold the Corporation harmless from and against any and all liability, damages, suits

and claims of every kind and nature, including reasonable attorneys' fees, made or brought by or on behalf of any person on account of any such accident, injury or damage not excepted as aforesaid. Each Owner further waives any and all right or claim he or any person claiming under him may have against the Corporation on account of any accident or injury (including death) to any person or damage to property which shall occur in any manner whatsoever on or about the Property or arise out of the condition, maintenance, repair, operation, control, regulation or use of the General Common Elements within the Property (including without limitation the roads within, adjacent to or in the vicinity of the Property), except for any accident, injury or damage resulting solely from the acts of the Corporation, its agents or employees.

ARTICLE XX

PARTY WALLS

Section 20.1. Controlling Law; Definitions: Every wall which is a Limited Common Element and constitutes a dividing line between separate Units shall constitute a "party wall." The Owners shall be subject to the limitations and restrictions set forth in this Article with respect to party walls. With respect to each such wall, each of the adjoining Owners shall have the obligations and be entitled to the benefits of the provisions in this Article and, to the extent applicable and not inconsistent herewith, the general rules of law regarding party walls.

Section 20.2. Damage by One of the Adjoining Owners: If any party wall is damaged or destroyed through the act or acts of any one adjoining Owner, or any of his guests, tenants, licensees, agents, servants or members of his family (whether such act is willful, negligent or accidental), the Council shall forthwith proceed to rebuild or repair the same to as good a condition as formerly and shall assess the cost therefor to said adjoining Owner without cost to the other adjoining Owner.

Section 20.3. Damage by Some Other Cause: If any wall is damaged or destroyed by some act or event other than that produced by one of the adjoining Owners, his guests, agents, tenants, licensees, servants, or members of his family (including ordinary wear and tear and deterioration from lapse of time), then the Council shall proceed forthwith to rebuild or repair the same to as good condition as formerly, and shall assess both adjoining Owners equally for the cost therefor.

Section 20.4. Alterations: Any Owner of a Unit who proposes, at his own cost, to modify, rebuild, repair or make additions in any way or manner to his own Unit which requires the extension, alteration or modification of any party wall, shall first obtain the written consent of the Council and the adjoining Owner, in addition to meeting the requirements of these Restrictions and of any applicable building codes or similar ordinances.

Section 20.5. Arbitration: In the event of a disagreement between Owners of adjoining Units with respect to the repair, reconstruction or maintenance of a party wall or with respect to sharing the cost of repairing, rebuilding or maintaining the same, then, upon the written request of either of said Owners to the Council, the matter shall be submitted to the Council for arbitration under such rules as from time to time may be adopted by the Council. If no such rules are adopted for such purpose or the Council refuses to act, then the matter shall be submitted to the Corporation.

Section 20.6. Council's Rights: Upon failure to forthwith institute rebuilding or repairing of such party wall as required under Section 20.2 and 20.3 (or as established by the Council or Corporation under Section 20.5), and after giving thirty (30) days' notice to the Owners involved, the Council shall have the right, at its option, to rebuild or repair such party wall and charge the responsible Owner or Owners therefor. Said charge shall be the personal obligation of the responsible Owner or Owners, shall be secured by the Assessment Lien against such responsible Owner's or Owners' Casitas, and shall be collected pursuant to the provisions of Section 9.2.

Section 20.7. Private Agreements: No private agreement of any adjoining Owners shall modify or abrogate any of these

party wall restrictions or the obligations, rights, duties and limitations set forth in this Article upon the individual Casita Owners.

ARTICLE XXI

TAXES AND UTILITY CHARGES

Section 21.1. Responsibility of Owners: Each Owner shall pay all real estate taxes, charges and assessments against his Casita and/or Unit, and shall pay all charges for water, electricity, telephone and other utilities, and for sewer services, used or consumed in his Unit when the same become due and payable. Owner also shall pay for any installation of such utilities if installed during his term of ownership of such Unit.

ARTICLE XXII

RESTORATION OF OWNER'S UNIT

Section 22.1. Individual Assessment: In the event the Owner of a Unit fails to maintain the exterior of the Unit and other improvements and the yard and landscaping on the numbered tract on which his Unit is situated in an attractive, neat and clean condition, and generally in a manner satisfactory to the Council and the Corporation (and each of them), the Council and/or the Corporation through their respective agents, employees and/or independent contractors shall have the right,

and each Owner expressly grants and assigns to the Council and the Corporation (and each of them) the right (subject to prior notice as hereinbelow set forth), to enter upon the land upon which such Unit is situated and repair, maintain, rehabilitate and restore the yard, patio and exterior of the Unit and any and all improvements and/or other structures located thereon to the condition deemed satisfactory to the Council and the Corporation. The cost thereof (together with a reasonable profit) shall be charged against and collected from the Owner of the Unit, the amount thereof to be paid by the Owner within thirty (30) days from the date of the invoice sent to the Owner, and said amount further shall be secured by, and subject to all provisions regarding the Assessment Lien as provided in Article IX of this Declaration.

Section 22.2. Notice: Prior to exercising the aforesaid right of restoration, the Council shall give written notice to the Owner of said Unit specifying the necessary repairs, maintenance, rehabilitation or restoration to be undertaken, and granting the Owner thirty (30) days to accomplish the same. If, at the end of said period, the work required to be performed has not been completed (or has been completed in a manner unsatisfactory to the Council or the Corporation), then the Council and/or the Corporation shall have the right,

as above set forth, to make such repairs, maintenance, re-
habilitation or restoration.

Nothing herein contained shall be construed as
granting to the Council or Corporation any right to enter into
or inside of any Unit without the consent of the Owner thereof.

ARTICLE XXIII

GENERAL PROVISIONS

Section 23.1. Binding Effect; Term: These Restrictions shall
run with, bind and burden the Property, and said Restrictions
shall be binding upon each Owner and his heirs, executors,
administrators, successors, assigns and grantees, and all
other persons (including but not limited to mortgagees and
beneficiaries under trust deeds, and their successors and
assigns) claiming an interest in and to the Property until
September 29, 2069.

Section 23.2. References to Declaration: All instruments of
conveyance, transfer or assignment of any interest of all or
any part of the Property may contain the Restrictions herein
set forth by reference to this Declaration. However, the
Restrictions herein shall be binding upon all persons affected
by the terms of this Declaration, regardless of whether any
reference is made to this instrument in the deed or other
instrument of conveyance.

Section 23.3. Amendment or Termination: These Restrictions may be amended at any time during the term hereof by recording in the office of the County Recorder of Maricopa County, Arizona, an instrument in writing reciting said amendments bearing the signed and acknowledged concurrence of the then Owners of fifty-one percent (51%) of the Casitas within the Property; provided, however, no such written instrument reciting said amendments shall be valid and effective during the term hereof unless it bears the signed and acknowledged concurrence of the Corporation.

These Restrictions may be terminated under the same conditions above set forth except that the Owners of one hundred percent (100%) of the Casitas, and the Corporation, must sign such instrument, and further provided that a public authority has agreed to accept a dedication of such General Common Elements as are commonly maintained by a public authority or otherwise has agreed to maintain the same.

In any event, this Declaration and the Restrictions herein set forth shall, if not earlier terminated pursuant to the terms hereinabove, terminate at 11:59 p.m. September 29, 2069, and the Owners, by accepting a sublease or other transfer, conveyance and/or assignment of their Casita, expressly consent to the termination of the Horizontal Property Regime

and the withdrawal of the Property from said Horizontal Property Regime on said date. It is understood that any encumbrances or liens against all or any of the Casitas and/or Units shall be deemed terminated or expired by operation of law, and of no further force and effect, as of 11:59 p.m., September 29, 2069.

Section 23.4. Default Under Ground Lease: In the event of any default by the Corporation (as Lessee) under the Ground Lease and such default is not cured as provided therein, the Smalls (the Ground Lessors) covenant and agree that (a) this Declaration and the Restrictions herein set forth nevertheless shall continue in full force and effect and shall not be terminated except as set forth in Section 23.3, and (b) with respect to each sublease of a Casita (between the Corporation, as sublessor, and a Casita Owner, as sublessee), as long as such sublease is not in default or otherwise subject to termination by the Corporation, then any such sublessee's tenancy shall not be disturbed (except as provided in the sublease) and there shall be an attornment between such sublessee and the Smalls (i.e., any such sublease shall continue in effect as if the Smalls were the sublessor).

Section 23.5. Financing: The terms of all financing arrangements relating to any Casita which contemplate or involve

placing any security interest, lien or encumbrance on the Smalls' or the Corporation's interests shall be subject to the prior approval of the Corporation, which approval shall not be unreasonably withheld. Any such loan made with respect to a Casita shall comply with the following requirements: (i) it shall be made by a reputable institutional lender; (ii) the total principal amount thereof shall not exceed seventy-five percent (75%) of the total estimated cost of the improvements for the Casita as established by the lending institution (which improvements include but shall not necessarily be limited to the Unit, architectural and engineering costs and fees, offsite and onsite improvements, and all subsequent alterations, repairs and replacements); (iii) the rate of interest thereon shall not exceed ten percent (10%) per annum and the principal amount thereof shall be amortized in equal monthly installments over a period of not in excess of thirty (30) years; and (iv) the security instrument to be executed shall be in a form regular for such an instrument and shall affect only the Corporation's and/or Smalls' interest in Hilton Casitas (or the portion thereof allocable to the Casita), and shall in no way serve to make the Corporation or the Smalls personally liable for the payment of the loan thereby secured; and each such security instrument shall provide that the holder thereof shall be

entitled to notice of default under the Sublease covering such Casita and shall be given the right to cure any such default within twenty (20) days from the time notice of default is given by the Corporation.

Section 23.6. Waiver or Abandonment: The waiver of, or failure to enforce, any breach or violation of any Restriction herein contained shall not be deemed to be a waiver of the right to enforce or be deemed an abandonment of, such Restriction or any of the Restrictions; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of such Restriction or any of the Restrictions. No Restriction contained herein shall be deemed to have been abandoned or the right to enforce the same waived, unless this Declaration is amended to delete such Restriction.

Section 23.7. Severability: Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 23.8. Construction: Except for judicial construction, the Corporation shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Corporation's construction or

interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and the Property.

Section 23.9. Rules and Regulations: The Council shall have the right to adopt rules and regulations, and amend, cancel, and adopt new rules and regulations from time to time with respect to all aspects of the Council's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration or the Bylaws or Articles (if any) of the Council.

Section 23.10. Mergers: The Council shall have the power and right to merge or consolidate with any other non-profit corporation, council of co-owners, association or other entity (regardless of whether the rights, obligations and area served by such other non-profit corporation, association or other entity are lesser than, the same as, or greater than those of the Council). Any such proposed merger or consolidation shall be effective only upon (i) an affirmative vote of a majority of the votes cast at a meeting of the Owners held for such purpose, and (ii) express written consent of the Corporation.

Section 23. 11. Corporation's Exclusive Rights: It is understood that the Corporation (and not the Council) has and shall retain all rights granted exclusively to the Corporation in this Declaration.

Section 23.12. Change of Circumstances: Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 23.13. Gender and Number: Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders. Words used in the neuter gender shall include the masculine and feminine genders; words used in the singular shall include the plural, and words in the plural shall include the singular.

Section 23.14. Captions and Titles: All captions, titles and headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent hereof.

IN WITNESS WHEREOF, this Declaration is signed as of the day, month and year first above written.

LINCSCOTT HOTEL CORPORATION

By Robert H. Karay
President

Attest:

Paul V. Wentworth
Assistant Secretary
W. J. Small
W. J. SMALL

Hazel M. Small
HAZEL M. SMALL

Plaintiff's Exhibit 2

1 5. Respondent's Answer to the Petition provided, in relevant part, as follows:

2 **There has been no violation of A.R.S. § 33-1243.**

3 The [Hilton Casitas] consists of twenty-nine (29) homes located
4 behind the Scottsdale Hilton. In large part, the majority of the
5 maintenance and management of the Casitas is taken care of by
6 the hotel. The Association adopts its proposed budget at the
7 annual meetings and adopted a proposed budget for 2013 at the
8 annual meeting. The proposed budget was insufficient because
9 Mr. Whitmer has made multiple legal challenges requiring the
10 Association's counsel to respond.

9 **TESTIMONY**

10 **Testimony of Michael Bengson**

11 6. Michael Bengson (hereinafter "Mr. Bengson") testified that he was elected to be a
12 member of the Board for Hilton Casitas in October 2014. Mr. Bengson stated that there
13 has been no Board meeting since October 15, 2014. Mr. Bengson testified that he
14 retained Respondent's counsel, Robert Anderson, Esq., as a friend to help Hilton
15 Casitas out. Mr. Bengson stated that he wanted to resolve the chaos that Hilton
16 Casitas was currently involved in. Mr. Bengson testified that Hilton Casitas' prior
17 counsel had resigned and that he felt it was imperative for Hilton Casitas to have legal
18 representation at the hearing.

19 7. Mr. Bengson testified that he had been a member of the association since May
20 2011. Mr. Bengson stated that there had not been a meeting of the Board since his
21 election to the Board on October 15, 2014. Mr. Bengson testified that the Board was
22 aware of the budget problems and intended to meet soon to adopt an amended budget.

23 8. Mr. Bengson testified that the amended budget would ratify the increased legal
24 expenses incurred by Hilton Casitas. Mr. Bengson stated that he and the new Board
25 wanted to "get everything on the right track."

26 **Testimony of Esther Sue Karatz**

27 9. Esther Sue Karatz (hereinafter "Mrs. Karatz") testified that she had previously been
28 president of the Board for Hilton Casitas. Mrs. Karatz stated that Hilton Casitas' prior
29 legal counsel was hired on January 31, 2013. Mrs. Karatz acknowledged that there
30 was no record of the Board's decision to retain legal counsel.

1 10. Mrs. Karatz testified that Hilton Casitas had suffered a computer crash and that
2 there were no records for meetings or actions of the Board for Hilton Casitas after
3 January 10, 2013, and that there were no records regarding the retention of Hilton
4 Casitas' prior legal counsel. Mrs. Karatz said that the majority of the Board approved
5 the hiring of the prior legal counsel by "a telephone vote."

6 11. Mrs. Karatz acknowledged that Hilton Casitas' legal fees in 2014, substantially
7 exceeded the amount of money that had been budgeted for legal fees in 2014. Mrs.
8 Karatz testified that the increased legal expenses were incurred because Petitioner had
9 filed two or three law suits against Hilton Casitas and that the law suits necessitated
10 increased legal fees. Mrs. Karatz stated that the increased legal fees had not been
11 anticipated by Hilton Casitas.

12 PROVISIONS OF LAW REFERENCED AT HEARING

13 1. A.R.S. § 33-1243(D) provides as follows:

14 Except as provided in the declaration, within thirty days after
15 adoption of any proposed budget for the condominium, the board
16 of directors shall provide a summary of the budget to all the unit
17 owners. Unless the board of directors is expressly authorized in
18 the declaration to adopt and amend budgets from time to time,
19 any budget or amendment shall be ratified by the unit owners in
20 accordance with the procedures set forth in this subsection. If
21 ratification is required, the board of directors shall set a date for a
22 meeting of the unit owners to consider ratification of the budget
23 not fewer than fourteen nor more than thirty days after mailing of
24 the summary. Unless at that meeting a majority of all the unit
25 owners or any larger vote specified in the declaration rejects the
26 budget, the budget is ratified, whether or not a quorum is present.
27 If the proposed budget is rejected, the periodic budget last ratified
28 by the unit owners shall be continued until such time as the unit
29 owners ratify a subsequent budget proposed by the board of
30 directors.

26 CONCLUSIONS OF LAW

27 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to
28 file a petition with the Department for a hearing concerning violations of planned
29 community documents or violations of statutes that regulate planned communities. That
30

1 statute provides that such petitions will be heard before the Office of Administrative
2 Hearings.

3 2. The burden of proof at an administrative hearing falls to the party asserting a
4 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
5 preponderance of the evidence. See A.A.C. R2-19-119.

6 3. Proof by "preponderance of the evidence" means that it is sufficient to persuade
7 the finder of fact that the proposition is "more likely true than not." *In re Arnold and*
8 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

9 4. A.R.S. § 33-1243(D) provides that within thirty days after adoption of any
10 proposed budget for the condominium, the Board shall provide a summary of the budget
11 to all the unit owners and that unless the Board is expressly authorized in the
12 declaration to adopt and amend budgets from time to time, any budget or amendment
13 shall be ratified by the unit owners in accordance with the procedures set forth in this
14 subsection. Mrs. Karatz acknowledged that Hilton Casitas' legal fees in 2014 exceeded
15 the amount of money that had been budgeted for legal fees in 2014. Mr. Bengson
16 stated that there had not been a meeting of the Board since his election to the Board on
17 October 15, 2014. Mr. Bengson testified that the Board was aware of the budget
18 problems and intended to meet soon to adopt an amended budget. Mr. Bengson stated
19 that the amended budget would ratify the increased legal expenses incurred by Hilton
20 Casitas. Hilton Casitas has not ratified the increased expenses and adopted an
21 amended budget as required by applicable statute. This Tribunal concludes that Hilton
22 Casitas failed to comply with the applicable provisions of A.R.S. § 33-1243(D).

23 **RECOMMENDED ORDER**

24 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing
25 party in this matter.

26 It is further ORDERED that Hilton Casitas shall fully comply with the applicable
27 provisions of A.R.S. § 33-1243(D) in the future.

28 It is further ORDERED that Hilton Casitas shall pay Petitioner his filing fee of
29 \$550.00, to be paid directly to Petitioner within thirty (30) days of this Order.

30 It is further ORDERED that no civil penalty shall be imposed in this matter.

Plaintiff's Exhibit 3

R L Whitmer

Subject: Hilton Casitas Council of Homeowners - Rules and Regulations
Attachments: ATT00014.doc

On Thursday, August 25, 2016 1:44 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Casita Owners,

Attached are the new "Rules and Regulations" for our community. The old "Rules and Regulations" have been replaced in its entirety by these new Rules and Regulations. The Board has also made changes to our Safeguard Security agreement. They are as follows:

- Monitoring of individual Casitas will terminate 10/01/2016. You may contact Safeguard direct if you would like to continue service individually at your expense. The plans start at \$35/month.
- Safeguard Patrol/vacation service will terminate 10/01/2016 as well. Again if the vacation service is important. You may contact Safeguard direct and they can let you know the costs etc.

Your next question should be: Will our monthly dues be going down?? The answer is "yes" in the long run. Let me tell you the 12-18-month plan:

- Install security cameras at the gates and at least looking down 2 streets.
- Having one management company to oversee all of the violations, finances, financial reports, and provide a Community website for owners to access all information such as Minutes of meetings, HOA financial reports, meeting information and dates.
- Repave our streets at the same time the hotel repaves their parking lot. This will be 12-18 months from now.

The savings from the Safeguard changes and management company changes will be used to build a reserve to pay for the paving and install the new security cameras. We will have those exact costs in the next 90 days. When the reserves are adequate to pay for these capital expenditures we will then reduce the monthly HOA dues to less than \$200/month!!!

The reserves and timing are also subject to our legal expenses. If we are assured these fees will be minimized, we can accomplish our goal sooner.

Please bear with us as we make these changes which will be positive for all of us in the long run.

Please let me know if you have any questions.

Best Regards-

On behalf of the Board of Directors-
Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: evon@cpihoa.com
<http://www.cpihoa.com>

The Hilton Casitas Council of Homeowners
6333 N. Scottsdale Rd.
Scottsdale, AZ 85250

Received 0/27/16 + 90 days

11/20/16 ~~16~~

August 22nd, 2016

Casita Owners,

Enclosed are the new "Rules and Regulations" for our community. The old "Rules and Regulations" have been replaced in its entirety by these new Rules and Regulations. The Board has also made changes to our Safeguard Security agreement. They are as follows:

- Monitoring of individual Casitas will terminate 10/01/2016. You may contact Safeguard direct if you would like to continue service individually at your expense. The plans start at \$35/month.
- Safeguard Patrol/vacation service will terminate 10/01/2016 as well. Again if the vacation service is important. You may contact Safeguard direct and they can let you know the costs etc.

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- Install security cameras at the gates and at least looking down 2 streets.
- Having one management company to oversee all of the violations, finances, financial reports, and provide a Community website for owners to access all information such as Minutes of meetings, HOA financial reports, meeting information and dates.
- Repave our streets at the same time the hotel repaves their parking lot. This will be 12-18 months from now.

The savings from the Safeguard changes and management company changes will be used to build a reserve to pay for the paving and install the new security cameras. We will have those exact costs in the next 90 days. When the reserves are adequate to pay for these capital expenditures we will then reduce the monthly HOA dues to less than \$200/month!!!

The reserves and timing are also subject to our legal expenses. If we are assured these fees will be minimized, we can accomplish our goal sooner.

Please bear with us as we make these changes which will be positive for all of us in the long run.

Please let me know if you have any questions.

Best Regards-

Board of Directors
The Hilton Casitas Council of Homeowners

Plaintiff's Exhibit 4



RESIDENTIAL & COMMERCIAL TECHNOLOGY INTEGRATION

CORPORATE OFFICE
16117 North 76th Street
Scottsdale, Arizona 85260

480-609-6200
TOLLFREE 800-426-6060
FAX 480-609-6222
www.safeguard.us

AZ CONTRACTORS LICENSE
ROC 095864 ROC 095865

HM LICENSE
#87397

May 19, 2006

Ms. Sue Crozier
President
Hilton Casitas Homeowners Association
(480) 607-1313 (Residence)

SUBJECT: PROPOSED MONTHLY FEE FOR "FULL SERVICES" BEING PERFORMED AT THE HILTON CASITAS GATED COMMUNITY

Dear Ms. Crozier:

As per our most recent telephone conversation, following you will find Safeguard's proposed monthly fee for "Full Services" being performed at the Hilton Casitas gated community:

BASED IN 29 HOMES

DALTON
\$1,140.45 Mobile patrol response to individual home alarm systems, "RED TAG VACATION" services and three (3) random mobile patrol tours of the community nightly, seven (7) days per week.
IDENT PRICE FOR FULL SERVICE IS \$125.00/MONTH

IDENT PRICE FOR FULL SERVICE IS \$125.00/MONTH

VS,
\$ 696.55 Monitoring of individual home alarm systems for fire, burglary and panic alarms.

1,131.55
\$ 450.00 Clearance services, programming, vehicle access control and Safeguard service contract to maintain gates including parts and labor.
29 HOMES
19.02/HOME
R MONTH

CHRIS G.

\$ 435.00 Radio backup for individual home alarm systems.

141.55
\$ 122.00 Safeguard service contract to maintain individual home alarm systems, including parts and labor.
85.98/MONTH OR
1,031.76/YEAR/HOME

MAINTENANCE SERVICE AGREEMENT 4.21/HOME/MONTH

\$2,844.00 Proposed monthly fee to be effective June 1, 2006.

PLATINUM PLAN FOR MAINTENANCE IS \$24.95/MONTH PER HOME
SAVINGS OF \$20.74/MONTH OR \$248.88/YEAR

D.C. WILL EXPLAIN ALL-SERVICE ACCOUNTS

Hilton Casitas Gated Community

May 19, 2006

Page 2

As always, we appreciate your confidence and the opportunity of servicing your security needs.

Please authorize below indicating the Hilton Casitas Homeowners Association's acceptance of Safeguard's proposed monthly fee.

If you have any questions and / or concerns, please contact me at your earliest convenience.

Respectfully submitted,



Daniel S. Mierzwa, CSS, CPO
Director of Security Operations
(480) 609-6292 (Direct Office Number)
(480) 367-6541 (Direct Fax Number)

cc: File

Safeguard Security & Communications, Inc.
Approved as presented:

By: 
Daniel S. Mierzwa

Title: Director of Security Operations

Date: 05-22-06

Hilton Casitas Homeowners Association
Accepted as presented:

By: 

Title: President / HOA

Date: 5/24/06

Plaintiff's Exhibit 5

R L Whitmer

Subject: Scottsdale Hilton Casitas - Board Meeting Notice- (Change of Location!)

On Monday, February 15, 2016 3:40 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Note: Change of Location!

BOARD OF DIRECTORS MEETING NOTICE

The Board of Directors meeting scheduled for:

Date: Tuesday February 16th, 2016.

Located: Scottsdale Hilton Ballroom

Time: 4:30pm

Agenda:

- Approve the last Board minutes
- Parking signs
- Noncompliance Issues
- Discuss the amended Declarations.
- Date for annual meeting and vote on the amended Declarations.
- Questions
- Adjourned

Homeowners are welcome to attend!

Thank you-

The Hilton Casitas Council of Homeowners

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: <mailto:evon@cpihoa.com>
<http://www.cpihoa.com/>

R L Whitmer

Subject: Board of Directors Open Meeting Notice 7/7

On Thursday, June 30, 2016 8:45 AM, Evon Potocki <Evon@cpihoa.com> wrote:

BOARD OF DIRECTORS MEETING NOTICE

**The Board of Directors open meeting
scheduled for:**

Date: Thursday July 7th, 2016.
Located: Hilton Hotel Boardroom
Time: 4:00pm

Agenda:

- Call meeting to order
- Read and approve prior minutes
- Discuss and vote on new rules and regulations
- Adjourn

Executive Session

- Delinquencies
- Adjourn

Homeowners are welcome to attend!

Thank you-

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: evon@cpihoa.com
<http://www.cpihoa.com>

R L Whitmer

Subject: The Hilton Casitas Council of Homeowners - OPEN BOARD MEETING NOTICE

On Thursday, August 11, 2016 3:14 PM, Evon Potocki <Evon@cpihoa.com> wrote:

BOARD OF DIRECTORS MEETING NOTICE

The Board of Directors open meeting scheduled for:

Date: Friday August 19th, 2016

Located: Hilton Hotel Boardroom

Time: 9:00 a.m.

Agenda:

- Call meeting to order
- Review and approve prior meeting minutes
- Vote to terminate all existing or past Rules and Regulations
- Discuss and vote on new Rules and Regulations
- Discuss current Safeguard service
- Adjourn

Executive Session

- Delinquencies
- Adjourn

Homeowners are welcome to attend!

Thank you-

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: evon@cpioha.com
<http://www.cpioha.com>

R L Whitmer

Subject: Hilton Casitas Council of Homeowners - Open Board Meeting
11/29/2016

On Tuesday, November 22, 2016 10:33 AM, Evon Potocki <Evon@cpihoa.com> wrote:

BOARD OF DIRECTORS MEETING NOTICE

**The Board of Directors open meeting
scheduled for:**

Date: Tuesday November 29th, 2016
Located: Sunset Board Room Hilton Hotel
Time: 9:00 a.m.

Agenda:

- Call meeting to order
- Review and approve prior meeting minutes
- Discuss and approve full time management
- Discuss security
- Discuss roads
- Open forum with owners and the Board
- Adjourn

Executive Session

- Adjourn

Homeowners are invited to attend!

Best Regards-

(For the Board of Directors)

Evon Potocki

Community Manager



Cornerstone Properties, Inc.

P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 X103

Fax: (602) 244-9214

E-Mail: evon@cpihoa.com

<http://www.cpihoa.com>

Plaintiff's Exhibit 6

Scottsdale Hilton Casita Worksheet
2015 Expenses

EXPENSES:
Note - Landscapes paid separately

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	2015
Projected Revenues @ \$231.52 thru April and \$288.04 beginning May (assuming ad pay)	\$ 6,772.09	\$ 6,772.09	\$ 6,772.09	\$ 6,772.09	\$ 6,382.16	\$ 6,382.16	\$ 6,382.16	\$ 6,382.16	\$ 6,382.16	\$ 6,382.16	\$ 6,382.16	\$ 6,382.16	\$ 64,143.00
Expenses:													
City of Scottsdale - Sewer	\$ 1,011.83	\$ 1,011.83	\$ 1,011.83	\$ 1,011.83	\$ 1,011.83	\$ 1,011.83	\$ 942.16	\$ 942.16	\$ 942.16	\$ 942.16	\$ 942.16	\$ 942.16	\$ 11,723.84
State Farm - Insurance	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,510.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,341.45	\$ 888.53	\$ 8,818.73
Horizon - Landscapers	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 34,288.89
Safeguard Security Svc	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 1,000.00
Street Sweepers	\$ 68.96	\$ 68.96	\$ 67.86	\$ 68.13	\$ 68.13	\$ 68.13	\$ 67.08	\$ 70.22	\$ 70.53	\$ 42.55	\$ 39.20	\$ 44.31	\$ 824.78
CenturyLink	\$ 39.42	\$ 39.81	\$ -	\$ 83.04	\$ 39.83	\$ 41.79	\$ 39.09	\$ 37.87	\$ 45.04	\$ 42.55	\$ 39.20	\$ 44.31	\$ 482.25
APS	\$ 580.00	\$ 680.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 1,648.38	\$ 1,648.38	\$ 1,648.38	\$ 1,648.38	\$ 1,648.38	\$ 1,648.38	\$ 16,508.88
HOA Reserve	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,189.00
Mgmt Fee - Hotel	\$ 6,980.88	\$ 6,981.07	\$ 6,343.48	\$ 7,919.27	\$ 6,316.37	\$ 7,862.78	\$ 6,809.36	\$ 7,762.71	\$ 7,770.09	\$ 7,897.07	\$ 6,894.78	\$ 8,178.43	\$ 84,987.25
Total Expenses	\$ (208.80)	\$ (208.89)	\$ (1,571.38)	\$ (747.19)	\$ 65.78	\$ 528.38	\$ (427.20)	\$ 616.45	\$ 612.07	\$ 685.09	\$ (312.60)	\$ 202.73	\$ (761.66)
Profit/Loss (Projected Revenues less Expenses)													

	Original Budget Per Casita	2015 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 33.69	\$ 28.29
State farm	\$ 6.12	\$ 4.03	\$ (1.09)
Horizon - Grounds	\$ 15.00	\$ 26.34	\$ 10.34
Safeguard	\$ 125.00	\$ 98.44	\$ (26.56)
ACE - street sweeping	\$ 3.00	\$ 2.87	\$ (0.13)
APS - fee	\$ 20.00	\$ 2.37	\$ 2.37
HOA	\$ 25.00	\$ 1.41	\$ (18.59)
Quest - gate phone line	\$ 25.00	\$ 44.56	\$ 44.56
Trash - Hotel	\$ 35.00	\$ 26.00	\$ 9.00
Mgmt Fee - Hotel	\$ 233.62	\$ 36.00	\$ 197.62
		\$ 273.72	\$ 38.20

Extra Expenses:

Horizon (In addition to monthly maintenance of \$480)

April - irrigation repairs	\$ 483.00
May - irrigation repairs & trim palm trees	\$ 285.75
July - trim palm trees	\$ 1,030.00
Nov - winter seeding	\$ 681.45
Dec - irrigation repairs	\$ 408.53

\$3,058.73

Scottsdale Hilton Casita Worksheet
01/31/13 thru 12/31/13

EXPENSES:

Note - Landlease paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2013
City of Scottsdale	\$ 751.12	\$ 751.12	\$ 751.12	\$ 751.12	\$ 751.12	\$ 751.12	\$ 751.12	\$ 883.58	\$ 883.58	\$ 883.58	\$ 883.58	\$ 883.58	\$ 9,675.74
State farm	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,280.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 980.00	\$ 1,472.00
Horizon	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 2,862.87	\$ 6,725.34	\$ 6,670.00
Safeguard	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 34,352.04
American Sweeping	\$ 38.14	\$ 41.69	\$ 37.22	\$ 38.44	\$ 37.45	\$ 37.91	\$ 38.74	\$ 37.29	\$ 36.34	\$ 38.93	\$ 35.73	\$ 34.60	\$ 2,400.00
APS	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 449.48
HOA	\$ 65.40	\$ 68.07	\$ 63.05	\$ 63.18	\$ 63.06	\$ 64.01	\$ 130.64	\$ 725.00	\$ 65.13	\$ 725.00	\$ 66.18	\$ 65.10	\$ 6,960.00
Qwest/Century Link	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 711.82
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 8,700.00
Mgmt Fee - Hotel	\$ 6,718.33	\$ 6,721.65	\$ 6,714.08	\$ 6,713.41	\$ 6,188.30	\$ 6,816.71	\$ 7,591.17	\$ 6,783.54	\$ 3,985.05	\$ 6,785.18	\$ 6,368.16	\$ 10,188.62	\$ 12,180.00
Average cost per Casita	\$ 231.67	\$ 231.78	\$ 231.52	\$ 231.50	\$ 282.28	\$ 235.02	\$ 281.76	\$ 233.92	\$ 137.42	\$ 233.97	\$ 219.59	\$ 351.33	\$ 240.15

