

1 TIMOTHY H. BARNES, P.C.
2 428 East Thunderbird Road, #150
3 Phoenix, Arizona 85022
4 (602) 492-1528 Direct
5 tim@thbpc.com

6 Timothy H. Barnes (SBN 003373)
7 *Attorney for Plaintiffs*

8 **SUPERIOR COURT OF MARICOPA COUNTY, ARIZONA**

9 LINDA W. SWAIN, an individual; and EILEEN
10 T. BRESLIN, an individual,

11 Plaintiffs

12 vs.

13 TTLC AHWATUKEE LAKES INVESTORS,
14 LLC, an Arizona limited liability company,

15 Defendant.

16 Case No. CV2014-051035

17 **PLAINTIFFS' REPLY IN**
18 **SUPPORT OF MOTION FOR**
19 **APPOINTMENT OF SPECIAL**
20 **MASTER**

21 (Assigned Hon. John R. Hannah, Jr.)

22 Defendant TTLC Ahwatukee Lakes Investors, LLC (“Defendant”) primary
23 Objection to Plaintiffs’ Motion for Appointment of Special Master (“Defendant’s
24 Objection”) is based on its opposition to Plaintiffs’ requested injunctive order in its
25 proposed form of Judgment and Order for Permanent Injunction. Defendant’s Objection,
26 1:16-24. Defendant argues there is no reason to appoint a special master because the Court
27 is without authority to enter a permanent injunction to restore the Lakes Golf Course in
28 the form proposed by Plaintiffs. *Id.* Plaintiffs’ Reply to Defendant’s Objection to Form
of Judgment explains (1:25 to 5:15) the multiple reasons Defendant’s argument fails
legally and factually.

Defendant’s suggestion that “not having a special master is likely to accelerate
matters” (Defendant’s Objection, 2:3) is based on its proposed overly broad injunction¹
under which Defendant would essentially be left to its own devices in restoring the golf

¹ Defendant’s argument that a permanent injunction should “only state that TTLC is required to operate a golf course on the Property so that it can be used for golfing and golfing practice” (Defendant’s Objection, 1:25 to 2:3) fails for the same reasons Plaintiffs opposed the same objection by Defendant in opposition to Plaintiffs’ form of judgment. Plaintiffs’ Reply to Defendant’s Objection to Form of Judgment, 5:16 to 6:23.

1 course. That circumstance would make no sense because, first, such an open-ended
2 injunction would not be enforceable and, more fundamentally, without a special master to
3 provide input any debate over compliance would be left to the Court to familiarize itself
4 with the reconstruction aspects of and resolve restoration issues raised by the parties. On
5 the other hand, a special master is professionally equipped to more readily resolve the
6 reconstruction aspects of restoration issues and, if challenged, advise the Court of options
7 to resolve the challenge.

8 Defendant's 2-part final objection to the appointment of a special master is, first,
9 "that a special master would not have the authority to tell TTLC how to restore the golf
10 course" and, second, "imposing any expense on TTLC to pay a special master would be
11 patently unfair". Defendant's Objection, 2:11-13. The first part of that objection is
12 addressed above and in Plaintiffs' Reply to Defendant's Objection to Form of Judgment
13 (1:25 to 5:15). Defendant's "patently unfair" arrogation must be considered in the context
14 of Defendant's strategy as outlined at trial: (i) purchase a purposely deteriorated golf
15 course (with no intention of restoring it), and (ii) perpetuate deterioration in order to extort
16 homeowners' acceptance of the destruction of their home values so that Defendant may
17 profit by building a housing tract, (iii) claim constitutional grounds (Fourth and Thirteenth
18 Amendments) for these arrogations, (iv) assert, once challenged in court, that Defendant
19 acted in the name of "good public policy", and (v) then, once the issues have been
20 adjudicated, maintain that the Court (like Plaintiffs), has no right to the tools to stop the
21 arrogations and enforce the Court's findings.

22 Plaintiffs respectfully submit a special master should be appointed to monitor the
23 progress of the restoration of the Lakes Golf Course.

24 Dated this 22nd day of February 2018.

25 TIMOTHY H. BARNES, P.C.

26 By /s/ Timothy H. Barnes (SBN 003373)

27 Timothy H. Barnes
28 *Attorney for Plaintiffs*

1 Original of the foregoing e-filed and
2 emailed this 22nd day of February 2018, to:

3 Chris R. Baniszewski
4 Warner Angle Hallam Jackson
5 Formanek PLC
6 2555 East Camelback Rd., Suite 800
7 Phoenix, Arizona 85016
8 Attorneys for TTLC Ahwatukee Lakes
9 Investors, LLC

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/s/ Carol J. Clark