Grant H. Frazier (#035535)
John N. Thorpe (#034901)
Maddalena S. Savary (#035090)
Brennan A.R. Bowen (#036639)
FRAZIER LAW, PLLC
7702 E Doubletree Ranch Rd., Suite 300
Scottsdale, Arizona 85258
Phone: 480-499-0855
filings@frazierlawpllc.net
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

JANICE LOHRMEYER and GERALD LOHRMEYER, a married couple; JOSHUA MEHR, an unmarried man; JESSE LILLYBLAD, an unmarried man; CHAE GARDNER and AMANDA GARDNER, a married couple; JOSEPH BRANCATO JR. and MARISA BRANCATO, a married couple; SARAH ZOCOLO, an unmarried woman; SAMANTHA KLEIN and DALLON KLEIN, a married couple; ASHLEY RIEKER-DAHL and VLADIMIR DAHL, a married couple; TISHA HARRIS and AARON HARRIS, a married couple,

Plaintiffs,

vs.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district and political subdivision organized and existing under the laws of the State of Arizona,

Defendant.

Case No. _____

COMPLAINT

(Inverse Condemnation; Nuisance; Declaratory Judgment)

(Assigned to the Hon.)

Plaintiffs Janice Lohrmeyer and Gerald Lohrmeyer (collectively, "Lohrmeyer"), Joshua Mehr ("Mehr"), Jesse Lillyblad ("Lillyblad"), Chae Gardner and Amanda Gardner (collectively, "Gardner"), Joseph Brancato Jr. and Marisa Brancato (collectively, "Brancato"), Sarah Zocolo ("Zocolo"), Samantha Klein and Dallon Klein (collectively, "Klein"), Ashley Rieker-Dahl and Vladimir Dahl (collectively, "Dahl"), and Tisha Harris and Aaron Harris (collectively, "Harris") are homeowners in the Circle Cross Ranch Community Association ("HOA"), and by and through undersigned counsel, allege as follows.

I. NATURE OF THE ACTION

1. This action arises out of Defendant Salt River Project Agricultural Improvement and Power District's ("SRP") condemnation of a portion of the HOA's common area property ("Common Area," defined below) for construction, ownership, and operation of a 69kV high voltage transmission line ("HVTL") without providing just compensation to nearby homeowners whose property rights and home values have been materially impaired by the taking and to whom just compensation is due. SRP's taking also permanently altered the character of Plaintiffs' neighborhood from a buffered residential environment to an industrialized transmission corridor, a change that the market recognizes and discounts.

2. SRP's taking of the HOA's Common Area extinguished and materially impaired Plaintiffs' recorded appurtenant easement rights of use, enjoyment, buffer, and view (including the loss of legally protected negative easement rights restricting above-ground utility infrastructure), and caused measurable severance and proximity damages to Plaintiffs' Homeowner Properties (defined below), including significant diminution in fair market value attributable to the proximity, scale, permanence, and visual intrusion of SRP's 69kV HVTL facilities, including proximity damages arising from the placement of tall transmission poles and conductors within approximately 100–150 feet of Plaintiffs'

residences. These damages include proximity and visual-intrusion severance damages of the type expressly recognized under A.R.S. § 12-1122(A)(2) and confirmed by the Arizona Supreme Court in its recent *Arizona v. Foothills Reserve Master Owners Ass'n, Inc.* decision, and are quantifiable through standard before-and-after valuation analysis. 259 Ariz. 92 (2025).

3. At all relevant times, Plaintiffs' Homeowner Properties and the Common Area functioned as a single, integrated residential economic unit, such that the fair market value of each Plaintiff's lot reflected the continued existence, character, and restricted use of the Common Area as open space and buffer, and not as land available for above-ground high-voltage transmission infrastructure, such capitalization being a recognized principle of subdivision valuation and appraisal. As will be explained by Plaintiffs' appraisal expert, once subdivision improvements were constructed, the value of the Common Area tracts was economically transferred and capitalized into the individual residential lots, forming a unified economic unit for valuation purposes, which subdivision economics recognize as a transfer of common-area value into lot prices upon build-out.

4. The Common Area functioned as a buffer, open space, and visual corridor for Plaintiffs' properties, and its value was economically capitalized into the purchase prices and market value of Plaintiffs' lots as part of a unified residential subdivision.

5. The Common Area stated in paragraph 2 of this Complaint is described in **Exhibit 1** and legally described in **Exhibit A** to **Exhibit 1.** *See also* **Exhibit 2** (Pinal County Recorder document numbers 2006-000788, 2006-000794 and 2006-065216, 2006-067314).