	Original Budget Per Casita	2013 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 27.80	\$ 22.40
State farm	\$ 6.12	\$ 4.23	\$ (0.89)
Horizon - Grounds	\$ 15.00	\$ 19.17	\$ 4.17
Safeguard	\$ 125.00	\$ 98.71	\$ (26.29)
ACE - street sweeping	\$ 3.00	\$ 6.80	\$ 3.80
APS - elec	\$ 20.00	\$ 1.29	\$ 1.71
HOA	\$ 20.00	\$ 20.00	\$ -
Qwest - gate phone line	\$ 25.00	\$ 2.05	\$ 2.05
Trash - Hotel	\$ 35.00	\$ 25.00	\$ 10.00
Mgmt Fee - Hotel	\$ 233.52	\$ 35.00	\$ 198.52
	\$ 233.52	\$ 240.15	\$ 6.63

Scottsdale Hilton Casita Worksheet
01/31/12 thru 12/31/12

EXPENSES:
Note - Landlease paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2012
City of Scottsdale	\$ 577.72	\$ 569.18	\$ 589.18	\$ 676.14	\$ 676.14	\$ 676.14	\$ 676.14	\$ 752.12	\$ 751.12	\$ 751.12	\$ 403.60	\$ 1,513.61	\$ 8,188.51
State farm	\$ 480.00	\$ 615.30	\$ 480.00	\$ 480.00	\$ 507.98	\$ 680.55	\$ 480.00	\$ 480.00	\$ 728.39	\$ 480.00	\$ 880.00	\$ 880.00	\$ 1,470.00
Horizon	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 2,882.87	\$ 5,725.34	\$ 6,352.22
Safeguard	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 2,882.87	\$ 400.00	\$ 34,352.04
American Sweeping	\$ 44.80	\$ 58.13	\$ 48.91	\$ 42.23	\$ 37.83	\$ 41.78	\$ 40.58	\$ 42.23	\$ 39.55	\$ 40.67	\$ 77.72	\$ 400.00	\$ 2,400.00
APS	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 1,160.00	\$ 6,960.00
HOA	\$ 62.77	\$ 63.34	\$ 63.35	\$ 63.35	\$ 63.23	\$ 83.23	\$ 127.41	\$ 65.52	\$ 63.08	\$ 63.09	\$ 725.00	\$ 127.91	\$ 763.06
Qwest/Century Link	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,180.00
Mgmt Fee - Hotel	\$ 6,547.98	\$ 6,888.62	\$ 6,544.11	\$ 8,114.39	\$ 6,004.72	\$ 6,024.37	\$ 6,706.61	\$ 3,859.87	\$ 6,984.82	\$ 6,717.55	\$ 4,602.67	\$ 11,704.48	\$ 61,880.37
Average cost per Casita	\$ 225.79	\$ 230.64	\$ 225.66	\$ 279.81	\$ 227.75	\$ 235.32	\$ 231.27	\$ 133.10	\$ 240.17	\$ 231.64	\$ 168.71	\$ 403.60	\$ 235.29

	Original Budget Per Casita	2012 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 23.53	\$ 18.13
State farm	\$ 5.12	\$ 4.22	\$ (0.90)
Horizon - Grounds	\$ 15.00	\$ 18.26	\$ 3.26
Safeguard	\$ 125.00	\$ 98.71	\$ (26.29)
ACE - street sweeping	\$ 3.00	\$ 3.90	\$ 0.90
APS - disc	\$ 20.00	\$ 1.48	\$ 18.52
HOA	\$ 20.00	\$ 20.00	\$ -
Qwest - gata phone line	\$ 25.00	\$ 2.19	\$ 22.81
Trash - Hotel	\$ 35.00	\$ 25.00	\$ 10.00
Mgmt Fee - Hotel	\$ 233.62	\$ 35.00	\$ 198.62
	\$ 233.62	\$ 235.29	\$ 1.67

Scottsdale Hilton Casita Worksheet
01/31/11 thru 12/31/11

EXPENSES:

Note - Land/lease paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2011
City of Scottsdale	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 6,830.18
State farm	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,374.00
Horizon	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 6,754.50
Safeguard	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 2,400.00
ACE	\$ 41.90	\$ 38.44	\$ 35.08	\$ 39.94	\$ 35.07	\$ 40.78	\$ 39.44	\$ 38.61	\$ 34.03	\$ 41.50	\$ 37.82	\$ 38.43	\$ 454.84
APS	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 6,960.00
HOA	\$ 82.28	\$ 62.88	\$ 62.88	\$ 61.92	\$ 62.73	\$ 63.05	\$ 81.53	\$ 61.69	\$ 62.68	\$ 62.57	\$ 62.77	\$ 62.77	\$ 769.59
Qwest	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,180.00
Mgmt Fee - Hotel	\$ 6,536.03	\$ 6,531.15	\$ 7,903.79	\$ 8,533.71	\$ 6,529.65	\$ 8,535.68	\$ 6,552.82	\$ 8,530.15	\$ 6,528.44	\$ 6,628.83	\$ 7,433.83	\$ 6,531.05	\$ 80,775.13
Average cost per Casita	\$ 225.38	\$ 225.21	\$ 272.54	\$ 225.30	\$ 225.16	\$ 225.37	\$ 225.96	\$ 225.18	\$ 225.12	\$ 228.56	\$ 258.34	\$ 225.21	\$ 232.11

	Original Budget Per Casita	2011 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 19.63	\$ 14.23
State farm	\$ 5.12	\$ 3.95	\$ (1.17)
Horizon - Grounds	\$ 15.00	\$ 18.41	\$ 3.41
Safeguard	\$ 125.00	\$ 98.71	\$ (26.29)
ACE - street sweeping	\$ 3.00	\$ 6.90	\$ 3.90
APS - elpc	\$ 20.00	\$ 1.31	\$ 18.69
HOA	\$ 20.00	\$ 2.21	\$ 17.79
Qwest - gate phone line	\$ 25.00	\$ 25.00	\$ -
Trash - Hotel	\$ 35.00	\$ 35.00	\$ -
Mgmt Fee - Hotel	\$ 233.52	\$ 232.11	\$ 1.41

Scottsdale Hilton Casita Worksheet
01/31/10 thru 12/31/10

EXPENSES:

Note - Leaseless paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2010
City of Scottsdale	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 569.18	\$ 569.18	\$ 569.18	\$ 569.18	\$ 4,856.40
State farm	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,964.00	\$ 480.00	\$ 1,353.00	\$ 1,590.65	\$ 581.42	\$ 628.85	\$ 480.00	\$ 1,224.50	\$ 612.78	\$ 1,354.00
Horizon	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 8,871.20
Safeguard	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 34,352.04
ACE	\$ 32.72	\$ 38.57	\$ 33.20	\$ 38.57	\$ 33.77	\$ 34.95	\$ 35.53	\$ 37.17	\$ 34.82	\$ 33.60	\$ 37.02	\$ 35.38	\$ 2,400.00
APS	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 425.40
HOA	\$ 58.99	\$ 59.49	\$ 58.37	\$ 58.51	\$ 58.74	\$ 58.74	\$ 59.05	\$ 58.72	\$ 62.16	\$ 41.86	\$ 61.97	\$ 61.38	\$ 6,980.00
Qwest	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,180.00
Mgmt Fee - Hotel	\$ 6,276.84	\$ 6,283.19	\$ 6,277.70	\$ 7,636.21	\$ 6,277.84	\$ 7,151.82	\$ 7,390.38	\$ 6,382.44	\$ 6,877.78	\$ 6,507.31	\$ 7,275.34	\$ 6,661.37	\$ 80,798.00
Average cost per Casita	\$ 216.44	\$ 216.66	\$ 216.47	\$ 263.32	\$ 216.47	\$ 246.61	\$ 254.84	\$ 220.08	\$ 230.27	\$ 224.39	\$ 250.87	\$ 229.70	\$ 232.18

	Original Budget Per Casita	2010 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 13.86	\$ 8.56
State farm	\$ 5.12	\$ 9.69	\$ (1.23)
Horizon - Grounds	\$ 15.00	\$ 25.49	\$ 10.49
Safeguard	\$ 125.00	\$ 98.71	\$ (26.29)
ACE - street sweeping	\$ 3.00	\$ 6.80	\$ 3.80
APS - elec	\$ 20.00	\$ 1.22	\$ 1.22
HOA	\$ 20.00	\$ 20.00	\$ -
Qwest - gate phone line	\$ 25.00	\$ 2.01	\$ 2.01
Trash - Hotel	\$ 35.00	\$ 25.00	\$ 10.00
Mgmt Fee - Hotel	\$ 233.52	\$ 35.00	\$ 198.52
	\$ 233.52	\$ 232.18	\$ (1.34)

Scottsdale Hilton Casita Worksheet
01/31/08 thru 12/31/08

EXPENSES:

Note - Leasehold paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2008
City of Scottsdale	\$ 770.82	\$ 770.82	\$ 770.82	\$ 775.82	\$ 770.82	\$ 770.82	\$ 543.48	\$ 543.48	\$ 543.48	\$ 548.48	\$ 548.48	\$ 553.48	\$ 7,910.80
State farm	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 1,400.11	\$ 420.00	\$ 420.00	\$ 420.00	\$ 1,380.13	\$ 480.00	\$ 1,326.00
Horizon	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 7,020.24
Safeguard	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 34,352.04
ACE	\$ 34.88	\$ 31.78	\$ 35.07	\$ 31.57	\$ 30.83	\$ 33.32	\$ 580.00	\$ 580.00	\$ 580.00	\$ 31.33	\$ 31.12	\$ 33.28	\$ 2,400.00
APS	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 6,960.00
HOA	\$ 57.22	\$ 113.27	\$ 56.21	\$ 57.25	\$ 57.25	\$ 57.28	\$ 57.28	\$ 58.50	\$ 57.64	\$ 57.99	\$ 57.89	\$ 57.61	\$ 745.49
Qwest	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,180.00
Mgmt Fee - Hotel	\$ 6,685.59	\$ 6,718.52	\$ 6,664.77	\$ 7,893.31	\$ 6,681.87	\$ 6,664.09	\$ 7,383.54	\$ 6,404.85	\$ 6,403.79	\$ 6,440.47	\$ 7,380.39	\$ 6,507.04	\$ 81,887.83
Average cost per Casita	\$ 228.85	\$ 231.87	\$ 228.82	\$ 275.83	\$ 228.71	\$ 228.80	\$ 254.60	\$ 220.85	\$ 220.82	\$ 222.09	\$ 254.50	\$ 224.38	\$ 285.31

* July, Aug. & Sept APS invoices were most likely included in the hotel's electric expense in error.

	Original Budget Per Casita	2008 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 22.73	\$ 17.33
State farm	\$ 5.12	\$ 3.81	\$ (1.31)
Horizon - Grounds	\$ 15.00	\$ 20.17	\$ 5.17
Safeguard	\$ 125.00	\$ 98.71	\$ (26.29)
ACE - street sweeping	\$ 3.00	\$ 6.90	\$ 3.90
APS - elec	\$ 20.00	\$ 0.84	\$ 19.16
HOA	\$ 20.00	\$ 2.14	\$ 17.86
Qwest - gats phone line	\$ 25.00	\$ 25.00	\$ -
Trash - Hotel	\$ 35.00	\$ 35.00	\$ -
Mgmt Fee - Hotel	\$ 233.52	\$ 235.31	\$ 1.79

Scottsdale Hilton Casita Worksheet
01/31/09 thru 12/31/09

EXPENSES:
Note - Landlease paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2009
City of Scottsdale	\$ 538.48	\$ 543.48	\$ 543.48	\$ 543.48	\$ 543.48	\$ 543.48	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 322.46	\$ 5,190.64
State farm	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,360.07	\$ 594.07	\$ 480.00	\$ 480.00	\$ 1,085.63	\$ 480.00	\$ 1,354.00
Horizon	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 7,359.77
Safeguard	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 34,352.04
ACE	\$ 31.45	\$ 36.52	\$ 31.67	\$ 32.18	\$ 33.74	\$ 31.61	\$ 32.86	\$ 34.53	\$ 32.46	\$ 30.61	\$ 30.33	\$ 38.65	\$ 396.61
APS	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 6,960.00
HOA	\$ 57.62	\$ 57.61	\$ 57.98	\$ 57.98	\$ 57.98	\$ 58.06	\$ 58.13	\$ 58.24	\$ 58.99	\$ 58.12	\$ 58.99	\$ 58.49	\$ 700.19
Qwest	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,180.00
Mgmt Fee - Hotel	\$ 6,480.22	\$ 6,500.28	\$ 6,485.80	\$ 7,850.31	\$ 6,487.87	\$ 6,486.82	\$ 7,157.19	\$ 6,391.97	\$ 6,276.58	\$ 6,273.86	\$ 6,880.08	\$ 6,282.27	\$ 79,583.25
Average cost per Casita	\$ 223.80	\$ 224.15	\$ 223.99	\$ 270.70	\$ 224.06	\$ 224.03	\$ 246.80	\$ 220.41	\$ 216.43	\$ 216.34	\$ 237.24	\$ 216.63	\$ 228.72

	Original Budget Per Casita	2009 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 14.92	\$ 9.52
State farm	\$ 5.12	\$ 3.89	\$ (1.23)
Horizon - Grounds	\$ 15.00	\$ 21.16	\$ 6.16
Safeguard	\$ 125.00	\$ 98.71	\$ (26.29)
ACE - street sweeping	\$ 3.00	\$ 6.90	\$ 3.90
APS - elec	\$ 20.00	\$ 1.14	\$ 1.14
HOA	\$ 25.00	\$ 2.01	\$ 2.01
Qwest - gate phone line	\$ 35.00	\$ -	\$ -
Trash - Hotel	\$ 233.62	\$ 35.00	\$ -
Mgmt Fee - Hotel		\$ 228.72	\$ (4.80)

Scottsdale Hilton Casita Worksheet
01/31/07 thru 12/31/07

EXPENSES:
Note - Landfills paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2007
City of Scottsdale **	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 420.00	\$ 4,800.00
State farm	\$ 2,855.48	\$ 2,844.00	\$ 2,855.49	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 2,862.67	\$ 34,318.01
Horizon	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 2,400.00
Safeguard	\$ 34.58	\$ 32.75	\$ 30.48	\$ 33.13	\$ 31.08	\$ 29.27	\$ 33.83	\$ 32.01	\$ 32.86	\$ 33.55	\$ 30.24	\$ 29.87	\$ 383.61
ACE	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 580.00	\$ 6,960.00
APS	\$ 56.95	\$ 57.08	\$ 57.09	\$ 57.09	\$ 57.47	\$ 57.45	\$ 57.47	\$ 56.42	\$ 56.42	\$ 56.42	\$ 56.38	\$ 56.37	\$ 682.61
HOA	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00
Qwest	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,180.00
Trash - Hotel	\$ 5,887.02	\$ 7,874.08	\$ 6,811.31	\$ 6,895.35	\$ 6,820.47	\$ 6,618.70	\$ 7,934.50	\$ 6,782.88	\$ 6,862.77	\$ 6,884.46	\$ 6,728.21	\$ 7,238.83	\$ 82,103.89
Mgmt Fee - Hotel	\$ 203.00	\$ 264.62	\$ 277.00	\$ 230.99	\$ 228.29	\$ 228.23	\$ 273.60	\$ 283.21	\$ 228.75	\$ 228.81	\$ 232.04	\$ 249.65	\$ 235.83
Average cost per Casita													

** Jan & Feb sewer invoices were most likely included in the hotel's sewer expense in error.

	Original Budget Per Casita	2007 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 21.55	\$ 16.15
State farm	\$ 5.12	\$ 3.78	\$ (1.34)
Horizon - Grounds	\$ 15.00	\$ 22.02	\$ 7.02
Safeguard	\$ 125.00	\$ 98.82	\$ (26.38)
ACE - street sweeping	\$ 3.00	\$ 6.80	\$ 3.80
APS - elec	\$ 20.00	\$ 1.10	\$ 1.90
HOA	\$ 20.00	\$ 20.00	\$ -
Qwest - gate phone line	\$ 25.00	\$ 1.88	\$ 23.12
Trash - Hotel	\$ 35.00	\$ 25.00	\$ 10.00
Mgmt Fee - Hotel	\$ 283.52	\$ 35.00	\$ 248.52
		\$ 235.83	\$ 2.41

Plaintiff's Exhibit 7

R L Whitmer

Subject: Scottsdale Hilton Casitas - Board Meeting Notice- (Change of Location!)

On Monday, February 15, 2016 3:40 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Note: Change of Location!

BOARD OF DIRECTORS MEETING NOTICE

The Board of Directors meeting scheduled for:

Date: Tuesday February 16th, 2016.
Located: Scottsdale Hilton Ballroom
Time: 4:30pm

Agenda:

- Approve the last Board minutes
- Parking signs
- Noncompliance Issues
- Discuss the amended Declarations.
- Date for annual meeting and vote on the amended Declarations.
- Questions
- Adjourned

Homeowners are welcome to attend!

Thank you-

The Hilton Casitas Council of Homeowners

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: <mailto:evon@cpihoa.com>
<http://www.cpihoa.com/>

R L Whitmer

From: Evon Potocki [Evon@cpihoa.com]
Sent: Monday, February 20, 2017 6:48 PM
To: R L Whitmer
Subject: Hilton Casitas Prior Accounting Ledger and Expenses
Attachments: Doc.pdf; Copy of Casita Expense Recap 2016 (002).xlsx

Hello Mr. Whitmer and Coleen London-

As stated in previous notices, Cornerstone Properties took over managing the Hilton Casitas Council of Homeowners Jan 1st 2017. Attached is the ledger from previous accounting and an excel sheet provided by Hilton of the 2016 expenses.

If there is anything else I can help you with, please let me know.

Best Regards-

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

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Fax: (602) 244-9214
E-Mail: evon@cpihoa.com
<http://www.cpihoa.com>

Scottsdale Hilton Casita Worksheet
2016 Expenses

EXPENSES:
Note - Landless paid separately

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	2015
Projected Revenues @ \$289.04 per unit (assuming all pay)	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 8,382.16	\$ 100,565.92
Expenses:													
City of Scottsdale- Sewer	\$ 942.16	\$ 942.16	\$ 942.16	\$ 942.16	\$ 942.16	\$ 942.16	\$ 866.48	\$ 866.48	\$ 866.48	\$ 866.48	\$ 866.48	\$ 866.48	\$ 10,651.84
State Farm - Insurance	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 1,295.00	\$ 480.00	\$ 480.00	\$ 480.00	\$ 2,177.15	\$ 480.00	\$ 1,565.00
Horizon - Landscapers	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 2,844.00	\$ 1,146.55	\$ 1,146.55	\$ 1,146.55	\$ 8,644.15
Safeguard Security Svc													\$ 500.00
Street Sweepers													\$ 778.02
CenturyLink	\$ 44.96	\$ 70.09	\$ 80.26	\$ 38.22	\$ 284.29	\$ 43.75	\$ 69.50	\$ 71.71	\$ 71.49	\$ 70.14	\$ 71.35	\$ 66.45	\$ 478.87
APS	\$ 1,648.36	\$ 1,648.36	\$ 1,648.36	\$ 1,648.36	\$ 1,648.36	\$ 1,648.36	\$ 40.51	\$ 40.58	\$ 37.26	\$ 38.97	\$ 35.55	\$ 40.71	\$ 24,872.87
HOA Reserve	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 3,345.81	\$ 3,345.81	\$ 3,345.81	\$ 8,700.00
Trash - Hotel	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 1,015.00	\$ 12,188.00
Mgmt Fee - Hotel	\$ 7,699.48	\$ 7,724.61	\$ 8,328.78	\$ 7,692.74	\$ 8,350.81	\$ 7,688.27	\$ 8,503.85	\$ 7,791.23	\$ 7,787.59	\$ 7,785.95	\$ 9,482.89	\$ 7,789.00	\$ 97,638.20
Total Expenses	\$ 682.68	\$ 667.55	\$ (947.62)	\$ 688.42	\$ 31.35	\$ 683.89	\$ (121.69)	\$ 590.83	\$ 594.57	\$ 586.21	\$ (1,100.73)	\$ 583.16	\$ 2,948.72
Profit/Loss (Projected Revenues less Expenses)													

	Original Budget Per Casita	2016 Expenses Per Casita	Variance
City of Scottsdale	\$ 5.40	\$ 31.18	\$ 25.78
State farm	\$ 5.12	\$ 4.58	\$ (0.54)
Horizon - Grounds	\$ 15.00	\$ 24.84	\$ 9.84
Safeguard	\$ 125.00	\$ 83.44	\$ (41.56)
ACE - street sweeping	\$ 3.00	\$ 1.44	\$ (1.56)
APS - elec		\$ 2.24	\$ 2.24
HOA - increased May 2016		\$ 1.38	\$ (74.14)
West - gate phone line		\$ 71.47	\$ 71.47
Trash - Hotel	\$ 25.00	\$ 25.00	\$ -
Mgmt Fee - Hotel	\$ 35.00	\$ 35.00	\$ -
	\$ 288.04	\$ 280.56	\$ (7.48)

Extra Expenses:

Horizon (in addition to monthly maintenance of \$480)

may - trim palms	\$ 372.00
July - trim 18 palms	\$ 816.00
Nov - winter lawn, irrigation repairs	\$ 847.15
Nov - repair to casita entrance curb	\$ 850.00
	\$2,884.15

Plaintiff's Exhibit 8

Hilton Casitas 2016 Legal Expenses			
Clark Hill Invoices		Monthly	Year to date
February 16, 2016		\$97.50	\$97.50
March 24, 2016		\$2,145.00	\$2,242.50
April 28, 2016		\$5,037.50	\$7,280.00
May 28, 2016		\$455.00	\$7,735.00
June 29, 2016		\$812.50	\$8,547.50
July 28, 2016		\$2,730.00	\$11,277.50
August 29, 2016		\$260.00	\$11,537.50
September 27, 2016		\$694.70	\$12,232.20
September 27, 2016		\$4,095.00	\$16,327.20
October 28, 2016		\$257.00	\$16,584.20
November 15, 2016		\$715.00	\$17,299.20
November 15, 2016		\$1,155.00	\$18,454.20
December 8, 2016		\$595.00	\$19,049.20
TOTAL		\$19,049.20	

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 639112

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

February 16, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through January 31, 2016

Total Services: \$97.50

INVOICE TOTAL \$97.50

12/16/15 631943 \$357.50

Outstanding Balance: \$357.50

TOTAL AMOUNT DUE \$455.00
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
February 16, 2016
INVOICE # 639112
Page 2

DETAILED DESCRIPTION OF SERVICES

01/22/16	Review memorandum from Corey R Anderson regarding status of litigation (.1) (No Charge); review letter from LeMan Witter regarding invalid assessment (.3).	.30	97.50
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\$97.50

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	0.30 hours at	\$325.00 =	\$97.50
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CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 645220

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

March 24, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through February 29, 2016

Total Services:			\$1,690.00
INVOICE TOTAL			\$1,690.00
12/16/15	631943	\$357.50	
02/16/16	639112	\$97.50	
Outstanding Balance:			<u>\$455.00</u>
TOTAL AMOUNT DUE			<u>\$2,145.00</u> =====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
March 24, 2016
INVOICE # 645220
Page 2

DETAILED DESCRIPTION OF SERVICES

02/11/16	Review comments to Declaration from Board members and Reply.	R Anderson	.90	292.50
02/12/16	Review and revise Declaration.	R Anderson	2.80	910.00
02/16/16	Review Declaration and bylaws; attend Homeowners Association Board meeting (No Charge).	R Anderson	3.20	NO CHARGE
02/24/16	Revise Declaration per Board's comments (2.2); telephone call to M. Bengson regarding changes to Declaration (.3). (Discount 1.0 hours from total).	R Anderson	1.50	487.50

\$1,690.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	3.20 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	5.20 hours at	\$325.00 =	\$1,690.00

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 649885

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

April 28, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through March 31, 2016

Total Services: \$2,892.50

INVOICE TOTAL \$2,892.50

12/16/15	631943	\$357.50
02/16/16	639112	\$97.50
03/24/16	645220	\$1690.00

Outstanding Balance: \$2,145.00

TOTAL AMOUNT DUE

\$5,037.50
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute

April 28, 2016

INVOICE # 649885

Page 2

DETAILED DESCRIPTION OF SERVICES

03/10/16	Review memorandum regarding voting for Board (.1); review condominium statutes and reply to B. Pollock, review issue of short term leases (.2); telephone call to M. Bengson regarding lease issue on Declaration, Whitmer's recent actions, HOA meeting, revision of rules and regulations (.8); research case law on amending Declaration, scope of amendment, (.9); review original declaration regarding rental issue and new Declaration (.7); memorandum to S. Pollock regarding amendment and fines for violating rules and regulations (.2).	R Anderson	2.90	942.50
03/14/16	Telephone call from S. Pollock regarding Declaration and leasing issue (No Charge).	R Anderson	.20	NO CHARGE
03/15/16	Review and revise Declaration in final format.	R Anderson	1.00	325.00
03/15/16	Telephone call to M. Bengson regarding meeting (.2); review Declaration and make revisions to Declaration (.5).	R Anderson	.70	227.50
03/21/16	Telephone call from M. Bengson regarding annual meeting (No Charge).	R Anderson	.20	65.00

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
April 28, 2016
INVOICE # 649885
Page 3

03/23/16	Prepare letter to members, Notice of Meeting and Agenda, review Absentee ballot.	R Anderson	1.30	422.50
03/24/16	Telephone call to M. Bengson regarding rules and regulations (.2); review memorandum from E. Sluder (.2).	R Anderson	.40	130.00
03/28/16	Telephone call from S. Pollock regarding issues with violation of rules and regulations.	R Anderson	.40	130.00
03/29/16	Review letter from attorney R. Porter regarding new Declaration.	R Anderson	.30	97.50
03/30/16	Review emails and prepare for meeting (.5); telephone call from Mike regarding corporation not ready to ratify new declaration, rules and regulations, issues at meeting (.8).	R Anderson	1.30	422.50
03/31/16	Review email from Cameron and Lamar regarding issues with Declaration (.1); telephone call to Mike B. regarding agenda, Cameron letter (.2); review email from Pollock (.1); Attend HOA meeting (2.1 No Charge).	R Anderson	.40	130.00

\$2,892.50

TIMEKEEPER SUMMARY

RG	Robert G. Anderson	0.20 hours at	\$0.00 =	\$0.00
RG	Robert G. Anderson	8.90 hours at	\$325.00 =	\$2,892.50

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 655227

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

May 28, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through April 30, 2016

Total Services: \$455.00

INVOICE TOTAL \$455.00

12/16/15	631943	\$357.50
02/16/16	639112	\$97.50
03/24/16	645220	\$1690.00
04/28/16	649885	\$2892.50

Outstanding Balance: \$5,037.50

TOTAL AMOUNT DUE \$5,492.50
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
May 28, 2016
INVOICE # 655227
Page 2

DETAILED DESCRIPTION OF SERVICES

04/14/16	Review memoranda regarding amended declaration and lease issue (No Charge).	R Anderson	.20	NO CHARGE
04/25/16	Telephone call from M. Bengson regarding revised rules and regulations and enforcing liens.	R Anderson	.30	97.50
04/30/16	Work on revised and updated Rules and Regulations.	R Anderson	1.10	357.50
				\$455.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	0.20 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	1.40 hours at	\$325.00 =	\$455.00

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 660064

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

June 29, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through May 31, 2016

Total Services: \$812.50

INVOICE TOTAL \$812.50

12/16/15	631943	\$357.50
02/16/16	639112	\$97.50
03/24/16	645220	\$1690.00
04/28/16	649885	\$2892.50
05/28/16	655227	\$455.00

Outstanding Balance: \$5,492.50

TOTAL AMOUNT DUE \$6,305.00
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
June 29, 2016
INVOICE # 660064
Page 2

DETAILED DESCRIPTION OF SERVICES

05/10/16	Review letter from L. Whitmer regarding assessments.	R Anderson	.20	65.00
05/18/16	Telephone call to M. Bengson regarding new Rules and Regulations;	R Anderson	.40	130.00
05/19/16	Telephone call from M. Bengson regarding Witmer lawsuit and rules and regulations.	R Anderson	.40	130.00
05/25/16	Work on rules and regulations.	R Anderson	1.50	487.50
				\$812.50

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	2.50 hours at \$325.00 =	\$812.50
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CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 664445

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

July 28, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through June 30, 2016

Total Services: \$2,730.00

INVOICE TOTAL \$2,730.00

05/28/16	655227	\$455.00
06/29/16	660064	\$812.50

Outstanding Balance: \$1,267.50

TOTAL AMOUNT DUE \$3,997.50
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
July 28, 2016
INVOICE # 664445
Page 2

DETAILED DESCRIPTION OF SERVICES

06/02/16	Telephone call from M. Bengson regarding rules and regulations.	R Anderson	.20	65.00
06/03/16	Prepare complaint for judicial foreclosure of Unit 21.	R Anderson	2.10	682.50
06/21/16	Review and revise Complaint for foreclosure on Unit 21 (.5); Review records of Maricopa County on other liens (.4); Prepare Verification (.2).	R Anderson	1.10	357.50
06/22/16	Review late fee calculations (.2); Revise Whitmer Complaint (.2); Telephone call to M. Bergson regarding late fees (.2); Review bylaws and declaration regarding board resolution for late fee (3.).	R Anderson	.90	292.50
06/22/16	Prepare Complaint for Schaffer delinquency (1.1); Review condition of title to Eli property (.5).	R Anderson	1.60	520.00
06/23/16	Review memorandum from Corey (.1); Review Whitmer Complaint and allegations (.3); Review original Declaration (.4); Review new proposed declaration (.4); Memorandum to Corey (.8); Review prior judgment (.3).	R Anderson	2.30	747.50
06/24/16	Prepare Complaint for filing.	R Anderson	.20	65.00

\$2,730.00

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
July 28, 2016
INVOICE # 664445
Page 3

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	8.40 hours at	\$325.00 =	\$2,730.00
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CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 669279

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

August 29, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through July 31, 2016

Total Services: \$260.00

INVOICE TOTAL \$260.00

05/28/16	655227	\$455.00
06/29/16	660064	\$812.50
07/28/16	664445	\$2730.00

Outstanding Balance: \$3,997.50

TOTAL AMOUNT DUE

\$4,257.50
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PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
August 29, 2016
INVOICE # 669279
Page 2

DETAILED DESCRIPTION OF SERVICES

07/18/16	TT First American re status of title reports (NO CHARGE).	R Anderson	.20	NO CHARGE
07/26/16	Review memorandum from Mike Bengson, review proposed changes to Rules and Regulations, review new Arizona Statutes to take effect August 1, 2016.	R Anderson	.80	260.00

\$260.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	0.20 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	0.80 hours at	\$325.00 =	\$260.00

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 673736

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

September 27, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through August 31, 2016

Total Services: \$195.00

FOR EXPENSES INCURRED OR ADVANCED:

Service of Process \$499.70

Total Expenses: \$499.70

INVOICE TOTAL \$694.70

TOTAL AMOUNT DUE \$694.70
=====

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
September 27, 2016
INVOICE # 673736
Page 2

DETAILED DESCRIPTION OF SERVICES

08/23/16	Review revised Rules and Regulations; review lease form; telephone call from M. Bergson regarding Rules and Regulations.	R Anderson	.60	195.00
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\$195.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	0.60 hours at \$325.00 =	\$195.00
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CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 683075

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

November 15, 2016
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through October 31, 2016

Total Services:			\$715.00
INVOICE TOTAL			\$715.00
09/27/16	673736	\$694.70	
Outstanding Balance:			<u>\$694.70</u>
TOTAL AMOUNT DUE			<u>\$1,409.70</u>

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
November 15, 2016
INVOICE # 683075
Page 2

DETAILED DESCRIPTION OF SERVICES

10/06/16	Telephone conference with Mike regarding Answer to Compliant regarding Safeguard; review Summary of Safeguard Contract and Benefits to Association; prepare Answer to Complaint.	R Anderson	1.50	487.50
10/07/16	Continue to prepare of answer to Whitmer Complaint; telephone conference with Mike regarding allegations by Whitmer regarding use of Safeguard Services.	R Anderson	.70	227.50

\$715.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	2.20 hours at \$325.00 =	\$715.00
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CLARK HILL

P.L.C.

