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

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

11 Plaintiffs

12 vs.

13 ALCR, LLC, an Arizona limited
14 liability company,

15 Defendant.

16 Case No. CV2014-051035

17 **PLAINTIFFS' APPLICATION TO
18 DETERMINE ALCR, LLC IN VIOLATION
19 OF CONTEMPT SANCTIONS ORDER,
20 IMPOSE COERCIVE SANCTIONS, AND
21 CONTINUE SPECIAL MASTER**

22 (Assigned Hon. Melissa Iyer Julian)

23 Plaintiffs Linda W. Swain and Eileen T. Breslin (collectively, "Plaintiffs") submit
24 their application requesting the Court to schedule an evidentiary hearing to determine:

25 (i) that ALCR, LLC ("ALCR") failed to meet its August 31, 2022, deadline to
26 complete construction to restore the Ahwatukee Lakes Golf Course ("Golf Course") set
27 by the Court's contempt citation order of November 16, 2020 (the "Sanctions Order");

28 (ii) that photographic and other evidence affirms that ALCR continues to fail to
meet the deadline; and that, accordingly,

(iii) the Court should impose in its entirety the third penalty against ALCR
prescribed by the Sanctions Order; and consequently,

(iv) to ensure proper restoration of the Golf Course by extending and
strengthening its March 18, 2022, Order Appointing Special Master ("Special Master
Order").

This Application is supported by the below Memorandum of Points and
Authorities, the attached Exhibits A – J referenced herein, and a courtesy copy of the
Sanctions Order.

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1 **Memorandum of Points and Authorities**

2 **I. Background**

3 ALCR and its predecessor owners have battled Plaintiffs since long before this
4 action was filed on October 10, 2014. From 2006 to 2018, the Golf Course was owned
5 by Bixby Village Golf Course, Inc. (controlled by Wilson Gee) and three investors, Hiro
6 Investment LLC, Nectar Investment LLC and Kwang Co. LLC (the “Bixby Group”).
7 Sanctions Order, Findings of Fact, ¶ 8. During that period, the Golf Course was leased to,
8 and operated by, Ahwatukee Golf Properties LLC (“AGP”), which was solely owned by
9 Wilson Gee and his wife. Sanctions Order, Findings of Fact, ¶¶ 10, 11.

10 Judge Hannah’s January 2, 2018, Findings of Fact determined that from 2006 to
11 May 2013, the Bixby Group – through Wilson Gee – operated the Golf Course but allowed
12 it to deteriorate and from early on were planning to turn it into a 300-unit housing tract..

13 The Ahwatukee community listened, then vigorously and repeatedly rejected any
14 plan to pave over the golf course. In turn, Wilson Gee retaliated by closing the course,
15 surrounding it with an unsightly cyclone fence (May 2013; Sanctions Order, Findings of
16 Fact, ¶ 12). In quick steps, Bixby Group cut off the course’s irrigation systems, drained
17 the lakes, cannibalized usable equipment and stripped the course’s 18 greens for sod. *Id.*
18 While Bixby expeditiously packed some of the course’s bounty off to its other golf courses
19 in the Ahwatukee area *Id.*, at the Lakes Golf Course, it turned the water off for eight (8)
20 years! “Without a water supply, the Golf Course’s grass died, and its physical condition
21 deteriorated.” *Id.* Hundreds of mature trees withered, destroyed – devastating wildlife,
22 migratory birds, flora and fish. The value of neighboring homes whose occupants had
23 invested life savings to ensure a secure retirement in a cohesive neighborhood cascaded
24 south. The once verdant Ahwatukee Lakes Golf Course became the neighborhood blight,
25 and an environmental cause celebre.

