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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF LA PAZ**

RODNEY ELLWOOD SCHLESENER,  
an unmarried man and Arizona resident  
doing business as HT4,

Plaintiff,

v.

LANDARIZONA/JAK, LLC, an Arizona  
limited liability company,

Defendant.

Case No. S1500CV202400045

**DEFENDANT'S FIRST AMENDED  
ANSWER AND COUNTERCLAIM**

(Tier 1)

Defendant LandArizona/JAK, LLC ("LandArizona") for its Amended Answer to  
Rodney Ellwood Schlesener dba HT4's ("HT4" or "the plaintiff") Complaint, admits,  
denies, and alleges as follows.

**THE PARTIES**

1. LandArizona is without knowledge and information sufficient to form a  
belief as to the truth of HT4's allegations in Paragraph 1.
2. LandArizona admits HT4's allegations in Paragraph 2.

**JURISDICTION & VENUE**



1           9.     LandArizona denies HT4's allegation in Paragraph 9, that the plaintiff's  
2 twenty-day preliminary notice was physically served upon LandArizona on July 25,  
3 2023. LandArizona admits that, per the copy of the preliminary notice, affidavit of  
4 service, and U.S. Postal Service certificate of mailing, the plaintiff deposited the  
5 preliminary notice in the U.S. mails on July 25, 2023. LandArizona admits the remainder  
6 of HT4 allegations in Paragraph 9.  
7

8           10.    LandArizona denies HT4's allegations in Paragraph 10.  
9

10          11.    LandArizona denies HT4's allegations in Paragraph 11.

11          12.    With respect to HT4's allegations in Paragraph 12, LandArizona admits  
12 that HT4 provided to LandArizona a written request for additional payment, and that such  
13 document is contained in the plaintiff's Exhibit D attached to its complaint. LandArizona  
14 denies that the plaintiff transmitted that request for payment to LandArizona on October  
15 14, 2023, or that the document was entitled "Invoice" or contained content that is  
16 customary and normal for an invoice in the Arizona construction contracting industry.  
17 LandArizona denies that the work described in the plaintiff's Exhibit D constitutes "extra  
18 work". LandArizona affirmatively states that the plaintiff transmitted by email the  
19 written request for additional payment in the amount of \$20,245.70 for the first time on  
20 October 16, 2023, and that the plaintiff entitled the document "Final Bill 1".  
21 LandArizona affirmatively alleges that all work described in the "Final Bill 1" was for  
22 work included in the original Proposals and did not constitute "extra work". LandArizona  
23 affirmatively alleges that the progress payment invoices that the plaintiff had previously  
24 transmitted to LandArizona did not include any reference to extra work or extra charges.  
25  
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1           13.    LandArizona denies HT4's allegations in Paragraph 13.

2           14.    LandArizona admits HT4's allegations in paragraph 14.

3  
4                           **COUNT ONE**  
5                           **(Breach of Contract)**

6           15.    LandArizona incorporates and re-alleges its prior answers set forth above  
7 as though fully set forth herein.

8           16.    LandArizona admits that it refused to pay HT4's demand for \$20,245.70,  
9 which HT4 transmitted to LandArizona on October 16, 2023. LandArizona denies the  
10 entirety of the remaining allegations of HT4 in Paragraph 16.

11           17.    As to HT4's allegations in Paragraph 17, LandArizona denies that the  
12 plaintiff served LandArizona with a "Notice of Intent to File a Bond Claim, Mechanic's  
13 Lien or Stop Notice" ("Notice of Intent") on October 30, 2023. The plaintiff's Notice of  
14 Intent, attached to its complaint as Exhibit E, states that it was placed in the mail on  
15 October 30, 2023. LandArizona affirmatively alleges that a Notice of Intent is not a  
16 statutorily-created instrument and does not have service definitions, such as placement in  
17 the U.S. mails constituting service upon a recipient, in contrast with the service  
18 definitions for Arizona's statutorily-created twenty-day preliminary notices.  
19 LandArizona further affirmatively alleges that the Notice of Intent does not have any  
20 statutory basis or legal consequence, and that it is no different from a non-statutory  
21 demand letter.  
22

23           18.    LandArizona denies HT4's allegations in Paragraph 18 to the extent that  
24 HT4 alleges that any additional amounts were due from LandArizona after LandArizona  
25 made the October 12, 2023 direct deposit to the plaintiff in the amount of \$25,010.34,  
26  
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1 and after those funds fully transmitted into the plaintiff's bank account, thereby  
2 converting HT4's execution of a conditional waiver and release on final payment, into an  
3 unconditional waiver and release on final payment. See A.R.S. § 33-1008(D).  
4  
5 LandArizona admits that, despite the absence of entitlement to any additional payment,  
6 the plaintiff nevertheless made multiple demands upon LandArizona for payment of  
7 \$20,245.70.

8  
9 19. LandArizona denies HT4's allegations in Paragraph 19 in full.

10 20. LandArizona denies HT4's allegations in Paragraph 20 in full.

11 21. LandArizona denies HT4's allegations in Paragraph 21 in full.

12 **COUNT TWO**  
13 **(Prompt Payment Violation)**

14 22. LandArizona re-alleges its answers to the paragraphs set forth above and  
15 incorporates the same herein as though fully set forth at length.

16  
17 23. LandArizona denies that it received a document entitled "Extra Work  
18 Invoice". LandArizona denies that any work or materials described in the document  
19 entitled "Final Bill 1" that the plaintiff emailed to LandArizona on October 16 contained  
20 descriptions of any labor, equipment use, or materials that were outside the scope of the  
21 original three Proposals submitted to LandArizona on July 5 and signed by LandArizona  
22 on July 6, 2023, or constituted "extra work". LandArizona admits that it did not respond  
23 in writing within fourteen days following receipt of HT4's email on October 16, 2023.  
24 LandArizona denies that it had any obligation to respond to the October 16, 2023, email  
25 by HT4 because LandArizona's payment obligations under the Proposals were complete,  
26 and because there was an accord and satisfaction as to any other payments amounts  
27  
28

1 alleged by HT4 to be due under the Proposals. LandArizona affirmatively alleges that  
2 payment of the three Proposals was complete, and therefore the Arizona Prompt Pay Act  
3 was no longer applicable, with no additional amounts due from LandArizona.  
4 LandArizona affirmatively alleges that this is due, in part, to LandArizona's October 12,  
5 2023 direct deposit into the plaintiff's bank account in the amount of \$25, 010.34,  
6 followed by the transmittal of those funds into the plaintiff's bank account, thereby  
7 converting HT4's execution of a conditional waiver and release on final payment into an  
8 unconditional waiver and release on final payment. *See* A.R.S. § 33-1008(D).  
9 Accordingly, LandArizona submits that its payment of \$25,010.34 constituted a final  
10 payment under A.R.S. § 32-1182(A), and therefore the plaintiff's "Final Bill 1" was not  
11 entitled to the protections of the Arizona Prompt Pay Act.  
12  
13  
14

15 24. LandArizona admits, as to HT4's allegations in Paragraph 24, that  
16 LandArizona has not paid to the plaintiff the \$20,245.70 that the plaintiff has demanded,  
17 for the reasons stated in LandArizona's answer. LandArizona denies that it is  
18 "withholding" payment from the plaintiff, which falsely suggests that LandArizona owes  
19 any further monies to the plaintiff; LandArizona does not.  
20

21 25. LandArizona denies HT4's allegations in Paragraph 25 in full.

