

1 Mark W. Drutz, #006772
2 Sharon Sargent-Flack, #021590
3 **MUSGROVE, DRUTZ & KACK, P.C.**
4 1135 W. Iron Springs Road
5 P.O. Box 2720
6 Prescott, Arizona 86302-2720
7 Phone: (928) 445-5935
8 Fax: (928) 445-5980
9 Firm Email: mdkpc@cableone.net

CLERK OF SUPERIOR COURT
STATE OF ARIZONA

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CLERK OF SUPERIOR COURT

BY: BOBBI JO BALL

7 Attorneys for Defendant Robert D. Veres

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF YAVAPAI**

11 JOHN B. CUNDIFF and BARBARA C.
12 CUNDIFF, husband and wife; ELIZABETH
13 NASH, a married woman dealing with her separate
14 property; KENNETH PAGE and KATHRYN
PAGE, as Trustee of the Kenneth Page and
Catherine Page Trust,

Case No. P1300CV20030399

ANSWER

15 Plaintiffs,

16 v.

17 DONALD COX and CATHERINE COX, husband
and wife, et al.,

18 Defendants.

19
20 Defendant Robert D. Veres (hereinafter, “**Defendant**” or “**Veres**”), by and through his
21 attorneys MUSGROVE, DRUTZ & KACK, P.C., for his Answer to Plaintiffs’ First Amended
22 Complaint alleges as follows:

23 1. Defendant is without knowledge or information sufficient to form a belief as to the
24 truthfulness of the allegations contained in Paragraph 1 of Plaintiffs’ First Amended Complaint
25 (“**FAC**”) and, therefore, denies the same for lack of such knowledge or information.

26
27 2. Defendant is without knowledge or information sufficient to form a belief as to the
28 truthfulness of the allegations contained in Paragraph 2 of Plaintiffs’ FAC as to Defendants Cox and,

1 therefore, denies the same for lack of such knowledge or information. To the extent these allegations
2 are directed to Defendant Veres, Defendant admits that he owns real property located in Coyote
3 Springs Ranch, Yavapai County, Arizona.
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5 3. Defendant is without knowledge or information sufficient to form a belief as to the
6 truthfulness of the allegations contained in Paragraphs 4, 5, 6, and 7 of Plaintiffs' FAC as they
7 pertain to Defendants Cox and, therefore, denies the same for lack of such knowledge or information.
8 To the extent that these allegations are directed to Defendant Veres, Defendant denies these
9 allegations. Alternatively, these allegations call for a legal conclusion to which no response is
10 necessary.
11

12 4. Defendant admits Paragraph 8 of Plaintiffs' FAC to the extent any such language
13 appears in the Declaration, denies that the language of paragraph 8 is a correct verbatim quote of the
14 language contained in the Declaration, and denies any other allegations contained therein.
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16 5. Defendant is without knowledge or information sufficient to form a belief as to the
17 truthfulness of the allegations contained in Paragraphs 9, 10, 11, 12, 13, and 14 of Plaintiffs' FAC,
18 as they pertain to Defendants Cox and, therefore, denies the same. To the extent that these
19 allegations are directed to Defendant Veres, Veres denies these allegations. Alternatively, these
20 allegations call for a legal conclusion to which no response is necessary.
21

22 6. Answering Paragraph 15 of Plaintiffs' FAC, Defendant admits venue is proper and
23 leaves Plaintiffs to their burden of proof as to subject matter jurisdiction, which cannot be 'waived'.
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COUNT 1 - BREACH OF CONTRACT

25 7. Answering Paragraph 16 of Plaintiffs' FAC, Defendant hereby incorporates by
26 reference Paragraphs 1 through 6 above as though fully set forth herein.
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COUNT IV - CLAIM FOR DECLARATORY RELIEF

13. Answering Paragraph 25 of Plaintiffs' FAC, Defendant hereby incorporates by reference Paragraphs 1 through 12 above as though fully set forth herein.

14. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraphs 26, 27, and 28 of Plaintiffs' FAC, as they pertain to Defendants Cox and, therefore, denies the same. To the extent that these allegations are directed to Defendant Veres, Veres denies these allegations. Alternatively, these Paragraphs call for a legal conclusion to which no response is necessary.