26 Unable to develop the Golf Course themselves, the Bixby Group and AGP in July
27 2013 sold the Golf Course to Pulte Corporation, the nation’s largest homebuilder. But
28 after the neighborhood vigorously organized against Pulte developing the Golf Course,

1 Pulte, too, withdrew. Finally, in March 2015, the Bixby Group entered into a Purchase
2 Agreement with The True Life Companies, LLC (“TTLC”).¹ Although TTLC was aware
3 that the Golf Course was subject to the 1992 Declaration of Covenants, Conditions,
4 Restrictions and Easements of the Ahwatukee Country Club and the Lakes Golf Course
5 (“CCR”) requiring the property to be a golf course, TTLC purchased the Golf Course
6 knowing this action was pending and intending to overturn the CCR requirement the
7 property remain a golf course.

8 At trial, photographs reflecting the condition of the Golf Course from 2005, the
9 year before Bixby Group purchased the Golf Course, through 2017 (taken prior to the trial
10 in October 2017) were admitted in evidence. Joint Pretrial Statement filed October 18,
11 2017. All of the photographs (and all other trial exhibits included in the Joint Pretrial
12 Statement) were admitted in evidence the morning of the first day of trial.² Those
13 photographs were in trial Exhibit 17 (depicting the Golf Course conditions in 2013, 2014
14 and 2015), trial Exhibit 18 (depicting the Golf Course condition in 2017), trial Exhibit 19
15 (depicting the clubhouse, maintenance building, restroom and culvert), trial Exhibit 20
16 (depicting the Golf Course condition in comparison 2005 to 2017), trial Exhibit 21
17 (depicting the Golf Course conditions in comparison 2013 to 2017), and trial Exhibit 22
18 (depicting the Golf Course conditions from 2013 to 2017).

19 Four of the fourteen trial Exhibit 20 photographs are attached hereto as “Trial
20 Exhibit 20”. Those four photographs, although a small sample, graphically depict the Golf
21 Course’s dramatic decline from 2005 (the year before the Bixby Group purchased the Golf
22 Course) to 2017 (the year of the trial). The Trial Exhibit 20 photographs reflect lush
23 conditions at the Golf Course and a sampling of the hundreds of trees that populated it –
24 that ultimately died when Wilson Gee turned off the water.

25
26
27 ¹ This action was pending when the Bixby Group entered into Purchase Agreement with
28 TTLC, and as with Pulte Homes, without soliciting neighborhood input.

² See Minute Entry entered on October 26, 2017, page 1.

1 The Final Judgment and Order for Permanent Injunction (the “Judgment”) entered
2 on May 31, 2018, was affirmed by the Arizona Court of Appeals. The Arizona Supreme
3 Court denied ALCR’s Petition for Review of the Court of Appeals Opinion. And, on
4 November 9, 2020, the United States Supreme Court denied ALCR’s Petition for Writ of
5 Certiorari asserting ALCR was subject to the United States Constitution’s Thirteenth
6 Amendment’s prohibition against involuntary servitude by the Judgment’s order that
7 ALCR be required to operate the Golf Course. On April 4, 2022, the Arizona Court of
8 Appeals accepted ALCR’s Petition for Special Action, but denied relief.

9 The Bixby Group assigned its interests in the Golf Course to ALCR in or about
10 August 2018. Sanctions Order, Finding of Fact, ¶ 18. Except for Bixby Village Golf
11 Course, Inc. (Wilson Gee’s company)³, ALCR was originally made up of members of the
12 Bixby Group. *Id.* “At the contempt hearing, Wilson Gee testified that ALCR was created
13 on the advice of counsel, and to avoid liability to its members that owned other assets.”
14 *Id.* Two of the original members of ALCR, Hiro Investment, LLC and Kwang Co., LLC)
15 withdrew from ALCR because “these entities had and have substantial assets, but [] they
16 did not want to expose those assets to a possible sanctions award against ALCR for
17 contemptuous conduct.” Sanctions Order, Findings of Fact ¶ 33.