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Fed.ID # 38-0425840

INVOICE

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

Invoice # 673740
September 27, 2016
Client: 48320
Matter: 306528

=====

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through August 31, 2016

Total Services:

\$4,095.00

INVOICE TOTAL

\$4,095.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
September 27, 2016
INVOICE # 673740
Page 2

DETAILED DESCRIPTION OF SERVICES

08/04/16	RGA	Telephone call from M. Bengson regarding production of documents for Whitmer, short term rental issues, new legislation; review file; review Whitmer Motion to Dismiss and documents attached; prepare Response to Motion to Dismiss.	2.90
08/05/16	RGA	Telephone call from M. Bengson regarding payment of delinquent assessments (No Charge).	.20
08/08/16	RGA	Review briefs and Court Judgments received from Corey Hill, continue to work on Response to Whitmer Motion, telephone call to M. Bengson regarding additional delinquency for July and August.	2.70
08/09/16	MSS	Discussion with R. Anderson regarding effective and proper arguments for response to motion to dismiss.	.70
08/09/16	RGA	Continue preparation of Response to Motion to Dismiss, telephone call to M. Bengson regarding payment by Whitmer.	3.50
08/18/16	RGA	Review letter from Whitmer regarding review of books and records, telephone call to M. Bengson regarding Whitmer request for records and response.	.60
08/19/16	RGA	Review correspondence from B. Porter, attorney for Whitmer regarding Board Meeting.	.20
08/25/16	RGA	Review Whitmer's Reply to HOA's Response to Motion to Dismiss; telephone call to M. Bengson regarding Reply.	.70
08/30/16	RGA	Review memo to Whitmer and attachments; review memo from Whitmer to Mike regarding Safeguard overcharges and offset.	.40

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
September 27, 2016
INVOICE # 673740
Page 3

\$4,095.00

TIMEKEEPER SUMMARY

MSS	Mark S. Sifferman	0.70 hours at	\$350.00 =	\$245.00
RGA	Robert G. Anderson	0.20 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	11.00 hours at	\$350.00 =	\$3,850.00

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 679335

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

October 28, 2016
Client: 48320
Matter: 306528

=====

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through September 30, 2016

Total Services: \$245.00

FOR EXPENSES INCURRED OR ADVANCED:

Filing Fees \$12.00

Total Expenses: \$12.00

INVOICE TOTAL \$257.00

09/27/16 673740 \$4095.00

Outstanding Balance: \$4,095.00

TOTAL AMOUNT DUE \$4,352.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
October 28, 2016
INVOICE # 679335
Page 2

DETAILED DESCRIPTION OF SERVICES

09/23/16 RGA Review new complaint from Whitmer re Safeguard, TT Mike re new complaint.	.40
09/26/16 RGA TF Mike Bergson re new complaint.	.30

\$245.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	0.70 hours at \$350.00 =	\$245.00
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CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Invoice # 683076

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

November 15, 2016
Client: 48320
Matter: 306528

=====

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through October 31, 2016

Total Services:			\$1,155.00
INVOICE TOTAL			\$1,155.00
09/27/16	673740	\$4095.00	
10/28/16	679335	\$257.00	
Outstanding Balance:			<u>\$4,352.00</u>
TOTAL AMOUNT DUE			<u>\$5,507.00</u>

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
November 15, 2016
INVOICE # 683076
Page 2

DETAILED DESCRIPTION OF SERVICES

10/10/16 RGA Review and revise Complaint and file in Justice Court.	.30
10/11/16 RGA Review Whitmer Application for Costs.	.20
10/17/16 RGA Prepare response in Opposition of Defendants Application for Costs; telephone conference with M. Bengson regarding issues with Opposition to Application; copy of May delinquency notice, Justice Court Answer.	2.60
10/18/16 RGA Telephone conference with M. Bengson regarding notices to Whitmer, Answer to Justice Court Complaint.	.20

\$1,155.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	3.30 hours at \$350.00 =	\$1,155.00
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P.L.C.

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Scottsdale, Arizona 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

Invoice # 686637
December 8, 2016
Client: 48320
Matter: 306528

=====

RE: London, Colleen and Whitmer, R.L.

FOR SERVICES RENDERED through November 30, 2016

Total Services: \$595.00

FOR EXPENSES INCURRED OR ADVANCED:

Filing Fees \$6.00

Total Expenses: \$6.00

INVOICE TOTAL \$601.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
London, Colleen and Whitmer, R.L.
December 8, 2016
INVOICE # 686637
Page 2

DETAILED DESCRIPTION OF SERVICES

11/08/16	RGA Telephone call from M. Bengson regarding response to Whitmer's letter challenging Board's Notice of Violation.	.30
11/16/16	RGA Review letter from Whitmer regarding dispute of assessments and fines; telephone call to M. Bengson regarding response (No Charge).	.50
11/17/16	RGA Review letter from Whitmer; review Declaration, bylaws and statutes regarding Whitmer claims.	.80
11/28/16	RGA Telephone call to M. Bengson regarding architectural control and response to Whitmer letter and Board meeting.	.60

\$595.00

TIMEKEEPER SUMMARY

RGA	Robert G. Anderson	0.50 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	1.70 hours at	\$350.00 =	\$595.00

Plaintiff's Exhibit 9

Hilton Casitas Council of Homeowners

2016 Budget

Beginning Cash	\$ 12,111.71	\$12,111.71
Added Cash receipts	\$ 19,780.32	100,585.92
<hr/>		<hr/>
Total Cash	\$ 31,892.03	\$112,697.63
Estimated Expenses		
Accounting	\$ 400.00	
Legal	\$ 15,000.00	
Bank Fees	\$ 360.00	
Manangement	\$ 3,000.00	
Misc		
Total	\$ 18,760.00	- 18,760.00
Estimated ending cash	\$ 13,132.03	<hr/>
<hr/>		<hr/>
		- \$13,132.03

Based on no change in the monthly dues of \$289.04

* \$ 80,865.60 out of balance

X 29 casitas
\$8,382.16
X 12 months

Total Annual Receipts \$100,585.92

* Plaintiff's notes & analysis.

Hilton Casitas Council of Homeowners

2016 Budget		2015 Actual expenses		2015 Budget Expenses
Beginning Cash	\$ 12,111.71	\$	13,641.26	\$ 13,641.26
Added Cash receipts	\$ 19,780.32	\$	19,383.60	\$ 19,780.32
Total Cash	\$ 31,892.03	\$	33,024.86	\$ 33,421.58
Estimated Expenses				
Accounting	\$ 400.00	\$	400.00	\$ 400.00
Legal	\$ 15,000.00	\$	17,059.72	\$ 14,500.00
Bank Fees	\$ 360.00	\$	29.95	\$ 360.00
Manangement	\$ 3,000.00	\$	2,838.48	\$ 2,500.00
Misc		\$	585.00	\$ -
Total	\$ 18,760.00	\$	20,913.15	\$ 17,760.00
Estimated ending cash	\$ 13,132.03	\$	12,111.71	\$ 15,661.58

Based on no change in the monthly dues of \$289.04

Plaintiff's Exhibit 10

R L Whitmer

Subject: Scottsdale Hilton Casitas - Board Meeting Notice- (Change of Location!)

On Monday, February 15, 2016 3:40 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Note: Change of Location!

BOARD OF DIRECTORS MEETING NOTICE

The Board of Directors meeting scheduled for:

Date: Tuesday February 16th, 2016.

Located: Scottsdale Hilton Ballroom

Time: 4:30pm

Agenda:

- Approve the last Board minutes
- Parking signs
- Noncompliance Issues
- Discuss the amended Declarations.
- Date for annual meeting and vote on the amended Declarations.
- Questions
- Adjourned

Homeowners are welcome to attend!

Thank you-

The Hilton Casitas Council of Homeowners

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: <mailto:evon@cpihoa.com>
<http://www.cpihoa.com/>

Plaintiff's Exhibit 11

R L Whitmer

From: Michael Bengson [mike@mbengson.com]
Sent: Thursday, January 05, 2017 3:23 PM
To: 'R L Whitmer'
Subject: Hilton Casita's

Lamar,

I thought it might be useful to let you know what I would present to the court on your latest complaint.

- #6 We emailed out an agenda and a PDF of the Amended Declarations.
- #7 The budget was discussed in the Board meeting previous to the annual meeting. It did not take very much time as everything remained the same from the previous year,
- #8 We hand delivered a packet before the meeting that contained the results from 2015 budget and the proposed new budget. I dropped yours off a packet at your house myself.
- #11 The Administrative order was given the first week on 2016. We complied by having the March meeting of the members and passing the appropriate budget. This was a reasonable time after the order was given.

With the above in mind consideration should be given to drop this complaint. The association now has to have legal fee's to defend. I am guessing it will be 2-4K (\$137/unit). This is out of all of our pockets. At this point I am not going to try to save the HOA money by representing the HOA on any complaints. Everything will go thru Bob Anderson and we will all have to absorb the bill. This will raise our legal costs but I am going to spend as little time on it as possible.

The following will or has happened:

- Cornerstone will be our only management company.
- Cornerstone will do all accounting and bill paying
- Cornerstone will provide all Financial Statements
- Cornerstone will set up a Community Web site to post all information so we have total transparency.
- Cornerstone will be contracting to a company to do a proper reserve study.
- Possible repaving our roads. They badly need it.

After we have the "Reserve Study" we will be adjusting our budget based on their recommendation. It will no longer be a guess. It will be cut and dry and will be the best for budget purposes.

This is professional and how it should be done.

My hope is you help us minimize legal costs. If you choose not to then we will just put it into the budget every year. I have no problem doing that. The problem we have is that the higher the HOA dues the more impact it has on our values.

Happy New Year.

-Michael Bengson-
480-688-7002

Plaintiff's Exhibit 12

A meeting of the Board of Directors of the H.O. A of Casita owners took place on Feb.16 4.30 p.m. in the Hilton Hotel.

Attending were Mike Bengson (president) and board members Steve pollock, Don Randolph, Barrie Bercuson and David Cameron (by conference call). Also attending were Bob Anderson (lawyer) and three casita owners.

The meeting was brought to order and the minutes from previous Board Meeting approved.

The purpose of this meeting was to go over the H.O.A. declarations that were amended by the board at the last meeting, and Mr. Anderson gave his comments and suggestions before presenting them to a general meeting of owners.

Also discussed were signs restricting overnight parking and approved by the board.

There were discussions about penalties for owners behind on dues and fines with comments from Bob Anderson of how to enforce penalties.

Also discussed was the option for owners to rent out their casitas, with the decision to bring it to a vote with all owners participating with a 51% margin for approval or disapproval.

Suggestions were made of forming an architectural committee to standardize exterior casita appearances but no decision taken. To be raised at next general meeting.

The meeting was ajourned with a motion from Don Randolph and seconded by Steve Pollock.

Plaintiff's Exhibit 13

R L Whitmer

Subject: FW: Scottsdale Hilton Annual Meeting Ballot
Attachments: → Amended Declarations of Hilton Casitas.pdf; Signed Notice of meeting.pdf; Scottsdale Hilton 2016 Ballot.pdf

On Thursday, March 24, 2016 1:57 PM, Evon Potocki <Evon@cpihoa.com> wrote:

Good Afternoon-

As you know the Annual Meeting is scheduled for:

Date: Thursday, March 31st, 2016.

Located: Scottsdale Hilton Ballroom

Time: 4:30pm

Homeowners are encouraged to attend the meeting. Attached is also the Board of Directors Ballot where you may cast your vote for the Amended and Restated Declarations. For delivery of your filled out and signed ballot: email to Mike@mbengson, deliver to Casita 11, or bring your ballot to the Annual Meeting.

Have a nice Easter weekend!

Evon Potocki
Community Manager



Cornerstone Properties, Inc.
P.O. Box 62073
Phoenix, AZ 85082

Office: (602) 433-0331 x103
Fax: (602) 244-9214
E-Mail: evon@cpihoa.com
<http://www.cpihoa.com>

Plaintiff's Exhibit 14

Your Vote is Important

**HILTON CASITAS COUNCIL OF HOMEOWNERS, INC.
NOTICE OF ANNUAL MEETING OF ELIGIBLE MEMBERS
TO BE HELD ON MARCH 31, 2016**

The Annual Meeting of Eligible Members of the Hilton Casitas Council of Homeowners, Inc., will be held at the Scottsdale Hilton Ballroom, located at 6333 N. Scottsdale Road, Scottsdale, AZ 85250, on March 31, 2016, at 4:30 pm, for the following purposes:

- To elect the Board of Directors for the Association;
- To review Financial Report of the Association;
- To review the approved Budget for 2016;
- To review and vote on Amending Declaration;
- To review and vote on proposed new Rules & Regulations; and
- To review and vote on amending Bylaws.

WHETHER OR NOT YOU EXPECT TO ATTEND THE MEETING IN PERSON, PLEASE PROMPTLY FILL IN, DATE, SIGN AND RETURN THE ENCLOSED FORM OF BALLOT, IN THE SELF-ADDRESSED, POSTAGE PREPAID ENVELOPE PROVIDED FOR YOUR CONVENIENCE. THIS BALLOT MAY ALSO BE HAND DELIVERED TO THE PRESIDENT OF THE ASSOCIATION. THE BALLOT CANNOT BE REVOKED.

Scottsdale, Arizona

Dated: March 24, 2016

By Order of the Board of Directors

____ BARRIE BERGUSON

Secretary

A handwritten signature in black ink, appearing to read "Barrie", is written over the printed name "BARRIE BERGUSON" and the title "Secretary".

March 24, 2016

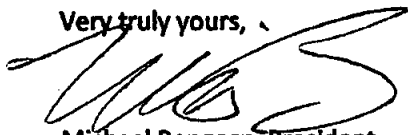
NOTICE OF ANNUAL MEETING

Dear Members:

You are cordially invited to attend the Annual Meeting of Members of Hilton Casitas Council of Homeowners, Inc., an Arizona non-profit corporation, on March 31, 2016, at 4:30 pm, at the Scottsdale Hilton Ballroom. located at 6333 N. Scottsdale Road, Scottsdale, AZ 85250.

Eligible Members of record can vote their interest by completing the attached ballot and submitting it at the Annual Meeting of the Members. Of course, you also may vote your unit membership by marking your votes on the enclosed absentee ballot, signing, dating it, and mailing it in the enclosed envelope or delivering it the undersigned.

Very truly yours, ✓

A handwritten signature in black ink, appearing to read 'MB', written over a horizontal line.

Michael Bengosn, President

Your Vote is Important

Plaintiff's Exhibit 15

**HILTON CASITAS COUNCIL OF HOMEOWNERS
AGENDA FOR
ANNUAL MEETING OF ACTIVE MEMBERS
MARCH 31, 2016**

- 1. Call meeting to Order-Chairman**
- 2. Roll call**
- 3. Declaration of Quorum**
- 4. Reading of Minutes of Preceding Meeting**
- 5. Vote on election of Board of Directors**
- 6. Formal Announcement of Voting Results re new Board**
- 7. Review Financial Report of the Association**
- 8. Review approved budget for 2016**
- 9. Review and vote on proposed new Rules & Regulations**
- 10. Review and vote on Amending Declaration**
- 11. Discuss Unfinished Business**
- 12. Discuss New Business**
- 13. Adjournment of Meeting**

**HILTON CASITA'S COUNCIL OF HOMEOWNERS
MAIL-IN BALLOT TO ELECT THE BOARD OF DIRECTORS AND
AMEND THE DECLARATION OF CONDOMINIUM**

Hilton Casita's Council of Homeowners hereby presents this ballot to elect Members of the Board of Directors and amend the Declaration of Condominium at the **Annual Meeting of the Association** scheduled for **March 31st 2016 at 4:30 PM**

Location of the meeting: Scottsdale Hilton Ballroom, located at 6333 N. Scottsdale Road, Scottsdale, AZ 85250

THE UNDERSIGNED, BEING THE OWNER(S) OF UNIT _____ OF THE ASSOCIATION, HEREBY VOTES AS FOLLOWS FOR BOARD MEMBERS AND FOR THE PROPOSED AMENDED DECLARATION. THERE ARE 5 OPEN POSITIONS AVAILABLE. YOU MAY CAST ONE VOTE FOR UP TO 5 MEMBERS. YOU MAY ALSO WRITE-IN UP TO 2 INDIVIDUALS FOR THE BOARD OF DIRECTORS. MAKE YOU'RE YOUR TOTAL NUMBER OF VOTES IS 5. PLEASE MAKE SURE YOUR VOTES ARE CLEAR.

_____ I VOTE TO ELECT MICHAEL BENGSON TO THE BOARD OF DIRECTORS.

_____ I VOTE TO ELECT STEVE POLLOCK TO THE BOARD OF DIRECTORS.

_____ I VOTE TO ELECT BARRIE POLLOCK TO THE BOARD OF DIRECTORS.

_____ I VOTE TO ELECT THE FOLLOWING WRITE-IN
CANDIDATE TO THE BOARD: _____

_____ I VOTE TO ELECT THE FOLLOWING WRITE-IN
CANDIDATE TO THE BOARD: _____

_____ I VOTE TO AMEND THE DECLARATION PURSUANT TO THE PROPOSED AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME FOR HILTON CASITAS, ALSO REFERRED TO AS THE AMENDED AND RESTATED DECLARATION FOR HILTON CASITAS CONDOMINIUMS, AS RECOMMENDED BY THE BOARD.

_____ **PLEASE PLACE AN "X" IF YOU ARE RETURNING THIS BALLOT FOR QUORUM PURPOSES ONLY.** Do NOT VOTE if this box is checked.

ONCE YOU HAVE COMPLETED YOUR BALLOT, PLEASE RETURN IT TO THE ASSOCIATION IN THE ENCLOSED ENVELOPE OR BRING IT TO THE ANNUAL MEETING OF THE MEMBERS IN PERSON TO BE HELD ON **MARCH 31 2016**. THIS BALLOT IS VALID FOR ONLY THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE MEMBER.

Name

Unit Number

Plaintiff's Exhibit 16

Hilton Casitas Council of Homeowners
Proposed 2015 Budget

Beginning Cash	\$13,641.26	\$13,641.26
Added Cash receipts	\$19,780.32	V. 100,585.92*
Total Cash	\$33,421.58	\$114,227.18

Estimated Expenses

Accounting	\$400.00	
Legal	\$14,500.00	
Bank Fees	\$360.00	
Management Fee	\$2500.00	
Total	\$17,760.00	- 17,760.00

\$96,467.18

Estimated Cash 3/20/2016	\$15,661.58	- 15,661.58
<u>Unaccounted for variance</u>		<u>\$ 80,805.60</u>

Cash receipts based on new monthly dues of ~~\$289.04~~
 x 29 units
 \$8,382.16 per month
 x 12 months
 * Total cash receipts \$100,585.92

Plaintiff's Exhibit 17

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

14830 N. Scottsdale Road, Suite 500
Scottsdale, Arizona 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

Invoice # 574583
March 31, 2015
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through November 30, 2014

Total Services:	\$4,420.00
INVOICE TOTAL	\$4,420.00

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
March 31, 2015
INVOICE # 574583
Page 2

DETAILED DESCRIPTION OF SERVICES

10/22/14	Telephone call from M. Bengson regarding condominium restructure (.3 no charge); review letter from attorney for association regarding issues.	R Anderson	.20	65.00
10/30/14	Bengson: Review legal action by unit owner; review declaration and statutory authority; telephone call to M. Bengson regarding legal issue.	R Anderson	.50	162.50
10/31/14	Telephone call from M. Bengson regarding bylaws, board meeting, and current issues.	R Anderson	.20	65.00
11/12/14	Telephone call to M. Bengson regarding lawsuit against association.	R Anderson	.40	130.00
11/14/14	Review file documents; review Motion for Summary Judgment; prepare Response to Motion.	R Anderson	3.50	1137.50
11/17/14	Telephone call from H. Mesrand, Department of Safety, regarding administrative hearing; review Notice of Hearing.	R Anderson	.80	260.00
11/20/14	Telephone call from M. Bengson regarding meeting with L. Whitmer.	R Anderson	.20	65.00

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
 Condominium Reorganization and Whitmer Dispute
 March 31, 2015
 INVOICE # 574583
 Page 3

11/21/14	Telephone call from M. Bengson regarding meeting with L. Whitmer; telephone call to M. Bengson regarding claims.	R Anderson	.30	97.50
11/21/14	Meeting with L. Whitmer regarding lawsuit, history of association.	R Anderson	2.00	NO CHARGE
11/26/14	Review petition, motion for summary judgment, and other legal claims for administrative hearing; review prior minutes; review Board and budget analysis of the original association and new association; review Corporation Commission records; review original by-laws and proposed amended by-laws..	R Anderson	3.70	1202.50
11/26/14	Meeting with L. Whitmer, A. Eli regarding condo ground lease issues.	R Anderson	2.50	NO CHARGE
11/28/14	Research issue of authority of association, amending declaration/bylaws, issue of replacement of unincorporated association with non-profit association, review ground lease and restrictions on casitas.	R Anderson	3.80	1235.00

TIMEKEEPER SUMMARY

\$4,420.00

RGA	Robert G. Anderson	4.50 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	13.60 hours at	\$325.00 =	\$4,420.00

CLARK HILL

P.L.C.

ATTORNEYS AT LAW

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Scottsdale, Arizona 85254
Telephone (480) 684-1100
Fed.ID # 38-0425840

INVOICE

Hilton Casitas Council of Homeowners
Attn: Michael Bengson
6333 N. Scottsdale Road
Unit 10
Scottsdale, AZ 85250-5428

Invoice # 578577
March 27, 2015
Client: 48320
Matter: 179849

=====

RE: Condominium Reorganization and Whitmer Dispute

FOR SERVICES RENDERED through December 31, 2014

Total Services:	\$2,307.50
INVOICE TOTAL	\$2,307.50

PAYABLE UPON RECEIPT IN U.S. DOLLARS

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
March 27, 2015
INVOICE # 578577
Page 2

DETAILED DESCRIPTION OF SERVICES

12/05/14	Telephone call to M. Bengson regarding meeting and leasing (.2 no charge).	R Anderson	.20	NO CHARGE
12/08/14	Telephone call from L. Whitmer regarding ground lease issue, hotel's offer (.2 no charge).	R Anderson	.20	NO CHARGE
12/12/14	Telephone call from M. Bengson regarding hearing (.2 no charge); telephone call from C. Hill, attorney for lawsuit.	R Anderson	.40	NO CHARGE
12/15/14	Meeting with M. Bengson, B. and S. Askenazi regarding Board elections, Administrative Hearing, witnesses, and evidence.	R Anderson	1.20	390.00
12/16/14	Telephone call from B. Askenazi regarding witnesses for hearing (.2 no charge).	R Anderson	.20	NO CHARGE
12/18/14	Review emails from M. Bengson, L. Whitmer, E. Karatz.	R Anderson	.30	97.50
12/19/14	Telephone call to M. Bengson regarding leasing; review evidence.	R Anderson	.20	65.00
12/22/14	Telephone call to M. Bengson regarding hearing; review evidence; review file; review pleading and Whitmer's evidence; prepare for hearing.	R Anderson	3.20	1040.00

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
March 27, 2015
INVOICE # 578577
Page 3

12/23/14	Prepare for hearing and attend administrative hearing on Whitmer petition.	R Anderson	2.20	715.00
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TIMEKEEPER SUMMARY

\$2,307.50

RGA	Robert G. Anderson	1.00 hours at	\$0.00 =	\$0.00
RGA	Robert G. Anderson	7.10 hours at	\$325.00 =	\$2,307.50

Plaintiff's Exhibit 18

Hilton Casitas Council of Homeowners
Annual General Meeting of Members
March 31, 2015
Minutes

Meeting called to order by Mike Bengson at 6:10 pm.

There was a call for a Quorum. The following members were in attendance: Sue Karatz, Mike Bengson, Peggy Bengson, Pamela Penn, Dorene Mykol, John Huston, Betsy Stodola, Barbara Askenazi, Kristin Bloomquist, Don Randolph, Barrie Bercuson, Mike Sheedy, Undine King, Steve Pollock, David Cameron, Nancy Diamond.

Motion to approve the October 15, 2014 minutes by Kristin Bloomquist, 2nd by Barbara Askenazi, motion passed.

Attorney Cory Hill, provided a summary and update on the pending Eli lawsuit.

Attorney Bob Anderson, General Counsel for the Hilton Casitas Council of Homeowners, discussed the process to make changes to our current governing documents.

Lia Correa, Community Manager with Cornerstone Properties, Inc. (CPI) described how her firm can assist the board in the management, administration and operations of our association.

Kristin Bloomquist made a motion to hire CPI as our management company, 2nd by Steve Pollock, motion passed.

Doug Heaton, General Manager with the Hilton Hotel, expressed good will and hospitality, appreciates Casitas as good neighbors. He listed perks/amenities for Casita owners. They will continue. He said the basic charges have stayed the same.

Annual budget was presented and discussed.

Betsy Stodola made a motion to approve the 2015 budget, 2nd by Barrie Bercuson, motion passed.

Ballots were collected for increase of monthly dues. The members approved monthly dues increase , effective May 1, 2015.

Ballots were collected for New Board Members. The members elected the following to the Board: Mike Bengson, Steve Pollock, David Cameron, Don Randolph, and Barrie Bercuson.

Mike Bengson adjourned the meeting at 7:40 pm.

Respectfully submitted by Barbara Askenazi

Plaintiff's Exhibit 19

CLARK HILL P.L.C.

Hilton Casitas Council of Homeowners
Condominium Reorganization and Whitmer Dispute
March 20, 2015
INVOICE # 588805
Page 2

DETAILED DESCRIPTION OF SERVICES

02/17/15	Review order from Administrative Judge.	R Anderson	1.10	NO CHARGE
02/17/15	Review original By-laws and Amendment to By-laws; prepare Amended By-laws.	R Anderson	1.20	390.00
02/17/15	Memorandum to M. Bengson (.1 no charge); telephone conference with H. Textor at Department of Fire and Transportation (.2 no charge).	R Anderson	.30	NO CHARGE
02/18/15	Review file regarding lawsuit; review original Declaration and continue work on Amended Declaration.	R Anderson	1.90	617.50
02/19/15	Telephone conference with M. Bengson regarding court decision, next meeting, issues for Annual Meeting, and special revisions for new Declaration (.3 no charge).	R Anderson	.30	NO CHARGE
02/25/15	Review memorandum from M. Bengson, review Declaration regarding issues M. Bengson has raised.	R Anderson	.50	162.50
02/27/15	Telephone conference with M. Bengson regarding Management Agreement with hotel regarding revised Declaration; review and revise Declaration.	R Anderson	2.60	845.00

Plaintiff's Exhibit 20

BYLAWS

OF

HILTON CASITAS COUNCIL OF CO-OWNERS

ARTICLE I

NAME AND LOCATION OF COUNCIL OF CO-OWNERS

Section 1. Name and Location. The name of this Council of Co-owners is HILTON CASITAS COUNCIL OF CO-OWNERS (hereinafter called the "Council"). Its principal place of business shall be located in the City of Scottsdale, Maricopa County, Arizona.

ARTICLE II

REFERENCE TO DECLARATION

Section 1. Reference. Reference is made to that certain Declaration of Horizontal Property Regime, recorded on May 22, 1972, in Docket 9448, pages 790 to 846 inclusive, records of Maricopa County, Arizona (hereinafter called the "Declaration"). The Declaration, as amended and supplemented from time to time as therein provided, is incorporated herein by reference. The Declaration covers Hilton Casitas (hereinafter called the "Property" or "Hilton Casitas"), as described in the Declaration.

ARTICLE III

MEMBERSHIP

Section 1. Qualification. Membership shall be limited to Owners (as said term is defined in the Declaration) of the

Casitas (as said term is defined in the Declaration). An owner will be deemed a member upon recordation, in the public records of Maricopa County, Arizona, of a Sublease and/or other instrument establishing a record title to the Casita. An owner shall remain a member of this Council until such member's death, or until such time as such member's Sublease is assigned or is terminated for any reason, or until such time as such member's right of occupancy of the Casita under the Sublease is terminated for any reason, at which time such member's membership in this Council shall automatically cease and terminate. No certificates of membership shall be issued, and membership shall be evidenced by an official list of said members, which list shall be kept by the Secretary of the Council.

Section 2. Place of Meetings. Meetings of the members of the Council shall be held at the Property or such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the members of this Council shall be held within one year after completion and occupancy by owners of seventy-five percent (75%) of the total number of Casitas to be constructed upon the Property, or at such earlier time as the initial Board of Directors shall designate, whichever is sooner. Thereafter the annual

meetings of the Council shall be held within three months after the end of each accounting year.

Section 4. Special Meetings. Special meetings of the Council may be held at any time upon the call of the President or a petition signed by at least twenty-five per cent (25%) of the members and presented to the Secretary.

Section 5. Notice of Meetings. The Secretary shall give written notice of each annual and special meeting to every member according to the Council's record of ownership, at least five days before the date set for such meeting, stating whether it is an annual or special meeting, the authority for the call thereof, the place, day and hour of such meeting and the purpose therefor, in any of the following ways: (a) by delivering it to him personally, or (b) by leaving it at his Casita in the Property or at his usual residence or place of business, or (c) by mailing it, postage prepaid, addressed to him at his address as it appears on the Council's records of ownership. If notice is given, pursuant to the provisions of this section, the failure of any members to receive actual notice of any meeting shall in no way invalidate such meeting or any proceedings thereat. The presence of any member in person or by proxy at any meeting shall be deemed a waiver of any required notice to such member unless he shall at the opening thereof object to the holding of such meeting

because of the failure to give notice in accordance with the provisions hereof.

Section 6. Quorum. The presence at any meeting in person or by proxy of a majority of members shall constitute a quorum, and the acts of a majority of the members at any meeting at which a quorum is present shall be the acts of the Council except as otherwise provided herein. The quorum percentage requirement shall be reduced by fifteen percent (15%) for each meeting which follows any prior meeting in which a sufficient number of members to constitute a quorum were not present in person or by proxy.

Section 7. Voting. A member shall be entitled to one vote for each Casita subleased (hereinafter referred to in the context of "owned") by such member. In the event any Casita is owned by two or more persons, by a corporation, partnership or other entity having more than one person as a member, whether by joint tenancy, tenancy in common, community property, or otherwise, the membership as to such Casita shall be joint and a single membership for such Casita shall be issued in the names of all, and they shall designate to this Council, in writing, at the time of issuance, one of their number who shall have the power to vote said membership, and, in the absence of such designation and until such designation is made, the Board of Directors of the Council shall make such designation.

Section 10. Order of Business. The order of business (if the subjects are appropriate) at all meetings of the Council shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Report of officers;
- (e) Report of committees;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number and Qualifications. The business and affairs of the Council shall be governed by a Board of Directors composed of not less than three (3) nor more than five (5) persons, who shall serve without compensation. The initial Board shall be composed of five members, and the number of members on the Board thereafter shall be established from time to time by the Board. No person shall be eligible for election as a director who is not at the time of election a member of this Council (except such persons who may serve as directors during the period from the date of recordation of the Declaration until the first annual meeting of the members).

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Section 2. Powers. The Board of Directors shall have all powers necessary for the administration of the affairs of the Council and may do all such acts and things therefor as are not by law, the Declaration or these Bylaws directed to be exercised or done only by the members.

Section 3. Election and Term. The Board of Directors shall be elected annually by the members at the annual meeting of the members of the Council, or at any special meeting called for the purpose of such election, for a term of one year, and each member shall be entitled to one vote for each Casita owned by him.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a director by the Council shall be filled by vote of a majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected shall be a director until his successor is elected at the next annual meeting of the Council. Ceasing to be a member of the Council, death, incapacity or resignation of any director shall cause his office to become vacant.

Section 5. Removal of Directors. At any regular or special meeting of the Council duly called, any one or more of the directors may be removed with or without cause by vote of a majority of members and a successor may then and there be elected to fill the vacancy thus created. Any director

whose removal has been proposed by the members shall be given at least five days notice of such proposed action and an opportunity to be heard at such meeting.

Section 6. Annual Meeting. An organizational meeting of the Board of Directors shall be held at the place of, and immediately following, each annual meeting of the Council, and it shall not be necessary to give any notice to any directors in order for there to be a valid meeting, provided that a majority of the whole Board shall be present. At such meeting the Board shall elect the officers of the Council for the ensuing year.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least one day prior to the date of such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on at least one day's notice to each director, given personally or by telephone or telegraph, which notice shall state the time, place and purpose of such meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and with like notice on the written request of at least two directors.

Section 9. Waiver of Notice. Before or at any meeting of the Board of Directors any director may in writing waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice to him of such meeting. If all the directors are present at any meeting of the Board, no notice thereof shall be required, and any business may be transacted at such meeting.

Section 10. Quorum of Board. At all meetings of the Board of Directors a majority of the total number of directors established by these Bylaws shall constitute a quorum for the transaction of business, and the acts of a majority of the directors present at any meeting at which a quorum is present shall be the acts of the Board. If less than a quorum shall be present at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 11. Fidelity Bonds. The Board of Directors may require that all officers, employees and agents of the Council handling or responsible for its funds, shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Council.

Section 12. First Board of Directors. The members of the first Board of Directors shall be George Palē, Gerald Hirt, Norman Grossman, Norman D. Levitt and Robert H. Karatz.

ARTICLE V
OFFICERS

Section 1. Designation. The principal officers of the Council shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by, and in the case of the President from, the Board of Directors. The Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

Section 2. Election and Term. The officers of the Council shall be elected annually by the Board of Directors at the Board's annual meetings and shall hold office at the pleasure of the Board. The officers elected shall hold office for a period of one (1) year, or until their successors are elected and qualified. No person shall be eligible for election as an officer who has not, at the time of election, fulfilled the membership requirements set forth in Article III hereof.

