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 9 (Owner of Assessor's Parcel No. 103-01-002K)

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
 11 **IN AND FOR THE COUNTY OF YAVAPAI**

12	JOHN B. CUNDIFF and)	
13	BARBARA C. CUNDIFF, his wife,)	
14	<i>et. al.,</i>)	Action No. P1300-CV2003-0399
15)	
16	Plaintiff,)	
17)	AMENDED ANSWER OF
18	v.)	WILLIAM M. GRACE
19)	
20	DONALD COX and)	
21	CATHERINE COX, his wife,)	
22	<i>et. al.,</i>)	
23)	Assigned to the Honorable
24	Defendants.)	Kenton D. Jones
25)	

19 Defendant WILLIAM M. GRACE, as a joined property owner in Coyote Springs Ranch,
 20 ("Defendant Grace"), by and through his undersigned counsel, and for his Amended Answer to
 21 Plaintiffs' First Amended Complaint (the "**Complaint**") in the above-captioned matter and
 22 admits, denies and alleges as follows:

23 1. Defendant Grace admits the allegations contained in Paragraph 1 of the Complaint,
 24 and will hereafter refer to the total property described therein as "**Coyote Springs Ranch**".
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1 2. Defendant Grace asserts and alleges that he is an owner of property located within
2 Coyote Springs Ranch; specifically, that he is the sole present owner of Assessor's Parcel No.
3 103-01-002K, a 10 acre parcel located at 8850 East Pronghorn Lane in Coyote Springs Ranch
4 (the "**Grace Parcel**"); (his ex-wife, Catherine Annette Filippinetti, formerly Catherine Annette
5 Grace having recently, and pursuant to the provisions of their divorce decree, conveyed to him
6 any interest she may have held in said parcel through that certain *Quit Claim Deed* recorded on
7 11/29/2010 at Book 4779, Page 221, and indexed under Fee No. 2010-4429930 of the Yavapai
8 County Recorder), and otherwise admits the allegations contained in Paragraph 2 of the
9 Complaint.

10 3. Defendant Grace admits the allegations contained in Paragraph 3 of the Complaint
11 pertaining to the recording of the *Declaration of Restrictions* attached as EXHIBIT A to the
12 Complaint (the "**Declaration**"), and further agrees that said Declaration, and some or all of the
13 various restrictions therein (the "**Restrictions**") thereby encumbered title to all of the property
14 within Coyote Springs Ranch.

15 4.- 8. Defendant Grace admits the allegations contained in Paragraphs 4 through 8 of the
16 Complaint.

17 9. Defendant Grace is without sufficient information to admit or deny the allegations
18 contained in Paragraph 9 of the Complaint concerning the reliance of Plaintiffs on the
19 Declarations or any Restrictions therein, and therefore denies the same, and alleges and
20 asserts the affirmative defenses set forth in Paragraph 33 herein, particularly those pertaining
21 to constructive notice to Plaintiffs of the existence and impact of widespread and longstanding
22 violations of the Restrictions throughout Coyote Springs Ranch, including the resulting
23 abandonment by the owners of parcels within Coyote Springs Ranch (the "**Coyote Springs**
24 **Parcel Owners**") of some or all of those Restrictions.

1 10. Answering Paragraph 10 of the Complaint, Defendant Grace admits that the subject
2 Restrictions were part of the public record at the time he and all prior and present Coyote
3 Springs Parcel Owners acquired their respective properties, and that all such parties thereby
4 had constructive notice of the recording and existence of the Declaration and the Restrictions
5 therein, but deny that all of the Restrictions were applicable, enforceable or in effect at the
6 time of their acquisition of their respective properties, and again alleges and asserts the
7 affirmative defenses set forth in Paragraph 33 herein, particularly those pertaining to
8 constructive notice to Plaintiffs of the existing and impact of widespread and longstanding
9 violations of the Restrictions.

10 11.-14. Answering Paragraphs 11 through 14 of the Complaint, Defendant Grace is
11 without knowledge or information sufficient to form a belief as to the truthfulness of the
12 allegations contained therein, and therefore denies the same, at least with respect to his
13 parcel, and again alleges and asserts the affirmative defenses set forth in Paragraph 33 herein.

14 15. Defendant Grace admits Paragraph 15 of the Complaint.

15 16. Answering Paragraph 16 of the Complaint, Defendant Grace realleges and
16 incorporates by reference his answers to Paragraphs 1-15 of the Complaint as if each were fully
17 set forth herein.