18 **II. Procedural Background of Contempt Proceedings**

19 Following the trial of this matter to the Court, the Final Judgment and Order for
20 Permanent Injunction” (the “Permanent Injunction” or “Judgment”) requiring the
21 restoration of the Golf Course was entered on June 1, 2018. Although the Judgment did
22 not specify how the Golf Course was to be restored, trial Judge Hannah outlined a
23 standard, and vested the golf course owner with express discretion to achieve it (June 1,
24 2018, Minute Entry Ruling, pg. 2):

25 *What the owner must do is create and operate a golf course that is consistent*
26 *with the reasonable expectations that the Lakes Golf Course created among*
27 *the benefitted homeowners. Reconstructing the Lakes Golf Course as it*

28 ³ See Sanctions Order, Findings of Fact ¶ 32.

1 existed in 2013 is one way to meet the reasonable expectations, but it is not
2 the only way.

3 Emphasis supplied. Four years after that ruling, Judge Agne reiterated Judge Hannah’s
4 standard (June 1, 2018, Minute Entry accompanying the Final Judgment and Order for
5 Permanent Injunction; see Agne’s Finding of Fact, ¶ 1 of Under Advisement Ruling
6 entered on January 19, 2022; (“January 2022 Order”). Sustaining these findings, the
7 Arizona Court of Appeals refined the point, stating the golf course deed restrictions were
8 intended to “protect the Benefitted Persons interest in living next to, or have views of, a
9 golf course.” *Swain v. Bixby Village Golf Course, Inc.*, 247 Ariz. 405, ¶ 23 (App. 2019).

10 Because their reasonable expectations had not been met, Plaintiffs initiated
11 contempt proceedings on May 20, 2020. By Order entered on August 26, 2020, the Court
12 found ALCR “in contempt of Court for intentionally and/or knowingly failing to comply
13 with Final Judgment and Order for Permanent Injunction.”⁴ Based upon the evidence
14 presented at hearings on August 18, 2020, and November 2, 2020, the Court issued the
15 Sanctions Order containing its extensive Findings of Fact (“FF”) and Conclusions of Law
16 (“CL”) and ordered ALCR to restore the Golf Course to an 18-hole executive golf course.
17 Sanctions Order, CL ¶¶ 6, 11, 13, 38, 45, 46 and Order, ¶¶ 2 & 3 (pg. 22).

18 To compel the Golf Course restoration, the Sanctions Order imposed three
19 deadlines with separate, sequential potential sanctions for a violation of each of the three.⁵
20 Sanctions Order, CL ¶ 40. The first deadline for “completion of preliminary pre–
21 construction matters” was set for May 31, 2021. Sanctions Order, ¶¶ 40, 44 – 45, 48 and
22 Order (pg. 22). The second deadline for “commencement of construction” was set for
23 August 31, 2021. Sanctions Order, ¶¶ 40, 46, 48 and Order (pg. 22). The third deadline
24
25

26
27 ⁴ This Finding/Order was “affirmed” in the Sanctions Order (pg. 22).

28 ⁵ “Each sanction stands alone, and the failure to meet one or more of the deadlines will
 not affect the civil sanctions imposed as to the other deadlines.” Sanctions Order, ¶ 40.

1 for “completion of construction and the commencement of operating the Golf Course”
2 was set for August 31, 2022.⁶ Sanctions Order, ¶¶ 40, 46, 48 and Order (pg. 22).

3 In the Court’s January 2022 Order, Judge Agne found that ALCR did not timely
4 comply with the requirements to meet the first deadline of August 31, 2021. While
5 recognizing the Judgment (“rendered under the applicable CC&R’s”) allowed ALCR
6 some “express discretion” in how the Golf Course would be restored, the Court found,
7 citing *Bike Fashion Corp. v. Kramer*, 202 Ariz. 420, 424 (App. 2002), a “party to a
8 contract can breach the implied covenant of good faith and fair dealing by exercising
9 express discretion in a way inconsistent with [the] other party’s reasonable expectations.”
10 The Court found that ALCR exercised its discretion in a way inconsistent with Plaintiffs’
11 “reasonable expectations” by failing to obtain City of Phoenix permits required for the
12 pre-construction portion of the restoration. January 2022 Order, CL, ¶ 2.