Section 3. Removal. Any officer may be removed either with or without cause by vote of a majority of the members of the Board of Directors and his successor elected, at any

regular meeting of the Board or any special meeting called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Council and shall preside at all meetings of the Council and of the Board of Directors. Subject to the control of the Board he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Council. He shall also have such other powers and duties as may be provided by these Bylaws or assigned to him from time to time by the Board.

Section 5. Vice President. The Vice President shall assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. He shall also have such other powers and duties as may be assigned to him from time to time by the Board.

Section 6. Secretary. The Secretary shall attend and keep the minutes of all meetings of the Council and of the Board of Directors, give all notices thereof as provided by these Bylaws, maintain and keep a continuous and accurate record of ownership of all Casitas, have charge of such books, documents and records of the Council as the Board may direct, and in general perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall keep and maintain the books and financial records of the Council, and shall prepare regular reports thereof and be responsible for the proper deposit and custody in the name of the Council of all its funds and securities.

Section 8. Auditor. The Council may appoint annually an independent public accountant or accounting firm as auditor to audit the books and financial records of the Council.

ARTICLE VI

ADMINISTRATION

Section 1. Management. The Board of Directors shall at all times manage and operate the Property and have such powers and duties as are granted the Board by the Declaration and these Bylaws.

ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO SALE, LEASING AND OTHER ALIENATION

Section 1. Sale or Lease. Except for any leasing of a Casita for a period of not in excess of 60 days (which shall require no notice to or approval by the Corporation, as said term is defined in the Declaration, or the Council), any owner who wishes to sell or lease his Casita (or any lessee of any Casita wishing to assign or sublease such Casita) to any person not related by blood or marriage to the owner shall give to the Corporation and the Council no less than fifteen (15)

days' prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee. The Corporation shall at all times have the first right and option to purchase or lease such Casita upon the same terms, which option shall be exercisable for a period of fifteen (15) days following the date of receipt of such notice. If said option is not exercised by the Corporation within said fifteen (15) days, the Council shall have the second right and option to purchase such Casita upon the same terms, which option shall be exercisable for a period of five (5) days following the expiration of the Corporation's option period. If said option is not exercised by the Council within said five (5) days, the owner (or lessee) may, at the expiration of said period and at any time within sixty (60) days after the expiration of the last option period, contract to sell or lease (or sublease or assign) such Casita to the proposed purchaser or lessee named in such notice upon the terms specified therein.

Section 2. Gift. Any owner who wishes to make a gift of his Casita or any interest therein to any person or persons who would not be heirs at law of the owner under the laws of intestate succession of this state, shall give to the Corporation and the Council not less than fifteen (15) days'

written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name and address of the intended donee and the contemplated date of such gift. The Corporation shall at all times have the first right and option, and if it fails to exercise such right the Council shall have the second right and option, to purchase such Casita or interest therein for cash at fair market value to be determined by arbitration as herein provided. The Corporation's option shall be exercisable until the expiration of forty-five (45) days after receipt by it of the written notice, and the Council's option shall be exercisable until the expiration of five (5) days after expiration of the Corporation's option period. Within five (5) days after receipt of said written notice by the Corporation and the Council, the Corporation and the owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten (10) days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days after the appointment of said arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the Casita or interest therein which the owner contemplates conveying by gift; and shall thereupon give written notice of

such determination to the owner, the Corporation and the Council. The Corporation's and Council's respective options to purchase the Casita or interest therein shall expire within the time periods set forth above.

Section 3. Devise. In the event any owner dies leaving a will devising his Casita or any interest therein to any person or persons not his heirs at law under the laws of interstate succession of this state, and said will is admitted to probate, the Corporation shall have the first option and the Council shall have the second option (to be exercised in the manner hereinafter set forth) to purchase said Casita or interest therein either from the devisee or devisees thereof named in said will or, if a power of sale is conferred by said will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration. Within twenty (20) days after the appointment of a personal representative for the estate of the deceased owner, the Corporation shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative as the case may be. Within twenty (20) days thereafter said devisee or devisees, or personal representative, as the case may be, shall appoint a qualified

real estate appraiser to act as an arbitrator. Within ten (10) days after the appointment of said arbitrator, the two so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days thereafter, the three arbitrators shall determine, by majority vote, the fair market value of the Casita or interest therein, and shall thereupon give written notice of such determination to the devisee or devisees (or personal representative), the Corporation and the Council. The Corporation's option to purchase the Casita or interest therein shall expire thirty (30) days after the arbitrators' written determination is delivered to the Corporation and the Council, and if the Corporation fails to exercise the option, the Council's option shall expire fifteen (15) days after the Corporation's option period.

Section 4. Consent of Voting Members. The Council shall not exercise any option hereinabove set forth to purchase any Casita or interest therein without the prior written consent of two-thirds of the voting members. The Council may bid to purchase at any sale of a Casita or any interest therein of any deceased owner which is held pursuant to an order or direction of a court upon the prior written consent of two-thirds of the voting members of the Council, which consent

shall set forth a maximum price which the Council is authorized to bid and pay for said Casita or interest therein.

Section 5. Release or Waiver of Options. The Corporation may, by written consent to be given within ten (10) days after application for such consent is received by the Corporation, release or waive any of the options given to it (for the particular transaction under consideration) in this Article. If the Corporation so releases or waives its options, then upon the written consent of a majority of the Board of Directors, such consent to be given within ten (10) days after application for such consent is received by the Board, and upon the written consent of two-thirds of the members of the Council, such consent to be given at the first meeting of the members after application for such consent is received by the Secretary, any of the options contained in this Article (with respect to the particular transaction at hand or the particular owner so applying) may be released or waived by the Council, and the Casita or any interest therein may be sold, conveyed, leased, assigned, given or devised free and clear (for that particular transaction) of the provisions of this Article.

Section 6. Proof of Termination of Option. A certificate executed and acknowledged by the respective secretaries of the Corporation and the Council stating that the provisions of

this Article as hereinabove set forth have been met by an Owner, or duly waived by the Corporation and the Council, and that the rights of the Corporation and the Council hereunder have terminated, shall be conclusive upon the Corporation, the Council and the owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished upon request to any owner who has in fact complied with the provisions of this section or in respect to whom the provisions of this section have been waived.

Section 7. Nonapplicability. The provisions applicable to (or obligations imposed upon) an owner in this Article shall not apply to the Corporation in its capacity as the owner of any Casita.

ARTICLE VIII

MANAGING AGENT AND EXECUTION OF INSTRUMENTS

Section 1. Managing Agent. The Board of Directors may annually employ a responsible corporation, partnership, individual or other entity, as Managing Agent to manage and control the Property, subject at all times to direction by the Board, with all the administrative functions set forth elsewhere in these Bylaws and such other powers and duties and at such compensation as the Board may establish.

Section 2. Execution of Instruments. All checks, drafts, notes, acceptances, conveyances, contracts and other

instruments shall be signed on behalf of the Council by such person or persons as shall be provided by general or special resolution of the Board of Directors, or, in the absence of any such resolution applicable to such instrument, by the President or Vice President and by the Treasurer or Secretary.

ARTICLE IX

OBLIGATIONS OF MEMBERS

Section 1. Assessments. All members shall pay to the Council or its Managing Agent in advance on the first day of each and every month the monthly installments of assessments against their respective Casitas for common expenses of the Property in accordance with the operating budget which shall be prepared thirty (30) days prior to the beginning of each fiscal year. In the event any member is delinquent in the payment of any monthly assessment for a period in excess of thirty (30) days, the Board of Directors may take any and all necessary action, pursuant to its powers set forth in the Declaration, including at its discretion and without limitation, sever or disconnect any or all utility connections to his Casita after five (5) days written notice.

Section 2. House Rules. The Board of Directors, upon giving notice to all members in the same manner as herein provided for notice of meetings of the Council, may adopt, amend or repeal any supplemental rules and regulations governing

details of the operation and use of the Property not inconsistent with any provision of law, the Declaration or these Bylaws.

Section 3. Record of Ownership. Every Casita owner shall promptly cause to be duly recorded or filed of record the Sublease, deed or other instrument establishing a record title to the Casita in the Property and deliver to the Secretary of the Council a certified copy of such instrument. The Secretary shall maintain all such information in the Council's records of ownership of the Casitas.

Section 4. Mortgages. Any Casita owner who mortgages his Casita or any interest therein shall notify the Corporation and the Board of Directors of the name and address of his mortgagee, and also of the release of such mortgage, and the Secretary shall maintain all such information in the Council's records of ownership. The Board of Directors at the request of any mortgagee or prospective purchaser of any Casita shall report to such person the amount of any assessments against such Casita then due and unpaid.

ARTICLE X

AMENDMENTS

Section 1. Procedure. These Bylaws may be amended by fifty-one percent (51%) of the members at a meeting of the members specially held for such purpose; provided, however,

that no amendment shall be valid and effective unless it bears the signed and acknowledged concurrence of the Corporation (as said term is used in the Declaration).

ARTICLE XI

CONFLICTS

Section 1. Control. These Bylaws are set forth to comply with the provisions set forth in the Declaration. In case any of the provisions of these Bylaws conflict with the provisions of said Declaration, the provisions of said Declaration shall control.

Plaintiff's Exhibit 21

MINUTES OF THE GENERAL MEETING OF HILTON H.O.A. MARCH 31 2016

The Casita owners present were Bruce and Betsy Stodola, Tammi Prentis, Don Randolph, Pam Penn, Mike and Peggy Bengson, Undine King, Barb Ashkenazi, Bill Shraeder and Kristin Bloomquist, Sue Karatz, Doug and Doreen Makol, David and Barrie Bercuson, Richard Walker, Steven Pollock, Nancy Diamond and Pamela Penn.

Also present Casita #2 owners and Bob Anderson (attorney) and Doug Heaton (hilton rep)

The minutes from the 2015 board meeting were read and approved by Kristin Bloomquist and seconded by Betsy Stodola.

Mike Bengson explained the delay in voting for new declarations as Hilton had not yet approved. The vote for board members went ahead with Mike Bengson, Steve Pollock, Don Randolph, Barrie Bercuson and Bill Shraeder voted in. Bill's position subject to approval of his trust.

Doug Heaton then thanked everyone for their patience regarding renovations and after some questioning about rentals voiced his opinion that taxes would eventually have to be paid by renters. He briefly discussed security concerns and said the hotel was working to improve several concerns.

Discussion followed about hilton perks re: Happy Hour and rewards for up to date owners.

The 2016 budget was presented and motion to approve by Sue Karatz and seconded by Kristin Bloomquist.

The discussion of Rules and Regulations was tabled as the change in Articles is on hold. Richard Walker volunteered to head a committee to try and summarize and compare changes in the new articles to the old so owners would easily understand the differences.

Betsy Stodola volunteered to help and more participants to be determined.

Mike Bengson then read a letter from David Cameron addressed to all the owners.

"Horizontal property condominium regime?,

I do not agree with the proposed changes to the declarations, bylaws, and rules and regulations. It is our intent to refute all changes whether they are improperly ratified or inappropriately voted on by parties whom have no authority to do so. We will reserve our rights accordingly and defend against any type of forced covenants.

The existing governing body is not a Bias group of individuals. We have witnessed first hand behind closed doors, acts of discrimination by board members. We believe these discriminations are based on gender, race, religion, and age. All of which are protected classes. It is our opinions that the current board must be dismantled based on this claim. We reserve the right to take action against any entity that chooses to make Homeowners

decisions that cause our property and rights as owners of multiple casitas, to be bound unwillingly. It is the opinion that these decisions and votes must be made by unanimous vote. Which derived by precedent, is the overruling law in this circumstance according to our council.

I implore the board to reconsider the intent to damage our property.

David Cameron"

Mike then explained that Cameron was an ex board member who worked and participated on the new articles with enthusiasm and was confused as to where this letter was coming from. The reality was about the change in rental periods but the letter caused some concern about its legitimacy

There was then discussion about Tim Schaffer's attorney letter where Bob Anderson emphatically denied it's correctness and thought we could enter a complaint to the bar association.

Bill Schrader the raised the possibility of binding arbitration on future law suits to prevent all these legal fees and Rick Walker thought that courts would love this alternative.

There was then discussion about replacing safe guard, changing gate code systems, towing parking violations and it was advised that the board could change these things in new rules and regulations.

Tammi Prentice and Doreen Makol objected to #25 yard art and Mike Bengson explained that the Hilton was going to handle these violations in future re: penalties and liens. There was a short discussion about common areas and H.O.A. responsibility as well as garbage pick up.

The meeting was then adjourned—moved by Steven pollock and seconded by Betsy Stodola.

Minutes of 3/31/16 Hilton Casitas Council of Homeowners Board meeting.

Meeting established the following:

Mike Bengson- President

Steve Pollock-Vice President

William Schrader- Treasurer

Barrie Pollock- Secretary

Don Randolph-Vice President

End of meeting.

Plaintiff's Exhibit 22

Hilton Casitas Council of Homeowners

2015 Annual Meeting Ballot

The Hilton Casita Council of Homeowners hereby presents this written ballot to change the common monthly HILTON CASITAS COUNCIL OF HOMEOWNERS FEE to **\$289.04** at the Annual Meeting of the Council scheduled for Tuesday March 31, 2015 at 6:00PM at the Hilton Board Room.

PLEASE VOTE YES OR NO BY PLACING AN "X" IN THE APPROPRIATE BOX

YOU MAY VOTE IN PERSON BY BRINGING THIS BALLOT TO THE MEETING AND SUBMITTING IT TO THE BOARD.

YOU MAY ALSO RETURN THE BALLOT TO MIKE BENGSON 6333 N SCOTTSDALE RD #11, SCOTTSDALE 85250. BALLOTS MUST BE RECEIVED BY 3/30/2015.

BELOW IS MY VOTE TO CHANGE THE COMMON MONTHLY HILTON CASITAS COUNCIL OF HOMEOWNERS FEE TO:

\$289.04

YES	
NO	

Name (Printed)

Address & Casita #

Signature

Date

Plaintiff's Exhibit 23

R L Whitmer

Subject: Hilton Casitas Council of Homeowners

On Tuesday, February 17, 2015 1:57 PM, Michael Bengson <mike@mbengson.com> wrote:

I just wanted to get everybody up to date on the Hilton Casitas Council of Homeowners.

The Council has been going thru some changes. We now have a new Board. The members are as follows:

Michael Bengson-President/Treasurer email: mike@mbengson.com

Barbara Askenazi-Secretary email: blaskenazi@gmail.com

Steven Pollock- Vice President

Please note we will have an annual meeting in the near future to elect new officers and approve the next budget and association fee's as well as amendments to the bi laws. I will let everybody know the date. If you cannot attend please vote on the issues by proxy. Prior to the meeting you will receive a package of information/agenda etc.

Thank you.

Michael Bengson
480-688-7002

Plaintiff's Exhibit 24

CHAPTER 4.1
HORIZONTAL PROPERTY REGIMES

ARTICLE 1. IN GENERAL

- Sec.**
- 33-551.** Definitions.
- 33-552.** Recording of declaration to submit property to regime.
- 33-553.** Contents of declaration.
- 33-554.** Reference to declaration for description of apartment and common elements.
- 33-555.** Interest in common elements; reference to them in instrument.
- 33-556.** Withdrawal of property from regime; recording; subsequent regime.
- 33-557.** Individual apartments and interest in common elements are alienable.
- 33-558.** Real property tax and special assessments; levy on each apartment.
- 33-559.** Liens against apartments; removal from lien; effect of part payment.
- 33-560.** Limitation upon availability of partition; exception as to limitation of partition by joint ownership.
- 33-561.** Management by council of co-owners; rules and regulations.

ARTICLE 1. IN GENERAL

Chapter 4.1, article 1, consisting of sections 33-551 to 33-561, was added by Laws 1962, Ch. 89, § 1, effective March 22, 1962.

§ 33-551. Definitions

In this article, unless the context otherwise requires:

1. "Apartment" means one or more rooms occupying all or a part of a floor or floors in a building of one or more floors or stories, but not the entire building, and notwithstanding whether the apartment be intended for use or used as a residence, office, for the operation of any industry or business or for any other use not prohibited by law.
2. "Building" includes the principal structure erected or to be erected upon the land described in the declaration provided for in § 33-552 which determines the use to be made of the improved land whether or not such improvement is composed of one or more separate buildings of one or more floors or stories.

Ch. 4.1 HORIZONTAL PROPERTY REGIMES § 33-551

3. "Co-owner" means a person, corporation, partnership or other legal entity capable of holding or owning any interest in real property who owns all or an interest in an apartment within the building.

4. "Co-owner's interest" means the fractional or percentage interest ascribed to each apartment by the declaration provided for in § 33-552.

5. "Council of co-owners" means all of the co-owners of the building.

6. "General common elements" includes:

(a) The land on which the building is erected.

(b) The foundations, basements, floors, exterior walls of each apartment and of the building, ceilings and roofs, halls, lobbies, stairways, and entrance and exit or communication ways, except as may be specifically otherwise provided in the declaration provided for in § 33-552.

(c) The compartments or installations of central services for public utilities, common heating and refrigeration units, reservoirs, water tanks and pumps servicing other than one apartment.

(d) Premises for lodging of service personnel engaged in performing services other than services within a single apartment.

(e) All devices and premises designed for common use or enjoyment by more than the owner or owners of a single apartment.

7. "Limited common elements" includes those elements designed for use by the owners of more than one but less than all of the apartments included in the building.

8. "Majority of co-owners" or "per cent of co-owners" means the owners of more than one-half or owners of that per cent of interest in the building irrespective of the total number of co-owners.

9. "Property" includes the land whether committed to the horizontal property regime in fee or as a leasehold interest, the building, all other improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates @=1.

C.J.S. Estates § 1 et seq.

§ 33-552. Recording of declaration to submit property to regime

When the sole owner or all of the owners, or the sole lessee or all of the lessees of a lease desire to submit a parcel of real property upon which is located a building to the horizontal property regime established by this chapter, a declaration to that effect shall be executed and acknowledged by the sole owner or lessee or all of such owners or lessees and shall be recorded in the office of the county recorder of the county in which such property lies.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1.

C.J.S. Estates § 1 et seq.

§ 33-553. Contents of declaration

The declaration provided for in § 33-552 shall contain:

1. A description of the land.
2. A description of the cubic content space of the building with reference to its location on the land.
3. A description of the cubic content space of each apartment located within the building, and a description of the cubic content space of each carport or garage or any other area to be subject to individual ownership and exclusive control.
4. A description of the common elements which may be the description provided for in paragraph 2 less the descriptions provided for in paragraph 3 and less the descriptions provided in paragraph 5, if applicable.
5. A description of the cubic content space of the limited common elements, if any.
6. The fractional or percentage interest which each apartment bears to the entire horizontal property regime. The sum of such shall be one if expressed in fractions and one hundred if expressed in percentage.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1.

C.J.S. Estates § 1 et seq.

Ch. 4.1 HORIZONTAL PROPERTY REGIMES § 33-556

§ 33-554. Reference to declaration for description of apartment and common elements

All subsequent deeds, mortgages, or other instruments shall describe the land, but may describe the individual apartments, the common elements, other than the land, or limited common elements by reference to appropriate numbers or letters if such appear on the declaration provided for in § 33-552 without repeating in detail the descriptions of such apartments, common elements other than the land, or limited common elements. Such reference shall include the docket and page of the recorded declaration.

Added Laws 1962, Ch. 89, § 1

Library References

Estates ⇨1.

C.J.S. Estates § 1 et seq.

§ 33-555. Interest in common elements; reference to them in instrument

A. The fractional or percentage interest in the general common elements and the fractional or percentage interest in the limited common elements where such exist are hereby declared to be appurtenant to each of the separate apartments.

B. Any conveyance, encumbrance, lien, alienation or devise of an apartment under a horizontal property regime by any instrument which describes the land and apartment as set forth in § 33-552 shall also convey, encumber, alienate, devise or be a lien upon the fractional or percentage interest appurtenant to each such apartment under § 33-553, paragraph 6, to the general common elements, and the respective share or percentage interest to limited common elements where applicable, whether such general common elements or limited common elements are described as in § 33-553, paragraphs 4 or 5, by general reference only, or not at all.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇨1.

C.J.S. Estates § 1 et seq.

§ 33-556. Withdrawal of property from regime; recording; subsequent regime

A. Any property so constituted as a horizontal property regime may be removed therefrom at any time, provided the sole owner or all of the owners execute, acknowledge and record a declaration evidencing such withdrawal. If at such time there are any encumbrances or

liens against any of the apartments, such declaration will be effective only when the creditors holding such encumbrances or liens also execute and acknowledge such declaration, or their encumbrances or liens are satisfied other than by foreclosure against the apartment, or expire by operation of law.

B. No withdrawal of any property from a horizontal property regime shall be a bar to any subsequent commitment to a horizontal property regime.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1.

C.J.S. Estates § 1 et seq.

§ 33-557. Individual apartments and interest in common elements are alienable

When real property containing a building is committed to a horizontal property regime, each individual apartment located therein and the interests in the general common elements and limited common elements if any, appurtenant thereto, shall be vested as, and shall be as completely and freely alienable as any separate parcel of real property is or may be under the laws of this state, except as limited by the provisions of this chapter.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1.

C.J.S. Estates § 1 et seq.

Notes of Decisions

I. Condominiums

If a condominium consists of five or more units, it constitutes a subdivision and is subject to prior approval of state real estate commissioner before an offering is made to the public. Op. Atty. Gen. No. 63-26.

§ 33-558. Real property tax and special assessments; levy on each apartment

A. All real property taxes and special assessments shall be levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as such apartments and appurtenances are separately owned, and not on the entire horizontal property regime.

B. Any exemption from taxes that may exist on real property or the ownership thereof shall not be denied by virtue of the registration of the property under the provisions of this chapter.

Added Laws 1962, Ch. 89, § 1.

Ch. 4.1 **HORIZONTAL PROPERTY REGIMES § 33-560**

Library References

Taxation ⇐62.

C.J.S. Taxation § 67.

§ 33-559. Liens against apartments; removal from lien; effect of part payment

A. Subsequent to recording the declaration provided for in § 33-552, and while the property remains enrolled in a horizontal property regime, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against the individual apartment and the general common elements and limited common elements where applicable, appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

B. In the event a lien against two or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the general common elements and limited common elements where applicable appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the fractions or percentages appearing on the declaration provided for in § 33-553, paragraph 6. Subsequent to any such payment, discharge or other satisfaction the individual apartment and the general common elements and limited common elements applicable appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the general common elements, limited common elements where applicable appurtenant thereto not so paid, satisfied or discharged.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1.

C.J.S. Estates § 1 et seq.

§ 33-560. Limitation upon availability of partition; exception as to limitation of partition by joint ownership

A. The provisions of title 12, chapter 8, article 7, relating to partition of real property shall not be available to any owner of any interest in real property included within a regime established under

§ 33-560

PROPERTY

Title 33

this chapter as against any other owner or owners of any interest or interests in the same regime, so as to terminate the regime.

B. Nothing contained in this chapter shall be construed as a limitation on partition by joint owners of one or more apartments in a regime as to individual ownership of such apartment or apartments without terminating the regime, or as to ownership of such apartment or apartments and lands outside the limits of the regime.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐3.

C.J.S. Estates § 2 et seq.

§ 33-561. Management by council of co-owners; rules and regulations

A. The council of co-owners shall be required to make provisions for maintenance of common elements, limited common elements where applicable, assessment of expenses, payment of losses, division of profits, disposition of hazard insurance proceeds and similar matters and shall be required to adopt bylaws, rules and regulations.

B. The bylaws, rules and regulations as amended shall be reduced to writing and available to every owner of any interest in the horizontal property regime.

Added Laws 1962, Ch. 89, § 1.

Library References

Estates ⇐1.

C.J.S. Estates § 1 et seq.

Plaintiff's Exhibit 25



c/o Cornerstone Properties, Inc.
PO Box 62073
Phoenix, AZ 85082-2073

December 2016

Hello Hilton Casita Homeowner-

Cornerstone Properties, INC. is pleased to have been given the opportunity to fully manage your association at The Hilton Casitas effective January 1st, 2017. Cornerstone takes a considerable amount of pride in the work we do for our associations. During our management if you have questions, concerns, or notice items that need attention, please give us a call. Your property manager will be **Evon Potocki**. She may be reached by email: **Evon@cpihoa.com** or by phone: **(602) 433-0331 ext. 103**.

The Board of Directors for The Hilton Casitas Council of Homeowners has established the 2017 assessment amount to be **\$289.04 per month**; this rate does not reflect an increase from the 2016 assessments. If you have auto pay set up with prior accounting/management through your bank, please contact them and cancel it effective December 31st, 2016. Should you wish to mail in your monthly HOA payments, **make your check or money order payable to The Hilton Casitas Council of Homeowners and send payment to:**

The Hilton Casitas Council of Homeowners
c/o Cornerstone Properties, INC.
PO Box 62073
Phoenix, AZ 85082-2073

(Please remember to put your 5-digit account number referenced on welcome letter to your payment when mailing it in.) **Also note that payments received after the 15th of the month that they are due are considered late and will be subject to a \$25 late fee.**

For those interested in alternative payment options such as automatic withdrawal, you may contact Cornerstone's accounting department at **(602) 433-0331 ext. 111**. All HOA assessments beginning **January 1st, 2017** and moving forward each month will be paid to Cornerstone. To make an electronic payment, please visit our website at **www.cpihoa.com** and click on "**Assessment Payment**." There you may also monitor your accounting info.

If you have an emergency after business hours or on weekends, please call our office line and you will be given an emergency number to call. Cornerstone personnel will be contacted to return your call for further details and then will arrange to have the problem resolved.

We are looking forward to a long-term relationship with your association! We would also like to wish you a safe, wonderful holiday season, and a happy upcoming New Years for all to come. If you have any questions or concerns, please contact management and we will be happy to assist you.

Sincerely,

Larry Roberson
CFO
Cornerstone Properties, Inc.

Plaintiff's Exhibit 26

HILTON CASITAS COUNCIL OF HOMEOWNERS

P.O. Box 62073

Phoenix, Arizona 85082-2073

Phone: 602-433-0331 Fax: 602-244-9214

www.cpihoa.com

February 23, 2017

RE: Annual Meeting/Budget Ratification Meeting

Dear Casitas Owners-

The Hilton Casitas Council of Homeowners Annual Meeting of the Association is scheduled for MONDAY, MARCH 13th 2017 at 5:00 PM. The location of the meeting will be at Hilton Scottsdale Resort & Villas inside the Sonora Ballroom, 6333 North Scottsdale Road, Scottsdale, AZ 85250.

Enclosed in this mailer you will find: A Board of Directors candidate application, the proposed 2017 Budget, and 2017 Budget Ballot.

If you are a member of the Hilton Casitas Council of Homeowners and interested in running for a position on the Board of Directors, please find the enclosed candidate application. Once you have filled out the candidate application, return it to Cornerstone Properties, INC. as instructed on the application. Once candidates are determined, a Board of Directors Ballot will go out for members to cast their votes for the Board of Directors.

Next you will find the 2017 Budget and Ballot. The Board of Directors of the Hilton Casitas Council of Homeowners proposes the enclosed 2017 Annual Budget for approval by the membership. Please fill out the Budget Ballot in its entirety and return accordingly. If you choose to mail in your 2017 Budget Ballot, it is imperative that you sign the enclosed envelope for authenticity.

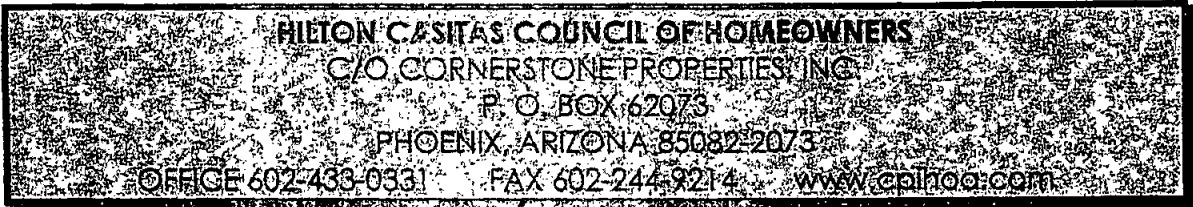
Your vote is very important, so thank you for your participation! If you have any questions or concerns, please contact me, Evon Potocki, and I will be happy to assist you!

Best Regards-

Evon Potocki CAAM

Evon@cpihoa.com

Community Association Manager for Hilton Casitas Council of Homeowners
Cornerstone Properties, INC.



The Hilton Casitas Council of Homeowners
Annual Meeting of the Association is scheduled for:
MONDAY, MARCH 13th 2017 at 5:00 PM.

Location of the meeting: Hilton Scottsdale Resort & Villas (Sonora Ballroom)
6333 North Scottsdale Road. Scottsdale, AZ 85250

BOARD OF DIRECTOR'S CANDIDATE APPLICATION

If you would like to be considered for a vacancy on the Board of Directors for The Hilton Casitas Council of Homeowners, please fill out this application and mail, email, or fax it back to Cornerstone Properties. **PLEASE NOTE THAT THIS INFORMATION WILL BE SHARED WITH THE MEMBERSHIP IN ORDER FOR THEM TO MAKE AN INFORMED DECISION CONCERNING WHOM THEY WISH TO ELECT TO THE BOARD OF DIRECTORS. AS SUCH, PLEASE PRINT YOUR RESPONSES CLEARLY AND LEGIBLY.**

NAME: _____ CASITA #: _____

Mailing Address (if different from onsite): _____

I believe as a Board Member, I can make a contribution to the business aspects of the Association and represent all the members of the Association. I understand that the Board of Directors is charged with the responsibility to govern the affairs of the Association according to the legal documents of the Association and I myself must fully understand that the Board of Directors must make its decisions based on what is in the best interest of the community as a whole, not on the interest of any individual lot owner or group of lot owners and I believe I can make a contribution to this decision making process.

Brief Biography: _____

Signature _____ Date _____

Please return this application to management before **March 2nd 2017 at 5:00pm.**

HILTON CASITAS COUNCIL OF HOMEOWNERS
Cornerstone Properties c/o Evon
P.O Box 62073
Phoenix, AZ 85082-2073

-Or-

Email back to: Evon@coihoa.com or Fax to: 602-244-9214.

For questions regarding this application, please call Evon at 602-433-0331

**HILTON CASITAS COUNCIL OF HOMEOWNERS HOA
2017 BUDGET**

29	NUMBER OF CASITAS:												ANNUAL	Per Casita	
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER			
Based on no change in the monthly dues															
29 Casitas @ 1229.84															
REVENUES:															
8410: Assessments	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 100,585.92	\$ 3,468.48
8400: Interest Income	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 5,382.16	\$ 100,585.92	\$ 3,468.48
TOTAL REVENUES	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 10,764.32	\$ 201,171.84	\$ 6,936.96
EXPENSES:															
ADMINISTRATIVE															
8420: Dues	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 40.00	\$ 480.00	\$ 16.38
8430: Insurance	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 1,650.00	\$ 19,800.00	\$ 678.97
8431: Legal Fees	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 900.00	\$ 10,800.00	\$ 368.97
8432: Management fee	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 6,000.00	\$ 206.89
8433: Office expense	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 2,400.00	\$ 81.38
8434: Misc. exp.	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 200.00	\$ 2,400.00	\$ 81.38
8435: Professional fees	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 7,200.00	\$ 244.83
8436: Taxes - other	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 600.00	\$ 7,200.00	\$ 244.83
8437: Website	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 2,715.00	\$ 32,580.00	\$ 1,123.45
TOTAL ADMINISTRATIVE	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 6,215.00	\$ 74,595.00	\$ 2,571.86
LANDSCAPING															
8438: Landscape - contract	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00	\$ 4,800.00	\$ 162.07
8439: Landscape - other	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 7,800.00	\$ 268.97
TOTAL LANDSCAPING	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 1,050.00	\$ 12,600.00	\$ 431.04
REPAIRS AND MAINTENANCE															
8432: Gate Maintenance	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 450.00	\$ 5,400.00	\$ 183.10
8433: Gate Maintenance	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 670.00	\$ 8,040.00	\$ 273.14
8434: Gate Telephone	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 1,200.00	\$ 41.38
8435: Gate Telephone	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 6,000.00	\$ 206.89
8436: Repairs - other	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 120.00	\$ 4.14
8437: Supplies - other	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 1,230.00	\$ 14,760.00	\$ 512.41
TOTAL REPAIRS & MAINT	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 2,960.00	\$ 35,420.00	\$ 1,222.07
UTILITIES															
8420: Sewer - City of Scottsdale	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 945.00	\$ 11,340.00	\$ 391.35
8421: Electric	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 45.00	\$ 540.00	\$ 18.31
8422: Garbage	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 725.00	\$ 8,700.00	\$ 293.45
8423: Gate Telephone	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 72.00	\$ 864.00	\$ 28.79
TOTAL UTILITIES	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 1,807.00	\$ 21,604.00	\$ 731.17
RESERVES															
Reserve Contribution	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 21,720.00	\$ 745.04
TOTAL RESERVES	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 1,810.00	\$ 21,720.00	\$ 745.04
TOTAL RESERVES & EXPENSE	\$ 8,542.00	\$ 8,332.00	\$ 9,541.75	\$ 8,332.00	\$ 8,237.00	\$ 7,782.00	\$ 9,112.00	\$ 7,782.00	\$ 7,982.00	\$ 8,332.00	\$ 8,432.00	\$ 7,939.17	\$ 100,585.92	\$ 3,468.48	
NET INCOME (LOSS)	\$ (159.84)	\$ 50.16	\$ (1,159.59)	\$ 30.16	\$ (45.16)	\$ 600.16	\$ (729.84)	\$ 600.16	\$ 450.16	\$ 30.16	\$ (279.84)	\$ 422.99	\$ (0.00)	\$ (0.00)	

**MAIL BALLOT AND CONSENT TO APPROVE
2017 HILTON CASITAS COUNCIL OF HOMEOWNERS BUDGET**

The Board of Directors of the Hilton Casitas Council of Homeowners (the "Association") proposes the enclosed 2017 Annual Budget for approval by the Membership.