22 26. LandArizona denies HT4's allegations in Paragraph 26 in full.  
23 LandArizona affirmatively alleges that the Arizona Prompt Pay Act has no relevance to  
24 this action, for the reason that, after LandArizona made the October 12, 2023 direct  
25 deposit to the plaintiff in the amount of \$25,010.34, and after those funds fully  
26 transmitted into the plaintiff's bank account, HT4's execution of a conditional waiver  
27  
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1 and release on final payment converted into an unconditional waiver and release on final  
2 payment. See A.R.S. § 33-1008(D). Accordingly, LandArizona submits that its payment  
3 of \$25,010.34 constituted a final payment under A.R.S. § 32-1182(A), and that the  
4 plaintiff's "Final Bill 1" was not entitled to the protections of the Arizona Prompt Pay  
5 Act. LandArizona also affirmatively states that the plaintiff, by citing to A.R.S. § 32-  
6 1129.01(K), is improperly basing its claim upon the old version of the Arizona Prompt  
7 Pay Act, instead of the new version found at A.R.S. § 32-1181, *et seq.*

8  
9  
10 27. LandArizona denies HT4's allegations in Paragraph 27 in full.  
11 LandArizona affirmatively states that the only remedy which the Arizona Prompt Pay  
12 Act provides is the award of interest of eighteen percent (18%) per annum, and that such  
13 award of interest is available only with respect to amounts which LandArizona is  
14 adjudged to owe to the plaintiff. LandArizona affirmatively alleges that, since  
15 LandArizona owes nothing to the plaintiff, the Arizona Prompt Pay Act does not provide  
16 for any assessment of interest and is not relevant to this action.  
17

18 **COUNT THREE**  
19 **(Unjust Enrichment)**

20 28. LandArizona re-alleges the allegations set forth above and incorporates the  
21 same herein as though fully set forth at length.

22  
23 29. LandArizona denies that it made any request whatsoever of the plaintiff as  
24 part of any form of change order, including a written and signed change order, or as part  
25 of any deviation from, alteration of, or addition to the work scope in the three Proposals,  
26 or that the plaintiff supplied any labor, rental equipment, or materials beyond what was  
27 included in the work scope of the Proposals and therefore already required to be  
28

1 performed and delivered pursuant to the Proposals. LandArizona denies that the labor,  
2 rental equipment, materials or other components of the “Final Bill 1” transmitted to  
3 LandArizona on October 16, 2023, are entitled to a valuation outside of the total charges  
4 of the Proposals, as resolved by LandArizona’s final payment of \$25,010.34 in exchange  
5 for HT4’s conditional waiver and release on final payment of that same amount. In the  
6 event of a separate valuation of any labor, rental equipment, or materials described in the  
7 “Final Bill 1” that were supplied to the project by the plaintiff, LandArizona is without  
8 sufficient knowledge and information to form a belief as to the truth of HT4’s allegation  
9 of valuation in Paragraph 29, and therefore denies same.

12         30. LandArizona denies HT4’s allegations in Paragraph 30 that LandArizona  
13 failed to pay to the plaintiff the “full value of the labor, equipment, materials and  
14 supplies”. LandArizona affirmatively alleges that it fully paid for any items described in  
15 the “Final Bill 1” that were actually supplied to LandArizona’s construction site, as part  
16 of LandArizona’s two progress payments and final payment to HT4 for the three  
17 Proposals, with HT4 accepting the \$25,010.34 in exchange for a conditional waiver and  
18 release on final payment. LandArizona admits that the items in the “Final Bill 1” that  
19 were delivered to the site had some value, but affirmatively alleges that LandArizona  
20 paid for that value as part of its payment for the three Proposals. LandArizona  
21 affirmatively alleges that, because the items in the “Final Bill 1” were included in the  
22 scope of work in the Proposals, the rule of law in Arizona values those items at the  
23 agreed-upon contract amount: “[W]hile the contract price between the subcontractor and  
24 the contractor is not binding upon the owner, the agreed price nevertheless may be taken  
25  
26  
27  
28

1 as prima facie the reasonable value of the materials.” *Lenslite Co. v. Zocher*, 95 Ariz.  
2 208, 213, 388 P.2d 421 (1964) (citing *Lanier v. Lovett*, 25 Ariz. 54, 213 P. 391 (1923)).

3  
4 31. LandArizona denies HT4’s allegations in Paragraph 31 in full.  
5 LandArizona affirmatively alleges that the remedy of unjust enrichment is not available  
6 to the plaintiff where remedies at law, in this case the parties’ contract, are available:  
7 “[a]n unjust enrichment claim requires proof of five elements: [...] (5) the absence of a  
8 remedy provided by law.” *Wang Elec., Inc., v. Smoke Tree Resort, LLC*, 230 Ariz. 314,  
9 318 (Ct. App. 2012). LandArizona affirmatively alleges that, because it and HT4 entered  
10 into three enforceable contracts in the form of the three July 5, 2023 Proposals, which  
11 LandArizona signed July 6, 2023, the plaintiff cannot pursue an unjust enrichment claim:  
12 “[only] [i]f a party performs work, renders services, or expends money under an  
13 agreement which is unenforceable, but not illegal, he may recover in quantum meruit...”  
14 *Ruck Corp. v. Woudenberg*, 125 Ariz. 519, 611 P.2d 106, 109 (App. 1990).  
15

16  
17 32. LandArizona denies HT4’s allegations in Paragraph 32 in full.  
18

19 **COUNT FOUR**  
**(Mechanic’s Lien Foreclosure and Judgment for Deficiency)**

20 33. LandArizona re-alleges its answers to the paragraphs set forth above and  
21 incorporates the same herein as though fully set forth at length.  
22

23 34. LandArizona admits HT4’s allegations in Paragraph 34.

24 35. LandArizona admits HT4’s allegations in Paragraph 35.

25 36. LandArizona denies HT4’s allegations in Paragraph 36 in full.  
26 LandArizona affirmatively alleges that there was no payment due by LandArizona to  
27 HT4 that could form the basis of a valid mechanic’s lien under Arizona law.  
28

1 LandArizona further affirmatively alleges that, after LandArizona made the October 12,  
2 2023 direct deposit to the plaintiff in the amount of \$25,010.34, and after those funds  
3 fully transmitted into the plaintiff's bank account, HT4's execution on October 12, 2023,  
4 of a conditional waiver and release on final payment converted into an unconditional  
5 waiver and release on final payment. See A.R.S. § 33-1008(D). Accordingly,  
6 LandArizona affirmatively alleges that its payment of \$25,010.34 constituted both a final  
7 payment and an accord and satisfaction under A.R.S. § 33-1008(D). Accordingly, as  
8 LandArizona informed counsel for HT4 by correspondence dated May 24, 2024, HT4  
9 violated A.R.S. § 33-420 with its mechanic's lien and its notice of *lis pendens*, recorded  
10 with the La Paz County Recorder on November 21, 2023, and May 16, 2024,  
11 respectively, and has incurred two separate statutory penalties of \$5,000 per the two  
12 separate violations of the false claims statute.  
13  
14  
15

16 **AFFIRMATIVE DEFENSES PRESERVED AS TO ALL COUNTS**

17 LandArizona asserts and thereby preserves the following affirmative defenses to  
18 HT4's claims to the extent necessary to defend against any compromise or diminution by  
19 HT4 of claims or interests of LandArizona:  
20

- 21 a. Ambiguity/Vagueness
- 22 b. Accord and satisfaction
- 23 c. Fraud in the inducement of an accord and satisfaction
- 24 d. Collateral estoppel;
- 25 e. Equitable estoppel;
- 26 f. Consent;
- 27 g. Ratification;
- 28 h. Novation;
- i. Statutory compliance and limitation on liability;
- j. Statute of Frauds;
- k. Waiver;
- l. Failure to mitigate damages;