13 Judge Agne also ruled, “To prevent the ills of this and similar excesses of [ALCR’s]
14 express discretion, an appropriate remedy is the appointment of a golf course restoration
15 special master.” January 2022 Order, CL ¶ 3. On March 18, 2022, the Court entered the
16 stipulated Special Master Order. The parties agreed upon Mark Woodward to be
17 appointed Special Master and the Order appointing him vested the Special Master with
18 the authority to “to oversee and, if necessary, direct the manner of the restoration of the
19 Ahwatukee Lakes Golf Course.”

20 On March 18, 2022, the Court also entered a stipulated Order Re: Civil Bond. By
21 Minute Entry Order entered on April 4, 2022, the Court awarded Plaintiffs’ attorneys’ fees
22 for the period of July 10, 2020, through August 31, 2021.

23 **III. ALCR has not met the August 31, 2022, Sanctions Order deadline to complete**
24 **the restoration construction work at the Golf Course**

25 **A. The August 31, 2022, Sanctions Order deadline required all restoration**
26 **construction be fully completed by the deadline; and the Special Master**

27
28 ⁶ The Court’s August 29, 2022, Order extended the deadline to open the Golf Course.

1 **issued periodic reports re: the status of the restoration construction**
2 **portion of the Sanctions Order**

3 **1. The August 31, 2022, Sanctions Order deadline**

4 The Sanctions Order spelled out the requirements for each of the three deadlines.
5 The third deadline was perhaps the most direct. Sanctions Order, CL ¶ 46 states, in part,

6 *The third deadline as to completion of construction means what it says:*
7 *Completion means completion. Not substantial completion. Not partial*
8 *completion. Completion means that the Golf Course is open for golfing on*
9 *all 18 holes, and that any amenities mentioned in the Declarations, such as*
10 *a pro shop, pathways, etc. are ready for usage by golfers.*

11 Emphasis supplied.

12 Why Judge Campagnolo underscored “completion of construction” becomes clear
13 in the Sanctions Order, CL ¶ 47 where he states:

14 Based on the Court’s finding that ALCR entered into its ownership with full
15 knowledge of its responsibilities under the CCR and Judgment, and based on
16 the Court’s finding that ALCR is able to comply with these responsibilities,
17 the Court believes it necessary to impose monetary sanctions that will
18 provide ALCR with sufficient motivation to meet the deadlines. *The*
19 *amounts of the coercive sanctions are relatively large, but they need to be*
20 *for many reasons. First, the cost of building a golf course, based on Mr.*
21 *Gee’s testimony, is in the neighborhood of \$5 million, so the specter of*
22 *sanctions should be relatively high. Second, ALCR’s history, as magnified*
23 *by Mr. Gee’s historical involvement with the Golf Course, strongly indicates*
24 *that ALCR will do all it can to stall and delay its obligations under the*
25 *Judgment.*

26 Emphasis supplied. Regrettably, Judge Campagnolo’s concern for ALCR’s compliance
27 was prescient. With this filing, Plaintiffs have sought sanctions against ALCR for failing
28 to comply at two of the three stages of the Sanctions Order (failing to obtain permits and
failing to timely complete restoration construction).

1 **2. The Special Master periodic reports**

2 The Special Master Order appointed Mark Woodward “to oversee and, if
3 necessary, direct the manner of the restoration of the Ahwatukee Golf Course.” The
4 Special Master periodic written reports listed tasks essential to complete. See four of his

1 reports dated June 11, 2022, June 29, 2022, July 15, 2022, and August 6, 2022, attached
2 as Exhibits A – D. See Barnes Declaration Re: Exhibits to Application, ¶ 6.

3 The Sanctions Order generously afforded ALCR time to hire a golf course
4 construction company or other third party to undertake the restoration construction phase
5 which began September 1, 2021. Instead, ALCR opted to use personnel and maintenance
6 workers employed by ALCR principal Wilson Gee at his other Ahwatukee golf courses.
7 Correspondingly, as if to answer, the Special Master’s reports raised the recurring need
8 for more labor and more equipment, beyond the ALCR staff assigned to complete the
9 tasks. For example, the June 11, 2022, report states, “I’m requesting and encouraging
10 everyone involved to continue to have the sense of urgency we need in terms of staffing,
11 equipment”; and the August 6, 2022, report stated, “Mario continues to do a good job but
12 we need to get him the necessary resources (staff and the proper equipment) over the next
13 three (3) weeks so he can succeed in getting all the remaining work completed”.