THE UNDERSIGNED, BEING THE OWNER(S) OF A LOT/UNIT IN THE ASSOCIATION, HEREBY VOTES AS FOLLOWS:

_____ **I CONSENT TO AND I APPROVE** the enclosed 2017 Annual Budget of the Association.

_____ **I DO NOT CONSENT TO AND I DO NOT APPROVE** the enclosed 2017 Annual Budget of the Association.

THIS BALLOT IS VALID FOR ONLY THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE OWNER. THIS BALLOT EXPIRES UPON THE ADJOURNMENT OF THE BELOW NOTED MEETING.

Please complete the following procedures in order to vote this Ballot:

- 1. Complete the Ballot, including your name, address and signature below:**
- 2. Place the completed Ballot in the envelope provided;**
- 3. Fill out your name, address and sign the envelope where indicated.**

After following the above procedures, you may return your Ballot by:

- 1. Mailing your Ballot to the address provided on the envelope, so long as the Ballot is received before 5 p.m. on March 12, 2017;**
- 2. E-mailing your ballot to Evon@cpioha.com by no later than 5 p.m. on March 12, 2017;**
- 3. Faxing your ballot to (602) 281-9214 by no later than 5 p.m. on March 12, 2017; or**
- 4. Bringing this Ballot to the Meeting scheduled for MONDAY, MARCH 13th 2017 at 5:00 PM at Hilton Scottsdale Resort & Villas (Sonora Ballroom) 6333 North Scottsdale Road. Scottsdale, AZ 85250.**

Name: _____

Address: _____

Signature: _____

Case Number: CV2016-055080

Part 2 of 2

Plaintiff's Exhibit 27

1 **Shaw & Lines, LLC**
2 4523 E. Broadway Road
3 Phoenix, AZ 85040
4 Phone (480) 456-1500
5 Facsimile (480) 456-1515
6 www.shawlines.com
7 Augustus H. Shaw IV - #021593
8 Mark E. Lines - #020553
9 Nicole D. Payne - #031213

Dreamy Draw Justice Court
18380 North 40th Street, Suite 130
Phoenix, Arizona 85032
Phone: 602-372-7000

Attorneys for Defendant/Appellant

MARICOPA COUNTY JUSTICE COURTS, ARIZONA

DREAMY DRAW JUSTICE COURT

COLLEEN LONDON/ R L WHITMER,

Plaintiffs/Appellees,

vs.

HILTON CASITAS HOMEOWNERS
ASSOCIATION, also known as HILTON
CASITAS COUNCIL OF
HOMEOWNERS, also known as HILTON
CASITAS COUNCIL OF CO-OWNERS;

Defendant/Appellant.

No. CC2016-164084RC

**AFFIDAVIT IN LIEU OF COST
BOND**

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

Michael Bengson, being first duly sworn and upon oath, says that:

1. I am the vice president of the board of directors for Defendant, Hilton Casitas Homeowners Association, also known as Hilton Casitas Council of Homeowners, also known as Hilton Casitas Council of Co-Owners (hereafter, the "Defendant"), in the above-entitled action and state that Defendant desires to take an appeal from the recent

1 March 29, 2017 signed ruling by the Justice of the Peace for the Dreamy Draw Justice
2 Court;

3 2. As the vice president, my responsibilities include the overseeing of
4 Defendant's finances and I have personal knowledge as to Defendant's financial accounts
5 and status.
6

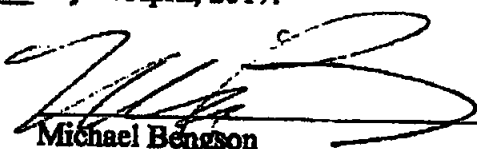
7 3. I have personal knowledge that Defendant is unable to give a bond for costs
8 on appeal.
9

10 4. Defendant is a non-profit corporation made up of homeowners and existing
11 as a homeowners association.

12 5. Requiring Defendant to post a bond for costs on appeal would cause a
13 financial hardship to a non-profit corporation that does not generate profits and does not
14 budget for this type of scenario.
15

16 WHEREFORE, the undersigned requests that Defendant be allowed to prosecute
17 an appeal in this action without bond for costs.

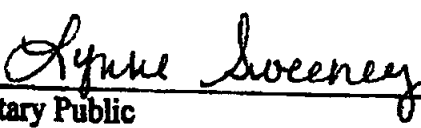
18
19 Dated: this 5th day of April, 2017.

20 
21 Michael Bengson
22 Agent/Vice President for Defendant

23
24 SUBSCRIBED AND SWORN TO before me this 5th day of April, 2017.

25 (Notary Seal)



26 
27 Notary Public


1 ORIGINAL of the foregoing submitted for
2 filing this 5th day of April, 2017:

3 Clerk of the Court
4 Dreamy Draw Justice Court
5 18380 N. 40th Street, Ste. 130
6 Phoenix, Arizona 85032

7 COPY of the foregoing mailed
8 this 5th day of April, 2017, to:

9 Colleen London
10 R.L. Whitmer
11 6333 North Scottsdale Road, Casita 21
12 Scottsdale, Arizona 85250
13 *Plaintiffs, Pro Per*

14 Robert Anderson
15 Andrew Turk
16 CLARK HILL PLC
17 14850 N. Scottsdale Road, Suite 500
18 Scottsdale, Arizona 85254
19 *Attorneys for Defendant*

20
21
22
23
24
25
26
27
By: 

Plaintiff's Exhibit 28

1 **Shaw & Lines, LLC**

2 4523 E. Broadway Road

3 Phoenix, AZ 85040

4 Phone (480) 456-1500

5 Facsimile (480) 456-1515

6 www.shawlines.com

7 Augustus H. Shaw IV - #021593

8 Mark E. Lines - #020553

9 Nicole D. Payne - #031213

Dreamy Draw Justice Court

18380 North 40th Street, Suite 130

Phoenix, Arizona 85032

Phone: 602-372-7000

Attorneys for Defendant/Appellant

MARICOPA COUNTY JUSTICE COURTS, ARIZONA

DREAMY DRAW JUSTICE COURT

10 COLLEEN LONDON/ R L WHITMER,

11 Plaintiffs/Appellees,

12 vs.

13 HILTON CASITAS HOMEOWNERS
14 ASSOCIATION, also known as HILTON
15 CASITAS COUNCIL OF
16 HOMEOWNERS, also known as HILTON
17 CASITAS COUNCIL OF CO-OWNERS;

18 Defendant/Appellant.

No. CC2016-164084RC

**DEFENDANT/APPELLANT'S
OBJECTION TO
PLAINTIFFS/APPELLEES'
SUGGESTED SUPERSEDEAS BOND**

19 Defendant/Appellant, Hilton Casitas Homeowners Association (hereafter,
20 "Association" or "Defendant"), by and through counsel undersigned, hereby objects to
21 Plaintiffs'/Appellees' Suggested Supersedeas Bond. This objection is supported by the
22 following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

23 **I. A supersedeas of other bond is not required to secure a potential**
24 **judgment.**

25 Plaintiff/Appellee, as a member of the Defendant Condominium Association, has
26 an obligation to pay assessments to the Association pursuant to Ariz. Rev. Stat. §33-1256.
27

1 The funds to be secured by a supersedeas or other bond are, in essence, a refund of
2 the Plaintiff's assessments. If the Plaintiff were to ultimately prevail in this matter, the
3 Association could simply allow the Plaintiff to not pay assessments in the amount of any
4 judgment owed or may allow the Plaintiff to offset any judgements currently held by the
5 Association against the Plaintiff. This would not affect the Association's requirements
6 pursuant to Ariz. Rev. Stat. §33-1243(D).
7

8 As such, a supersedeas or other bond is not necessary to secure the Defendant's
9 interest in a potential judgement.
10

11 **II. Association cannot use reserve or budgeted funds for a bond.**

12 In their recent Motion, Plaintiffs' state "[T]he 2017 Budget shows that Association
13 has over \$100,000 in reserves and that \$40,000 of the total reserves is earmarked for legal
14 fees" to argue that the Association is not entitled to a waiver of the bond requirement.
15

16 What the Plaintiffs' do not mention is that the reserve accounts and budgetary line
17 items for attorney's fees are strictly accounted for and may not be used for a bond without
18 the express permission of the Members of the Association.

19 Both parties agree that the Association is subject to Ariz. Rev. Stat. §33-1243(D),
20 which requires the Association to create an accurate budget and have that budget ratified
21 by the Members of the Association. Ariz. Rev. Stat. §33-1243(D) states:
22

23 **Any budget or amendment shall be ratified by the unit owners in**
24 **accordance with the procedures set forth in this subsection. (Emphasis**
25 **added).**
26
27

1 Once the Members ratify a budget, the budget may not be amended unless the
2 Members vote to amend the budget. Each Membership vote is a costly and time consuming
3 endeavor.

4 As such and pursuant to Ariz. Rev. Stat. §33-1243(D), budgeted amounts for
5 attorney's fees may only be used for attorney's fees unless the entire Membership votes
6 to allow said funds to be used for a different purpose. Also, reserve accounts can only be
7 used for capital improvement items unless the entire Membership votes to allow said funds
8 to be used for a different purpose.

9 Additionally, based on the strict requirements of Ariz. Rev. Stat. §33-1243(D), if
10 the budgeted funds or reserve funds were used outside of their anticipated function, the
11 Association would be left with a hole in its budget that, as stated in the Association's
12 Affidavit in Lieu of Cost Bonds, would "cause a financial hardship to a non-profit
13 corporation that does not generate profits and does not budget for this type of scenario."

14 Thus, in order to use the budgeted amount for attorney's fees or any reserve account
15 funds for a superceded bond or any bond, a vote of the Members must take place and a
16 large hole would be left in the budget or reserve account.

17 Also, the Association would have to hold a costly election to gain Member approval
18 to use the funds for a bond. In totality, the above actions would, as stated in the
19 Association's Affidavit in Lieu of Cost Bonds, "cause a financial hardship to a non-profit
20 corporation that does not generate profits and does not budget for this type of scenario."

21 The Association does not generate a budget surplus. Therefore, being required to
22 take funds from a budgetary allocation would cause a budget shortfall. Since a non-profit
23
24
25
26
27

1 corporation cannot have a budget deficit or shortfall, requiring the Association to use
2 allocated funds to post a bond would cause a serious financial and legal hardship.

3 Finally, the funds to be secured by a supersedeas or other bond are, in essence, a
4 refund of the Plaintiff's assessments. If the Plaintiff were to ultimately prevail in this
5 matter, the Association could simply allow the Plaintiff to not pay assessments in the
6 amount of any judgment owed. This would not affect the Association's requirements
7 pursuant to Ariz. Rev. Stat. §33-1243(D).
8

9 **III. Conclusion.**

10 The Association is a nonprofit corporation with limited funds forced by Ariz. Rev.
11 Stat. §33-1243(D) to obtain Member approval if it desires to deviate from the Member
12 approved budget or reserve funds. Each penny of the Association's funds are accounted
13 for and as such, the Association does not have the discretion to post bonds on its own.
14

15 Requiring the Association to post bonds, as stated in the Association's Affidavit in
16 Lieu of Cost Bonds, would "cause a financial hardship to a non-profit corporation that
17 does not generate profits and does not budget for this type of scenario." The Plaintiff's do
18 not provide any credible evidence that this statement is not correct.
19

20 Therefore, the Defendant hereby requests that the Court waive the requirement of
21 the Association to post a cost bond and deny the Plaintiff's request for a supersedeas bond.
22

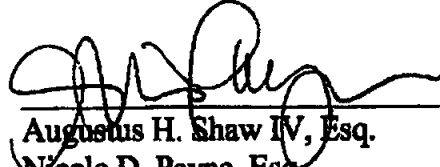
23 ...

24 ...

25 ...

1 DATED this 21st day of April, 2017

2 SHAW & LINES, LLC

3
4 

5 Augustus H. Shaw IV, Esq.

6 Nicole D. Payne, Esq.

7 4523 E. Broadway Rd.

8 Phoenix, Arizona 85040

Substituting Attorneys for Defendant

9 ORIGINAL of the foregoing submitted for
10 filing this 27th day of April, 2017:

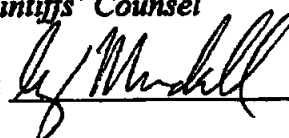
11 Clerk of the Court
12 Dreamy Draw Justice Court
13 18380 N. 40th Street, Ste. 130
14 Phoenix, Arizona 85032

15 COPY of the foregoing mailed
16 this 27th day of April, 2017, to:

17 Colleen London & R.L. Whitmer
18 6333 North Scottsdale Road, Casita 21
19 Scottsdale, Arizona 85250
20 *Plaintiffs*

21 Robert Anderson
22 Andrew Turk
23 CLARK HILL PLC
24 14850 N. Scottsdale Road, Suite 500
25 Scottsdale, Arizona 85254
26 *Previous Attorneys for Defendant*

27 Lisa Borowski
28 Scottsdale Law Group, P.C.
29 7150 E. Camelback Road, Suite 444
30 Scottsdale, Arizona 85251
31 *Plaintiffs' Counsel*

32 By: 

Plaintiff's Exhibit 29

Hilton Casitas Council of Homeowner
Board of Directors Meeting
Tuesday, February 14th, 2017 @ 4:00 PM
Open Meeting Agenda

- I. Call Meeting to order / Establish Quorum**
- II. Open Forum**
 - Limited to 3 minutes
 - Architectural Applications
 - A. Casita 2 – Exterior Lighting & Exterior Paint Change
 - B. Casita 22 – Exterior Paint Change SW 7642 Pavestone
- III. Approval of Meeting Minutes**
 - A. November 29, 2016 Meeting Minutes
- IV. Review of Financials**
 - A. January 2017 Financials
- V. Old Business**
 - A. Bill Shrader – Board of Director Resignation on 2/1/17
- VI. New Business**
 - A. Legal HOA Representation Change
 - B. Landscaping Contract Proposal Review
 - C. Short Term Rentals
 - D. Hotel Discussion
 - E. Discuss and Approve 2017 Budget
 - F. Reserve Study Bid
- VII. Adjourn**
- VIII. Executive Session (Closed Session to Members)**
 - A. Delinquencies
 - B. Compliance log/Violations

***Please note that the Board President has the right to close discussion on any topic that exceeds a reasonable time limit.**

Hilton Casitas Council of Homeowner
Board of Directors Meeting
Wednesday, March 15th, 2017 @ 4:00pm
Location: Cornerstone Properties, INC. Board Room
Open Meeting Agenda

- I. Call Meeting to order / Establish Quorum**
- II. Open Forum**
 - Limited to 3 minutes
- III. New Business**
 - A. 2017 Revised Budget**
- IV. Adjourn**

*Please note that the Board President has the right to close discussion on any topic that exceeds a reasonable time limit.

**Hilton Casitas Council of Homeowners
Board of Directors Open Meeting Minutes
February 14th, 2017 – 4:00pm
Location: Hilton Resort Sunset Board Room**

The meeting was called to order at 4:23pm by Mike Bengson. Quorum for the meeting was met and duly noted.

Board Members present: Mike Bengson, Barrie Bercuson, Don Randolph, Steven Pollock (4:36pm)

Homeowners present: Jack Houston, Bill Schrader, Betsy and Bruce Stodola

Also In presence: Evon Potocki, Cornerstone Properties, INC.

November 29th, 2016 Meeting Minutes: Steve motioned to approve November 29th, 2016 meeting minutes. Don Randolph seconded that motion. All in favor, duly approved.

Architectural Applications

- A. Casita 2 – Exterior Lighting & Exterior Paint Change – Approved unanimously
- B. Casita 22 – Exterior Paint Change SW 7642 Pavestone - Approved unanimously

New Business

- A. Legal HOA Representation Change- Motion retained to change legal counsel. All in favor and duly noted.
- B. Landscaping Contract Proposal Review – Steve Pollock asserted to give Horizon a chance to fix problem issue. The Board unanimously agree and tabled the change. No change will be made with at this time.
- C. Short Term Rentals – Manager suggested that a survey go out to the members and see how the members feel about the subject.
- D. Hotel Discussion
- E. Discuss and Approve 2017 Budget – Mike Bengson motioned to approve the 2017 with an increase to \$20,000 in projected legal fees. Barrie Bercuson seconded that motion. Motion carried and duly approved.

Adjournment: Motion to adjourn meeting at 05:34 PM

Plaintiff's Exhibit 30

Hilton Casitas Council of Homeowner
Board of Directors Meeting
Wednesday, March 15th, 2017 @ 4:00pm
Location: Cornerstone Properties, INC. Board Room
Open Meeting Agenda

- I. **Call Meeting to order / Establish Quorum**
- II. **Open Forum**
 - Limited to 3 minutes
- III. **New Business**
 - A. 2017 Revised Budget
- IV. **Adjourn**

*Please note that the Board President has the right to close discussion on any topic that exceeds a reasonable time limit.

Plaintiff's Exhibit 31

Hilton Casitas Council of Homeowners
2017 Annual Meeting of the Association

Thursday, March 30th, 2017 @ 5:00pm
6333 N. Scottsdale Road, Scottsdale, AZ 85250
Sonora Ballroom inside the Scottsdale Hilton Resort & Villas

- I. Call to order by the Chairman. Establish Quorum**
- II. Introduction of the Board of Directors**
- III. Approval of Annual Meeting Minutes**
 - A. March 31st, 2016**
- IV. Presidents Report**
- V. Financial Report**
 - A. Vote & Ballot Collection of the 2016 Expenses of the Association**
 - B. Voting Results**
- VI. Review of the 2017 Budget**
 - A. Vote & Ballot Collection**
 - B. Voting Results**
- VII. Election of 2017 Board of Directors**
 - A. Introduction of Candidates**
 - B. Vote & Ballot Collection**
 - C. Election Results**
 - D. Appointment of Officers**
- VIII. Open Forum**
- IX. Adjourn**

(After the adjournment of the 2017 Annual Meeting the Board will reconvene into a Board of Directors Meeting.)

*Please note that the Board President has the right to close discussion on any topic that exceeds a reasonable time limit.

Hilton Casitas Council of Homeowners
2017 Annual Meeting Minutes

Thursday, March 30th, 2017 @ 5:00pm

Location: 6333 N. Scottsdale Road, Scottsdale, AZ 85250

(Inside the Sonora Ballroom of the Scottsdale Hilton Resort & Villas)

- I. The meeting was called to order at 5:10 PM by Augustus Shaw. The quorum for the meeting was met and duly noted.

Board Members Present: Mike Bengson (P), Steve Pollock (VP), Barrie Bercuson (S), and Don Randolph (T)

Homeowners: Barbara Askenazi, Peggy Bengson, Karen Randolph, John Brooke, Dorene Mykol, Pamela Penn, Richard Kosiec, Michael Sheedy, Bruce Stodola, Richard Walker

Management Present: Evon Potocki, Community Manager, Cornerstone Properties, Inc.

Legal Counsel: Augustus Shaw and Nicole Payne of Shaw & Lines

II. **Board of Directors Introduction**

- III. **Approval of March 31st, 2016 Annual Meeting Minutes.** Betsy Stodola motioned to approve the March 31, 2016 Annual Meeting Minutes. Pamela Penn seconded that motion. Motion carried and unanimously approved.

- IV. **President's Report.** President Mike Bengson gave an overview of 2016. Later mentioning goals for 2017 including road paving and the hopes of keeping legal costs under budget.

V. **Financial Report. 2016 Financial report given by Steve Pollock.**

a. **Vote & Ballot Collection of the 2016 Expenses of the Association**

b. **2016 Expenses of the Association were ratified by a vote of the Members.**

VI. **Review of the 2017 Budget**

a. **Vote & Ballot Collection**

b. **2017 Budget approved by a vote the Members.**

VII. **Election of 2017 Board of Directors**

a. **Introduction of Candidates**

b. **Vote & Ballot Collection**

c. **Election Results** – Michael Bengson, Steve Pollock, Michael Sheedy, Richard Walker, and John Jack Huston won the election for Hilton Casitas Council of Homeowners Board of Directors.

d. **Appointment of Officers** - Appointment of Officers tabled until the open Board Meeting to follow.

VIII. **Open Forum**

Barbara Askenazi brought up the unsolicited mail that went out to all the homeowners. Wanting to know fact information vs. hearsay.

Augustus Shaw answered several questions from the Members regarding the legal matters pending in the Association.

Betsy Stodola expressed concerns regarding the violations that are harming property values.

- IX. Motion to adjourn meeting at 6:20 PM

Plaintiff's Exhibit 32

**MAIL BALLOT AND CONSENT TO APPROVE
HILTON CASITAS COUNCIL OF HOMEOWNERS
2016 EXPENSE SUMMARY**

The Board of Directors of the Hilton Casitas Council of Homeowners (the "Association") desires to seek the Membership's approval of the enclosed 2016 Expense Summary of the Association.

THE UNDERSIGNED, BEING THE OWNER(S) OF A LOT/UNIT IN THE ASSOCIATION, HEREBY VOTES AS FOLLOWS:

_____ **I CONSENT TO AND I APPROVE** the enclosed 2016 Expense Summary of the Association.

_____ **I DO NOT CONSENT TO AND I DO NOT APPROVE** the enclosed 2016 Expense Summary of the Association.

THIS BALLOT IS VALID FOR ONLY THE PURPOSES OUTLINED ON THIS BALLOT. THIS BALLOT MAY NOT AUTHORIZE ANOTHER PERSON TO CAST VOTES ON BEHALF OF THE OWNER. THIS BALLOT EXPIRES UPON THE ADJOURNMENT OF THE BELOW NOTED MEETING.

Please complete the following procedures in order to vote this Ballot:

1. Complete the Ballot, including your name, address and signature below;
2. Place the completed Ballot in the envelope provided;
3. Fill out your name, address and sign the envelope where indicated.

After following the above procedures, you may return your Ballot by:

1. Mailing your Ballot to the address provided on the envelope, so long as the Ballot is received before 5 p.m. on March 29, 2017;
2. E-mailing your ballot to Evon@cpihoa.com by no later than 5 p.m. on March 29, 2017;
3. Faxing your ballot to (602) 244-9214 by no later than 5 p.m. on March 29, 2017; or
4. Bringing this Ballot to the Meeting scheduled for THURSDAY, MARCH 30th 2017 at 5:00 PM at Hilton Scottsdale Resort & Villas (Sonora Ballroom) 6333 North Scottsdale Road. Scottsdale, AZ 85250.

Name: _____

Address: _____

Signature: _____

Plaintiff's Exhibit 33

The Hilton Casitas Council of Homeowners

02 - Statement of Revenues and Expenses

Posted 12/1/2016 to 12/31/2016 11:59:00 PM

	Current Month Operating			Year to Date Operating			Annual
	Actual	Budget	Variance	Actual	Budget	Variance	
REVENUES							
<u>Revenues</u>							
5010 Assessments	122,121.48	100,585.92	21,535.56	122,121.48	100,585.92	21,535.56	100,585.92
TOTAL Revenues	122,121.48	100,585.92	21,535.56	122,121.48	100,585.92	21,535.56	100,585.92
TOTAL REVENUES	122,121.48	100,585.92	21,535.56	122,121.48	100,585.92	21,535.56	100,585.92
EXPENSES							
<u>Administrative</u>							
8500 Bank charges	0.00	360.00	(360.00)	0.00	360.00	(360.00)	360.00
8530 Insurance	1,595.00	1,595.00	0.00	1,595.00	1,595.00	0.00	1,595.00
8540 Legal Fees ←	14,802.00	15,000.00	(198.00) →	14,802.00 ←	15,000.00	(198.00)	15,000.00
8545 Land Lease ←	10,000.00	0.00	10,000.00 →	10,000.00 ←	0.00	10,000.00	0.00
8550 Management fee	1,350.00	3,000.00	(1,650.00)	1,350.00	3,000.00	(1,650.00)	3,000.00
8555 Management Fee Hilton	12,180.00	12,180.00	0.00	12,180.00	12,180.00	0.00	12,180.00
8570 Meeting expense	75.00	0.00	75.00	75.00	0.00	75.00	0.00
8590 Office expense	1,459.05	0.00	1,459.05	1,459.05	0.00	1,459.05	0.00
8595 Accounting/misc fees	425.00	400.00	25.00	425.00	400.00	25.00	400.00
8625 Security	29,035.65	28,035.65	3,000.00	29,035.65	28,035.65	3,000.00	28,035.65
8634 AZ Corp Comm Report	125.00	0.00	125.00	125.00	0.00	125.00	0.00
TOTAL Administrative	71,046.70	58,570.65	12,476.05	71,046.70	58,570.65	12,476.05	58,570.65
<u>Landscaping</u>							
8010 Landscape - contract	8,644.15	8,644.15	0.00	8,644.15	8,644.15	0.00	8,644.15
TOTAL Landscaping	8,644.15	8,644.15	0.00	8,644.15	8,644.15	0.00	8,644.15
<u>Repairs and Maintenance</u>							
8340 Storage	652.30	0.00	652.30	652.30	0.00	652.30	0.00
8355 Street maintenance/Repairs	500.00	500.00	0.00	500.00	500.00	0.00	500.00
TOTAL Repairs and Maintenance	1,152.30	500.00	652.30	1,152.30	500.00	652.30	500.00
<u>Utilities</u>							
8400 Electric	478.87	478.87	0.00	478.87	478.87	0.00	478.87
8410 Gate Telephone	778.02	778.02	0.00	778.02	778.02	0.00	778.02
8425 Sewer	10,851.84	10,851.84	0.00	10,851.84	10,851.84	0.00	10,851.84
8440 Trash	8,700.00	8,700.00	0.00	8,700.00	8,700.00	0.00	8,700.00
TOTAL Utilities	20,808.73	20,808.73	0.00	20,808.73	20,808.73	0.00	20,808.73
<u>z - Reserve Contributions</u>							
8700 Reserve - contribution	24,872.67	24,872.67	0.00	24,872.67	24,872.67	0.00	24,872.67
TOTAL z - Reserve Contributions	24,872.67	24,872.67	0.00	24,872.67	24,872.67	0.00	24,872.67
TOTAL EXPENSES	126,524.55	113,396.20	13,128.35	126,524.55	113,396.20	13,128.35	113,396.20
Excess Revenue / Expense	(4,403.07)	(12,810.28)	8,407.21	(4,403.07)	(12,810.28)	8,407.21	(12,810.28)

Plaintiff's Exhibit 34

DEPOSITION of MICHAEL BENGSON, taken on January 15, 2019, commencing at 8:56 a.m., at OTTMAR & ASSOCIATES, 3770 North 7th Street, Suite 150, Phoenix, Arizona, before Debora Mitchell, an Arizona Certified Reporter, in and for the County of Maricopa, State of Arizona.

COUNSEL APPEARING:

R. L. Whitmer
6333 North Scottsdale Road, Casita 21
Scottsdale, Arizona 85250
Pro Per Petitioner

SHAW & LINES, LLC
By: Augustus H. Shaw IV, Esq.
4523 East Broadway Road
Phoenix, Arizona 85040
Attorney for Respondents

I N D E X

WITNESS	PAGE
MICHAEL BENGSON	
EXAMINATION BY MR. WHITMER	5

E X H I B I T S

EXHIBIT DESCRIPTION	PAGE
Exh. 1 Declaration of Horizontal Property Regime for Hilton Casitas	12
Exh. 2 Bylaws of the Hilton Casitas Council of Co-Owners	13
Exh. 3 April 5, 2017 Bengson Affidavit	13
Exh. 4 January 7, 2015 Administrative Law Decision	14
Exh. 5 February 18, 2015 Cashier's Check	14
Exh. 6 February 16, 2016 HOA board meeting agenda and minute notes	15
Exh. 7 2017 ballot to approve the 2016 expense summary	15
Exh. 8 August 22, 2016 HOA letter regarding Safeguard Security	15
Exh. 9 April 27, 2017 HOA objection to supersedes bond	16

EXHIBIT DESCRIPTION	PAGE
Exh. 10 2016 Hilton Casitas' statement of revenues and expenses	16
Exh. 11 Tabulation of Clark Hill's billing invoices for 2016	17
Exh. 12 Hilton Casitas' 2017 GL income statement	17
Exh. 13 Tabulation of the 2017 Clark Hill billings and Shaw Lines billings exhibits for fees and costs in their application for fees and costs	18

* * * * *

1 (In accordance with ACJA 7-206(J) (3) (b) ,
2 an itemized, written list of rates and charges has been
3 disclosed to all parties or their attorneys and any
4 unrepresented witnesses.)

5
6 MICHAEL BENGSON,
7 a witness herein, having been first duly sworn by the
8 Certified Reporter to speak the truth and nothing but
9 the truth, was examined and testified as follows:

10

11

EXAMINATION

12

BY MR. WHITMER:

13

Q. For the record, state your name and address.

14

A. Michael Bengson, 6333 North Scottsdale Road,

15

No. 11.

16

Q. Are you president of Michael L. Bengson

17

Insurance Agency, Inc.?

18

A. Yes.

19

Q. Are you now or have you ever been affiliated

20

with State Farm?

21

A. Yes.

22

Q. Is your State Farm agency an S or C corp.?

23

MR. SHAW: Objection, relevance.

24

MR. WHITMER: State the reason for your

25

objection.

1 MR. SHAW: The reason is this is a lawsuit
2 regarding a contempt action. Whether his employer is
3 an S or a C corp is not relevant to the contempt
4 action.

5 MR. WHITMER: Do you have any other
6 objections?

7 MR. SHAW: Relevance is the objection.

8 MR. WHITMER: Thank you.

9 BY MR. WHITMER:

10 Q. For the record I am just ascertaining
11 Mr. Bengson's sophistication with business issues in
12 financial affairs.

13 MR. SHAW: Objection. Mr. Bengson is not
14 an expert. He has not been called as an expert witness
15 in business affairs or financial matters. Therefore,
16 he cannot testify as an expert.

17 MR. WHITMER: Do you have any other
18 objections?

19 MR. SHAW: I will let you know when you
20 ask the question.

21 MR. WHITMER: Okay.

22 BY MR. WHITMER:

23 Q. Mr. Bengson isn't here as an expert. He is
24 here to testify as to his depth of knowledge.

25 MR. SHAW: Objection, he's not here --

1 according to the notice of deposition, he is not here
2 to testify to his knowledge. In fact, the notice of
3 deposition is blank regarding what he is here to
4 testify for. So it is not relevant to the underlying
5 contempt action that we are here -- that is currently
6 in litigation.

7 MR. WHITMER: Any other objections?

8 MR. SHAW: I will let you know.

9 MR. WHITMER: Your objection is noted for
10 the record.

11 BY MR. WHITMER:

12 Q. The witness will answer the question.

13 MR. SHAW: Yes, you can answer to the best
14 of your knowledge.

15 THE WITNESS: What's the question?

16 BY MR. WHITMER:

17 Q. Is your agency in S or a C corp.?

18 A. It is.

19 Q. Which?

20 A. It is an S or a C corp.

21 Q. Please don't be evasive. Is it an S or a C
22 corp.?

23 A. It is an S corp.

24 Q. Thank you. Have you ever prepared or had
25 prepared financial balance sheets or income statements

1 for your agency?

2 MR. SHAW: Objection, relevance.

3 MR. WHITMER: The reason for your
4 objection?

5 MR. SHAW: Again, we are here for a
6 contempt action regarding a judgment. We are not here
7 to discuss Mr. Bengson's business. Mr. Bengson's
8 business is not at issue and there have been no
9 allegations against Mr. Bengson's business. Therefore,
10 the question is not relevant to the underlying lawsuit.

11 MR. WHITMER: Any other reasons?

12 MR. SHAW: I will let you know.

13 MR. WHITMER: For the record, it is noted.

14 BY MR. WHITMER:

15 Q. Answer the question.

16 THE WITNESS: Do I need to answer the
17 question?

18 MR. SHAW: Yeah.

19 THE WITNESS: What was the question?

20 BY MR. WHITMER:

21 Q. Have you ever prepared balance sheets or income
22 statements for your agency or any other business
23 entity?

24 A. Have I prepared them?

25 Q. Or had prepared?

1 A. Yes.

2 Q. Have you ever used financial statements --
3 let's see, in the course of your business, have your
4 clients given you financial statements?