COUNT V - REQUEST FOR INJUNCTIVE RELIEF

15. Answering Paragraph 29 of Plaintiffs' FAC, Defendant hereby incorporates by reference Paragraphs 1 through 14 above as though fully set forth herein.

16. Defendant is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 30 of Plaintiffs' FAC, as they pertain to Defendants Cox. To the extent that these allegations are directed to Defendant Veres, Veres denies these allegations. Alternatively, these Paragraphs call for a legal conclusion to which no response is necessary.

AFFIRMATIVE DEFENSES

17. Each and every allegation of the FAC not specifically admitted herein is denied.

18. Defendant asserts that he is entitled to an award of attorneys' fees and costs pursuant to Contract, A.R.S. §§12-341, 12-341.01, 12-1103, Ariz. R. Civ. P. 65, and/or any other applicable rule or law.

19. Defendant alleges that Plaintiffs' FAC fails to allege a legitimate equitable or tort basis for imposing any liability against him in this matter.

1 20. Defendant alleges that the Declaration as a whole are no longer enforceable because
2 of abandonment.

3 21. Defendant alleges that any and all portions of the Declaration at issue in this case are
4 no longer enforceable because of abandonment.
5

6 22. Defendant alleges that his conduct and actions were not wrongful under the facts of this
7 case.

8 23. Defendant alleges that Plaintiffs' injuries and damages, if any, were caused or
9 contributed to by Plaintiffs' own negligence or inattention. It is alleged that Plaintiffs, through their
10 own acts and/or omissions, were negligent and careless and a proximate cause of some or all of their
11 alleged damages. Accordingly, Defendant alleges the defenses of comparative negligence and the
12 right to a reasonable apportionment of fault in accordance with the Arizona Uniform Contribution
13 Among Tort Feasors Act, A.R.S. §12-2501, et. seq., and maintains that any recovery by Plaintiffs,
14 if any such recovery is permitted, should be barred or reduced up to and including the whole thereof.
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17 24. Defendant alleges that Plaintiffs failed to exercise reasonable care and diligence to
18 avoid and minimize their alleged damages. Consequently, Plaintiffs may not recover for losses that
19 could have been prevented or avoided by reasonable efforts on their part and their recovery, if any,
20 should be reduced by the amount of damages which could or should have been mitigated or avoided.
21

22 25. Defendant alleges the damages and injuries alleged in Plaintiffs' FAC, if any such
23 damages or injuries exist, were a direct and proximate result of acts and omissions of persons or
24 entities other than Defendant Veres. Defendant specifically alleges that one or more persons or
25 entities not a party to this action was wholly or partially at fault in causing or contributing to the
26 injuries and losses for which damages are being sought in this action. Therefore, any damages are
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1 limited in direct proportion to the percentage of fault attributable to the parties or non-parties at fault
2 pursuant to the Uniform Contribution Among Tort Feasors Act, A.R.S. §12-2501, et. seq.

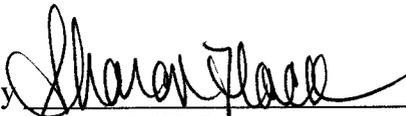
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4 26. Defendant further alleges as and for his affirmative defenses, the defenses of lack of
5 jurisdiction over the subject matter, lack of jurisdiction over the person, insufficiency of process,
6 insufficiency of service of process, failure to join a party under Rule 19 of the Arizona Rules of Civil
7 Procedure, lack of standing as real party in interest, lack of capacity to sue, estoppel, failure of
8 consideration, laches, res judicata, statute of frauds, statute of limitations, waiver, ratification, mutual
9 mistake, lack of mutual assent, accord satisfaction, and any other matter constituting an avoidance
10 or affirmative defense, and as set forth in Rules 8(c) and 12(b)-(h) of the Arizona Rules of Civil
11 Procedure, as may be discovered and deemed applicable in the course of discovery.