14 **A. ALCR has not replaced the Clubhouse, which was the primary amenity**
15 **of the original Golf Course**

16 The Sanctions Order expressly requires ALCR to restore the Golf Course with all
17 the “amenities mentioned in the Declarations, such as a pro shop, pathways, etc.”
18 Sanctions Order CL, ¶ 46. The CCR, ¶ 2, describes amenities including clubhouses,
19 restaurants, pro shops and golf cart trails. Because Ahwatukee Lakes was Arizona’s top-
20 rated executive golf course, its ample clubhouse was a bustling center of sport, commerce,
21 community and camaraderie – part of the backdrop for Judge Hannah’s finding that any
22 restoration must be “consistent with the reasonable expectations that the Golf Course
23 created among the benefitted homeowners”.

24 In contrast, as of August 31, 2022, ALCR dropped a 15 ft. by 32 ft. manufactured
25 building it described as a “temporary clubhouse” in its Golf Course restoration plans
26 stipulated into evidence as ALCR Exhibits 18 and 19 (attached as Exhibit E) during the
27 September 23, 29, 2021, and October 6, 2021, evidentiary hearing). Those plans state the
28 clubhouse “will have drinks and snacks” and a pro shop. ALCR’s Exhibit 18 to the

1 October 2021 sanction hearing (attached as Exhibit E) informed the Court that the restored
2 Clubhouse would have a restroom. For the course’s leading amenity, Judge Hannah’s
3 standard seems not to reconcile with ALCR’s small, manufactured building. For
4 restoration of the Golf Course to be complete, ALCR must provide the Court a reasonable
5 timeline addressing when an appropriate clubhouse will be built at its own expense.

6 **B. Inadequate budget**

7 As the preceding discussions hint and the photographic evidence suggests, ALCR’s
8 issues as to timeliness in restoration, lack of staff, inadequate space and building choice
9 finger the problems’ core: inadequate budget.

10 As Judge Campagnolo noted: Wilson Gee testified that he believed the restoration
11 of the Golf Course would require “in the neighborhood of \$5 million”. Sanctions Order,
12 CL, ¶ 46. In contrast, the cost of the current restoration to date appears to be about or less
13 than \$1 million. Calling a 15 ft. by 32 ft. manufactured building a suitable clubhouse for
14 what was Arizona’s top executive golf course before its plunder focuses the point. What
15 Judge Campagnolo described as, Wilson Gee’s “historical involvement with the Golf
16 Course [which] strongly indicates that ALCR will do all it can to stall and delay its
17 obligations under the Judgment.” Unless ALCR is ordered to fully restore the clubhouse,
18 the 15 ft. by 32 ft. manufactured building will be all that that ALCR ever produces.

19 **C. ALCR has not completed restoration repairs of the cart paths around**
20 **the Golf Course**

21 The concrete cart path that loops throughout the entire Golf Course had multiple
22 places where the concrete had either buckled or was broken in some manner. The Special
23 Master reports included several references regarding the need to repair those areas.

- 24 ● The June 11, 2022, report stated, “The damaged and missing concrete cart paths
25 will need to be repaired and replaced.”
- 26 ● The June 29, 2022, report stated, “The broken concrete cart paths need to be
27 repaired sometime in July and August.”

1 ● The July 15, 2022, report stated, “The broken concrete cart paths need to be
2 repaired sometime in July and August.”

3 ● The August 6, 2022, report stated, “Need to get the concrete work on the
4 damaged cart paths fixed as soon as possible.”