6. On or about March 13, 2025, SRP brought its eminent domain action against the HOA and the Pinal County Treasurer to condemn the HOA's Common Area. *See generally* Pinal County Superior Court Case No. CV2025-00789 ("Eminent Domain Litigation").

7. A complaint for eminent domain "shall set forth … [t]he names of *all owners and claimants of the property, if known, or a statement that they are unknown, as defendants.*" A.R.S. § 12-1117 (emphasis added).

8. Despite the public records memorializing the homeowners' (including Plaintiffs') interests in the Common Area, SRP neither named, nor noticed, the homeowner members of the HOA in that suit. *See* Eminent Domain Litigation Complaint, attached as **Exhibit 3**; *see also* Section IV(B)-(E) herein (describing that litigation).

9. The rights of Plaintiffs—individual HOA homeowners—are recorded property rights and property interests in the condemned Common Area as provided in the HOA CC&Rs, which were recorded in the Pinal County Recorder's records in 2003, 22 years prior to SRP's initiation of the Eminent Domain Litigation. *See* **Exhibit 4** (HOA CC&Rs).

10. The rights and interests of the Plaintiffs are expressly specified in both Section 4.1 Owners' Easements of Enjoyment ("Subject to the rights and easements created in this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to the Lot[.]") & Section 9.3 Easement of Enjoyment to Common Area ("[T]his Declaration grants every Member an easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to the Lot subject to the Declaration.") of the CC&Rs. *See* **Exhibit 4**.

11. SRP proceeded to request and secure an Order of Immediate Possession in the Eminent Domain Litigation without notifying or joining Plaintiffs or other HOA homeowners in the Eminent Domain Litigation, and without paying just compensation to Plaintiffs or the other HOA homeowners.

12. Thereafter, SRP constructed its new 69kV transmission line in the Common Area.

13. As further detailed below, SRP's condemnation caused substantial before-and-after value losses to Plaintiffs' properties, with preliminary diminution-in-value estimates ranging from approximately 25%-42.8%, depending on proximity, pole placement, and degree of visual intrusion, as preliminarily determined through before-and-after valuation analysis.

14. Plaintiffs, therefore, bring this action for inverse condemnation, nuisance, and declaratory relief because SRP's actions have resulted in substantial and ongoing damages to their respective properties, including diminished market value, loss of aesthetic views, interference with quiet enjoyment, health and safety concerns, reduced use and development potential, and other damages incidental to the taking performed by SRP.

15. Plaintiffs seek a declaration of their rights to compensation under Arizona law, including a 2025 Arizona Supreme Court ruling confirming homeowner injury and damages arising from takings of a homeowners' association's common areas are compensable as to nonpossessory, severance, proximity, and other damages incidental to the taking.

16. Plaintiffs further contend that SRP's conduct constitutes a taking and/or an unreasonable and continuing interference with the use and enjoyment of their properties, and that they are entitled to recover all just compensation, including severance damages, proximity damages, interest, costs, taxes, attorneys' fees, and all other relief authorized under Arizona law. *See Arizona v. Foothills Reserve Master Owners Ass'n, Inc.*, 259 Ariz. 92 (2025); *see also* A.R.S. §§ 11-972(B); 12-437, 12-1128, 12-1129, 44-1201; Ariz. Const. art. 2, § 17.

17. Further, SRP requested and received immediate possession of the Common Area without notice to the Homeowner Plaintiffs. *See* Eminent Domain Litigation, Order of Immediate Possession, dated April 14, 2025, attached as **Exhibit 5**.

18. The deposit of money or bond contemplated in that Eminent Domain Litigation Immediate Possession Order expressly inures to "benefit of *each* person having

an interest in *each* parcel of land sought to be condemned." A.R.S. § 12-1116(I) (emphasis added). But SRP did not include the Plaintiff homeowners who bring this action.

19. Each Plaintiff's property includes one or more such parcels, estates, and interests, including nonpossessory interests, as contemplated in Section 12-1116(I), each of which adds values to each Plaintiff's property.

20. The amount contemplated in the Eminent Domain Litigation deposit fails to include the nonpossessory interests of the Plaintiffs homeowners who bring this action.

21. Plaintiffs reserve the right to add additional homeowners as plaintiffs to this action, including as part of a Motion for Class Certification.