- 1 m. Election of remedies;  
2 n. Intervening/Superseding cause;  
3 o. Lack of duty;  
4 p. Laches;  
5 q. Unclean hands;  
6 r. Spoliation of evidence;  
7 s. Prevention and frustration of performance;  
8 t. Punitive damages for fraud in the inducement of an accord and  
9 satisfaction  
10 u. Without waiving objections, any additional affirmative defenses which  
11 become apparent during the course of discovery in this matter.  
12

13 **PRAYER FOR RELIEF**  
14

15 WHEREFORE, the Defendant LandArizona/JAK, LLC, respectfully requests that  
16 this Court enter relief in favor of LandArizona and against Rodney Ellwood Schlesener,  
17 dba HT4, as follows:  
18

- 19 A. Denying all relief requested by the plaintiff in their Complaint against  
20 LandArizona, and ordering that the plaintiff take nothing thereby;  
21  
22 B. Awarding to LandArizona its cost and attorney fees for a successful defense  
23 against the claims of the plaintiff, pursuant to any available contractual  
24 provision, A.R.S. §§ 12-341, 341.01(A), 349-350, and A.R.S. §§ 33-995(E )  
25 and 998(B), along with statutory interest thereon;  
26  
27 C. For an order entering such other and further relief in favor of LandArizona, as  
28 this Court deems just and appropriate.

**COUNTERCLAIM**

As and for their Amended Counterclaim, Defendant alleges as follows:

1 **PARTIES**

2 1. At all times relevant hereto, Counterclaimant LandArizona/JAK LLC  
3 (“LandArizona”) was an Arizona limited liability company and conducted business in La  
4 Paz County, Arizona.  
5

6 2. At all times relevant hereto, based on information and belief formed by  
7 Paragraph 1 of the complaint filed herein, Counterdefendant Rodney Ellwood  
8 Schlesener, dba HT4 (“HT4”), was an Arizona limited liability company with his  
9 principal place of business in Graham County, Arizona, and who conducted business in  
10 La Paz County, Arizona.  
11

12 **JURISDICTION AND VENUE**

13 3. The events in this matter occurred in La Paz County, Arizona.  
14

15 4. Counterdefendant HT4 committed acts, omissions, or caused events to  
16 occur within La Paz County.

17 5. This Court has jurisdiction over the subject matter of this controversy  
18 pursuant to A.R.S. § 12-123 and Article VI § 14 of the Arizona Constitution.  
19

20 6. Under Rule 26.2(c)(3) of the Arizona Rules of Civil Procedure, damages  
21 and the number of documents are such as to qualify for Tier 1 assignment.

22 7. Venue is proper in this Court pursuant to A.R.S. § 12-401.  
23

24 **GENERAL ALLEGATIONS**

25 8. On or about July 5, 2023, HT4 submitted to LandArizona three proposals  
26 for construction work in the total amount of \$73,990.05 (“Proposals”). Exhibit A hereto.  
27  
28



1           9.     On August 18 and September 14, 2023, LandArizona made two progress  
2 payments in the amount of \$20,000 and \$23,000, respectively, totaling \$43,000.00.

3  
4           10.    On October 12, 2023, HT4 presented to LandArizona a document entitled  
5 “Conditional Waiver and Release on Final Payment” for payment of the amount of  
6 \$25,010.34 (“Conditional Final”). See Exhibit B hereto.

7           11.    The Conditional Final stated, in all bold and capitalized letters:

8  
9                   **NOTICE: THIS DOCUMENT WAIVES THE**  
10                   **CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND**  
11                   **PAYMENT BOND RIGHTS EFFECTIVE UPON**  
12                   **RECEIPT OF PAYMENT. A PERSON SHOULD NOT**  
13                   **RELY ON THIS DOCUMENT UNLESS SATISFIED**  
14                   **THAT THE CLAIMANT HAS RECEIVED THE**  
15                   **PAYMENT.**

16           *See Ex. B.*

17           12.    The Conditional Final further states:

18                               **Conditional Waiver and Release**

19                   This document waives and releases lien, stop payment notice,  
20                   and payment bond rights the claimant has for labor and service  
21                   provided, and equipment and material provided, to the  
22                   customer on this job. Rights based on labor or service  
23                   provided, and equipment and material delivered, to the  
24                   customer on this job. Rights based upon labor or service  
25                   provided, or equipment or material delivered, pursuant to a  
26                   written change order that has been fully executed by the parties  
27                   prior to the date that this document is signed by the claimant,  
28                   are waived and released by this document, unless listed as an  
                    exception below. This document is effective only upon the  
                    claimant’s receipt of payment from the financial institution on  
                    which the following check is drawn:

                    Maker of Check: LandArizona/JAKLLC  
                    Amount of Check: \$25,010.34  
                    Check payable to: HT4

*See Ex. B.*

13. The Conditional Final further states:

### Exceptions:

This document does not affect any of the following:

Disputed claims for extras in the amount of \$ \_\_\_\_\_  
[left blank]

*See* Ex. B.

14. The Conditional Final was signed as follows:

**Signature**

Claimant's Signature: [Rodney E. Schlesener]

Claimant's Title: Owner [with owner written in also]

Date of Signature: 10/11/2023

*See* Ex. B.

15. HT4 drafted and supplied to LandArizona the Conditional Final.

16. Also on October 12, 2023, after receiving the conditional release, LandArizona paid to HT4 the amount of \$25,010.34, by way of a direct deposit that LandArizona made directly to HT4's bank. See Exhibit C hereto.

17. HT4 thereafter received the funds into its account by successful bank transfer.

18. Upon the successful transfer of LandArizona's funds into the account of HT4, the conditional release on final payment, by its language and by the operation of A.R.S. § 33-1008(D)(3), converted into an unconditional waiver and release on final payment.

19. The total of the three payments in the amount of \$68,010.34 constituted LandArizona's full performance under the contract.

20. Prior to HT4's provision of the conditional waiver and release on final

1 payment, HT4, on or about September 25, 2023, demanded payment from LandArizona  
2 in the amount of \$30,990.04 for labor and materials supplied to the project, referring to  
3 the amount as the “Grand Total Due”.  
4

5 21. On or about October 1, 2023, HT4 emailed to LandArizona: “I need to  
6 know if my *final payment per contract and invoice* is \$30,990.04.” (emphasis added).  
7

8 22. On or about October 5, 2023, HT4 transmitted to LandArizona a  
9 conditional waiver and release on final payment of \$30,990.04, using the same form that  
10 HT4 later prepared and transmitted to LandArizona for the \$25,010.34 payment.

11 23. On or about October 11, 2023, LandArizona transmitted a two-page letter  
12 to HT4, stating that LandArizona had offsets in the amount of \$5,979.70 incurred for  
13 purchasing road material due to a shortfall under the contract by HT4, and to pay HT4’s  
14 waterline worker.  
15

16 24. HT4’s demand for \$30,990.04 and LandArizona’s demand for an offset of  
17 \$5,979.70 constituted a bona fide dispute as to the amount of the final payment under  
18 A.R.S. § 33-1008(D).  
19

20 25. HT4 thereupon agreed to LandArizona’s claim of offset and deducted the  
21 amount of \$5,979.70 from HT4’s demand for \$30,990.04 as final payment and  
22 transmitted to LandArizona the Conditional Final for payment of \$25,010.35.  
23

24 26. The final payment by LandArizona \$25,010.34 in exchange for a  
25 conditional release on final payment for the same amount of \$25,010.34 constituted an  
26  
27  
28

1 accord and satisfaction between LandArizona and HT4.