5 As of August 31, 2022, multiple areas of the concrete cart path remain unrepaired.
6 Several of those areas are on the west side of the Golf Course near the 12th, 16th and 18th
7 fairways. Other cart path problem areas on the east side appear near the 6th and 8th greens.
8 See Exhibit F.⁷

9 **D. ALCR has not completed the restoration of the restrooms on the Golf**
10 **Course**

11 Of two restrooms on the Golf Course – one on each side of the course – as of
12 August 31, 2022, neither had been repaired. See attached Exhibit G. Despite ALCR’s
13 plans stating that “existing restrooms will be repair[ed] and an additional one in the
14 clubhouse,” See ALCR Exhibit 18 in attached Exhibit E. See also ALCR Exhibit 19
15 (“Restore both bathrooms on the course”) in attached Exhibit E. As well, the Special
16 Master’s August 6, 2022, report noted, “The two on-course restrooms need to be a focused
17 priority to get repaired, operational, painted, etc.” That neither has been repaired remains
18 further evidence that ALCR has failed to comply with its August 31, 2022, deadline.

19 **E. Lake beds uncleaned, unsealed or abandoned.**

20 The 8-year span with no water in the lakes beds on the Golf Course left the lake
21 beds overgrown with scrub trees and shrubs. The Special Master report of the June 11,
22 2022, noted the need to “[c]lean up around all lake beds”; and the need for “more cleanup
23 work around the perimeter of the large lake behind #16 green”. See attached Exhibit A.
24 the Pending Work” portion of the June 29, 2022, Special Master report noted, “The lake
25 edges on the large pumping lake need to be cleaned of all weeds and unwanted plant
26 material as soon as possible”; and “All the other lakes need to be cleaned as well.” See

27
28 ⁷ The photographs in Exhibit F and those is Exhibits G through J are but samples of the
photographs depicting the conditions of the Golf Course.

1 attached Exhibit B. The “Pending Work” portion of the July 15, 2022, Special Master
2 report stated, “The lake edges on the large pumping lake and all lakes need to continue to
3 be cleaned up now that the weeds have been removed.” See attached Exhibit C. The
4 “Pending Work” portion of the August 6, 2022, Special Master report stated, “The lakes
5 on both the front nine and the back nine that will not have water in them need to be cleaned
6 out. All trees, weeds and debris should be removed.” See attached Exhibit D.

7 ALCR has neither cleaned out nor cleaned up each of the lake beds on the Golf
8 Course. Attached Exhibit H reflects one of the lake beds still scattered with scrub growth
9 which, when compared with the 2005 photographs (in Trial Exhibit 20), is not close to
10 acceptable condition.

11 Finally, ALCR appears to have made no effort whatsoever to restore the “Z” lake,
12 a prominent, missing element of the Golf Course off of Sandia Street. The Lake’s absence,
13 missing from the Gee/Bixby restoration, betrays another of the expectations cited by Judge
14 Hannah, refined by the Arizona Court of Appeals to “protect the Benefitted Persons
15 interest in living next to, or have views of, a golf course.” *Swain v. Bixby Village Golf*
16 *Course, Inc.*, 247 Ariz. 405, ¶ 23 (App. 2019).

17 **F. ALCR has not completed the bridge repair and graffiti removal**

18 **1. Bridges**

19 There are several bridges on the Golf Course that needed to be repaired or replaced.
20 Certain of those bridges also had issues with the concrete cart paths butting up to the
21 bridges that needed to be addressed. See also “Late Summer Projects” portion of June 11,
22 2022, Special Master report (attached Exhibit A) and “Pending Work” portion of June 29,
23 2022, Special Master report (attached Exhibit B). The bridge work that was “completed”
24 was, generously, shoddy work that reflects a “workmanship be damned” attitude. See,
25 e.g., attached Exhibit I. Needless to say, the August 31, 2022, deadline, the bridge issues
26 have not been resolved and are therefore not completed.