II. THE PARTIES

22. Plaintiff Joshua Mehr is an unmarried man domiciled and residing in Pinal County, Arizona, who owns the residential real property at 1408 W. Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 2, parcel 18, of Circle Cross Ranch, document number 2012-088737 (the "Mehr Property"). The Mehr Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declaration attached as **Exhibit 6(A)**.

23. Plaintiff Jesse Lillyblad is an unmarried man domiciled and residing in Pinal County, Arizona, who owns the residential real property at: 1464 W. Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 6, parcel 18, of Circle Cross Ranch, document number 2020-102478 (the "Lillyblad Property"). The Lillyblad Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(B)**.

24. Plaintiff Chae Gardner and Amanda Gardner are a married couple domiciled and residing in Pinal County, Arizona, who own the residential real property at: 1160 W. Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 4, parcel 20, of Circle Cross Ranch, document number 2024-050699 (the

"Gardner Property"). The Gardner Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(C) &(D).**

25. Plaintiffs Joseph and Marisa Brancato are a married couple domiciled and residing in Pinal County, Arizona, who own the residential real property at: 870 W. Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 52, parcel 20, of Circle Cross Ranch, document number 2017-063825 (the "Brancato Property"). The Brancato Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(E) & (F).**

26. Plaintiff Sarah Zocolo is an unmarried woman domiciled and residing in Pinal County, Arizona, who owns the residential real property at: 940 W. Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 57, parcel 20, of Circle Cross Ranch, document number 2023-060501 (the "Zocolo Property"). The Zocolo Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(G)**.

27. Plaintiffs Samantha Klein and Dallon Klein are a married couple domiciled and residing in Pinal County, Arizona, who own the residential real property at: 1116 W Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 1, parcel 20, of Circle Cross Ranch, document number 2023-050049 (the "Klein Property"). The Klein Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(H) & (I)**.

28. Plaintiffs Ashley Rieker-Dahl and Vladimir Dahl are a married couple domiciled and residing in Pinal County, Arizona, who own the residential real property at: 884 West Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County

Recorder records as lot 53, parcel 20, of Circle Cross Ranch, document number 2017-053569 (collectively, the "Dahl Property"). The Dahl Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(J) & (K)**.

29. Plaintiffs Janice Lohrmeyer and Gerald Lohrmeyer are a married couple domiciled and residing in Pinal County, Arizona, who own the residential real property at: 926 W Danish Red Trail, San Tan Valley, Arizona 85143 identified by Pinal County Recorder records as lot 56, parcel 20, of Circle Cross Ranch, document number 2017-048988 (the "Lohrmeyer Property"). The Lohrmeyer Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(L) & (M)**.

30. Plaintiffs Tisha Harris and Aaron Harris are a married couple domiciled and residing in Pinal County, Arizona, who own the residential real property at: 1436 W Danish Red Trail San Tan Valley Arizona 85143 identified by Pinal County Recorder records as lot 004, parcel 18, of Circle Cross Ranch, document number 2019-044019 (the "Harris Property"). The Harris Property holds appurtenant easement rights in and to the Common Area. *See* **Exhibit 4** at Sections 4.1 & 9.3; *see also* Plaintiffs' Declarations attached as **Exhibit 6(N) & (O)**.

31. The Mehr Property, Lillyblad Property, Gardner Property, Brancato Property, Zocolo Property, Klein Property, Dahl Property, Lohrmeyer Property, and Harris Property are collectively referred to herein as the "Homeowner Properties."

III. VENUE AND JURISDICTION

32. At all times relevant hereto, all Plaintiffs were domiciled and resided in Pinal County, Arizona.

33. SRP is an agricultural improvement district and political subdivision of the State of Arizona organized and existing under the laws of the State of Arizona.

34. SRP has caused events to occur and took conduct out of which Plaintiffs' claims arise, having their principal effect in Pinal County, Arizona.

35. The damaged land and property interests in that land at issue are located in Pinal County, Arizona.

36. The damages alleged in this case exceed the jurisdictional minimum of this Court.

37. Jurisdiction and venue are proper under, *inter alia*, A.R.S. §§ 12-123, 12-401, and 12-1116.

IV. GENERAL ALLEGATIONS

A. Plaintiffs' Rights In The Common Area.

38. Prior to SRP's condemnation of the Common Area, Circle Cross Ranch Community Association (the "HOA"), an Arizona non-profit corporation, was the fee owner of Pinal County Arizona Assessor's Parcel Nos. 210-81-7650 & 210-81-4740. *See* **Exhibit 7**.

39. The Circle Cross Ranch Community covers an approximately 118.205 acres, single-family residential subdivision, and includes privately owned properties and HOA owned common areas.