2       27. Pursuant to A.R.S. § 33-1008(C), any failure of a conditional waiver and  
3 release on final payment to substantially follow the form set forth at A.R.S. § 33-  
4 1008(D)(3) “does not affect the enforceability of ... an accord and satisfaction regarding  
5 a bona fide dispute...”  
6

7       28. Pursuant to A.R.S. § 33-1008(D), the conditional waiver and release  
8 which HT4 drafted and provided to LandArizona follows substantially the form and  
9 circumstances found at A.R.S. § 33-1008(D)(3).  
10

11       29. As a result of HT4 presenting the Conditional Final to LandArizona,  
12 followed by LandArizona signing the Conditional Final and making payment as required  
13 by its language, followed by HT4 receiving the funds, HT4 lost all rights to claim any  
14 form of mechanic’s lien on the project.  
15

16       30. HT4 also lost such rights because LandArizona paid the contract between  
17 the parties in full per the terms and language of the Conditional Final.  
18

19       31. HT4 also lost such rights because LandArizona’s payment of \$25,010.34  
20 and HT4’s acceptance of that payment after agreeing to LandArizona’s demand for a  
21 reduction of HT4’s demand for \$30,990.04 by the offset amount of \$5,979.70  
22 constituted an accord and satisfaction.  
23

24       32. Nevertheless, on or about October 14, 2023, HT4 demanded payment of  
25 an additional \$20,245.70 with a document it called “Final Bill 1”.

26       33. The October 14 “Final Bill 1” is a catch-all of amounts that HT4 claimed  
27 to be due after the parties, on October 12, 2023, resolved the amounts due on the project.  
28

1           34.    The items appearing on the “Final Bill 1” were included in the work scope  
2 of the original three Proposals.

3           35.    The three signed Proposals each stated: “Any alteration or deviation from  
4 above specifications involving extra costs will be executed only upon written order and  
5 will become an extra charge over and above the estimate.” Exhibit A hereto.

6           36.    LandArizona did not agree to or pre-approve any alteration or deviation  
7 from the Proposals, whether orally or in writing.

8           37.    For an alteration or deviation from the Proposals to occur, the Proposals  
9 required that LandArizona sign and date its acceptance of a written alteration of the  
10 Proposals.

11           38.    There were no written change orders or other form of written alteration or  
12 addition to the Proposals.

13           39.    LandArizona did not sign any written change orders or other form of  
14 written alteration or addition to the Proposals.

15           40.    Accordingly, the entire amount of \$20,245.70 which HT4 claims in its  
16 mechanic’s lien claim and in this action, even if not barred by the conversion of the  
17 conditional waiver and release on final payment into an unconditional waiver and release  
18 on final payment, would be unrecoverable as a result of not following the contractual  
19 pre-approval requirements for any labor or materials supplied pursuant to the “Final Bill  
20 1” dated October 14, 2023.  
21  
22  
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**COUNTERCLAIM COUNT I**  
**(Declaratory Judgment)**

41. LandArizona re-alleges the allegations set forth above and incorporates the same herein as though fully set forth at length.

42. This Court has jurisdiction to enter declaratory judgment relief pursuant to A.R.S. § 12-1831 (“Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”).

43. Based on the facts alleged in the General Allegations of LandArizona’s Counterclaim, HT4’s “Conditional Waiver and Release on Final Payment” for payment of the amount of \$25,010.34 converted into an unconditional final waiver and release.

44. Due to that conversion of HT4’s conditional waiver and release on final payment into an unconditional waiver and release on final payment, HT4 relinquished all mechanic’s lien rights against LandArizona’s real property.

45. Because HT4 relinquished those mechanic’s lien rights against LandArizona’s property, HT4, on November 21, 2023, recorded an invalid mechanic’s lien.

46. Based on the General Allegations of LandArizona’s Counterclaim, LandArizona and HT4 entered into an accord and satisfaction as to all remaining claims by HT4 for work, equipment, and materials supplied to LandArizona’s construction project based on the three Proposals.

47. As a result of the accord and satisfaction, HT4 relinquished all mechanic’s lien rights against LandArizona’s real property.

1           48. As a result of such relinquishment of mechanic's lien rights, HT4, on  
2 November 21, 2023, recorded an invalid mechanic's lien with the La Paz County  
3 Recorder.  
4

5           49. As a result of HT4's mechanic's lien being invalid, HT4's mechanic's lien  
6 foreclosure lawsuit filed May 16, 2024, is groundless.

7           50. As a result of filing a groundless mechanic's lien foreclosure lawsuit,  
8 HT4's notice of *lis pendens* recorded with the La Paz County Recorder on May 16, 2024,  
9 is groundless and null and void.  
10

11           51. Because of LandArizona's three payments to HT4 in the amount of  
12 \$68,010.34, and in light of the parties' accord and satisfaction, LandArizona fully  
13 performed under the three Proposals which HT4 submitted on July 5, 2023, and which  
14 LandArizona signed on July 6, 2023, and therefore no further contract obligations  
15 remain for LandArizona to perform.  
16

17           WHEREFORE, the counterclaimant LandArizona/JAK, LLC, respectfully  
18 requests that this Court enter relief in favor of LandArizona and against the  
19 counterdefendant Rodney Ellwood Schlesener, dba HT4, in the form of a declaratory  
20 judgment that rules as follows:  
21

22           A. LandArizona and HT4 entered into an accord and satisfaction on October 12,  
23 2023, as to all disputes between them;  
24

25           B. HT4, on November 21, 2023, recorded with the La Paz County Recorder an  
26 invalid Notice and Claims of Mechanic's Lien;  
27  
28

1 C. HT4, on May 16, 2024, filed with the La Paz County Superior Court a  
2 groundless mechanic's lien foreclosure action against the real property of  
3 LandArizona;  
4

5 D. HT4, on May 16, 2024, recorded with the La Paz County Recorder a  
6 groundless notice of *lis pendens*;  
7

8 E. HT4, by recording its Notice and Claim of Mechanic's Lien and its Notice of  
9 *Lis Pendens*, violated A.R.S. § 33-420 and is liable for the penalties set forth  
10 therein;  
11

12 F. Awarding to LandArizona its costs and attorney fees as a prevailing party  
13 pursuant to A.R.S. §§ 33-420(A) and (C), A.R.S. §§ 12-341, 341.01(A), 349-  
14 350, and A.R.S. §§ 33-995(E) and 998(B), along with statutory interest  
15 thereon; and  
16

17 G. For an order entering such other and further relief in favor of LandArizona and  
18 against HT4 as this Court deems just and appropriate.

19 **COUNT II**  
20 **(Fraud – in the alternative to Counterclaim Count I)**

21 52. LandArizona re-alleges the allegations set forth above and incorporates  
22 the same herein as though fully set forth at length.