5 MR. SHAW: Objection, relevance. Oh, I'm
6 sorry. I didn't let you finish the question. My
7 apologies.

8 MR. WHITMER: That's okay.

9 THE WITNESS: It has nothing to do with
10 what we are doing here.

11 MR. SHAW: Well, you just have to answer
12 the questions.

13 I'm sorry I interrupted. My apologies.

14 MR. WHITMER: Apology accepted.

15 BY MR. WHITMER:

16 Q. In the course of your business, have your
17 clients given you financial statements, including
18 balance sheets and income statements?

19 MR. SHAW: For the record, I'm just going
20 to do a general objection to any questions regarding
21 Mr. Bengson's business activities. Again, it is not
22 relevant to the lawsuit at hand. So instead of
23 objecting after every question, I'm just going to do a
24 general objection regarding any business-related
25 questions.

1 MR. WHITMER: Thank you. It is noted for
2 the record.

3 THE WITNESS: What was the question?

4 BY MR. WHITMER:

5 Q. In the course of your business, have clients
6 given you financial statements, including balance
7 sheets and income statements?

8 A. No.

9 Q. Have you ever used financial statements for
10 securing a loan from a financial institution or lending
11 entity?

12 MR. SHAW: Again, objection for relevance.
13 But it is a general objection, so go ahead and answer.

14 THE WITNESS: Yes.

15 BY MR. WHITMER:

16 Q. Is it fair to say that you have a working
17 knowledge of financial statements, including balance
18 sheets and income statements?

19 A. What's your definition of working knowledge?

20 Q. Have you -- do you know what they are? Do you
21 understand them?

22 A. I am not an accountant.

23 Q. I didn't ask you if you were an accountant.

24 A. I don't know. Be specific. Do I have an
25 understanding in which way?

1 Q. Do you know what they -- do you know how to use
2 a financial statement? Do you know how to use a
3 balance sheet? Do you know how to read a balance
4 sheet? Do you know how to read an income statement?

5 MR. SHAW: Objection. Can we ask each
6 question individually? That's a compound question.

7 MR. WHITMER: He wanted an explanation for
8 the question.

9 MR. SHAW: So which question would you
10 like him to answer?

11 THE WITNESS: You want to know if I know
12 how to read a statement?

13 MR. SHAW: Hold on.

14 Which question would you like him to
15 answer?

16 BY MR. WHITMER:

17 Q. Do you know how to read a financial statement?

18 A. I can read a financial statement, correct.

19 Q. Thank you.

20 MR. WHITMER: At this time, I would like
21 to introduce the exhibits and go through them. So here
22 you go.

23 MR. SHAW: So what are these exhibits to?

24 MR. WHITMER: My questions in this
25 deposition.

1 MR. SHAW: I object. I was not provided a
2 copy of these exhibits prior to the deposition.
3 Moreover, I don't know if these exhibits have been
4 disclosed. So have these exhibits been disclosed in
5 the disclosure statement?

6 MR. WHITMER: I believe so.

7 MR. SHAW: Okay. We will have to
8 determine which --

9 MR. WHITMER: Well, let's go through them
10 one by one. I am happy to do that.

11 MR. SHAW: Very well.

12 MR. WHITMER: If you would, there is a
13 list in there.

14 THE WITNESS: Go ahead.

15 MR. SHAW: Yeah, we'll just go question by
16 question. That's fine.

17 MR. WHITMER: Sure. Exhibit 1, if you
18 would turn to Exhibit 1, is the Declaration of
19 Horizontal Property Regime for Hilton Casitas.

20 MR. SHAW: No objection.

21 MR. WHITMER: Marked as Exhibit 1,
22 introduced and marked as Exhibit 1.

23 (Exhibit No. 1 marked.)

24 MR. WHITMER: Exhibit 2 is the Bylaws of
25 the Hilton Casitas Council of Co-Owners.

1 MR. SHAW: No objection.

2 MR. WHITMER: Introduced and marked as
3 Exhibit 2.

4 (Exhibit No. 2 marked.)

5 MR. WHITMER: Exhibit 3 is the Bengson
6 affidavit from April 5, 2017.

7 MR. SHAW: Objection, relevance. This has
8 nothing to do with the current litigation. This is
9 referencing a previous litigation. Therefore, this
10 document is not relevant, and it has not been disclosed
11 in this lawsuit. I am just seeing the fact that the
12 plaintiff would like to use this document in this
13 lawsuit, so as it has not been disclosed, it cannot be
14 used pursuant to Rule 26.1.

15 MR. WHITMER: Any other objections?

16 MR. SHAW: I will let you know.

17 MR. WHITMER: Okay. Objection noted for
18 the record, introduced and marked as Exhibit 3.

19 (Exhibit No. 3 marked.)

20 MR. SHAW: It cannot be introduced. It
21 has not been disclosed. Under 26.1, it cannot be
22 introduced. So under Rule 26.1, there will be no
23 questions regarding documents that have not been
24 introduced or disclosed prior to this deposition.

25 MR. WHITMER: At this time, we will move

1 on to Exhibit 4, the administrative law decision.

2 MR. SHAW: No objection.

3 MR. WHITMER: Introduced and marked as
4 Exhibit 5.

5 (Exhibit No. 4 marked.)

6 MR. WHITMER: Excuse me, Exhibit 4.

7 Exhibit 5, a check.

8 MR. SHAW: Objection, relevance. It has
9 nothing to do with the lawsuit. Also, it has not been
10 previously disclosed under Rule 26.1, and I have not
11 seen this document, nor have I -- nor has it been
12 previously disclosed to me as is required pursuant to
13 Rule 26.1.

14 MR. WHITMER: Noted. Introduced and
15 marked as Exhibit 5.

16 (Exhibit No. 5 marked.)

17 MR. SHAW: It can't be marked as an
18 exhibit. It hasn't been disclosed, so that document
19 cannot be used until it is disclosed.

20 MR. WHITMER: Exhibit 6, notice of a
21 February 2016 board meeting and minutes.

22 MR. SHAW: I'm going to object. This
23 document has not been disclosed. And also there is a
24 more accurate recitation of the board meeting minutes
25 as an official record. That should be used instead of

1 this document. But has this document been disclosed?

2 MR. WHITMER: Yes.

3 MR. SHAW: It has been disclosed?

4 MR. WHITMER: Yes.

5 MR. SHAW: Okay. Yeah, no objection.

6 (Exhibit No. 6 marked.)

7 MR. WHITMER: Okay. Exhibit 7 is a 2017
8 ballot to approve the 2016 expense summary.

9 MR. SHAW: No objection.

10 (Exhibit No. 7 marked.)

11 MR. WHITMER: Exhibit 9, the HOA's April
12 27, 2017 objection to a supersedes bond.

13 MR. SHAW: Has this been disclosed?

14 MR. WHITMER: No. 9, or did I skip No. 8?

15 MR. SHAW: No. 8.

16 MR. WHITMER: I'm sorry. Oh, yeah, here
17 we go. Pardon me, Exhibit 8 is a letter, August 22,
18 2016, regarding Safeguard Security. And yes, it has
19 been disclosed.

20 MR. SHAW: Okay. So as long as it has
21 been disclosed, no objection.

22 (Exhibit No. 8 marked.)

23 MR. WHITMER: Exhibit No. 9, the April 27,
24 2017 objection to supersedes bond.

25 MR. SHAW: No objection.

1 (Exhibit No. 9 marked.)

2 MR. WHITMER: Exhibit 10, Hilton Casitas'
3 2016 statement of revenues and expenses.

4 MR. SHAW: No objection.

5 (Exhibit No. 10 marked.)

6 MR. WHITMER: Exhibit 11, tabulation of
7 Clark Hill's billing invoices for 2016.

8 MR. SHAW: Objection, this document has
9 not been disclosed pursuant to Rule 26.1, and there is
10 no one here to authenticate the authenticity of Clark
11 Hill's billing. Therefore, there is a question as to
12 whether this document is factual.

13 MR. WHITMER: Mr. Shaw, it has been
14 disclosed.

15 MR. SHAW: It has been disclosed?

16 MR. WHITMER: Yes, it has been disclosed.

17 MR. SHAW: In this form?

18 MR. WHITMER: In this form, yes, sir.

19 MR. SHAW: Okay. Well, then, I will
20 revise the objection to object that it has not been
21 authenticated as accurate by Clark Hill or any evidence
22 presented regarding its accuracy, so that would be the
23 objection.

24 MR. WHITMER: Noted. Introduced as
25 Exhibit 11.

1 (Exhibit No. 11 marked.)

2 MR. SHAW: And when was this -- was this
3 document disclosed in the 26.1?

4 MR. WHITMER: Yes.

5 MR. SHAW: Okay.

6 MR. WHITMER: Exhibit 12, the Hilton
7 Casitas 2017 GL income statement.

8 MR. SHAW: What I have is exhibit -- are
9 we going to -- oh, okay. Exhibit 11 is the tally sheet
10 and then the actual invoices. Yeah, I got you. Okay.
11 And I'm sorry. I will revise that objection. I
12 apologize. I will object to the tally sheet, but I
13 will not object to the actual billing statements. No
14 objection to the actual billing statements. My
15 apologies.

16 MR. WHITMER: Okay.' Let's move on to
17 Exhibit 12, the Hilton Casitas' 2017 GL income
18 statement.

19 MR. SHAW: No objection.

20 (Exhibit No. 12 marked.)

21 MR. WHITMER: And Exhibit 13 is a
22 tabulation of the 2017 Clark Hill billings and Shaw
23 Lines billings for exhibits and fees in their costs and
24 their applications for fees and costs.

25 MR. SHAW: I will object to the first page

1 tabulation. I will not object to the remainder of the
2 exhibit.

3 MR. WHITMER: Objection noted and
4 introduced as Exhibit 13.

5 (Exhibit No. 13 marked.)

6 MR. WHITMER: Can we take a five-minute
7 break?

8 (Recess from 9:08 a.m. to 9:17 a.m.)

9 BY MR. WHITMER:

10 Q. Exhibit 1, if you will look at it.

11 A. Sure. What do you want me to look at?

12 Q. The declaration.

13 A. Okay.

14 Q. That was recorded on May 22, 1972. Is that
15 correct?

16 MR. SHAW: Objection, the document speaks
17 for itself.

18 MR. WHITMER: I will reframe the question.

19 BY MR. WHITMER:

20 Q. Do you agree that the document was recorded on
21 May 22, 1972?

22 A. That's what it appears to be.

23 Q. Has the declaration ever been amended?

24 A. I don't know, to the best of my knowledge.

25 Q. Did you try to amend the declaration a few

1 years ago?

2 MR. SHAW: Objection. This witness is
3 here to testify in his personal capacity, not on behalf
4 of the association. So he cannot answer questions
5 regarding what the association did or did not do in
6 reference to the CC&Rs. He is not the -- Mr. Bengson
7 is not the Rule 30(b)(6) witness to answer questions on
8 behalf of the association.

9 MR. WHITMER: Any other objections?

10 MR. SHAW: I will let you know.

11 MR. WHITMER: Your objection is so noted.

12 BY MR. WHITMER:

13 Q. Please answer the question.

14 MR. SHAW: He can't. He cannot answer a
15 question on behalf of the association. He --

16 MR. WHITMER: I'm asking do you have
17 personal knowledge. I will reframe it.

18 BY MR. WHITMER:

19 Q. Do you have personal knowledge of whether there
20 was an attempt to amend this declaration, again, a few
21 years ago when you were president of the HOA?

22 A. By the association?

23 Q. Was there an attempt to amend the declaration?

24 A. There was an attempt to amend the declaration
25 by the association.

1 Q. Yes or no, so that's a yes?

2 A. That's my answer.

3 Q. Okay. Let's go to Exhibit 2, the bylaws, and
4 if you would turn to page 11 and please read section 4.

5 A. I'm not going to read the sections.

6 MR. SHAW: Count to five.

7 THE WITNESS: Yeah.

8 MR. SHAW: Objection. The document speaks
9 for itself. There is no need to read the document into
10 evidence.

11 BY MR. WHITMER:

12 Q. Okay. Would you agree that the HOA president
13 is the chief executive officer?

14 MR. SHAW: I'm going to object. Please
15 clarify the question. Do you mean pursuant to the
16 bylaws, or is your question just in general?

17 MR. WHITMER: I will clarify it for your
18 client.

19 BY MR. WHITMER:

20 Q. Per the bylaws, is the president of the HOA
21 also the chief executive officer?

22 A. Yes.

23 Q. And does the president exercise general
24 supervision and direction of the management of the
25 conduct of the business affairs of the council or the

1 HOA?

2 A. Are we just going to read the section here, is
3 that what we're going to do?

4 MR. SHAW: No, just answer the question.

5 THE WITNESS: Yes.

6 BY MR. WHITMER:

7 Q. Is it correct that you have been the HOA
8 president starting in February 2015, 2016, the acting
9 president in 2017, 2018, and you are currently the HOA
10 president?

11 MR. SHAW: Objection to form. That is a
12 compound question. Can we break that question up into
13 bite-size chunks?

14 MR. WHITMER: Certainly.

15 BY MR. WHITMER:

16 Q. Is it correct that you started as HOA president
17 in 2015, February 2015?

18 A. I believe so.

19 Q. And 2016, were you the HOA president in 2016?

20 A. Yes.

21 Q. Were you the acting president in 2017?

22 A. Was I the acting president?

23 Q. Uh-huh.

24 A. I would say yes.

25 Q. Okay. In 2018?

1 A. Yes.

2 Q. And you are currently the HOA president?

3 A. Yes.

4 Q. Okay. Now let's turn to page 8. According to
5 section 6, 7, and 8, it describes how board meetings
6 are called. During your tenure as president, did the
7 board ever schedule regular board meetings?

8 A. I guess what's the definition of regular board
9 meetings?

10 Q. Did they schedule --

11 A. Did we have board meetings? Correct, we did.

12 Q. Were they regularly scheduled? In other words,
13 were they set on a specific date like quarterly,
14 monthly, semiannually, annually?

15 A. The meetings were done on an as-needed basis.

16 Q. So they were special meetings?

17 MR. SHAW: Objection, leading.

18 THE WITNESS: I never said that.

19 BY MR. WHITMER:

20 Q. I didn't ask you --

21 MR. SHAW: Objection, the question is
22 leading.

23 BY MR. WHITMER:

24 Q. Now, in the bylaws, special meetings are the
25 purview of the president. Did you ever call special

1 board meetings or board meetings?

2 MR. SHAW: Objection, compound question.

3 It's either a special meeting or a board meeting.

4 BY MR. WHITMER:

5 Q. Okay. Did you ever call board meetings as
6 president?

7 A. Did I ever call board meeting as a president?

8 The board meetings were called by the board.

9 Q. And how did they call those board meetings?

10 A. How did they call the board meetings?

11 Q. Yes.

12 A. It's time for a board meeting. What do you
13 mean? Be specific.

14 Q. Did you as president notice the board meetings?

15 A. The management company takes care of all of the
16 notices of board meetings.

17 Q. And who tells the management company to notice
18 board meetings?

19 A. Usually it's one of the board members.

20 Q. So a board member can call a meeting of the
21 board?

22 A. Typically the board in general and the
23 president as well. Go ahead, keep going.

24 Q. No, I appreciate your evasiveness.

25 MR. SHAW: Objection. He's badgering the

1 witness.

2 MR. WHITMER: I'm not badgering the
3 witness.

4 BY MR. WHITMER:

5 Q. I apologize if you feel badgered. But the
6 issue is how did the board call a board meeting? Was
7 it by email? Did they email the other board members?

8 MR. SHAW: I'm going to object. The
9 question is not specific enough. It is a general
10 question. It is too general or calls for a narrative
11 answer.

12 BY MR. WHITMER:

13 Q. Okay. Let's move on. So as president, you
14 could've called a board meeting. Is that correct?

15 A. I believe so.

16 Q. Per the bylaws?

17 A. I believe so.

18 MR. SHAW: Objection, it's a compound
19 question. The first question was as president could
20 you call a board meeting, and then a follow-up question
21 was per the bylaws, so that's a compound question.

22 BY MR. WHITMER:

23 Q. Per the bylaws, as president, could you call
24 the board meeting?

25 MR. SHAW: Objection, it's requesting a

1 legal conclusion. This witness is not an expert.

2 MR. WHITMER: Do you have any other --

3 MR. SHAW: I'll let you know.

4 MR. WHITMER: Noted for the record.

5 BY MR. WHITMER:

6 Q. Answer the question.

7 A. I usually refer to legal or the management
8 company to make sure it can be done properly.

9 Q. Turn to page 3 of the bylaws, Exhibit 2. This
10 deals with special meetings of the unit owners. As
11 president, under the bylaws, could you call special
12 unit owner meetings?

13 MR. SHAW: Objection, the question calls
14 for a legal conclusion.

15 MR. WHITMER: Any other objections?

16 MR. SHAW: I will let you know. I will
17 let you know.

18 MR. WHITMER: Noted for the record.

19 BY MR. WHITMER:

20 Q. Answer the question.

21 A. I would not know for sure. I would refer that
22 to legal.

23 Q. Do the bylaws give the president the authority
24 to call a special unit owners meeting? It's a very
25 simple question.

1 MR. SHAW: Objection, it calls for a legal
2 conclusion regarding the bylaws.

3 THE WITNESS: I am not an attorney. I
4 refer that to legal.

5 MR. WHITMER: Mr. Bengson, you don't need
6 to speak right now.

7 Any other reasons?

8 MR. SHAW: I will let you know.

9 MR. WHITMER: Noted for the record.

10 BY MR. WHITMER:

11 Q. Answer the question.

12 A. As I just stated, I'm not an attorney. We
13 refer that to our legal, anything for the
14 interpretation.

15 Q. I can appreciate you checking with Mr. Shaw,
16 but I'm asking you do the bylaws give the authority to
17 the president to call a special meeting?

18 MR. SHAW: Objection, it calls for a legal
19 conclusion.

20 MR. WHITMER: Noted.

21 BY MR. WHITMER:

22 Q. Answer the question.

23 A. I answered that.

24 MR. SHAW: Yes, objection, asked and
25 answered.

1 BY MR. WHITMER:

2 Q. Let's go to Exhibit 4, the administrative law
3 order. We will refer to it as "the order" for
4 simplicity. Were you a witness in the 2014
5 administrative law hearing?

6 A. Yes.

7 Q. Was the HOA ordered to pay a \$500 fee to the
8 petitioner?

9 MR. SHAW: I'm going to object for
10 relevance.

11 MR. WHITMER: Any other reasons?

12 MR. SHAW: I will let you know.

13 MR. WHITMER: Noted for the record.

14 BY MR. WHITMER:

15 Q. Please answer the question.

16 A. I believe it paid some fee. I don't recall the
17 amount.

18 Q. Let's turn to page 3. And if you would, read
19 lines 13 through 24.

20 MR. SHAW: Objection, the document speaks
21 for itself. There is no need to read it into
22 testimony.

23 BY MR. WHITMER:

24 Q. Does Arizona Revised Statute 33-1243(d) require
25 the board to adopt a budget and then have the Casita

1 owners ratify it?

2 MR. SHAW: Objection, speculation,
3 pursuant to Rule 602 and 7.1 Arizona Rules of Evidence.
4 It's calling for a legal conclusion.

5 MR. WHITMER: Any other reasons?

6 MR. SHAW: I will let you know.

7 MR. WHITMER: Noted for the record.

8 BY MR. WHITMER:

9 Q. Please answer the question.

10 A. I am not an attorney. I do not interpret the
11 law.

12 Q. Have you ever read the statute before?

13 A. Have I ever read which statute?

14 Q. The statute that we are talking about,
15 ARS 33-1243(d)?

16 A. No.

17 Q. You have never read it?

18 MR. SHAW: Objection, asked and answered.

19 THE WITNESS: As I said, I'm not an
20 attorney. That's why we have an attorney on staff.

21 BY MR. WHITMER:

22 Q. Please confine your answers to yes or no unless
23 asked otherwise. Let's go to page 4, and I will read
24 the section lines 13 through 14. "Mrs. Karatz
25 acknowledged that Hilton Casitas' legal fees in 2014

1 exceeded the amount of money that had been budgeted for
2 legal fees in 2014." Will you agree that is in there?

3 A. Yes.

4 MR. SHAW: Is that a question?

5 THE WITNESS: Yeah, I guess it's a
6 question.

7 BY MR. WHITMER:

8 Q. Okay. I will read lines 21 and 22, the judge
9 found that Hilton Casitas had not ratified the increase
10 in expenses and adopted an amended budget as required
11 by applicable statute. "This tribunal concludes that
12 Hilton Casitas failed to comply with the applicable
13 provisions of ARS 33-1243(d)." You agree that is in
14 there?

15 MR. SHAW: Objection, the document speaks
16 for itself.

17 MR. WHITMER: Objection noted.

18 BY MR. WHITMER:

19 Q. Answer the question.

20 A. It's in where, it's in this document?

21 Q. Yes.

22 A. Yes.

23 Q. So the conclusion -- I'll just ask the
24 question. Given the order, when expenses exceed the
25 authorized budget amount for the expense, is a budget

1 amendment required?

2 MR. SHAW: Objection, speculation, calls
3 for a legal conclusion pursuant to rules of evidence
4 602 and 7.1.

5 MR. WHITMER: Noted for the record.

6 BY MR. WHITMER:

7 Q. Answer the question.

8 A. What was the question?

9 Q. When expenses exceed an authorized budget
10 amount for that expense, does ARS 33-1243(d) require a
11 budget amendment?

12 A. That would be referred to our management
13 company and/or legal.

14 Q. Have they issued an opinion on such?

15 MR. SHAW: Objection, attorney-client
16 privilege. The question requests information on
17 attorney-client privilege.

18 You will not answer the question.

19 Actually, no, I will revise that
20 objection. As to the question regarding the attorney,
21 I object to attorney-client privilege when I answered
22 the question. In regards to the question regarding the
23 management company, you may answer the question.

24 THE WITNESS: What was the question?

25 BY MR. WHITMER:

1 Q. When the expenses exceed an authorized budget
2 amount for that expense, is a budget amendment
3 required?

4 MR. SHAW: Well, again, I object to that
5 question. That leads to a legal conclusion pursuant to
6 Rule 602 and 7.1 -- 701 of the rules of evidence.

7 BY MR. WHITMER:

8 Q. Did the management company ever tell you that
9 when a budget expense exceeds a budgeted amount, you
10 need to have an amended budget?

11 A. I don't really recall.

12 Q. Can we agree that budgets have two basic
13 components, revenues and expenses?

14 MR. SHAW: Objection, the question is
15 leading.

16 BY MR. WHITMER:

17 Q. What are the two components of a budget?

18 A. What are the two components of a budget? Are
19 there only two?

20 Q. Two primary items.

21 A. You want to talk two?

22 MR. SHAW: I'm going to object. The
23 question is not clear. I will object to the form of
24 the question. As the plaintiff suggested, he is
25 requesting yes-or-no answers. The question does not

1 lead itself to a yes-or-no answer.

2 BY MR. WHITMER:

3 Q. Then we will go back. Budgets have two major
4 components, revenues and expenses, yes or no?

5 MR. SHAW: Objection, the question is
6 leading.

7 MR. WHITMER: Noted.

8 BY MR. WHITMER:

9 Q. Answer the question.

10 A. I'm not an accountant, so I wouldn't know if
11 there's two or three or four considered major
12 components.

13 Q. Are revenues and expenses part of a budget?

14 A. Yes.

15 Q. Okay. Let's move to Exhibit 6, which is the
16 agenda.

17 MR. SHAW: Exhibit 6. Do I have that?

18 MR. WHITMER: What?

19 MR. SHAW: I'm talking to myself. My
20 apologies.

21 BY MR. WHITMER:

22 Q. Was the February 16, 2016 board meeting the
23 only board meeting prior to the March 31, 2016 annual
24 meeting?

25 A. I don't recall.

1 Q. Do you recall if there were any other meetings
2 in the intervening time?

3 MR. SHAW: Objection, asked and answered.
4 The witness answered the question.

5 MR. WHITMER: Objection noted.

6 BY MR. WHITMER:

7 Q. Answer the question.

8 A. I don't recall.

9 Q. Okay. On the second page of Exhibit 6 are the
10 minutes of the February board meeting, and they don't
11 mention the adoption of a budget. Is that correct?

12 MR. SHAW: Objection, the document speaks
13 for itself.

14 MR. WHITMER: Objection noted.

15 BY MR. WHITMER:

16 Q. Answer the question.

17 MR. SHAW: Further objection, the question
18 calls for a legal conclusion.

19 MR. WHITMER: Objection noted.

20 BY MR. WHITMER:

21 Q. Answer the question.

22 A. What's the question?

23 Q. The question was the minutes and the agenda
24 don't mention the adoption of a budget?

25 MR. SHAW: I'm going to object, because as

1 I earlier objected, this is not an official copy of the
2 meeting minutes. Therefore, asking whether this
3 document says a specific thing, the document speaks
4 for itself. So are you asking the question based on
5 this document or based on the witness's general
6 knowledge?

7 MR. WHITMER: Yes.

8 MR. SHAW: So he is asking you based on
9 your general knowledge.

10 THE WITNESS: Based on my general
11 knowledge of the meeting?

12 BY MR. WHITMER:

13 Q. No, of the minutes and the agenda.

14 A. My general knowledge of the meeting, which I
15 really don't recall exactly what we talked about in the
16 meeting.

17 Q. So let me ask it a different way. So you can't
18 say that a budget was adopted at that meeting?

19 A. Whether it was adopted or not?

20 Q. Yeah, discussed and adopted.

21 MR. SHAW: That's two questions.

22 THE WITNESS: Right.

23 BY MR. WHITMER:

24 Q. Was the budget discussed at the meeting?

25 MR. SHAW: What meeting are we talking

1 about?

2 BY MR. WHITMER:

3 Q. The February 2016 board meeting, was the budget
4 discussed?

5 A. I really can't recall.

6 Q. Okay. I don't need to ask the second question.

7 Okay. Let's turn to Exhibit 7, if you
8 would.

9 A. Sure.

10 Q. Is that your signature?

11 A. It appears to be, correct.

12 Q. So that was you submitting an approval of an
13 expense -- 2016 expense summary?

14 MR. SHAW: You can answer the question.

15 THE WITNESS: I guess that was me
16 approving that particular form.

17 BY MR. WHITMER:

18 Q. Okay. The HOA claims in this case that the
19 budget was approved by the adoption of this ballot.
20 Accordingly, you would agree that there was no budget
21 adopted in 2016?

22 MR. SHAW: Objection. One, this is not a
23 Rule 30(b)(6) witness. He cannot testify on behalf of
24 the association. Two, the question is leading.

25 MR. WHITMER: Objections noted.

1 BY MR. WHITMER:

2 Q. Answer the question.

3 A. I can't answer for the association.

4 Q. I'm asking you. You voted on this. Was the
5 intent to ratify expenses because the 2016 budget had
6 not been adopted?

7 A. Was my intent to ratify expenses because it
8 wasn't adopted?

9 Q. Because the 2016 budget wasn't adopted.

10 A. I disagree with your premise.

11 Q. I'm not asking you to disagree or agree. I'm
12 asking yes or no, was it your intent?

13 MR. SHAW: The question was answered. He
14 disagreed with your premise. Rephrase the question.

15 BY MR. WHITMER:

16 Q. Is the purpose of this ballot, your signing
17 this ballot, was to approve the expense summary in lieu
18 of an adoption of the 2016 budget?

19 MR. SHAW: Objection. That calls for
20 testimony on behalf of the association, as the
21 association promulgated the ballot. Mr. Bengson did
22 not. All Mr. Bengson did was execute the ballot. So
23 he cannot testify as to the intent of the association
24 regarding the ballot. He is not the Rule 30(b)(6)
25 witness.

1 MR. WHITMER: Objection noted. I am
2 asking him as a casita owner.

3 MR. SHAW: Okay. That's fair.

4 BY MR. WHITMER:

5 Q. Was it your understanding that this was to
6 ratify the expenses of 2016 in lieu of having adopted a
7 budget?

8 A. I don't recall.

9 Q. All right. Let's move on to Exhibit 8. As
10 president of the HOA, you negotiated with Safeguard
11 Security. Is that correct?

12 MR. SHAW: Objection, relevance. We are
13 here to discuss a contempt regarding an Administrative
14 Law Judge's judgment. We are not here to discuss
15 contract negotiations.

16 MR. WHITMER: Any other objections?

17 MR. SHAW: I will let you know.

18 MR. WHITMER: So noted.

19 BY MR. WHITMER:

20 Q. Answer the question.

21 A. What's the question?

22 Q. The question is as the HOA president, did you
23 negotiate with Safeguard Security to revise their
24 contract?

25 A. Did I negotiate with Safeguard?

1 Q. Yes.

2 A. The board of the association was in charge of
3 voting and approving or not approving changes.

4 Q. And who negotiated those changes, Mr. Bengson?

5 MR. SHAW: Objection, the question has
6 been answered, asked and answered.

7 MR. WHITMER: Any other objections?

8 MR. SHAW: I'll let you know.

9 MR. WHITMER: Noted.

10 BY MR. WHITMER:

11 Q. Answer the question.

12 A. The definition of negotiation, I don't know. I
13 couldn't tell you.

14 Q. What is "is"?

15 A. What is your definition of negotiations? I
16 mean, you have to be specific.

17 Q. Did you as HOA president have direct contact
18 with Safeguard?

19 A. I did as well as the board.

20 Q. So --

21 A. The entire board.

22 Q. So the entire board negotiated with Safeguard
23 is what you are telling me?

24 A. Correct.

25 Q. Did they notice any meetings for those

1 negotiations?

2 A. Did they notice any meetings? I can't recall.

3 MR. SHAW: And I am going to object to the
4 question. Again, he's being asked to respond on behalf
5 of the association. He is not the Rule 30(b)(6)
6 witness to testify on behalf of the association, nor
7 can he testify on behalf of any other board members.

8 MR. WHITMER: I'll tell you what we're
9 going to do. We're going to stop right here, and then
10 we will pick it up at another date.

11 MR. SHAW: Please note that under the
12 Rules of Civil Procedure, I'm not agreeing to a
13 continuance in this deposition. Under the Rules of
14 Civil Procedure, you get one deposition, and I am not
15 agreeing to a continuance.

16 MR. WHITMER: I get four hours.

17 MR. SHAW: In one day.

18 MR. WHITMER: And if I need to --

19 MR. SHAW: I will be happy to read Rule
20 30(e) -- no, excuse me, that's not correct. It is Rule
21 30(d), Arizona Rules of Civil Procedure, unless the
22 parties agree or the Court orders otherwise, a
23 deposition is limited to four hours and must be
24 completed in a single day. You get one four-hour
25 period in one single day.

1 I am not agreeing to a continuance of this
2 deposition. So we either continue and max out the four
3 hours, or you go to court and ask for the Court to give
4 you leave, or this is your only shot at Mr. Bengson,
5 pursuant to the rule.

6 MR. WHITMER: Yeah, as Mr. Bengson.

7 MR. SHAW: Correct, as Mr. Bengson.

8 MR. WHITMER: So I can call him back as a
9 Rule 30(b)(6).

10 MR. SHAW: 30(b)(6) if you desire. If you
11 want him to be the sole Rule 30(b)(6) witness, which
12 means you're not calling the manager.

13 MR. WHITMER: That's fine.

14 MR. SHAW: It's your case.

15 THE WITNESS: Are we done?

16 MR. SHAW: I don't know. Are we done?

17 MR. WHITMER: Give me a minute. No, let's
18 continue on. What the hell.

19 BY MR. WHITMER:

20 Q. Okay. According to this letter, the HOA or the
21 president of the HOA, or the board -- multiple compound
22 question. Let me start over.

23 No, I don't need to.

24 MR. WHITMER: We are done.

25 MR. SHAW: Very good.

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THE WITNESS: Thank you.

THE COURT REPORTER: You're welcome.

Do you need a transcript, Mr. Shaw?

MR. WHITMER: I do.

(Conclusion of deposition at 9:45 a.m.)

MICHAEL BENGSON

STATE OF ARIZONA)
) ss.
 COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the foregoing pages are a full, true, and accurate record of the proceedings, all done to the best of my skill and ability; that the proceedings were taken down by voice writing and thereafter reduced to print under my direction.

I CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

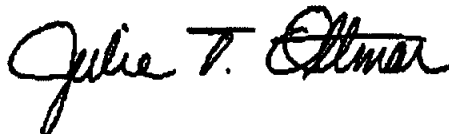
- Review and signature was requested.
- Review and signature was waived.
- Review and signature not requested/required.

I CERTIFY that I have complied with the ethical obligations set forth in ACJA 7-206(F) (3) and ACJA (J) (1) (g) (1) and (2). Dated at Phoenix, Arizona, this 23rd day of January, 2019.