40. The Common Area that is the subject of the Eminent Domain Litigation is approximately 1.905 acres running along Gary Road and Charbray Drive, and was condemned in the Eminent Domain Litigation.

41. This Common Area is subject to easements rights held by the individual members of the HOA, including each of the Plaintiffs.

42. Such easements are nonpossessory interests in the larger parcel at issue in the Eminent Domain Litigation. These easements are also appurtenant to, and run with, the land, and as such are part of the acquired right of ownership in the Homeowner Properties. Relatedly, these nonpossessory interests are compensable property rights under Arizona law

when taken or substantially impaired, as occurred here. Plaintiffs' appurtenant easements therefore form part of the "larger parcel" for eminent-domain purposes and are subject to severance damages when taken or impaired.

43. These easements attach to the dominant estate carving out a servient estate with corresponding and increased value to each of the property owners.

44. Specifically, the HOA CC&Rs provide in relevant part at Section 4.1: "Subject to the rights and easements created in this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to the Lot[.]" *See* **Exhibit 4**.

45. The CC&Rs provide both positive and negative easements. These easements are part the larger parcel at issue in the Eminent Domain Litigation.

46. The positive easements entitle homeowners, including Plaintiffs, to nonexclusive use and enjoyment of the Common Areas. *See affirmative easement*, Black's Law Dictionary (12th Ed. 2024) ("Positive easements give rights of entry upon the land of another, not amounting to profits, to enable something to be done on that land,") (citing Peter Butt, *Land Law* 305 (2d ed. 1988)).

47. The negative easements are property rights that act as a buffer by restricting the use, development, and construction on the Common Area. *See negative easement*, Black's Law Dictionary (12th Ed. 2024) (defined as "an easement that prohibits the servient-estate owner from doing something, such as building an obstruction.").

48. Each easement added value to each Plaintiff's respective property, was material to each Plaintiff's decision to purchase each's property, and reflected in the premium paid for homes abutting or near the Common Area. The loss of those easement benefits resulted in an immediate and measurable reduction in market value, as reflected in, *inter alia*, comparable sales data and before-and-after valuation analysis.

49. In particular, the negative easements to the Common Area added a buffer against construction, development, or other use of the Common Area, and the positive easement allowed Plaintiffs' access, use, and enjoyment of the Common Area, including the walkway upon it and access thereto.

50. Both the positive and negative easements to the Common Area include a right to enjoyment of the views of the surrounding landscape and other aesthetic qualities of the locations, both from the Common Area and from Plaintiffs' homes looking out across the Common Area. The destruction of these view and buffer attributes constitutes a compensable injury independent of any physical invasion of Plaintiffs' lots. Such visual intrusion is a primary driver of buyer resistance and pricing discounts for properties impacted by HVTLs.

51. The aesthetic aspect of the easements is consistent with, and evidenced by, *inter alia*, the nature and contemplated usage of the Common Area, as well as provisions throughout the HOA's CC&Rs that regulate views and other aesthetic qualities of the Common Area and properties adjacent to the Common Area, and of other properties throughout the HOA. *See, e.g.*, **Exhibit 4** at Sections 3.6 (regulating landscaping on any property that "is adjacent to any Common Area"); 3.9 (regulating "overhangs" that "encroach[] upon … the Common Area"); 3.16 (restricting the parking of vehicles "visible from the Common Area"); and 3.17 (prohibiting devices from being "located, used, or placed on any such property so as to be audible from other Lots or the Common Area").

52. Plaintiffs' easement rights included not only physical access and use, but also legally protected expectations regarding the *absence* of intrusive infrastructure, including tall utility poles, overhead transmission lines, and industrial-scale facilities, the introduction of which fundamentally altered the character of the servient estate and impaired the value of the dominant estates.

53. Plaintiffs' nonpossessory interests are compensable property rights under Arizona law when taken or substantially impaired.

B. <u>SRP Threatens Exercise Of Eminent Domain To Obtain The Common Area</u>.

54. On or about November 21, 2023, SRP sent a letter to the HOA informing it that SRP desired to buy the Common Area in furtherance of the Hunt-Tobin-Morcom-Loop-in ("HTML") 69kV Line Addition Power Transmission Easement project (the "Project"). Specifically, SRP sought to install above ground poles along Gary Road with a height of 70' while the poles along Charbray Drive vary from 61' to 74.5'.

