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8 Attorneys for Department of Fire, Building and Life Safety

9
10 **ARIZONA SUPERIOR COURT**
11 **COUNTY OF MARICOPA**

13 Troon Village Master Association, an Arizona
non-profit corporation,

14 Plaintiff,

15 v.

16 Arizona Department of Fire, Building & Life
17 Safety; and Nancy J. Waugaman, an unmarried
18 woman.

19 Defendants.

Case No. LC-2007-000598-001DT

**NOTICE OF APPEARANCE
AS NOMINAL PARTY**

(Assigned to the Hon.
Margaret H. Downie)

20
21 Defendant Department of Fire, Building and Life Safety and its Director
22 Robert Barger (hereinafter "the Department"), by and through the undersigned
23 Assistant Attorney General, hereby notifies this Court that it will take a passive or
24 nominal role in this judicial review of its administrative decision. See, *International*
25 *Brotherhood of Electrical Workers. Local Union 640 v. Kayeton*, 199 Ariz. 508, 581
26 P.2d 1158 (Ct. App. 1978). The Department seeks to avoid potential adverse

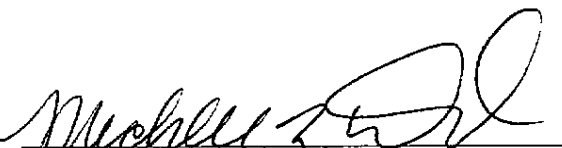
1 attorneys' fees award pursuant to A.R.S. §12-348(H)(4). See, Cortaro Water Users
2 Association v. Steiner, 148 Ariz. 314, 714 P.2d 807 (1986).

3 The circumstances underlying this appeal do not warrant active participation. In
4 the underlying administrative hearing, the Department was not the adjudicator of this
5 dispute and perceives no significant or compelling reason to interject itself into the
6 current litigation as an advocate. The matter was adjudicated by the Office of
7 Administrated Hearings and the final decision was issued by that office. The
8 Department merely received the Complaint, and forwarded the same to the Office of
9 Administrative Hearings.

10 For these reasons the Department is and will continue to be a nominal party in
11 these proceedings and will take a passive role even though it is a named defendant.
12 The Department waives its appearance at all future oral arguments, conferences and
13 hearings, but requests that it continue to receive copies of all pleadings, notices, minute
14 entries and orders.

15 RESPECTFULLY SUBMITTED this 25th day of October, 2007.

16 Terry Goddard
17 Attorney General

18
19 
20 Michelle L. Wood
21 Assistant Attorney General
22 Attorneys for the Department

23 **ORIGINAL** of the foregoing filed
24 this 25th day of October, 2007, with:

25 Maricopa County Superior Court
26 Clerk of the Court
101/201 W. Jefferson
Phoenix, AZ 85003

1 COPY of the foregoing mailed/delivered
this 25th day of October, 2007, to:

2 Hon. Margaret Downie
3 101/201 W. Jefferson
4 Phoenix, AZ 85701

5 Jason E. Smith, Esq.
6 Carrie H. Smith, Esq.
7 Carpenter, Hazlewood, Delgado & Wood, PLC
8 1400 E. Southern Ave., Ste. 640
9 Tempe, AZ 85282

10 Office of Administrative Hearings
11 1400 W. Washington, Ste. 101
12 Phoenix, AZ 85007

13 Nancy Waugaman
14 25924 N. 115th Way
15 Scottsdale, AZ 85255

16 Robert Barger, Director
17 Arizona Department of Fire, Building and Life Safety
18 1110 W. Washington St., St. 100
19 Phoenix, AZ 85007

20 
21 _____
22 Secretary to Michelle L. Wood

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Arizona Department of Fire, Building & Life
Safety; and Nancy J. Waugaman, an unmarried
woman.

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19 Defendants.

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Case No. LC-2007-000598-001DT

ANSWER

(Assigned to the Hon.
Margaret H. Downie)

21

22 Defendant Department of Fire, Building and Life Safety (hereinafter "the
Department") for its answer to Plaintiff's Complaint for Judicial Review of
23 Administrative Decision hereby admits, denies and alleges as follows:

24

I.

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The Department admits that Ms. Waugaman filed a complaint against
Troon Village at the Department of Fire, Building, and Life Safety. The Department

1 admits the matter was forwarded to the Office of Administrative Hearings for hearing
2 and that the ALJ rendered a final decision on August 13, 2007 which found in favor of
3 Ms. Waugaman. The Department admits that the decision was mailed to the parties on
4 August 14, 2007. The Department asserts that the decision of the ALJ speaks for itself.
5 The Department denies the remaining allegations of paragraph 1.

6 II.

7 The Department admits the allegations contained in paragraphs 2 and 4,
8 5, and 6, of Plaintiff's Complaint.

9 III.

10 The Department admits that Ms. Waugaman was a Defendant in the proceedings
11 before the Office of Administrative Hearings. The Department denies the remaining
12 allegations of paragraph 3.

13 IV.

14 The Department admits the Plaintiff was served on August 14, 2007,
15 with a copy of the OAH decision dated August 13, 2007. The Department admits
16 service was made by regular mail and that service is deemed complete five days
17 thereafter on August 19, 2007. As a result, the complaint should have been filed 35
18 days thereafter or on or before, September 23, 2007. The Department denies the
19 remaining allegations of paragraph 7.

20 V.

21 The Department denies the allegation of paragraph 8, and affirmatively
22 asserts that the decision of the ALJ was supported by substantial evidence and was not
23 arbitrary, irrational, capricious or in excess of legislative authority. The Department is
24 without sufficient facts to admit or deny the remaining allegations of paragraphs 8 a, b,
25 and c and 9 and therefore denies the same.

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VI.

Answering paragraph 10 a, b, c and d of Plaintiff's Complaint, the Department affirmatively asserts that the record on appeal is governed by A.R.S. § 12-904(B).

VII.

The Department denies each and every allegation not specifically admitted herein.

VIII.

For affirmative defenses, the Department alleges that the Department was not the adjudicator of this matter. The matter was adjudicated by the Office of Administrative Hearings which also issued the final Decision and Order. The Department asserts that the Decision and Order was based upon the record of proceedings before the Office of Administrative Hearings.

IX.

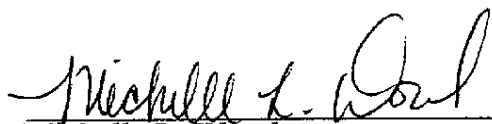
The Department alleges that the Decision and Order of the Office of Administrative Hearings is not arbitrary, capricious, irrational, illegal, unsupported by law, unsupported by evidence or an abuse of discretion.

WHEREFORE, having fully answered Plaintiff's Complaint, the Department requests the Court issue its order:

1. Dismissing Plaintiff's Complaint with prejudice.
2. Affirming the Decision and Order of the Office of Administrative Hearings.
3. Denying Plaintiff all requested relief.
4. Denying Plaintiff's request for stay of enforcement;
5. Denying Plaintiff's request for attorney's fees and costs.
6. Awarding the Department its attorney's fees and costs.
7. Granting such further relief as the Court deems just and equitable.

1 RESPECTFULLY SUBMITTED this 25th day of October, 2007.

2 Terry Goddard
3 Attorney General

4 
5 _____
6 Michelle L. Wood
7 Assistant Attorney General
8 Attorneys for the Department

9 **ORIGINAL** of the foregoing filed
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