Debora Mitchell
 AZ Certified Reporter No. 50768

I CERTIFY that OTTMAR & ASSOCIATES, INC., has complied with the ethical obligations set forth in ACJA 7-206(J) (1) (g) (1) through (6).



OTTMAR & ASSOCIATES, INC.
 AZ Registered Reporting Firm No. R1008

Plaintiff's Exhibit 35

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

R. L. WHITMER,)
)
) Petitioner,) No.: CV2016-055080
)
) vs.)
) HILTON CASITAS HOMEOWNERS)
) ASSOCIATION, also known as)
) HILTON CASITAS COUNCIL OF)
) HOMEOWNERS, also known as)
) COUNCIL OF CO-OWNERS, also known)
) as HILTON CASITAS COUNCIL OF)
) CO-OWNERS; and MICHAEL BENGSON,)
) as President of named)
) Respondent,)
) Respondents.)
)
)

DEPOSITION OF JOHN HUSTON
Phoenix, Arizona
January 22, 2019
2:06 p.m.

PREPARED FOR:

ATTORNEY AT LAW
(COPY)

REPORTED BY:

Debora Mitchell
Arizona CCR No. 50768
AZ Registered Reporting Firm No. R1008

DEPOSITION of JOHN HUSTON, taken on
January 22, 2019, commencing at 2:06 p.m., at OTTMAR &
ASSOCIATES, 3770 North 7th Street, Suite 150, Phoenix,
Arizona, before Debora Mitchell, an Arizona Certified
Reporter, in and for the County of Maricopa, State of
Arizona.

COUNSEL APPEARING:

R. L. Whitmer
6333 North Scottsdale Road, Casita 21
Scottsdale, Arizona 85250
Pro Per Petitioner

SHAW & LINES, LLC
By: Augustus H. Shaw IV, Esq.
4523 East Broadway Road
Phoenix, Arizona 85040
Attorney for Respondents

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* * * * *

1 (In accordance with ACJA 7-206(J)(3)(b),
2 an itemized, written list of rates and charges has been
3 disclosed to all parties or their attorneys and any
4 unrepresented witnesses.)

5
6 JOHN HUSTON,
7 a witness herein, having been first duly sworn by the
8 Certified Reporter to speak the truth and nothing but
9 the truth, was examined and testified as follows:

10

11

EXAMINATION

12

BY MR. WHITMER:

13

Q. For the record, state your name and address.

14

A. John Huston, 6633 North Scottsdale Road.

15

Q. What is your occupation?

16

A. Retired.

17

Q. Semi or completely?

18

A. Well, I have been retired for three years.

19

They are barking at me again to go back to work, but so
20 far, I have been avoiding it.

21

Q. Were you elected to the HOA board on March 31,

22

2017?

23

A. If that's what you've got. I don't remember.

24

I've been elected and reelected so many times, I

25

couldn't tell you.

1 Q. Are you currently a board member and secretary
2 of the HOA?

3 A. Yes.

4 Q. Okay.

5 MR. WHITMER: Mr. Shaw.

6 MR. SHAW: Yes, go ahead. No objection to
7 the documents. We will do it like we did last time.

8 MR. WHITMER: You're being way too nice.

9 MR. SHAW: No, it's your deposition.

10 (Exhibit No. 1 marked.)

11 BY MR. WHITMER:

12 Q. Okay. Let's turn to Exhibit 1.

13 A. Okay.

14 Q. Is it correct that Exhibit 1 is the declaration
15 that was recorded in 1972 and remains unamended?

16 A. I would have to look through it more. I can't
17 tell you.

18 Q. Take your time.

19 A. Okay.

20 Q. Let me rephrase the question just in the
21 interests of time.

22 A. Okay.

23 Q. To your knowledge, has the declaration ever
24 been amended as long as you have been a resident of
25 Hilton Casitas?

1 A. Not that I can remember.

2 (Exhibit No. 2 marked.)

3 BY MR. WHITMER:

4 Q. Thank you. Let's go to Exhibit 2, if you
5 would.

6 A. Okay.

7 Q. Turn to page 11. Go ahead and read section 4.

8 A. Section 4, special meetings. Special meetings
9 of the Council --

10 Q. Page 11.

11 A. Oh, I am on page 3. Page 11?

12 Q. Yes.

13 A. Section 4. Okay. Section 4, president.

14 The President shall be the chief
15 executive officer of the Council and
16 shall preside at all meetings of the
17 Council and of the Board of Directors.
18 Subject to the control of the board,
19 he shall exercise general supervision
20 and direction over the management and
21 conduct of business and affairs of the
22 Council. He shall also have such
23 other powers and duties as may be
24 provided by those bylaws or assigned
25 to him from time to time by the board.

1 Q. Is it correct that the president is the chief
2 executive officer?

3 MR. SHAW: Objection, calls for a legal
4 conclusion.

5 Please answer the question.

6 THE WITNESS: Would you repeat the
7 question again.

8 MR. WHITMER: Will you read it back.

9 (The requested portion was read back by
10 the court reporter.)

11 THE WITNESS: That's not really what it
12 says here. It says he shall be the chief executive
13 officer, so I guess I've got to say no.

14 BY MR. WHITMER:

15 Q. So does he have the general supervision and
16 direction over the management and conduct of the
17 business affairs of the council?

18 A. Repeat the question again.

19 Q. Does he have supervision and direction over the
20 management and conduct and business affairs of the
21 council?

22 A. Again, the verbiage is subject to the control
23 of the board, he shall exercise general supervision and
24 direction over the management and conduct of the
25 business affairs -- business and affairs of the

1 council. So again, I don't know how to answer that
2 question, but it is subject to the control of the
3 board.

4 Q. Well, let me rephrase it.

5 A. Yes.

6 Q. Is he the point person for the business affairs
7 of the HOA?

8 A. Is he the point person? Can you define point
9 person for me.

10 Q. Is he the person that one would go to for
11 issues regarding the HOA?

12 A. You know, people come to me all of the time,
13 even when I wasn't on the board when I was out walking
14 my dog. So at times I have been the point person, so I
15 can't answer your question.

16 Q. With all due respect, Jack -- you don't mind me
17 calling you Jack?

18 A. No.

19 Q. That would make you an unofficial point person.
20 Now, is the president of the HOA the official point
21 person?

22 A. It really never spells it out here.

23 MR. SHAW: Objection, form, asked and
24 answered.

25 Now you can go ahead and answer the

1 question.

2 THE WITNESS: What was the question one
3 more time? Is he the point person?

4 BY MR. WHITMER:

5 Q. The official point person for the business
6 affairs of the HOA.

7 A. I guess personally I would say maybe. I don't
8 know, Lamar.

9 Q. That's fine. That's fine. Let's move on.
10 Let's turn to page 8.

11 A. Backwards, page 8?

12 Q. Yeah, page 8.

13 A. Okay.

14 Q. Let's read section 7. You don't have to read
15 it out loud.

16 A. Okay.

17 Q. During your time as a board member, did the
18 board ever schedule regular board meetings, quarterly,
19 monthly, semiannually?

20 A. Did the board ever schedule regular meetings?

21 Q. Regular meetings, uh-huh.

22 A. As opposed to an annual meeting?

23 Q. No, as opposed to a special meeting.

24 A. Let me think about that for a second. I can't
25 recollect any.

1 Q. So that would be a no?

2 MR. SHAW: Form objection. The question
3 was answered by the witness.

4 BY MR. WHITMER:

5 Q. Okay. Now go ahead and read section 8. You
6 don't have to read it out loud.

7 A. Okay.

8 Q. Okay. For the board to have a special meeting
9 to conduct HOA business, did you as a board member make
10 a call or any calls for a board meeting?

11 A. Sure.

12 Q. Did the president ever make any calls for a
13 special meeting of the board?

14 A. I'm sure he did. You can ask him.

15 Q. I'm asking you.

16 A. I said I'm sure he did.

17 (Exhibit No. 3 marked.)

18 BY MR. WHITMER:

19 Q. Okay. Let's turn to Exhibit 3.

20 A. Okay.

21 Q. This is the administrative law order from
22 January 7, 2015. Are you aware of the order?

23 A. I kind of remember it, yes.

24 Q. Have you ever read it?

25 A. I kind of -- yes, I kind of remember reading

1 it, yes.

2 (Exhibit No. 4 marked.)

3 BY MR. SHAW:

4 Q. All right. Budgets have two basic components,
5 revenues and expenses. We are going to talk a little
6 bit about the 2017 expenses. So if you would, would
7 you turn to Exhibit 4.

8 A. Okay.

9 Q. And you see circled legal expenses for the
10 total year.

11 A. On the first page?

12 Q. Yes.

13 A. Okay.

14 Q. But if you would go to June, there's 7,900 --
15 let's just make it a \$8,000 credit.

16 A. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. Do you know what that is for?

20 A. As best I remember, there was some actual legal
21 expenses in there, and then there was a refund from
22 State Farm on a case, but I can't be 100 percent sure
23 of that because I don't have all of that detail in
24 front of me.

25 (Exhibit No. 5 marked.)

1 BY MR. WHITMER:

2 Q. Let's turn to Exhibit 5 now. And Exhibit 5 is
3 the billing exhibits that were attached to the
4 application for attorney fees in this case in 2017.

5 A. Which case?

6 Q. This case.

7 A. Okay.

8 Q. It was remanded by the appellate court.

9 A. Okay.

10 Q. For your convenience, there is a tabulation of
11 those on the first page.

12 A. Okay.

13 Q. Which is \$27,951.50.

14 A. Okay.

15 Q. Now, when you compare that to the total
16 reported legal expenses of 2017, you come up with an
17 \$829 difference.

18 A. So I need to go back to the budget; is that
19 correct?

20 Q. Yes, the first page.

21 A. First page.

22 Q. Where it is circled.

23 A. 27,172. Okay.

24 Q. So in essence, Mr. Shaw's and Clark Hill's
25 bills total \$829 more than what was reported. Can you

1 explain the underreporting?

2 A. Well, it's what I said before. I don't know if
3 part of that \$7,894 was a refund or a back payment.

4 Q. For clarity, that credit is already taken out
5 of that, so the total is still 27 --

6 A. Oh, I see what you are saying. Let's see.
7 Those numbers match. It almost looks like somebody's
8 adding machine didn't add up. On Clark Hill it's
9 8,061. On yours it is 8,051, so it's somebody's adding
10 machine is messed up. I can't tell you about that.
11 Sorry about that.

12 Q. So it is \$10 understated?

13 A. Well, that's what I'm saying. Normally, at
14 least where I'm coming from, if there is one mistake on
15 all of that adding machine, I would go back and take a
16 look at it and see if they added it up wrong.

17 Q. For argument's sake, let's just stick with the
18 numbers we are dealing with.

19 A. Okay. So which number do you want?

20 Q. Well, I'm just asking, can you explain on
21 Exhibit 4 the underreporting?

22 A. There could be a multitude -- excuse me.

23 MR. SHAW: That's okay. I forgot my
24 objection.

25 Objection, form. The question was

1 answered. And then objection, form, calls for
2 speculation.

3 Please go ahead and answer the question.

4 THE WITNESS: Well, can I speculate? I
5 mean, an adding machine went wrong.

6 MR. SHAW: Yeah, answer the question.
7 Answer the question.

8 THE WITNESS: He's trying to make a point
9 that he added wrong. I mean, there's a million things
10 that could happen.

11 MR. SHAW: You are talking to him.

12 THE WITNESS: Okay. There's a million
13 things that could happen, so I don't know.

14 BY MR. WHITMER:

15 Q. The question was --

16 MR. SHAW: Mr. Whitmer, can we take a
17 pause for a second?

18 So you want to answer his questions. I
19 will object.

20 THE WITNESS: Okay.

21 MR. SHAW: But don't hear my objection.

22 THE WITNESS: Okay.

23 MR. SHAW: I will object, and you go ahead
24 and answer the question.

25 THE WITNESS: All right.

1 MR. SHAW: It is Lamar's show.

2 THE WITNESS: Okay.

3 MR. SHAW: Is that all right?

4 MR. WHITMER: Yeah, that's fine.

5 MR. SHAW: Thank you.

6 BY MR. WHITMER:

7 Q. The question that was asked was can you explain
8 the underreporting? It is a simple yes-or-no question.

9 A. No, it isn't, Lamar. I cannot explain it
10 because it could be a multitude of causes.

11 Q. All right. As secretary, do you get annual --
12 not annual. As a secretary, do you get constant
13 monthly financial reports?

14 A. Sure.

15 Q. Okay. Do you know what the total amount for
16 the legal expenses in the JP case, CC2016-164084-RC, do
17 you know what the total amount of those legal expenses
18 were?

19 A. I have a hard time remembering my phone number,
20 Lamar, so do you think I would remember that number?
21 No.

22 Q. Do you know what the total amount of the 2017
23 legal expenses that were incurred for the appeal of
24 that JP case?

25 A. I didn't bring it. I'm sorry, Lamar. I should

1 have brought those.

2 Q. I'm just asking, do you know?

3 A. No, I don't know.

4 Q. Okay. Thank you. To appeal the JP judgment,
5 the HOA had to post a supersedes bond of \$3,431.24. Do
6 you know how the HOA posted that bond?

7 A. No, I don't.

8 Q. Okay. Do you know if the cost of that bond was
9 included in the reported 2017 legal expenses?

10 A. No, I don't.

11 Q. Okay. On January 16, 2018, the HOA filed an
12 answering brief in the 2017 appeal, Case
13 No. 1-CA-CV17-0543.

14 A. Yes.

15 Q. Do you know how much of those legal expenses
16 were incurred in 2017?

17 A. No, I don't.

18 Q. Okay. Do you -- did the board waive the
19 conflict between the HOA and Mr. Bengson to allow
20 Mr. Shaw to represent him in this matter?

21 MR. SHAW: Objection, the question calls
22 for attorney-client privileged information.

23 Go ahead and answer the question.

24 THE WITNESS: I don't have a legal degree,
25 so I couldn't tell you. Sorry.

1 BY MR. WHITMER:

2 Q. Let me rephrase it. Did the board take any
3 action to waive the conflict between Mr. Bengson and
4 the HOA to allow Mr. Shaw to represent Mr. Bengson?

5 MR. SHAW: Objection, calls for
6 attorney-client privileged information.

7 Please answer the question.

8 THE WITNESS: Can you repeat the question
9 again.

10 MR. SHAW: She can repeat it.

11 (The requested portion was read back by
12 the court reporter.)

13 THE WITNESS: I don't recall.

14 MR. WHITMER: That's it.

15 MR. SHAW: That's it?

16 MR. WHITMER: Yeah.

17 MR. SHAW: Okay.

18 THE WITNESS: That's it?

19 MR. SHAW: Actually, I will ask you a
20 couple of questions.

21 THE WITNESS: Okay.

22

23 EXAMINATION

24 BY MR. SHAW:

25 Q. How long have you been serving on the board

1 would you say in your approximation?

2 A. I have been off and on probably three or four
3 times in the seven years, so I would say total maybe
4 I've got four years.

5 Q. Okay. What are some of the duties as secretary
6 of the association?

7 A. Mainly we hire people, a firm, to keep the
8 minutes and all of that kind of stuff, so my main
9 duties are just to double check her and make sure those
10 minutes are right.

11 Q. Okay. Regarding the various lawsuits that the
12 association is in with Mr. Whitmer, are any of those
13 lawsuits currently covered by your association
14 insurance carrier?

15 A. I believe so.

16 Q. Would you say all of them are covered by your
17 association's insurance carrier?

18 A. I believe so.

19 MR. SHAW: No further questions. That's
20 all I have for you.

21 THE WITNESS: Oh, come on.

22 MR. WHITMER: I have a couple of
23 follow-ups.

24 MR. SHAW: He has some follow-ups for you.

25 THE WITNESS: Okay.

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FURTHER EXAMINATION

BY MR. WHITMER:

Q. Do you know that a claim has been filed with State Farm on any of this ongoing litigation?

A. Not that I know of. I was probably out of the board when that happened.

Q. Thank you.

MR. SHAW: That's it?

MR. WHITMER: That's it.

(Conclusion of deposition at 2:28 p.m.)

JOHN HUSTON

STATE OF ARIZONA)
) ss.
 COUNTY OF MARICOPA)

BE IT KNOWN that the foregoing proceedings were taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the foregoing pages are a full, true, and accurate record of the proceedings, all done to the best of my skill and ability; that the proceedings were taken down by voice writing and thereafter reduced to print under my direction.

I CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

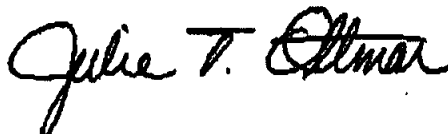
- Review and signature was requested.
- Review and signature was waived.
- Review and signature not requested/required.

I CERTIFY that I have complied with the ethical obligations set forth in ACJA 7-206(F)(3) and ACJA (J)(1)(g)(1) and (2). Dated at Phoenix, Arizona, this 30th day of January, 2019.



Debora Mitchell
 AZ Certified Reporter No. 50768

I CERTIFY that OTTMAR & ASSOCIATES, INC., has complied with the ethical obligations set forth in ACJA 7-206(J)(1)(g)(1) through (6).



OTTMAR & ASSOCIATES, INC.
 AZ Registered Reporting Firm No. R1008

Plaintiff's Exhibit 36

DEPOSITION of RICHARD WALKER, taken on January 22, 2019, commencing at 12:58 p.m., at OTTMAR & ASSOCIATES, 3770 North 7th Street, Suite 150, Phoenix, Arizona, before Debora Mitchell, an Arizona Certified Reporter, in and for the County of Maricopa, State of Arizona.

COUNSEL APPEARING:

R. L. Whitmer
6333 North Scottsdale Road, Casita 21
Scottsdale, Arizona 85250
Pro Per Petitioner

SHAW & LINES, LLC
By: Augustus H. Shaw IV, Esq.
4523 East Broadway Road
Phoenix, Arizona 85040
Attorney for Respondents

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Exh. 5 Tabulation of the 2017 Clark Hill billings and Shaw Lines billings exhibits for fees and costs in their application for fees and costs	10
Exh. 6 April 27, 2017 HOA Objection to Supersedes Bond	--

EXHIBIT DESCRIPTION	PAGE
Exh. 7 Bainbridge Law Firm letter and attached 2013 Amended Bylaws	22
Exh. 8 March 13 2013 Annual Meeting Minutes	22

* * * * *

1 (In accordance with ACJA 7-206(J) (3) (b),
2 an itemized, written list of rates and charges has been
3 disclosed to all parties or their attorneys and any
4 unrepresented witnesses.)

5
6 RICHARD WALKER,
7 a witness herein, having been first duly sworn by the
8 Certified Reporter to speak the truth and nothing but
9 the truth, was examined and testified as follows:

10

11

EXAMINATION

12

BY MR. WHITMER:

13

Q. For the record, state your name and address.

14

A. Richard K. Walker.

15

Q. What is your occupation?

16

A. I am an attorney.

17

Q. Were you elected to the HOA board in March

18

2017?

19

A. Yes.

20

Q. Are you currently a board member and vice

21

president of Hilton Casitas HOA?

22

A. Yes.

23

Q. Okay. At this time I would like to go through

24

the exhibits so we can get through them.

25

MR. SHAW: Actually, since we have very

1 limited time, we will just -- just go ahead and go
2 through with your questions.

3 MR. WHITMER: You don't want to object?

4 MR. SHAW: Just go ahead and go through.

5 We have very limited time. I want to make sure you
6 have all of your time.

7 MR. WHITMER: Thank you.

8 (Exhibit No. 1 marked.)

9 BY MR. WHITMER:

10 Q. Okay. If you would turn to Exhibit 1. Is it
11 correct that Exhibit 1, the declaration as recorded in
12 1972, remains unamended?

13 A. As far as I am aware, the declaration of the
14 Horizontal Property Regime for Hilton Casitas has not
15 been amended.

16 (Exhibit No. 2 marked.)

17 BY MR. WHITMER:

18 Q. Okay. Let's go to Exhibit 2, page 11. Would
19 you go to section 4.

20 A. I see section 4 on page 11 of Exhibit 2.

21 Q. Does section 4 define the responsibilities of
22 the HOA president?

23 MR. SHAW: Objection, calls for a
24 conclusion.

25 BY MR. WHITMER:

1 Q. Is it your understanding that section 4 defines
2 the duties of the president?

3 MR. SHAW: Objection, calls for a
4 conclusion.

5 BY MR. WHITMER:

6 Q. What is your understanding of section 4,
7 Mr. Walker?

8 A. My understanding of section 4 is that it
9 provides a broad outline of the authority and
10 responsibility of the president of the council.

11 Q. Okay. Does it state that the chief
12 executive -- the president is the chief executive
13 officer?

14 MR. SHAW: Objection, calls for a legal
15 conclusion.

16 THE WITNESS: The document speaks for
17 itself. That is what it says.

18 BY MR. WHITMER:

19 Q. Thank you. Now turn to page 8. Let's look at
20 section 7. Page 8.

21 A. Whose Bates numbers are these?

22 Q. The hotel's.

23 A. Page 8, you said?

24 Q. Yes, page 8.

25 A. Okay.

1 Q. Section 7, it talks about regular meetings of
2 the board. During your tenure as a member of the
3 board, did you ever -- did the board ever create a
4 schedule of meetings?

5 A. Meetings of the board?

6 Q. Yes.

7 A. Meetings of the board have been scheduled
8 during my tenure, yes.

9 Q. But did the board set scheduled meetings?

10 A. Yes.

11 Q. When did they -- when were their scheduled
12 meetings?

13 A. Well, it varies. Sometimes in a meeting we'll
14 set a schedule for the next meeting. Sometimes it is
15 between meetings. It is just when the need arises.

16 Q. Okay. If you would go to section 8, same page.

17 A. Okay.

18 Q. As a board member, did you ever make any calls
19 for a meeting?

20 A. I don't believe so.

21 Q. Did the president make any calls for a special
22 meeting of the board?

23 A. I don't recall anybody characterizing a call
24 for a meeting as a special meeting. They may have and
25 I just don't recall.

1 Q. Did the president ever call any meetings?

2 MR. SHAW: Objection, asked and answered.

3 MR. WHITMER: Noted.

4 BY MR. WHITMER:

5 Q. Please respond.

6 A. Yeah, the president has on occasion informed
7 the other board members that he thought there was a
8 need for a meeting.

9 (Exhibit No. 3 marked.)

10 BY MR. WHITMER:

11 Q. Okay. Let's go to Exhibit 3. Exhibit 3 is the
12 January 7, 2015 administrative law order. Were you
13 aware of this order?

14 A. Yes.

15 Q. Have you read the order?

16 A. I have, but it's been a long time.

17 Q. Okay. Budgets have two basic components,
18 revenues and expenses. We are going to talk about
19 expenses for right now, specifically the 2017 budget
20 expenses.

21 (Exhibit No. 4 marked.)

22 BY MR. WHITMER:

23 Q. So if you would, would you turn to Exhibit 4.

24 A. Okay.

25 Q. Okay. Exhibit 4 for the month of June for

1 legal fees shows a credit of 7,000 -- roughly \$8,000.

2 MR. SHAW: There's no question there.

3 Objection, form. The question was not posed.

4 MR. WHITMER: There wasn't a question yet.

5 MR. SHAW: My apologies.

6 BY MR. WHITMER:

7 Q. Do you see that credit?

8 MR. SHAW: Objection, form of the
9 question. The question is leading.

10 Go ahead and answer.

11 THE WITNESS: Yeah, I see what looks to be
12 a credit for the month of June.

13 Q. Do you know what that credit was for?

14 A. Not that I presently recall.

15 (Exhibit No. 5 marked.)

16 BY MR. WHITMER:

17 Q. Okay. Let's go to Exhibit 5, which is the
18 exhibits to the request for legal fees, the application
19 for legal fees in this case in 2017. There is a
20 tabulation that shows the total amounts so you don't
21 have to add them up.

22 A. Is this part of the document, or is this
23 something separate?

24 Q. It's a separate.

25 A. Okay.

1 Q. It is just a tabulation. Now, the total of
2 that is \$829 more than the total legal exhibits --
3 excuse me -- the total legal fees in Exhibit 4.

4 A. Which total are we talking about?

5 Q. The legal fees, the one that is circled. The
6 legal fees, \$27,112.50.

7 A. Assuming your math is correct, that does appear
8 to be the case.

9 MR. SHAW: Objection, there was no
10 question posed.

11 MR. WHITMER: There wasn't a question.

12 MR. SHAW: Only answer questions.

13 THE WITNESS: Right. Sorry.

14 BY MR. WHITMER:

15 Q. So there is a difference of \$829 roughly. Can
16 you explain that underreporting?

17 A. No, I can't. I don't know what accounts for
18 the difference.

19 Q. Okay. Let's move on. Did the board authorize
20 Shaw Lines to defend the justice court case?

21 MR. SHAW: Objection, that leads to
22 attorney-client privileged information.

23 MR. WHITMER: Objection noted. However,
24 there is ample precedent that billing information is
25 not attorney-client privileged.

1 BY MR. WHITMER:

2 Q. Please answer the question.

3 A. The question wasn't about billing information.
4 It was about whether the board authorized something to
5 legal counsel, and that is privileged, sir.

6 Q. Well, in contempt proceedings, as in fraud,
7 there is no attorney-client privilege.

8 A. That's not true.

9 Q. So you are saying you are not going to answer
10 the question whether the board authorized that
11 expenditure?

12 MR. SHAW: Objection, the question calls
13 for attorney-client privileged information.

14 THE WITNESS: Are you directing me not to
15 answer?

16 MR. SHAW: Yes.

17 THE COURT REPORTER: I'm sorry, what did
18 you say?

19 THE WITNESS: He is directing me not to
20 answer.

21 MR. WHITMER: Okay. We will move on.

22 BY MR. WHITMER:

23 Q. Do you know what the total was for the legal
24 expenses that were incurred in the JP case?

25 MR. SHAW: Objection, form. The JP case

1 is undefined. Could you please specify a case number?

2 MR. WHITMER: Certainly. CC2016-164084RC.

3 THE WITNESS: Not off the top of my head,
4 no.

5 BY MR. WHITMER:

6 Q. The JP case was appealed. Do you know what the
7 total amount of the legal expenses that were incurred
8 for the JP appeal?

9 A. Not off the top of my head.

10 Q. To appeal the JP judgment, the HOA had to post
11 a \$3,400 supersedes bond. Do you now that was posted?

12 A. I do not.

13 Q. Do you know if that expense of that bond was
14 included in the legal expenses?

15 A. I don't know the answer to that.

16 Q. On January 16, 2018, the HOA filed an answering
17 brief in 1-CA-CV-2017-0543, which remanded this case
18 back. Do you know what those -- you know what those --
19 do you know if any of those legal expenses were
20 incurred in 2017?

21 A. I'm not sure I understand the question.

22 Q. Well, was the HOA billed for any legal expenses
23 relative to that appeal in 2017?

24 A. I don't recall off the top of my head.

25 Q. Okay. You don't know what amounts those would

1 be in answering that appeal -- let me rephrase the
2 question.

3 Do you know what the cost was for
4 answering that appeal?

5 A. No.

6 MR. SHAW: Objection, question asked and
7 answered. Objection, form.

8 Go ahead, please.

9 THE WITNESS: Not off the top of my head,
10 I do not.

11 BY MR. WHITMER:

12 Q. Let's move on to revenues. Is it correct that
13 the HOA budget includes revenues and expenses?

14 A. Yes.

15 Q. Is it correct that the HOA's only source of
16 revenue is homeowner assessments?

17 A. No, I don't think that's true.

18 Q. What other revenues do they collect?

19 A. Well, listed here are late fees and interest
20 income. And I can't think of a particular instance off
21 the top of my head, but there could be situations where
22 there has been an overpayment of something and money is
23 refunded. That would show up in revenues. Those are
24 the things that occur to me off the top of my head.

25 Q. Okay. Here is a copy of ARS 33-1255(a).

1 Actually, it's the whole statute, but I am more
2 interested in subsection (a). Is it your understanding
3 that 33-1255(a) requires the HOA to adopt a budget
4 every year?

5 MR. SHAW: Objection, the question calls
6 for a legal conclusion.

7 MR. WHITMER: Noted.

8 BY MR. WHITMER:

9 Q. Please answer.

10 A. Are you asking for my lay opinion or are you
11 asking --

12 Q. Your lay opinion.

13 A. That is -- it does appear to require the
14 assessments to be made at least annually, but I -- the
15 caveat here, real estate, home association law is not
16 an area of my expertise, so my opinion on such things
17 doesn't count for any more than that of a person on the
18 street.

19 Q. I can appreciate that, Mr. Walker. But
20 33-1255(a) requires the approval of an assessment by
21 the membership.

22 MR. SHAW: Objection, form. Is that a
23 question?

24 MR. WHITMER: Yeah.

25 MR. SHAW: Objection, form. Also

1 objection, it calls for a legal conclusion. Also
2 objection, asked and answered.

3 Please answer the question.

4 MR. WHITMER: Noted.

5 THE WITNESS: Can you reread the question?

6 (The requested portion was read back by
7 the court reporter.)

8 MR. SHAW: That doesn't sound like a
9 question.

10 BY MR. WHITMER:

11 Q. It should be -- okay. Is it your understanding
12 that it requires an approval of the majority of the
13 owners?

14 MR. SHAW: Objection, calls for a legal
15 conclusion.

16 Please answer.

17 THE WITNESS: Well, it says that
18 assessments are to be based on a budget adopted at
19 least annually by the association. I do not see in
20 what you handed me anything that defines the word
21 association, so I really can't say whether that's right
22 or not.

23 BY MR. WHITMER:

24 Q. We will get to that. But it is correct to say
25 that the budget is based -- the revenue is primarily

1 based on assessments?

2 MR. SHAW: Objection, form.

3 Please answer.

4 THE WITNESS: What do you mean by
5 primarily?

6 BY MR. WHITMER:

7 Q. The primary source of revenue for the HOA is
8 homeowner assessments. Is that correct?

9 A. Are you asking in the sense of the volume of
10 revenues?

11 Q. Yes.

12 A. Yes, that would be correct.

13 Q. Okay. Let's go back to Exhibit 1. If you turn
14 to page 22. It starts on page 22. Look at the first
15 paragraph, please, of 8.2, section 8.2. It is at the
16 bottom of the page, Mr. Walker.

17 A. If you don't mind, I would like to have a
18 little context.

19 Q. Sure. That's fine.

20 A. Okay.

21 Q. Now, section 8.2, is it your understanding it
22 covers the adoption of the assessments?

23 MR. SHAW: Objection, calls for a legal
24 conclusion.

25 Please answer.

1 THE WITNESS: Can you read back the
2 question, please.

3 (The requested portion was read back by
4 the court reporter.)

5 THE WITNESS: What do you mean by
6 adoption?

7 BY MR. WHITMER:

8 Q. The approval or the determination of the
9 assessment.

10 A. I read the language as relating to the
11 determination to be made by the Council based on
12 certain specified aggregate costs.

13 Q. So do you agree that section 8.2 requires the
14 council to determine the assessment?

15 MR. SHAW: Objection, asked and answered.
16 Please answer.

17 THE WITNESS: Again, are you asking for my
18 opinion as a legal expert or a lay opinion?

19 BY MR. WHITMER:

20 Q. With all due respect, you have already
21 qualified that you are not a legal expert on these
22 issues, so yes, as a layperson.

23 A. I am not sure if the phrase to be determined by
24 the council is -- articulates a requirement or an
25 authorization. I can read it both ways.

1 Q. For argument's sake, let's read it as an
2 authorization.

3 MR. SHAW: Objection, form.

4 BY MR. WHITMER:

5 Q. Mr. Walker, you say it can be read both ways.
6 But irrespective, it requires action by the council.
7 Would you say that is a correct statement?

8 MR. SHAW: Objection, leading.

9 THE WITNESS: My problem is with your use
10 of the word requires. This --

11 BY MR. WHITMER:

12 Q. Well, let me rephrase it for you. Is it
13 correct that 8.2 requires the council to determine the
14 assessment?

15 MR. SHAW: Objection, leading.

16 THE WITNESS: It was also asked and
17 answered.

18 MR. SHAW: Objection, asked and answered.

19 THE WITNESS: I view that phrase as being
20 ambiguous and it can be construed in either of two
21 ways.

22 BY MR. WHITMER:

23 Q. Okay. Let's move on. As a board member and
24 witness, did the council, pursuant to 8.2 of the
25 declaration, determine and approve the annual

1 assessment for 2017?

2 A. I don't specifically recall, but I'm sure we
3 did.

4 Q. And for 2018, the same question?

5 A. I don't think we finalized the budget for 2018
6 yet. Oh, I'm sorry. I'm sorry, wrong year. 2018,
7 let's go back to the earlier question.

8 2017, I was not on the board at the time
9 the budget was done.

10 Q. Okay.

11 A. So I don't know, and I don't believe I attended
12 a board meeting where it was discussed. But I can't be
13 100 percent sure of that.