23 53. HT4 made representations to LandArizona that HT4 was of the belief and  
24 in agreement that LandArizona's payment of \$25,010.34 would be the final payment by  
25 LandArizona to HT4 with respect to the construction labor, equipment, and materials  
26 that HT4 supplied to LandArizona's construction site.  
27  
28



1           54. HT4 made such representations in the form of oral statements, issuing and  
2 signed the Conditional Final, drafting and delivering to LandArizona the conditional  
3 release on final payment of \$25,010.34, and accepting LandArizona's final check for  
4 \$25,010.34.  
5

6           55. HT4's representations were false, in that HT4 withheld its intention to  
7 demand payment from LandArizona for additional sums after delivering the signed  
8 Conditional Final to LandArizona and accepting LandArizona's final check.  
9

10          56. HT4 had knowledge of the falsity of its statements because it knew that it  
11 did not intend to stand by its representations that LandArizona's payment of \$25,010.34  
12 constituted the final payment to HT4 for HT4's labor, equipment, and materials supplied  
13 to the project.  
14

15          57. HT4's misrepresentations were material to LandArizona's decision to  
16 enter into the accord and satisfaction agreement to exchange a final payment of  
17 \$25,010.34 for HT4's signed Conditional Final, because LandArizona would not have  
18 paid \$25,010.34 to HT4 if LandArizona knew that HT4 thereafter intended to demand  
19 an additional \$20,245.70 from LandArizona or else record a mechanic's lien for that  
20 amount against LandArizona's property.  
21

22          58. HT4 intended that LandArizona would act upon its representations by  
23 paying the \$25,010.34 to HT4, which in turn constituted an action by LandArizona in  
24 reliance upon HT4's representations, with LandArizona's reliance reasonably  
25 contemplated and intended by HT4.  
26  
27  
28

1           59. LandArizona was ignorant of the falsity of HT4's representations, i.e., that  
2 HT4 considered LandArizona's payment to HT4 of \$25,010.34 to constitute  
3 LandArizona's final payment to HT4.  
4

5           60. LandArizona relied upon the truth of HT4's representations by paying to  
6 HT4 the amount of \$25,010.34.

7           61. LandArizona had a right to rely upon those representations by HT4, as  
8 they were not the result of any unconscionable or improper coercion or any unlawful  
9 circumstances or other form of excuse for HT4 not to be truthful and accurate in its  
10 representations to LandArizona.  
11

12           62. LandArizona was consequently and proximately injured by HT4's deceit,  
13 in the form of HT4's recording of an invalid mechanic's lien, along with HT4's  
14 recording a groundless notice of *lis pendens*, and HT4's filing this groundless lawsuit.  
15

16           63. HT4's actions were improper and malicious and were undertaken with an  
17 intention to cause harm to LandArizona, as part of an effort to improperly extract  
18 payment from LandArizona to which HT4 was not entitled.  
19

20           64. HT4's malice is established by HT4's knowledge that it has taken the  
21 foregoing improper actions despite having generated and provided the Conditional Final,  
22 and thereafter accepted the \$25,010.34 payment from LandArizona, and thereby  
23 converted the Conditional Final into an unconditional waiver and release on final  
24 payment.  
25

26           65. HT4's malice is further established by the fact that, despite providing the  
27 form of Conditional Final in exchange for the \$25,010.34 payment, HT4 attempted to  
28

1 claim that the Conditional Final failed to meet Arizona statutory requirements. Exhibit  
2 D hereto.

3  
4 66. HT4's malice is further established by HT4's counsel, after LandArizona  
5 presented to her a copy of HT4's October 12, 2023, Conditional Final, by sending  
6 LandArizona multiple emails and correspondence threatening to foreclose HT4's lien  
7 claim unless LandArizona paid \$20,245.70 to HT4, which HT4's counsel eventually  
8 reduced to a \$15,000 demand before foreclosing HT4's lien against LandArizona's real  
9 property. Exhibit E hereto.

10  
11 67. In that correspondence, HT4's counsel repeatedly made the false claim  
12 that LandArizona had drafted and provided the Conditional Final to HT4 to sign:

- 13
- 14 • "The form that you presented to HT4 for signature does not come close to  
15 following Arizona's statutory form."
  - 16 • "LandAZ paid only \$25,010.34; the amount recited in the form of lien  
17 waiver you presented to HT4."
  - 18 • "In an apparent belief that the form of lien waiver you presented to HT4,  
19 once signed, would act to provide LandAZ with a discount, you refused to  
20 pay more."

21 *See* Ex. D, pp. 1-2.

22 68. HT4's malice is further established by the fact that it not only knowingly  
23 recorded a mechanic's lien that it knew was improper, due to HT4's issuance and  
24 signature of the Conditional Final and its acceptance of LandArizona's final payment of  
25 \$25,010.34, but HT4, in the face of repeated requests to release the lien, instead  
26 foreclosed it and recorded a notice of *lis pendens*.

WHEREFORE, the counterclaimant LandArizona/JAK, LLC, respectfully requests that this Court enter relief in favor of LandArizona and against the counterdefendant Rodney Ellwood Schlesener, dba HT4, as follows:

A. For damages to be established at trial for the injury to LandArizona as a result of HT4's fraud and its recording of its mechanic's lien, recording its notice of *lis pendens*, and filing the present lawsuit;

B. Finding that HT4 engaged in reprehensible and malicious conduct, with an evil mind, and thereby assessing punitive damages against HT4 and in favor of LandArizona, in an amount to be established at trial;

C. Awarding to LandArizona its costs and attorney fees as a prevailing party pursuant to A.R.S. §§ 12-341, 341.01(A), 349-350, and A.R.S. §§ 33-995(E) and 998(B), along with statutory interest thereon;

D. For an order entering such other and further relief in favor of LandArizona as this Court deems just and appropriate.

**COUNT III**  
**(Violation of A.R.S. § 33-420)**

69. LandArizona re-alleges the allegations set forth above and incorporates the same herein as though fully set forth at length.

70. HT4, on November 21, 2023, recorded a “Notice and Claim of Mechanic’s and Materialman’s Lien” against real property owned by Counterclaimant LandArizona/JAK LLC (“Lien Claim”).

1           71. Pursuant to the standards of liability in A.R.S. § 33-420(A), HT4 knew at  
2 the time of recording the Lien Claim that it was groundless, due to LandArizona having  
3 paid the \$25,010.34 set forth in the Conditional Final.  
4

5           72. HT4 further knew the Lien Claim was groundless due to it containing a  
6 material misstatement that LandArizona owed \$20,245.70 to HT4.  
7

8           73. HT4 further knew that the Lien Claim was a false claim due to all of the  
9 preceding facts and was therefore invalid.  
10

11           74. Further pursuant to the standards of liability in A.R.S. § 33-420(A), HT4,  
12 on May 16, 2024, HT4 filed a foreclosure action upon its Mechanic's Lien and recorded  
13 a notice of *lis pendens* against the real property of LandArizona.  
14

15           75. HT4 knew at the time of foreclosing the Lien Claim and recording the  
16 notice of *lis pendens* that the lien foreclosure and the notice of *lis pendens* were  
17 groundless, due to LandArizona having paid the \$25,010.34 set forth in the Conditional  
18 Final.  
19

20           76. HT4 also knew that its Lien Claim foreclosure and notice of *lis pendens*  
21 were groundless at the time of their filing and recording, because the Lien Claim  
22 contained a material misstatement that LandArizona owed \$20,245.70 to HT4 and was  
23 a false claim due to the preceding facts and was therefore invalid.  
24

25           77. Accordingly, pursuant to A.R.S. § 33-420(A), HT4, due to its conduct  
26 described throughout LandArizona's Answer and Counterclaim, incurred liability to  
27 LandArizona for the sum of not less than ten thousand dollars for two offenses to be  
28 penalized for five thousand dollars each, i.e., recording the Lien Claim and the notice of

1 *lis pendens*, or for treble the actual damages to LandArizona, whichever is greater, and  
2 reasonable attorney fees and costs of this action.