18 17.-18. Defendant Grace denies the allegations of Paragraphs 17 and 18 of the
19 Complaint, at least with respect to his parcel, and again alleges and asserts the affirmative
20 defenses set forth in Paragraph 33 herein, particularly those regarding the impact of the
21 existence of widespread and longstanding violations of the Restrictions on the values and
22 prices of Plaintiffs' parcels at the time of their acquisition and the resulting lack of any real
23 damages to Plaintiffs.

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1 19. Answering Paragraph 19 of the Complaint, Defendant Grace realleges and
2 incorporates by reference his answers to Paragraphs 1-18 of the Complaint as if each were fully
3 set forth herein.

4 20.-21. Defendant Grace denies the allegations contained in Paragraphs 20 and 21 of
5 the Complaint, at least with respect to his parcel, and again alleges and asserts the affirmative
6 defenses set forth in Paragraph 33 herein, particularly those regarding the impact of the
7 existence of widespread and longstanding violations of the Restrictions on the values and
8 prices of Plaintiffs' parcels at the time of their acquisition, and the resulting lack of any real
9 damages to Plaintiffs.

10 22. Answering Paragraph 22 of the Complaint, Defendant Grace realleges and
11 incorporates by reference his answers to Paragraphs 1-21 of the Complaint as if each were fully
12 set forth herein, and the resulting lack of any real damages to Plaintiffs.

13 23.-24. Defendant Grace denies the allegations contained in Paragraphs 23 and 24 of
14 the Complaint, at least with respect to his parcel, and again alleges and asserts the affirmative
15 defenses set forth in Paragraph 33 herein, particularly those regarding the impact of the
16 existence of widespread and longstanding violations of the Restrictions on the values and
17 prices of Plaintiffs' parcels at the time of their acquisition, and the resulting lack of any real
18 damages to Plaintiffs.

19 25. Answering Paragraph 25 of the Complaint, Defendant Grace realleges and
20 incorporates by reference his answers to Paragraphs 1-24 of the Complaint as if each were fully
21 set forth herein.

22 26. Answering Paragraph 26 of the Complaint, Defendant Grace admits that a
23 controversy exists as to the enforceability of the Declaration and Restrictions, and again alleges
24 and asserts the affirmative defenses set forth in Paragraph 33 herein.

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1 27. Answering Paragraph 27 of the Complaint, Defendant Grace denies that such
2 allegations pertain to his parcel, is without sufficient information to admit or deny that they
3 pertain to the parcels of other Defendants, and again alleges and asserts the affirmative
4 defenses set forth in Paragraph 33 herein.

5 28. Defendant Grace denies Paragraph 28 of the Complaint, at least with respect to his
6 parcel, and again alleges and asserts the affirmative defenses set forth in Paragraph 33 herein.

7 29. Answering Paragraph 29 of the Complaint, Defendant Grace realleges and
8 incorporates by reference his answers to Paragraphs 1-28 of the Complaint as if each were fully
9 set forth herein.

10 30. Defendant Grace denies the allegations contained in Paragraph 30 of the Complaint,
11 at least with respect to his parcel, and again alleges and asserts the affirmative defenses set
12 forth in Paragraph 33 herein.

13 31. Defendant Grace denies each and every allegation in the Complaint not expressly
14 admitted herein.

15 32. Defendant Grace denies that Plaintiffs are entitled to any of the relief or remedies
16 requested in the Complaint or to any relief or remedy of any kind whatsoever.

17 33. Defendant Grace further and affirmatively alleges as follows:

18 a. he denies that some or all of the violations of Restrictions alleged by Plaintiffs
19 exist on his parcel;

20 b. he denies that the notices and demands by any of the Plaintiffs on the
21 Defendants named in the Complaint were made upon him;

22 c. there has been partial or complete abandonment by the Coyote Springs Parcel
23 Owners of their rights to enforce the Restrictions, because of the existence of numerous,
24 widespread, substantial, obvious and longstanding violations of some or all of the
25 Restrictions within the Declarations;

1 d. Plaintiffs are bound to actual notice of all conditions and aspects of their
2 parcels and of the remainder of Coyote Springs Ranch of which they had actual
3 knowledge at the times they purchased their parcels, and to constructive notice of those
4 conditions and aspects which were patently obvious to them at such times, or which
5 would have become actually known to them had they made the reasonably diligent
6 inquiry required of them (as described in *Shalimar Association v. D.O.C. Enterprises, Ltd.*,
7 688 P.2d 682, 142 Ariz. 36, (App. 1984)), including the existence and impact of numerous,
8 widespread, substantial, obvious and longstanding violations of certain Restrictions
9 within the Declarations, and the likelihood of abandonment of some or all of the
10 Restrictions by most or all of the Coyote Springs Parcel Owners;