12
13 WHEREFORE, having answered each and every count of Plaintiffs' FAC, Defendant requests
14 judgment in his favor and against Plaintiffs as follows:

- 15
16 A. Declaring that the Declaration is unenforceable against Defendant;
17 B. Dismissing Plaintiffs' FAC against Defendant with prejudice;
18 C. Awarding Defendant's attorneys' fees and costs incurred in the defense of Plaintiffs'
19 FAC; and
20 D. Ordering such other and further relief as the Court deems just and proper in these
21 circumstances.
22

23 DATED this 25 day of March, 2011.

24 MUSGROVE, DRUTZ & KACK, P.C.

25
26 By 
27 Mark W. Drutz
28 Sharon Sargent-Flack
Attorneys for Defendant Robert D. Veres

1 COPY of the foregoing mailed
2 this 25th day of March, 2011, to:

3 J. Jeffrey Coughlin, Esq.
4 J. Jeffrey Coughlin PLLC
5 114 S. Pleasant Street
6 Prescott, AZ 86303
7 Attorneys for Plaintiffs

8 Jeffrey R. Adams, Esq.
9 The Adams Law Firm, PLLC
10 125 Grove Avenue
11 Prescott, AZ 86301
12 Attorneys for Defendants Cox

13 David K. Wilhelmsen, Esq.
14 Favour, Moore & Wilhelmsen, P.A.
15 P.O. Box 1391
16 Prescott, AZ 86302-1391
17 Attorneys for Property Owner James Varilek

18 Christopher D. Lonn, Esq.
19 David B. Goldstein, Esq.
20 Hymson, Goldstein & Pantiliat, P.C.
21 14646 North Kierland Boulevard #255
22 Scottsdale, AZ 85254
23 Attorneys for Linda J. Hahn

24 Hans Clugston, Esq.
25 Hans Clugston, PLLC
26 1042 Willow Creek Road
27 #A101-PMB 502
28 Prescott, AZ 86301
Attorney for Margaret Kozłowski and
Northern Arizona Fiduciaries, Inc.

Noel J. Hebets, Esq.
Noel J. Hebets, PLC
127 East 14th Street
Tempe, AZ 84281
Attorney for William M. Grace

- 1 William H. "Bill" Jensen
- 2 2428 West Coronado Avenue
- 3 Flagstaff, AZ 86001
- 3 pro se
- 4 Garry & Sabra Feddema
- 5 9601 East Far Away Place
- 6 Prescott Valley, AZ 86315
- 6 pro se
- 7 William R. Stegeman
- 8 Judith K. Stegeman
- 9 9200 East Far Away Place
- 9 Prescott Valley, AZ 86315
- 10 pro se
- 11 Van Tong Cong
- 12 Phi Thi Nguyen
- 12 8775 North Coyote Springs Road
- 13 Prescott Valley, AZ 86315
- 13 pro se
- 14 Karen L. Wargo
- 15 Michael P. Wargo
- 16 9200 East Spurr Lane
- 16 Prescott Valley, AZ 86315
- 17 pro se
- 18 Sergio and Susana Navarro
- 19 10150 N. Lawrence Lane
- 19 Prescott Valley, AZ 86315
- 20 pro se
- 21 Lloyd E. and Melva J. Self
- 22 9250 E. Slash Arrow Drive
- 22 Prescott Valley, AZ 86315
- 23 pro se
- 24 Rynda and Jimmy Hoffman
- 25 9650 E. Spurr Lane
- 25 Prescott Valley, AZ 86315
- 26 pro se
- 27
- 28

1 William and Shaunla Heckethorn
2 9715 E. Far Away Place
3 Prescott Valley, AZ 86315
4 pro se

4 Leo M. and Marilyn Murphy
5 9366 E. Turtlerock Road
6 Prescott Valley, AZ 86315
7 pro se

7 James C. and Leslie M. Richie
8 Rhonda L. Folsom
9 P.O. Box 26085
10 Prescott Valley, AZ 86312-6085
11 pro se

11 Kenneth Paloutzian
12 8200 Long Mesa Drive
13 Prescott Valley, AZ 86315
14 pro se

14 Bonnie Rosson
15 8950 E. Plum Creek Way
16 Prescott Valley, AZ 86315
17 pro se

17 John and Rebecca Feddema
18 9550 E. Spurr Lane
19 Prescott Valley, AZ 86315
20 pro se

20 Robert Lee Stack and Patti Ann Stack
21 Trustees of the Robert Lee and Patti
22 Ann Trust utd March 13, 2007
23 10375 Lawrence Lane
24 Prescott Valley, AZ 86315
25 pro se

24 John D. and Dusti L. Audsley
25 10500 N. Orion Way
26 Prescott Valley, AZ 86315
27 pro se

27 
28 _____