3  
4 78. Further, pursuant to A.R.S. § 33-420(C), HT4 will be liable to  
5 LandArizona for the total sum of \$2,000, for two instances of conduct penalized at  
6 \$1,000 each, or treble actual damages, whichever is greater, along with an award of  
7 reasonable attorney fees and costs of this litigation, if HT4 does not release its  
8 Mechanic's Lien and notice of *lis pendens* within twenty (20) days of LandArizona's  
9 email transmittal of a written demand to HT4's counsel on May 24, 2024, for HT4 to  
10 release both the Mechanic's Lien and the notice of *lis pendens*.  
11

12 WHEREFORE, the counterclaimant LandArizona/JAK, LLC, respectfully  
13 requests that this Court enter relief in favor of LandArizona and against the  
14 counterdefendant Rodney Ellwood Schlesener, dba HT4, as follows:  
15

- 16 A. For a finding that HT4 violated A.R.S. § 33-420 by recording of its  
17 Mechanic's Lien and its notice of *lis pendens*;  
18  
19 B. For an award of damages against HT4 and in favor of LandArizona in the  
20 amount of \$5,000 each for HT4 recording its Mechanic's Lien and its notice  
21 of *lis pendens*, in the total amount of \$10,000, or for treble LandArizona's  
22 actual damages to be established at trial, whichever is greater;  
23  
24 C. In the event that HT4 refuses to release its Mechanic's Lien and notice of  
25 *lis pendens* by not later than June 13, 2024, then for an award of damages  
26 against HT4 and in favor of LandArizona in the amount of \$1,000 each for  
27 HT4 recording its Mechanic's Lien and its notice of *lis pendens*, in the total  
28

1 amount of \$2,000, or for treble LandArizona's actual damages to be  
2 established at trial, whichever is greater;

3  
4 D. Awarding to LandArizona its costs and attorney fees as a prevailing party  
5 pursuant to A.R.S. §§ 33-420(A) and (C), A.R.S. §§ 12-341, 341.01(A),  
6 349-350, and A.R.S. §§ 33-995(E) and 998(B), along with statutory interest  
7 thereon;

8  
9 E. For an order entering such other and further relief in favor of LandArizona,  
10 as this Court deems just and appropriate.

11 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of June, 2024.

12 UDALL SHUMWAY PLC

13  
14 /s/James B. Reed  
15 Roger C. Decker  
16 James B. Reed  
17 1138 North Alma School Road, Suite  
101  
Mesa, AZ 85201  
*Attorneys for Defendant*

18 **ORIGINAL** filed via TurboCourt this  
19 20<sup>th</sup> day of June, 2024.

20 **COPY** emailed this same date to:

21 Julianne C. Wheeler  
22 WHEELER LAW GROUP, PLLC  
23 1490 S. Price Road, Suite 203  
Chandler, AZ 85286-8600  
[docket@wheelerlawgroup.law](mailto:docket@wheelerlawgroup.law)  
24 [jcw@wheelerlawgroup.law](mailto:jcw@wheelerlawgroup.law)  
*Attorneys for Plaintiff*

25 /s/ Kristina R. Jacobs

26 11749104.1/122331.1

# EXHIBIT A



# PROPOSAL

HT4

Boomer Schlesener  
PO Box 552  
Safford, AZ 85548

Mobile: (928)322-4447  
Email: boomerht4const@gmail.com

PROPOSAL SUBMITTED TO	PHONE	DATE
Land Arizona/ JAK LLC	(760)505-8999	07/05/2023
ADDRESS	EMAIL	
2015 Freda Ln	jim@landarizona.net	Quartzsite Job # 3-2023
CITY, STATE AND ZIP		
Cardiff, CA 92007		

We hereby submit specifications and estimates for:  
This includes 1500 LF of STD 21 pipe,  
Two Water Services with Just Angle Meter Stops,  
Run to property line,  
Also one Blow-off and one Air Release Valve

**Waterline**

We propose hereby to furnish material and labor - complete in accordance with the above specifications for the sum of:  
Twenty Nine Thousand, Eight hundred Twelve dollars \$29,812.00

Payment to be made as follows:  
Payment in full due upon completion of said work.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.

Signature

*Note - this proposal may be withdrawn by us if not accepted within 3 days.*

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.  
Payment will be made as outlined above.

  
Customer Signature

Date of Acceptance 07-06-2023

# PROPOSAL

HT4

Boomer Schlesener  
PO Box 552  
Safford, AZ 85548

Mobile: (928)322-4447  
Email: boomerht4const@gmail.com

PROPOSAL SUBMITTED TO	PHONE	DATE
Land Arizona/ JAK LLC	(760)505-8999	07/05/2023
ADDRESS	EMAIL	
2015 Freda Ln	jim@landarizona.net	Quartzsite Job # 3-2023
CITY, STATE AND ZIP		
Cardiff, CA 92007		

We hereby submit specifications and estimates for:  
Build a road 24' wide by 12" high for 350 Feet  
Borrow source will be 400' to 500' away er Stops,  
Owner to supply 6" of AB for road base,  
This includes some time to help channel water flow S.E. Of new road

## Earthwork

We propose hereby to furnish material and labor - complete in accordance with the above specifications for the sum of:  
Eighteen Thousand, Five Hundred Twenty Three Dollars \$18,523.00

Payment to be made as follows:	TOTAL FOR BOTH JOBS: \$48,335.00
	Gross Receipts Tax \$2,387.75
	TOTAL DUE \$50,722.75

Payment in full due upon completion of said work.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.

Signature

Note - this proposal may be withdrawn by us if not accepted within 3 days.

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.  
Payment will be made as outlined above.

  
Customer Signature

Date of Acceptance 07-06-2023

# PROPOSAL

HT4

Boomer Schlesener  
PO Box 552  
Safford, AZ 85548

Mobile: (928)322-4447  
Email: boomerht4const@gmail.com

PROPOSAL SUBMITTED TO	PHONE	DATE
Land Arizona/ JAK LLC	(760)505-8999	07/05/2023
ADDRESS	EMAIL	
2015 Freda Ln	jim@landarizona.net	Quartzsite Job # 3-2023
CITY, STATE AND ZIP		
Cardiff, CA 92007		

We hereby submit specifications and estimates for:  
I will place 6" of borrow,  
And 6" of AB supplied by owner

**Earthwork for Site Pads**

We propose hereby to furnish material and labor - complete in accordance with the above specifications for the sum of:  
Twenty Three Thousand, Two Hundred Sixty Seven Dollars and thirty Cents      \$23,267.30

Payment to be made as follows:	\$22,172.00
Gross Receipts Tax	\$1,095.30
<b>TOTAL DUE</b>	<b>\$23,267.30</b>

Payment in full due upon completion of said work.

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order and will become an extra charge over and above the estimate.

Signature

*Note - this proposal may be withdrawn by us if not accepted within 3 days.*

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.  
Payment will be made as outlined above.

  
Customer Signature

Date of Acceptance 07-06-2023

# EXHIBIT B

## CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

### Identifying Information

Name of Claimant: Rod Schlesener DBA HT4

Name of Customer: LandArizona/JAK LLC

Job Location: 29884 N 53rd Street Quartzsite, Arizona 85346 La Paz County

Owner: LandArizona/JAK LLC

### Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: LandArizona/JAK LLC

Amount of Check: \$25,010.34

Check Payable to: HT4

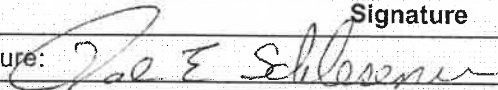
### Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$

### Signature

Claimant's Signature:



Claimant's Title: Owner

owner

Date of Signature: 10/11/2023

# EXHIBIT C

Deposit

(Check One)

☒ Checking ☐ Savings ☐ Money Market Access ☐ Commodity

WELLS  
FARGO

\*

[Redacted]

Date 10/12/23.