55. SRP's plans would install five (5) new poles along Gary Road, replacing the existing 12kV poles in place, as well as ten (10) new poles along Charbray Drive, with one being on the opposite side of the street, the spacing between the poles being +/- 236'.

56. These pole heights and configurations are materially greater in scale and visual impact than the pre-existing 12kV distribution infrastructure previously serving the neighborhood. Furthermore, such infrastructure is inconsistent with the residential character contemplated by the CC&Rs and materially exceeds what a reasonable homeowner would expect from ordinary neighborhood utility facilities.

57. The scale, configuration, and location of the 69kV HVTL here materially exceeds typical residential distribution facilities, is atypical for minor collector streets serving single-family neighborhoods, and materially increases adverse market perception and value loss.

58. A collection of power lines, not previously in existence, would run between these power poles, along the majority of the Homeowner Properties, and across the street, creating continuous visual dominance across Plaintiffs' rear elevations and primary living areas. As Plaintiffs anticipate will be confirmed by a forthcoming expert report, the continuous visibility of poles and conductors from Plaintiffs' rear elevations materially contributes to proximity and severance damages.

59. The Common Area deed restrictions require HOA membership approval for SRP's contemplated dedication of the Common Area to a public authority or utility, as such a dedication would have a substantial adverse effect on the use and enjoyment of the Common Areas by the HOA's members. *See* **Exhibit 4**.

60. The deed restrictions on the Common Area also require HOA membership approval for sale or other encumbrance of the Common Area pursuant to Sections 5.11 and 5.13 of the HOA's CC&Rs. *See* **Exhibit 4**.

> **Section 5.11 Conveyance or Encumbrance of Common Area**
>
> Except as set forth in Section 5.13 below and except for the conveyance of the Common Area to the Association, the Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Members of the Association, if any, and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association.
>
> …
>
> **Section 5.13 Procedure for Dedication of Common Area**
>
> The Association shall have the right to dedicate or otherwise transfer all or any part of the Common Area to any public authority or utility (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Members or the Owners, or (ii) if required by a recorded subdivision plat, a zoning stipulation or agreement with Pinal County effective prior to the date hereof. Except as authorized in (i) or (ii) above, no such dedication or transfer shall be effective without the approval required by Section 5.11 above.

61. The CC&Rs contemplate utility easements, stating:

> **4.2 Utility Easement**
>
> There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots, but *no* sewers,

> *electrical,* water lines, *or other utility or service lines may be installed or located on the Common Area or Lots except as approved by Declarant or as approved by the Board and in no event shall the easement herein granted encroach on any building within the Property.*

(emphasis added).

62. The negative easements belonging to each Plaintiff prohibited construction of any improvements on the Common Areas and also prohibited the installation of electrical or other utility or service lines in the Common Areas.

63. Accordingly, the HOA Board of Directors informed SRP that the HOA did not intend to execute SRP's proposed easement without the affirmative vote or written consent of the HOA owners representing at least 2/3 of the owner votes.

64. In or about May 2024, SRP hired J. Douglas Estes of Landpro Valuation to prepare an appraisal report ("SRP Appraisal") for the Common Area, which appraised the Common Area taking at $623,025. *See* **Exhibit 8.**

65. The stated "objective of th[e] appraisal [wa]s to provide an opinion of the market value of the proposed acquisition and its effect on the remainder" pertaining to the "acquisition negotiations and possible eminent domain proceedings." SRP Appraisal at 1.

66. Landpro was not provided a title report for the calculations. *Id.* at 2 #1. Landpro claimed such title report was "unavailable." *Id.* at 48. As a result, the SRP Appraisal failed to identify or value Plaintiffs' recorded easement interests.

67. The Landpro calculations were made based on an "unencumbered remainder." *id.* at 1, 46, 81, and included no "easements, encumbrances or restrictions," *id.* at 2 #2.

68. The SRP Appraisal recognized that the condemned parcel was part of a larger parcel. *Id.* at 2 #1. The SRP Appraisal defined and explained the calculation of "Severance Damages," *id.* at 87, 88, but the appraisal calculation failed to quantify any such severance damages here, *id.* at 2, 89, and therefore SRP cannot argue that it already paid damages relating to Plaintiffs' interests.

69. The SRP Appraisal states: "there are no severance damages." *Id.* at 87–88. This conclusion is legally erroneous where, as here, the taking impaired dominant-estate easements and reduced the fair market value of adjacent residential properties.

70. The SRP Appraisal further states: "the remainder improvements are not negatively impacted by the acquisition or project." *Id.* at 11.