27 //

28 //

1 **2. Graffiti**

2 There are tunnels going underneath 44th Street that connect the front nine (on the
3 east side) and the back nine (on the west side). Those tunnels are covered in graffiti which
4 the July 15, 2022, Special Master report directed to be “addressed and removed”. See
5 Exhibit C. This task was not completed by the August 31, 2022, deadline to complete the
6 restoration construction of the Golf Course. See Exhibit J.

7 **G. Plaintiffs’ request for Mark Woodward to continue as Special Master**

8 The Special Master Order appointed Mark Woodward “to act as Special Master in
9 this matter to oversee and, if necessary, direct the manner of the restoration of the
10 Ahwatukee Lakes Golf Course.” That Order effectively allows the Special Master to
11 continue in place so long as the Golf Course is being restored and meets the Sanctions
12 Order’s requirements. However, the compensation portion of that Order goes only
13 through October 2022. Plaintiffs request the Court enter an order extending the Special
14 Master Order indefinitely until the Golf Course is fully restored to the standard set by
15 Judges Hannah (May 31, 2018) and Agne (January 19, 2022).

16 The Special Master played a pivotal role in providing a roadmap of how the Golf
17 Course should be restored. That ALCR did not follow the roadmap completely was on
18 ALCR, not the Special Master. Because ALCR has not completed the restoration
19 construction portion of the Sanctions Order, Plaintiffs request that the Court order that the
20 Special Master shall continue with his duties, being paid \$3,000 per month (beyond
21 October) until the Golf Course is fully restored by all required tasks satisfactorily
22 completed.

23 **H. Plaintiffs’ Reasonable Attorneys’ Fees**

24 The Sanctions Order allowed Plaintiffs to recover attorneys’ fees one time. See
25 Sanctions Order, pg. 23 (Order ¶ 3). Plaintiffs have been awarded attorneys’ fees once
26 under the Sanctions Order. January 2022 Order, pg. 4. However, if it becomes necessary
27 for Plaintiffs to once again challenge ALCR’s completion of the restoration construction,
28 Plaintiffs further request that the Court enter an order that Plaintiffs may seek their

1 reasonable attorneys' fees incurred after August 31, 2022, in relation to their efforts to
2 enforce the Sanctions Order.

3 **III. Conclusion**

4 The succession of defendants in this matter have willfully ignored the CCR, and
5 the determination of Plaintiffs and their neighbors to seek to enforce the CCR despite the
6 odds. Plaintiffs consequently wish to acknowledge that, without exception, the courts
7 have responded to their arguments with fairness, and sometimes ferocity.

8 The defendants each knew what they were getting into. Yet, even after being given
9 the opportunity to redress their errors, defendants, as noted by three trial judges, have been
10 consistent in delay, and in breaching the standards of good faith and fair dealing. Their
11 actions have inspired little trust and no confidence by maneuvering to avoid responsibility,
12 or to lowball restoration by a factor of 5.

13 From the outset, Judge Hannah's Conclusion of Law, ¶ 25, aptly concluded "The
14 inequitable conduct of Bixby Properties [] largely created the alleged hardship" and "that
15 Bixby's actions substantially contributed to the conditions that made restoration of the golf
16 course economically unfeasible. Bixby [] will bear most of the economic burden if the
17 transaction fails. That result, frankly, will not be unfair."

18 Not surprisingly, Judge Campagnolo accurately predicted that "*ALCR's history, as*
19 *magnified by Mr. Gee's historical involvement with the Golf Course, strongly indicates*
20 *that ALCR will do all it can to stall and delay its obligations under the Judgment.*"
21 Sanction Order, Conclusion of Law, ¶ 47. Emphasis supplied.

22 Consequently, because defendants from the outset to the present day continue in
23 their dilatory manner, Plaintiffs request imposition of the maximum \$2 million coercive
24 sanction, to ensure compliance and redress the damage to Plaintiffs and their community.

25 Dated this 13th day of September 2022.

26 TIMOTHY H. BARNES, P.C.

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

28 Timothy H. Barnes
Attorney for Plaintiffs

1 Original of the foregoing e-filed and
2 emailed this 13th day of September 2022, to:

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/s/ Carol J. Clark