Rodney Schleener

Signature of Depositor

Cash  
Total Deposits  
Selected  
Amount Cash Back

Total \$

25,010.34

X

Please sign on the back of the check for cash back

Make sure only money is in the box

Customer ID

For Cash

Amount of Cash

Approved

Signature

Date

Branch

Address

City

State

Zip

Phone

Fax

E-mail

Website

Other

Comments

Notes

Attachments

Footer

Page

Version

Printed

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Modified

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LAND ARIZONA JAK LLC  
JAMES KUNISCH, MANAGER  
2015 FRED LANE PM, 700-505-8229  
CHANDLER, AZ 85007

PAY TO THE ORDER OF

Rodney Schleener

10-12-23

DATE

\$25,010.34

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# EXHIBIT D



**From:** Emma Poeling ht4boomer@yahoo.com  
**Subject:** Lien  
**Date:** February 16, 2024 at 9:46 AM  
**To:** Jim landarizona.net jim@landarizona.net

---



Jim,

My attorney used to work at the law firm you listed as to where your attorney works. She would like to know the name of your attorney. The conditional waiver and release on final payment does not meet Arizona statutory requirements.

CC: Julianne C. Wheeler  
Julianna Law Group

Thank you,  
Emma for Boomer of HT4

# EXHIBIT E



**Julianne C. Wheeler**  
*Attorney*

Direct Line: 602-885-7485  
[jcw@wheelerlawgroup.law](mailto:jcw@wheelerlawgroup.law)

**Toni Hannigan**  
*Paralegal*

Direct Line: 602-228-4809  
[toni@wheelerlawgroup.law](mailto:toni@wheelerlawgroup.law)

May 2, 2024

VIA EMAIL [jim@landarizona.net](mailto:jim@landarizona.net)

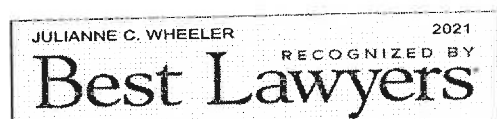
James Kunisch  
LandArizona/JAK LLC  
2015 Freda Lane  
Cardiff by the Sea, CA 92007

Re: HT 4 Notice and Claim of Mechanics' Lien ("Mechanics' Lien")  
Settlement Offer subject to Rule 408, Arizona Rules of Evidence

Dear Mr. Kunisch:

As you know from our April 29, 2024, conversation, this firm represents HT4, the entity that recorded the attached Mechanics' Lien against real property owned by LandArizona/JAK LLC (LandAZ"). During our conversation you advised me that, although you stated, in your January 30, 2024 letter to Rodney Schlesener of HT4, that you "sought legal counsel from [your] attorney at Jennings Haug Keleher McLeod" ("JHKM"), you are not, in fact, represented by that firm. Instead, you used Rocket Lawyer and communicated with Joseph Brophy, an attorney at JHKM, about the dispute between LandAZ and HT4 but never retained the firm as counsel. Accordingly, I am writing to you, instead of to Mr. Brophy, as you directed.

Your January 30, 2024, letter reflects a misunderstanding of Arizona law in several respects, only one of which is pertinent to this letter. Please note that a Conditional Waiver and Release on Final Payment must "follow substantially" the statutory form set forth in A.R.S. § 33-1008. A copy of that form is attached for your review. Under subsection (D) of that statute, a "waiver and release given by any claimant is unenforceable" if it does not substantially follow the attached form. The form that you presented to HT4 for signature does not come close to following Arizona's statutory form.



WHEELER LAW GROUP, PLLC  
1490 S. Price Road, Suite 203  
Chandler, AZ 85286-6800

Beyond that, LandAZ and HT4 had three (3) different contracts; one was for waterline work, a second for road earthwork and the third for earthwork for site pads. At your request, additional work was performed, all of which was described in an October 14, 2023, letter to you and summarized as follows:

HT4 recorded a lien for precisely this amount.

**RE-CAP**

**Money back on water line bill -**

**\$1,497.20 for pads**

**\$2,457.50 for road**

**\$375.00 for Tom Smith's hrs.**

**Total \$4,329.70**

**Extra cost for hauling water**

**Truck time \$864.00**

**Extra rental time \$7,067.00**

**Labor costs \$4,000.00**

**Total \$11,931.00**

**Hose at well site \$175.00**

**Level around pump house \$100.00**

**Haul Road \$800.00**

**Total \$1,075.00**

**Electric Trench \$100 X 6 hrs = \$600.00**

**Extra cost for motels \$1,356.00**

**Total due \$19,291.70**

**GROSS RECEIPTS TAX \$954.00**

**GRAND TOTAL NOW DUE \$20,245.70**

LandAZ paid only \$25,101.34; the amount recited in the form of lien waiver that you presented to HT4. In an apparent belief that the form of lien waiver that you presented to HT4, once signed, would act to provide LandAZ with a discount, you refused to pay more. Nowhere on the Conditional Waiver form does it state the name of the project for which lien rights were being waived or the nature of the work that was the subject of the form of lien waiver. Mr. Schlesener signed the document without any forewarning that LandAZ intended to pay nothing further for the additional work performed.

When we spoke, you told me that HT4 "cost you \$5,000" and claimed a right to backcharge for that amount. There are no communications from you that would explain a basis for doing that. In short, with the additional work performed on the waterline and because the form of lien waiver fails to comply with Arizona law, HT4 is due a minimum of \$20,245.70, plus statutory interest at 18% per Arizona's Prompt Pay Act to be calculated from the date due to the present, as well as attorneys' fees and costs.

In addition to the Mechanic's Lien Foreclosure claim, HT4 has a claim for unjust enrichment. There is little doubt that LandAZ has been unjustly enriched by the work that HT4 performed. Your material quantities were wrong. Material was hauled from your friend's house and water had to be hauled from Quartzsite because you failed to provide it. Both you and your wife agreed to pay for that extra work. In addition, HT4 sat on its hands for 11 days waiting for you to get your pump ready. As a result, HT4 is entitled to restitution from LandAZ in an amount equal to the reasonable value of the work and materials provided. We are prepared to offer the testimony of another contractor who performs similar work. That contractor will testify that the amount that HT4 seeks as restitution is equal to or less than the reasonable value of the work performed.

When we spoke, you offered to resolve the matter for \$5,000.00. That offer is rejected. For purposes of settlement, only, and provided that a check for \$15,000 is received by either my office or HT4 **no later than close of business on May 9, 2024**, HT4 will accept \$15,000 as full and final payment for the amount due. I will prepare a Final Conditional Waiver and Release on Final Payment and present it to you after the check is received. Once the check clears the issuing bank, I will provide an Unconditional Waiver and Release on Final Payment, signed by Mr. Schlesener.

I look forward to hearing from you soon.

WHEELER LAW GROUP, PLLC

Sincerely,

*/s/ Julianne C. Wheeler*

Julianne C. Wheeler  
For the Firm

JCW/  
cc: Rodney Schlesener  
Encl.