11 e. the impact of any applicable statutes of limitations on any violations of the
12 Restrictions alleged in the Complaint, particularly violations that were apparent and in
13 existence for longer than the 6 or 4 year periods described in A.R.S. §§12-548 & 550, and
14 had not been challenged in court within those periods;

15 f. the damages alleged by Plaintiffs were a direct and proximate result of acts
16 and omissions of persons or entities other than Defendant Grace;

17 g. the lack of any real damages to Plaintiffs because: (i) of the impact on the
18 values of parcels purchased by Plaintiffs, and the corresponding prices they paid, from
19 the existence of numerous, widespread, substantial, obvious and longstanding violations
20 of the Restrictions, and (ii) since those acquisition dates, no substantial impact in their
21 parcel values has been caused by those continuing violations or any additional violations
22 of the Restrictions;

23 h. the counts against him in this action are barred by the doctrines of estoppel,
24 waiver and laches;

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i. the Complaint is barred because of Plaintiffs' own negligence, acts, omissions, carelessness and/or inattention;

j. discharge and release of Defendant Grace, if not other Defendants as well, from some or all of the Restrictions; and

k. any other matter constituting an avoidance or affirmative defense and also alleges that discovery may reveal the existence of other affirmative defenses as set forth in Rules 8(c) and 12(b), Ariz. R. Civ. P., and they reserve the right to amend this Answer to allege any and all of said affirmative defenses as may be applicable.

34. Defendant Grace is entitled to an award of his reasonable attorneys' fees incurred in defending against the Complaint pursuant to A.R.S. §§ 12-341.01 and 12-349.

WHEREFORE, having fully answered each and every Count of Plaintiffs' First Amended Complaint, Defendant Grace requests Judgment in his favor and against Plaintiffs as follows:

A. For an Order dismissing the Complaint, at least as it is asserted against him, with prejudice and ordering that Plaintiffs take nothing thereby;

B. For an Order declaring that the subject Declaration, or at least many of the Restrictions therein, are no longer enforceable as against any Coyote Springs Parcel Owner;

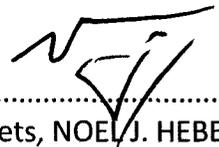
C. For an Order declaring that Defendant Grace, if not all Defendants, and their respective parcels, are not bound or encumbered by the subject Declaration or at least many of the Restrictions therein;

D. For an Order awarding Defendant Grace his reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341.01 and 12-348 and interest thereon at the highest legal rate;

E. For such other and further relief as the Court deems just and necessary under the premises.

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RESPECTFULLY SUBMITTED this 14th day of July, 2010.



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Noel J. Hebets, NOEL J. HEBETS, PLC
-- Attorney for Defendant William M. Grace
(Owner of Assessor's Parcel No. 103-01-002K)

1 The undersigned certifies that, on this 14th day of July, 2011, the original of the foregoing
2 document was mailed to the Clerk of the Court, while: (a) copies were e-mailed to counsel or
3 other parties at the email addresses shown below, and (b) notices of the filing of this
document were mailed to any parties for whom only postal addresses are shown below:

4 (a) Parties receiving copies by email only:

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1 (b) Parties receiving notice of the filing this the forgoing document by US mail with explanation
2 that it will soon be available on at <http://apps.supremecourt.az.gov/docsyav/>, the Clerk's
3 online site for High Profile Cases, and that they will be provided sooner copies of such filings if
4 they provide their email address pursuant to the following order within the Court's June 15,
5 2010 Notice, itself filed with the Clerk on June 17, 2010:

6 **IT IS ORDERED** by June 30, 2010 or at the time of filing an initial pleading or motion
7 with the Court, whichever is sooner, all parties and attorneys appearing in this case **SHALL**
8 designate and maintain an e-mail address with the Clerk of the Court and the other parties. The
9 e-mail address will be used to electronically distribute any document, including minute entries
10 and other orders, rulings, and notices described in Rule 125, *Rules of the Supreme Court* by e-
11 mail or electronic link in lieu of distribution of paper versions by regular mail. The e-mail
12 address shall be designated on each document filed. In the event that a party's e-mail address
13 changes, that change shall immediately be brought to the attention of the Clerk of Superior Court
14 and included on subsequent filings and pleadings.

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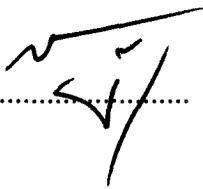
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