14 For 2018, again, I don't specifically
15 recall a meeting where it was done, but I'm sure we did
16 approve a budget.

17 Q. Here is 33-1215, which defines the contents of
18 the declaration. Is it correct that the statute says
19 the declaration shall contain, one, the name of the
20 condominium and the name of the association?

21 MR. SHAW: Objection, calls for a legal
22 conclusion.

23 BY MR. WHITMER:

24 Q. I'm asking as someone reading the statute.
25 Would you agree with that?

1 MR. SHAW: Objection, asks for a legal
2 conclusion. This witness is not an expert.

3 Please answer.

4 THE WITNESS: That is what the document
5 says.

6 BY MR. WHITMER:

7 Q. Okay. Let's go back to Exhibit 1.

8 A. Exhibit 1?

9 Q. Yes. You are there already. Let's turn to
10 page 4. Earlier you spoke about defined terms. Would
11 you mind reading out loud for the record section 1.4?

12 MR. SHAW: Objection, the document speaks
13 for itself. Please read it.

14 THE WITNESS: (Reading.)

15 Section 1.4, Council, in quotes,
16 shall mean the Council of Co-Owners is
17 defined in the Horizontal Property
18 Regime Act and consists of all of the
19 owners of the Casitas.

20 BY MR. WHITMER:

21 Q. Okay. So is it correct that the council
22 referenced in that section, in section 8.2 regarding
23 the determination of the annual assessment, is the
24 Council of Co-Owners, which is the 29 casitas owners?

25 MR. SHAW: Objection, form, leading.

1 Objection, calls for a legal conclusion.

2 Please answer.

3 THE WITNESS: Can you read back the
4 question, please.

5 (The requested portion was read back by
6 the court reporter.)

7 THE WITNESS: That appears to be the case.

8 (Exhibit No. 7 marked.)

9 BY MR. WHITMER:

10 Q. Thank you. Let's go to Exhibit 7. That is a
11 cover letter from Mr. Bainbridge transmitting a copy of
12 the amended bylaws to me, and the bylaws follow behind
13 it.

14 A. Okay.

15 Q. Did you prepare those bylaws?

16 A. No.

17 (Exhibit No. 8 marked.)

18 BY MR. WHITMER:

19 Q. Okay. Let's go to Exhibit 8, which is the
20 minutes of the March 13, 2013 meeting.

21 A. Okay.

22 Q. Go to the second paragraph on the second page.
23 The second paragraph, please. Pardon me, this one
24 right here.

25 A. That's what I'm reading.

1 Q. Okay. Sorry. Is it correct that the minutes
2 show that the bylaws were amended at that meeting?

3 MR. SHAW: Answer the question.

4 THE COURT REPORTER: I'm sorry what,
5 Mr. Shaw?

6 MR. SHAW: I'm sorry?

7 THE COURT REPORTER: What did you say? I
8 didn't hear you.

9 MR. SHAW: Oh, objection, the document
10 speaks for itself.

11 BY MR. WHITMER:

12 Q. Noted. Please answer the question.

13 MR. SHAW: Objection, calls for a
14 conclusion of the document as well.

15 You can answer if you can, please.

16 THE WITNESS: Will you read back the
17 question.

18 (The requested portion was read back by
19 the court reporter.)

20 THE WITNESS: No.

21 BY MR. WHITMER:

22 Q. The minutes don't show that?

23 A. No.

24 Q. Do the minutes show that there was a vote to
25 amend the bylaws at that meeting?

1 A. The minutes state there was a motion to amend
2 the bylaws that was seconded and that the motion was
3 approved.

4 Q. Thank you.

5 A. That is not the same as amending the bylaws.

6 Q. Okay. I appreciate the distinction. Thank
7 you.

8 Did you have a role in amending the
9 bylaws?

10 A. I was -- which meeting is this?

11 Q. March 2013.

12 A. I was involved in drafting amendments to the
13 bylaws at some point, and I don't remember exactly
14 when. It was some years ago. Whether I was involved
15 in drafting this particular proposed amendment, I don't
16 recall off the top of my head.

17 Q. Did you do any research for the amendment for
18 the bylaws?

19 A. What do you mean by research?

20 Q. Did you read the governing documents? Did you
21 read the statutes?

22 A. Again, I'm not sure that I was involved in
23 drafting this particular proposed amendment. But when
24 I was involved in drafting, I do recall reading both
25 the then current bylaws and the declaration, and I

1 probably looked at statutes, but I don't recall off the
2 top of my head.

3 Q. Okay. Let's go to Exhibit 2, which is the
4 current bylaws. And I will go ahead and read the
5 unamended bylaws. (As read.)

6 Article 1, section 1. Section 1,
7 name and location. The name of this
8 Council of Co-Owners is the Hilton
9 Casitas Council of Co-Owners,
10 hereinafter called the Council. Its
11 principal place of business shall be
12 located in the City of Scottsdale,
13 Maricopa County.

14 Would you agree that is what it states?

15 A. No.

16 MR. SHAW: Objection, the document speaks
17 for itself.

18 Sorry, please answer.

19 THE WITNESS: No, I do not agree.

20 BY MR. WHITMER:

21 Q. Would you mind telling me what the bylaws say
22 in that section?

23 MR. SHAW: Objection, asks -- objection,
24 asks for a legal conclusion and the form of the
25 question, the document speaks for itself.

1 Please answer the question.

2 THE WITNESS: You left off the word
3 Arizona in the last sentence.

4 BY MR. WHITMER:

5 Q. Pardon me. So noted.

6 And if you would -- this is an Arizona
7 Revised Statute 33-1213, and I would like you to look
8 at subsection (c) that deals with the priorities,
9 conflicts of various documents.

10 A. Okay. I have read it.

11 Q. Do you agree that the bylaws are inferior to
12 articles of incorporation, if any articles existed?

13 MR. SHAW: Objection, calls for a legal
14 conclusion.

15 You can answer the question.

16 THE WITNESS: What do you mean by the word
17 inferior?

18 BY MR. WHITMER:

19 Q. That in case of a conflict, the articles
20 govern, per 33-1213(c).

21 A. That is what -- that appears to be what
22 33-1213(c)(2) provides.

23 Q. Are the bylaws inferior to the declaration?

24 A. With inferior defined the same way as you did
25 the last time?

1 Q. Yes.

2 A. Well, 33-1213(c)(1) provides if a conflict
3 exists between the provisions of the declaration or the
4 other condominium documents, the declaration prevails.

5 Q. Okay. If any articles of incorporation
6 existed, are they inferior to the declaration? Does
7 the declaration -- excuse me. Let me rephrase that.

8 In the event of a conflict between
9 articles of incorporation, if any existed, would the
10 declaration prevail?

11 MR. SHAW: Objection, form, calls for a
12 legal conclusion.

13 Please answer.

14 THE WITNESS: I really don't know the
15 answer to that question. I think -- I wonder if there
16 is another provision that defines condominium
17 documents.

18 BY MR. WHITMER:

19 Q. I am not aware of any.

20 A. Then I don't know the answer.

21 Q. Okay. All right. Let's go back to Exhibit 7,
22 page 1 of the articles. And please read article 2,
23 section 1, if you would, please.

24 MR. SHAW: Objection, the witness does not
25 have a copy of the articles. The witness has a copy of

1 the bylaws.

2 MR. WHITMER: Excuse me. Pardon me.

3 BY MR. WHITMER:

4 Q. I'm sorry. The amended bylaws.

5 A. Okay. You put in front of me a document that
6 has the title Amended Bylaws of Hilton Casitas Council
7 of Co-Owners. I don't recall that the bylaws have been
8 amended, so I am not exactly sure what this document is
9 or what its status is. But I have read article 2,
10 section 1.

11 Q. You would agree that there is no mention of any
12 articles of incorporation in that?

13 A. In article 2, section 1, that is true, there is
14 no mention of articles of incorporation.

15 Q. Let's go back to Exhibit 2 and read the same
16 article.

17 MR. SHAW: Objection, form, Exhibit 2 --

18 MR. WHITMER: Article 2, section 1.

19 MR. SHAW: Do you understand the question?

20 THE WITNESS: I think he is asking me to
21 read article 2, section 1 of Exhibit 2.

22 MR. WHITMER: Yes.

23 MR. SHAW: Is that the question?

24 MR. WHITMER: That is correct.

25 MR. SHAW: My apologies.

1 Go ahead, please.

2 THE WITNESS: Okay. I have read it.

3 BY MR. WHITMER:

4 Q. Okay. There is no mention of articles -- are
5 there any mention of articles of incorporation in that
6 section?

7 A. I don't see one.

8 Q. Okay. Let's go back to Exhibit 7 again. And
9 while these may not have been amended properly and may
10 not be the current bylaws, let's take a look at article
11 1, section 1 again -- not again, I'm sorry -- in this
12 document that was prepared and voted on by members.

13 MR. SHAW: Objection, form. Is there a
14 question there?

15 MR. WHITMER: I am asking him to read it
16 right now, Mr. Shaw. There will be a question
17 forthcoming.

18 MR. SHAW: Okay. Thank you.

19 THE WITNESS: Okay. Well, I am not sure
20 of your premise that this document that is in Exhibit 7
21 is the same as the document that is referenced in the
22 minutes that we are looking at, Exhibit 8.

23 BY MR. WHITMER:

24 Q. Exhibit 8.

25 A. But with that caveat, I have read article 1,

1 section 1.

2 Q. Okay. Is the Hilton Casitas Council of
3 Co-Owners an Arizona nonprofit corporation named in
4 those bylaws?

5 A. Say that again.

6 Q. Is the Hilton Casitas Council of Co-Owners an
7 Arizona nonprofit corporation named in that section?

8 A. That section names the Council of Co-Owners as
9 Hilton Casitas Council of Co-Owners.

10 Q. Okay. Let's turn to Exhibit 1, the
11 declaration.

12 A. Okay.

13 Q. Do you agree that the nonprofit corporation is
14 not named in that declaration?

15 MR. SHAW: Objection, calls for a legal
16 conclusion.

17 Please answer.

18 THE WITNESS: Read back the question,
19 please.

20 (The requested portion was read back by
21 the court reporter.)

22 THE WITNESS: Section 1.4 defines the
23 council to mean the Council of Co-Owners as defined in
24 the Horizontal Property Regime Act, and consists of all
25 of the owners of the Casitas. Without taking the time

1 to read all of the way through the document, that
2 appears to be the most relevant provision to your
3 question.

4 BY MR. WHITMER:

5 Q. Okay. So if you wouldn't mind going back to
6 ARS 1215.

7 A. Okay.

8 Q. And (a)(1) requires the name of the
9 association. You would agree that the name of the
10 nonprofit, the Hilton Casitas Council of Co-Owners, is
11 not in the declaration as required by that statute?

12 MR. SHAW: Objection, calls for a legal
13 conclusion.

14 Please answer the question.

15 THE WITNESS: I'm not really sure that is
16 correct. I mean, I'm not sure whether section 1.4 of
17 the declaration would be in substantial compliance with
18 33-1215 (a)(1), and you also seem to be mixing a couple
19 of things together, and I can't keep it straight in my
20 head. But there was a successor, and as you know,
21 there is a Court of Appeals decision that's talking
22 about the successor to the original organization.

23 BY MR. WHITMER:

24 Q. Did the Court of Appeals opinion amend the
25 declaration?

1 MR. SHAW: Objection, asks for a legal
2 conclusion.

3 Please answer the question.

4 THE WITNESS: My recollection of the Court
5 of Appeals decision is that it held that -- and, again,
6 I can't keep this straight in my head -- but that the
7 original council was replaced by a successor entity
8 that -- and that successor entity stepped into the
9 shoes -- that's not the language of the opinion -- but
10 in essence stepped into the shoes of the predecessor
11 entity.

12 BY MR. WHITMER:

13 Q. But the declaration doesn't name the successor
14 entity. You would agree with that?

15 MR. SHAW: Objection, calls for a legal
16 conclusion. Objection, form, leading.

17 Please answer.

18 THE WITNESS: Well, just reading the
19 document, I can't be sure of that. I suspect that is
20 true.

21 BY MR. WHITMER:

22 Q. Uh-huh. That's good enough.

23 A. The language has reference to something else,
24 and we don't have that something else in front of us,
25 so I don't really know the answer I guess.

1 Q. One last question. I know Mr. Shaw is going to
2 object to this, but did the board waive the conflict
3 that it has with Mr. Bengson so that Mr. Shaw could
4 represent him?

5 MR. SHAW: Objection, calls for
6 attorney-client privilege. I'm sorry, I withdraw that
7 objection.

8 Can you please rephrase the question?

9 BY MR. WHITMER:

10 Q. Did the board waive the conflict between
11 Mr. Bengson and the HOA so that Mr. Shaw could
12 represent him? It's simple question.

13 MR. SHAW: I will object to that question.

14 THE WITNESS: I think we better step
15 outside and talk about it.

16 MR. WHITMER: Do you want a break?

17 MR. SHAW: Would you allow us to do that?

18 MR. WHITMER: Sure.

19 MR. SHAW: That is not customary under the
20 rules. Would you allow it?

21 MR. WHITMER: Sure, absolutely.

22 MR. SHAW: Thank you. It will not take
23 from your deposition time.

24 (Recess from 1:51 p.m. to 1:54 p.m.)

25 MR. SHAW: I will object to the question

1 as for attorney-client privileged information. But I
2 will ask the witness to answer.

3 THE WITNESS: And could you read back the
4 question, please.

5 (The requested portion was read back by
6 the court reporter.)

7 MR. SHAW: And before he answers the
8 question, you have the objection for attorney-client
9 privilege on the record?

10 THE COURT REPORTER: There were a whole
11 series of objections. Do you want me to read that
12 back?

13 MR. SHAW: No. One of them is
14 attorney-client privilege? I just want to make sure.

15 THE COURT REPORTER: Yes.

16 MR. SHAW: Thank you.

17 Please respond.

18 THE WITNESS: To the best of my
19 recollection, it has never been discussed.

20 MR. WHITMER: Thank you. That's it.

21 MR. SHAW: Actually, I have a few. Since
22 we do have five minutes, I do have some rebuttal
23 questions to ask. May I use those five minutes for
24 rebuttal questions?

25 MR. WHITMER: They are permitted under the

1 rules?

2 MR. SHAW: Yes.

3

4 EXAMINATION

5 BY MR. SHAW:

6 Q. Mr. Walker, may I call you Rick?

7 A. Sure.

8 Q. Rick, are you an attorney?

9 A. I am.

10 Q. What type of law do you practice?

11 A. Primarily complex commercial litigation. I
12 also do a fair amount of constitutional litigation for
13 the County.

14 Q. Have you ever represented a condominium
15 association in Arizona?

16 A. No.

17 Q. Have you ever represented a homeowner
18 association in Arizona?

19 A. No.

20 Q. Do you have any expertise in homeowner
21 association accounting or homeowner association law?

22 A. No.

23 Q. To the best of your recollection, when did your
24 term on the board start?

25 A. I believe it was around April 1, 2017.

1 Q. Have you ever provided legal advice to the
2 entity on which you serve on the board?

3 A. No. I wouldn't say I have provided legal
4 advice.

5 Q. Have you ever represented the entity to which
6 you serve on the board today?

7 A. No.

8 Q. Do you have day-to-day interactions with the
9 Arizona Condominium Act?

10 A. No.

11 Q. Do you profess yourself as an expert in the
12 Arizona Condominium Act?

13 A. No.

14 Q. Do you believe that the association is
15 currently in compliance with the Arizona Condominium
16 Act?

17 A. As far as I am aware, yes.

18 Q. Do you -- is it your opinion that the
19 association has complied with the budgetary provisions
20 of the Arizona Condominium Act?

21 A. Yes.

22 Q. Have you ever as a board member voted on an
23 issue --

24 A. Let me go back. During my tenure on the board,
25 yes.

1 Q. During your tenure on the board, have you ever
2 voted on an issue that you feel would violate the
3 Arizona Condominium Act?

4 A. No.

5 Q. During your tenure on the board, has the board
6 of directors ever voted on an issue that would violate
7 the Arizona Condominium Act?

8 A. No.

9 Q. What is your -- what are your thoughts
10 regarding this lawsuit that we are currently -- that is
11 currently pending?

12 A. I think as with many of Mr. Whitmer's other
13 endeavors, it is frivolous and malevolent, and it is
14 entertainment to him at the cost of his neighbors.

15 MR. SHAW: I have no further questions.

16 Would you like some rebuttal questions,
17 Mr. Whitmer?

18

19

FURTHER EXAMINATION

20 BY MR. WHITMER:

21 Q. Our first meeting was at Esther Karatz's house,
22 was it not, in 2013?

23 A. I remember a conversation with you outside
24 Ms. Karatz's house. I don't remember what year it was.

25 Q. Do you remember what the issue was?

1 A. I remember that you were upset about the fact
2 that she wasn't willing to let you come into her house,
3 I know that part.

4 Q. She was holding a board meeting at her house,
5 was she not?

6 A. I don't -- there was -- there were a few people
7 present who were discussing, as I recall, principally
8 some of the things that I had been working on drafting
9 in terms of potential amendments, but I don't recall
10 that it was a board meeting as such.

11 Q. Didn't she claim it was a closed executive
12 meeting and that non-board members couldn't be there?

13 A. She may have, but I did not hear that.

14 MR. WHITMER: I think that's it.

15 MR. SHAW: That's all I have.

16 (Conclusion of deposition at 2:00 p.m.)

17

18

19

20



A handwritten signature of Richard Walker, written in black ink, is positioned above a horizontal line. The signature is cursive and appears to read "Richard Walker".

21

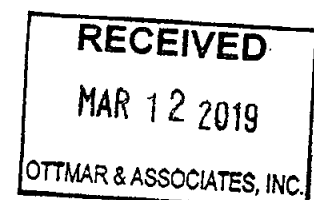
RICHARD WALKER

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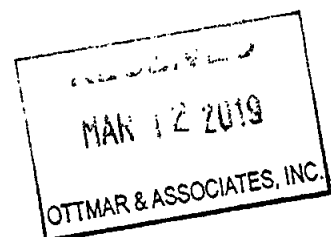
Ottmar & Associates
Court Reporters, Videoconferencing, Transcription
3770 N. 7th St., Ste. 150
Phoenix, AZ 85014
AZ Registered Reporting Firm No. R1008

Richard D. Walker

Deponent Signature

March 8, 2019

Date signed



Plaintiff's Exhibit 37

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

R. L. WHITMER, *Plaintiff/Appellant*,

v.

HILTON CASITAS HOMEOWNERS ASSOCIATION, *et al.*,
Defendants/Appellees.

No. 1 CA-CV 17-0543
FILED 7-10-2018

Appeal from the Superior Court in Maricopa County
No. CV2016-055080
The Honorable Aimee L. Anderson, Judge

REVERSED AND REMANDED

COUNSEL

R.L. Whitmer, Scottsdale
Plaintiff/Appellant

Shaw & Lines LLC, Phoenix
By Augustus H. Shaw IV, Patrick J. Whelan
Counsel for Defendants/Appellees

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OPINION

Judge Kent E. Cattani delivered the opinion of the Court, in which Presiding Judge James B. Morse Jr. and Judge Lawrence F. Winthrop joined.

CATTANI, Judge:

¶1 R.L. Whitmer appeals from the superior court's judgment dismissing his complaint against Hilton Casitas Homeowners Association ("Hilton Casitas") for lack of subject matter jurisdiction. Whitmer's complaint sought to enforce a final decision resulting from a prior administrative dispute resolution proceeding, part of a process to adjudicate disputes between an owner and a homeowners' association concerning compliance with condominium documents and governing statutes. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 32-2199 to -2199.05. Given the statutory directive that such decisions are "enforceable through contempt of court proceedings," A.R.S. § 32-2199.02(B), and absent any authority establishing that the administrative tribunal itself has jurisdiction to enforce such orders by contempt or otherwise, we hold that the superior court has subject matter jurisdiction to do so. Accordingly, and for reasons that follow, we reverse the dismissal and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

¶2 Hilton Casitas is the homeowners' association for a property in Scottsdale subject to Arizona's laws governing condominiums. *See* A.R.S. tit. 33, ch. 9. Whitmer is a residence owner and a member of Hilton Casitas.

¶3 In 2014, Whitmer filed an administrative petition alleging that Hilton Casitas had violated statutory provisions governing procedures for adopting or amending a budget (specifically, that Hilton Casitas had overspent on legal fees without receiving owners' approval of the increase).¹ *See* A.R.S. § 33-1243(D). The dispute went to a hearing before an

¹ As relevant here, Arizona law allows administrative adjudication of disputes between an owner and a homeowners' association concerning compliance with condominium documents or the statutes governing condominiums. *See* A.R.S. §§ 32-2199 to -2199.05; *see also* A.R.S. §§ 41-2198

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administrative law judge (“ALJ”) in the Office of Administrative Hearings (“OAH”), and the ALJ issued a decision in Whitmer’s favor concluding that Hilton Casitas had failed to comply with the statutory provision for amending its budget, and ordered Hilton Casitas to “fully comply with the [statutory requirement] in the future.” Hilton Casitas did not seek judicial review, *see* A.R.S. § 32-2199.02(B), and the ALJ’s order became final.

¶4 Two years later, Whitmer filed this complaint in superior court alleging that Hilton Casitas had failed to comply with the ALJ’s order and seeking enforcement of the decision by contempt. Hilton Casitas answered, then moved to dismiss for (as relevant here) lack of subject matter jurisdiction. *See* Ariz. R. Civ. P. 12(b)(1). Whitmer opposed the motion and included as an exhibit an informational article from OAH, which included the following statement explaining OAH’s view that the superior court was the proper forum for enforcement proceedings:

If the petition item has been decided by a court or previously has been addressed in a hearing before the OAH, it cannot be revisited. OAH has no authority for contempt proceedings or enforcement of prior decisions. However, failure by a party to comply with a decision issued by the OAH may result in the other party seeking enforcement of the Administrative Law Judge’s decision through a contempt of court proceeding in Superior Court.

After full briefing, the superior court granted the motion to dismiss, reasoning that the court’s jurisdiction was limited to judicial review of the ALJ’s ruling (not at issue here) and did not include authority to consider an action to enforce an administrative order by contempt. The court acknowledged the statutory provision stating that the ALJ’s order “is enforceable through contempt of court proceedings,” *see* A.R.S. § 32-2199.02(B), but concluded that the proper forum for such contempt proceedings “is the Administrative Courts, not the Superior Court.”

to -2198.05 (2014). The relevant statutory provisions have been renumbered (and redirected from the Department of Fire, Building and Life Safety to the Department of Real Estate) since the time Whitmer filed his petition. *See* 2016 Ariz. Sess. Laws ch. 128, §§ 30–35 (52d Leg., 2d Reg. Sess.). We cite to the current version of the statutes because the provisions material to this decision were not substantively changed. *Compare* A.R.S. §§ 32-2199 to -2199.05, *with* A.R.S. §§ 41-2198 to -2198.05 (2014).

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¶5 Whitmer then emailed OAH, noting the court’s ruling and requesting information regarding where to file his contempt complaint. In response, OAH’s acting director stated that “there is nothing in OAH’s enabling statutes (ARS § 41-1092 et. seq.), that would enable OAH to enforce its own decisions through contempt proceedings that it would hold.” Whitmer then filed a timely motion for reconsideration in superior court, attaching as exhibits his correspondence with OAH. After the superior court denied reconsideration, Whitmer filed a motion for new trial, which the court also denied.

¶6 The superior court awarded attorney’s fees to Hilton Casitas and entered a final judgment dismissing the case. Whitmer timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).²

DISCUSSION

I. Dismissal for Lack of Subject Matter Jurisdiction.

¶7 Whitmer challenges the superior court’s determination that it lacked subject matter jurisdiction to consider his complaint. As there are no jurisdictional facts in dispute, we review the court’s ruling de novo. *Falcone Bros. & Assocs. v. City of Tucson*, 240 Ariz. 482, 487, ¶ 10 (App. 2016).

¶8 Hilton Casitas argues, and the court agreed, that the superior court lacked subject matter jurisdiction to consider contempt of the ALJ’s order, and that OAH itself was the only proper forum for a proceeding to enforce a prior OAH decision under § 32-2199.02(B). But the superior court is a court of general jurisdiction and has “original jurisdiction of . . . [c]ases and proceedings in which exclusive jurisdiction is not vested by law in another court.” Ariz. Const. art. 6, § 14(1); *see also id.* § 14(11) (original jurisdiction of “[s]pecial cases and proceedings not otherwise provided for, and such other jurisdiction as may be provided by law”); A.R.S. § 12-123(A). And Hilton Casitas has presented no authority establishing that OAH has authority to enforce its ALJ’s decision through contempt proceedings, much less that OAH has exclusive jurisdiction to do so.

² Although “[t]his court lacks jurisdiction over an appeal from a civil contempt adjudication,” *State ex rel. Dep’t of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 18 (App. 2003), the issue here is whether the superior court properly concluded that it lacked subject matter jurisdiction to hear the request for a contempt finding. *See, e.g., Falcone Bros. & Assocs., Inc. v. City of Tucson*, 240 Ariz. 482, 487, ¶ 10 (App. 2016); *Church of Isaiah 58 Project of Ariz., Inc. v. La Paz County*, 233 Ariz. 460, 462–63, ¶ 9 (App. 2013).

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¶9 The administrative dispute resolution process at issue here— which produced the ALJ decision Whitmer seeks to enforce—refers contested cases for adjudication before OAH, pursuant to OAH’s procedures. A.R.S. §§ 32-2199, -2199.01(D). The ALJ hearing the case “may order any party to abide by the statute [or] condominium documents . . . and may levy a civil penalty on the basis of each violation.” A.R.S. § 32-2199.02(A). The ALJ’s final order is subject to judicial review if a party properly and timely appeals it. *See* A.R.S. §§ 32-2199.02(B), 41-1092.08(H), 12-901 to -914. Otherwise, the ALJ’s order binds the parties and “is enforceable through contempt of court proceedings.” A.R.S. § 32-2199.02(B).

¶10 Hilton Casitas urges that § 32-2199.02(B) grants OAH exclusive jurisdiction to enforce the ALJ’s order by contempt. Hilton Casitas suggests that because § 32-2199.02(B) references A.R.S. § 41-1092.08 (which provides for an appeal to the superior court in accordance with the provisions governing judicial review of administrative decisions, *see* A.R.S. §§ 12-901 to -914), the superior court’s jurisdiction with regard to the ALJ’s order is limited to providing judicial review in its appellate capacity. But § 32-2199.02(B) expressly allows for both judicial review *and* enforcement: “The order issued by the administrative law judge is enforceable through contempt of court proceedings *and* is subject to judicial review as prescribed by § 41-1092.08.” (Emphasis added.) And, with regard to enforcement, § 32-2199.02(B) contemplates enforcing the ALJ’s order through contempt of court proceedings; the statute does not reference contempt of “the office” or “the department.” *Compare* A.R.S. § 40-424(A) (describing penalties for “contempt of commission” based on failure to comply with Arizona Corporation Commission orders, rules, or requirements).

¶11 Unlike the courts, which have inherent contempt power, *see Owen v. City Court*, 123 Ariz. 267, 268 (1979), an agency only has the powers delegated to it by the Legislature. *Facilitec, Inc. v. Hibbs*, 206 Ariz. 486, 488, ¶ 10 (2003). OAH’s statutory authority extends to adjudicating “contested cases” (proceedings in which a party’s legal rights or duties are determined by an agency after an administrative hearing, *see* A.R.S. § 41-1001(5)) and “appealable agency actions” (actions other than contested cases in which an agency determines a party’s legal rights or duties, *see* A.R.S. § 41-1092(3)). *See* A.R.S. § 41-1092.02(A). A contempt proceeding of this nature—seeking enforcement of the parties’ legal rights or duties that were previously determined by the final decision in a prior administrative proceeding—does not fit the definition of either an appealable agency action or a contested case. *See also* A.R.S. § 32-2199.01(A) (providing for administrative dispute resolution “concerning violations of condominium documents . . .

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or violations of the statutes that regulate condominiums,” not violations of previously issued administrative orders).

¶12 And OAH’s mandate does not include enforcement authority generally, much less contempt powers. *See generally* A.R.S. §§ 41-1092 to -1092.12. For example, although OAH’s enabling statutes grant the ALJ authority to subpoena witnesses, the ALJ must apply to the superior court to enforce the subpoena – including by contempt – should the witness fail to comply. *See* A.R.S. §§ 41-1092.07(C), 12-2211; *see also* A.R.S. §§ 41-1062(A)(4), 12-2212(B) (noting that an officer presiding over a contested case may issue subpoenas and, should the witness subpoenaed fail to comply, the officer may apply to the superior court, which “shall thereupon proceed as though such failure had occurred in an action pending before it”). And although not dispositive, OAH’s position in documents provided by Whitmer to the superior court similarly reflects OAH’s understanding that it lacks statutory authorization or capacity to hold contempt proceedings.

¶13 Hilton Casitas argues that the regulations governing OAH’s prehearing and hearing procedures provide a mechanism for OAH to conduct contempt of court proceedings. The regulation on which Hilton Casitas relies, however, is a catch-all provision for *procedural* rules, not a substantive grant of authority to conduct enforcement proceedings. *See* A.A.C. R2-19-102(C) (“If a procedure is not provided by statute or these rules, an administrative law judge may issue an order using the Arizona Rules of Civil Procedure and related local rules of guidance.”); *see also generally* A.A.C. tit. 2, ch. 19, art. 1 (setting forth procedural rules for OAH proceedings). And even if that regulation purported to expand OAH’s statutory grant of authority, it cannot do so. *See Ariz. Health Care Cost Containment Sys. v. Bentley*, 187 Ariz. 229, 232 (App. 1996) (“The scope of an agency’s power is measured by statute and may not be expanded by agency fiat.”) (citation omitted).

¶14 We recognize a certain dissonance in the superior court conducting proceedings to consider a party’s refusal to follow an order issued by a separate administrative forum. But the statutory schemes governing several administrative bodies allow the superior court to act as a forum for such contempt proceedings. *See* A.R.S. §§ 41-1092.07(C), 12-2211 (allowing an OAH ALJ to subpoena witnesses and apply to the superior court to enforce the subpoena, including by contempt); A.R.S. §§ 41-1062(A)(4), 12-2212(B) (allowing an administrative officer conducting a contested case to apply to the superior court to remedy a witness’s noncompliance with a subpoena “as though such failure had occurred in an action pending before [the court]”); *see also* A.R.S. § 32-148 (authorizing an

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administrative board to certify a person who refuses to obey its subpoena “to the superior court in the county in which service was made for contempt proceedings”); A.R.S. § 23-677 (authorizing an administrative department to apply to the superior court in the case of “contumacy or refusal of a person to obey a subpoena,” upon which the court “shall issue” an order to comply, and failure to so comply “may be punished by the court as a contempt thereof”); A.R.S. § 44-3134(A) (same authorization for a different commission), (B) (authorizing “the superior court in Maricopa county [to] exercise its contempt powers” on application of the commission for a person’s willful noncompliance with a nondisclosure order in a subpoena).

¶15 Accordingly, the superior court erred by concluding that OAH had jurisdiction to enforce the ALJ’s order by contempt, much less *exclusive* jurisdiction (assuming OAH qualifies as “another court”) depriving the superior court of original jurisdiction to consider Whitmer’s enforcement action. *See* Ariz. Const. art. 6, § 14(1); *see also* A.R.S. § 12-864 (describing civil contempts to include failure to obey the superior court’s order as well as “all other contempts not specifically embraced within this article”). We therefore reverse the judgment of dismissal and remand for further proceedings.

II. Attorney’s Fees in Superior Court.

¶16 Whitmer also challenges the superior court’s award of attorney’s fees in favor of Hilton Casitas. The basis for the award is unclear. The judgment reflects an award to Hilton Casitas as the prevailing party, but Hilton Casitas’ application for fees only urged an award as a sanction under A.R.S. §§ 12-349 and -350 or under Arizona Rule of Civil Procedure 11. The superior court made no findings under § 12-350 as required to support an award under § 12-349, and the record shows no indication that Hilton Casitas complied with the procedural prerequisites for an award under Rule 11(c). Given our disposition reversing dismissal, however, we vacate the award and do not further address the issue of fees in superior court.

III. Attorney’s Fees and/or Sanctions on Appeal.

¶17 Hilton Casitas requests an award of attorney’s fees incurred on appeal, but cites only ARCAP 21 without stating a substantive basis for the award. For that reason, *see* ARCAP 21(a)(2), and given that Hilton Casitas did not prevail on appeal, we decline its request for attorney’s fees.

¶18 Whitmer requests that we impose sanctions on Hilton Casitas under ARCAP 25. In an exercise of our discretion, we decline to do so. As

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the prevailing party, however, Whitmer is entitled to costs on appeal upon compliance with ARCAP 21.

CONCLUSION

¶19 For the foregoing reasons, we reverse the judgment of dismissal and remand for further proceedings. In light of this disposition, we vacate the superior court's award of attorney's fees.



AMY M. WOOD • Clerk of the Court
FILED: AA