2023-11-21 10:00 AM  
FILED  
RECEIVED  
COUNTY CLERK  
OFFICE  
GILBERT, ARIZONA

**PREPARED BY, RECORDING  
REQUESTED BY AND RETURN TO:**

Jeff Veerhusen, As Ltd. Agent For  
National Lien & Bond Services LLC  
428 E Thunderbird Rd, #131  
Phoenix, AZ 85022

**NOTICE AND CLAIM OF MECHANIC'S AND MATERIALMAN'S LIEN**

**CLAIMANT**

HT4  
PO Box 552  
Safford, AZ 85548

**OWNER OR REPUTED OWNER**

LandArizona/JAK LLC  
2015 Freda Lane  
Cardiff By The Sea, CA 92007

**Nature of improvements to be charged with a Lien:**

General Contracting, Construction, & Repair

**Amount of claim after deducting just credits and offsets:**

\$20,245.70

**REAL PROPERTY ADDRESS/LOCATION**

Quartzsite Land, 29884 N 53rd St, Quartzsite, AZ 85346 in the County of La Paz, APN: 302-56-003

A legal description of the property follows: THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 3 NORTH, RANGE 19 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, LAPAZ COUNTY, ARIZONA (Section: 29 Township: 3N Range: 19W NE4 NE4 SEC 29 T-3N R-19W EX N 33' RD R/W).

1. I am the Claimant or have knowledge of the facts of this claim and make this affidavit in compliance with ARS 33-993.
2. Claimant has furnished labor, materials, machinery, fixtures or tools in the construction, alteration or repair of the buildings, other structures or above described improvements on Subject Real Property. This was done at the Request of Owner or Reputed Owner, or at the request of a person whom Claimant reasonably believed to be the lawful agent of Owner or Reputed Owner.
3. The Owner or Reputed Owner by whom Claimant was employed or to whom Claimant furnished materials was LandArizona/JAK LLC, 2015 Freda Lane, Cardiff By The Sea, CA 92007.
4. The labor, materials, machinery, fixtures or tools were furnished pursuant to a written contract, a copy of which is attached.
4. The building, structure or improvement or the alteration or repair of such building, structure or improvement was completed on October 3, 2023.
5. The Preliminary Twenty Day Notice required by ARS 33-992.01 was served on July 25, 2023.
6. If the lien against the dwelling of a person who became an owner-occupant prior to the construction, alteration, repair or improvement, the claimant has executed written contract directly with the owner-occupant. ARS 33-1002.

WHEREFORE Claimant demands a lien on the Subject Real Property and all improvements thereon in the amount set forth above, and in order to fix this lien has made this Notice and Claim in two or more original copies, causing one to be filed in the Office of the County Recorder of this County.

Dated November 21, 2023 for HT4, PO Box 552, Safford, AZ 85548

By: 

Jeff Veerhusen, As Ltd. Agent For, HT4

ACKNOWLEDGEMENT BY NOTARY PUBLIC

State of Arizona

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County Of Maricopa

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SUBSCRIBED and SWORN TO on the 21st day of November 2023 before me, Suzanne L. Hall,  
NOTARY PUBLIC:

Signature

Suzanne L. Hall  
Notary Public in and for the State of Arizona  
My Commission Expires: ~~07/01/2024~~ 07/16/2026



**Exhibit A - Property Description**

**Owner: LandArizona/JAK LLC, 2015 Freda Lane, Cardiff By The Sea, CA 92007**

**Project: Quartzsite Land, 29884 N 53rd St, Quartzsite, AZ 85346**

The following is a complete legal description, to the best of our knowledge, of the property to be liened. Information for this exhibit was obtained through the Recorder's Office where the property is located, or from other sources.

**THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 3 NORTH, RANGE 19 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, LAPAZ COUNTY, ARIZONA (Section: 29 Township: 3N Range: 19W NE4 NE4 SEC 29 T-3N R-19W EX N 33' RD R/W)**



File No: 5366 | AZ |  
Notice Requested by and Return To:  
National Lien & Bond Services LLC  
428 E Thunderbird Rd. #131  
Phoenix, AZ 85022 | Job No: 0723

Customer: LandArizona/JAK LLC  
Project: Quartzsite Land  
Res. ID: 778721  
FIRST CLASS MAIL  
Return Receipt Requested

**TWENTY DAY PRELIMINARY NOTICE**

In Accordance With Arizona Revised Statutes Section 33-992.01

**THIS IS NOT A LIEN. THIS IS NOT A REFLECTION ON THE INTEGRITY OF ANY CONTRACTOR OR SUBCONTRACTOR**

**TO: OWNER OR REPUTED OWNER**

LandArizona/JAK LLC  
2015 Freda Lane  
Cardiff By The Sea, CA 92007  
**TO: ORIGINAL CONTRACTOR  
OR REPUTED CONTRACTOR**  
HT4  
PO Box 552  
Safford, AZ 85548

1. The following is a general description of the labor, service, equipment or materials furnished or to be furnished by the undersigned.  
General Contracting, Construction, & Repair

2. Estimated Price: \$75,000.00

3. The name of the person who furnished that labor, service, equipment or materials is:

HT4  
PO Box 552  
Safford, AZ 85548

4. The name of the person who contracted for purchase of that labor, service, equipment or material is:

LandArizona/JAK LLC  
2015 Freda Lane  
Cardiff By The Sea, CA 92007

5. The description of the jobsite is.

Quartzsite Land  
29884 N 53rd St  
Quartzsite, AZ 85346  
County of La Paz, APN: 302-56-003

6. Date Claimant first provided said labor, services, equipment or materials:  
07/13/2023

**TO: TENANT OR REPUTED TENANT**

**NOTICE TO PROPERTY OWNER**

If bills are not paid in full for the labor, professional services, materials, machinery, fixtures or tools furnished, or to be furnished, a Mechanic's Lien leading to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property. You may wish to protect yourself against this consequence by either:

1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes Section 33-1008, Subsection D, Paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.
2. Requiring your contractor to furnish a unconditional waiver and release pursuant to Arizona Revised Statutes Section 33-1008, Subsection D, Paragraphs 2 and 4 signed by the person or firm giving you this notice before you make payment to your contractor.
3. Using any other method or device that is appropriate under the circumstances.

Within ten days of the receipt of this preliminary twenty day notice the owner or other interested party is required to furnish all information necessary to correct any inaccuracies in the notice pursuant to Arizona Revised Statutes Section 33-992.01, Subsection 1 or lose as a defense or lose as a defense any inaccuracy of that information.

Within ten days of the receipt of this preliminary twenty day notice if any Payment Bond has been recorded in compliance with Arizona Revised Statutes Section 33-1003. The owner must provide a copy of the Payment Bond including the name and address of the surety company and bonding agent providing the Payment Bond to the person who has given the preliminary twenty day notice. In the event that the owner or other interested party fails to provide the bond information within that ten day period, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim against the bond as a result of not timely receiving the bond information.

  
Jeff Veethusen, As Ltd. Agent For, HT4, July 25, 2023

**DETACH HERE AND SEND LOWER PORTION TO CLAIMANT**  
**ACKNOWLEDGMENT OF RECEIPT OF TWENTY DAY PRELIMINARY NOTICE**

This acknowledges receipt on (today's date) \_\_\_\_\_ of a copy of the Twenty

Day Preliminary Notice at (address where notice received) \_\_\_\_\_

Date (date this acknowledgment is executed) \_\_\_\_\_

Signature of person acknowledging receipt, with title if acknowledgment is made for another person \_\_\_\_\_

Reference #: 778721 | File #: 5366

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT  
PURSUANT TO A.R.S. § 33-1008**

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

The undersigned has been paid in full for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_ (person with whom undersigned contracted) on the job of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (job description) and does hereby waive and release any right to mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, except for disputed claims for extra work in the amount of \$ 0.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above-referenced project.

Dated: \_\_\_\_\_

**>NAME OF COMPANY**

By \_\_\_\_\_

>Name

>Title

**NOTICE:** This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.