71. Pursuant to A.R.S. § 12-1122(A)(2), Plaintiffs are entitled to damages for any injury to property interests not adjudicated in the Eminent Domain Litigation, including injury that reduced Plaintiffs' property values due to the property severances and the installation of the power lines and power poles in proximity to Plaintiffs' properties. *See Foothills Reserve*, 259 Ariz at. 97 ¶13, 103 ¶ 43.

72. Such "[s]everance damages compensate an owner whose property has been taken for any reduction in the fair market value of remaining property not taken." *Id.* at 97 ¶ 12 (citations omitted) (applying statute in the calculation of such damages); *see* A.R.S.§ 12-1122(A)(2), (A)(3).

73. The HOA did not accept SRP's purchase offer.

C. <u>SRP Filed Eminent Domain Litigation And Secured An Order Of Immediate Possession</u>.

74. On January 6, 2025, SRP's Board of Directors duly passed and adopted the SRP Resolution purportedly determining that acquisition of the Common Area was (a) necessary for the Project and (b) for a proper public purpose. SRP then authorized and directed acquisition of the Common Area for the Project via exercise of eminent domain power.

75. On February 13, 2025, SRP sent the HOA a letter regarding SRP's intent to exercise its eminent domain power to obtain the Common Area.

76. On March 13, 2025, SRP filed its Complaint for Eminent Domain in Pinal County Superior Court Case No. 202500789, initiating the Eminent Domain Litigation. *See* **Exhibit 3**.

77. The SRP Appraisal was utilized—without correction or introduction of other evidence—as evidence of damages in the Eminent Domain Litigation.

78. The SRP Appraisal states that the eminent domain acquisition provisions "are not intended to and do not constitute a public utility easement or any other grant, dedication, or conveyance for public use of the Easement Parcel." SRP Appraisal at 84, Private Use section, **Exhibit 8**. This is inconsistent with the Order for Immediate Possession finding made in the Eminent Domain Litigation stating that "SRP needs immediate possession of the Property, the acquisition of the same is duly authorized by applicable law, and the use for which the Property is sought to be condemned is a necessary and public use." Order at #2, **Exhibit 5**.

79. SRP brought Eminent Domain Litigation against the HOA as to its "real property and property interests." SRP did not name as parties the HOA homeowners (including Plaintiffs) who have a recorded interest in the Common Area.

80. In the Eminent Domain Litigation, SRP, *inter alia*:

a. Sought to condemn the Common Area for the Project for a Power Transmission Easement (as defined in Exhibit 1 to the Eminent Domain Litigation Complaint).

b. Alleged it has the right and authority to acquire the Common Area by eminent domain pursuant to A.R.S. § 12-1111, *et seq.* and A.R.S. § 48-2340.

c. Alleged that "The Project is located in the manner which will be most compatible with the greatest public good and the least private injury."

d. The HOA is entitled to just compensation for its interest in the Common Area.

81. SRP filed an Application for Order to Show Cause as to why an Order of Immediate Possession should not issue as requested in its Eminent Domain Litigation Complaint.

D. SRP Disregarded The Property Rights And Interests Of Plaintiffs In This Filing.

82. SRP did not move to amend its Complaint or otherwise name the Plaintiff homeowners or any other property owners with nonpossessory interests in or related to the Common Area.

83. SRP did not modify the SRP Appraisal to reflect additional possible damages (e.g., damages to Plaintiffs) or additional claimants (e.g., Plaintiffs).

84. SRP is permitted to bring joint or separate condemnations actions pursuant to A.R.S. § 12-1118.

85. On March 17, 2025, the court in the Eminent Domain Litigation issued an Order to Show Cause, and eventually, on April 14, 2025, issued an Order of Immediate Possession, which ordered:

a. SRP to deposit $623,025 with the Clerk of Court or Arizona State Treasurer;
b. SRP would be let into physical possession of the Common Area upon providing notice of compliance with SRP's obligation to deposit $623,025 with the Clerk of Court or Arizona State Treasurer; and
c. That the Order shall not be introduced in evidence or used to the prejudice of any party in interest at the trial of the Eminent Domain Litigation.

See **Exhibit 5**.

86. Notably, the $623,025 deposit did not include or even contemplate the interests of Plaintiffs or any other HOA homeowners with nonpossessory property rights and interests in or related to the Common Area.

87. SRP has made no separate offers to purchase any of the Plaintiff's Homeowner Properties and interests in Common Area, nor to pay just compensation or to make compensable damages for any of the Plaintiffs' remaining property interests as required by A.R.S. §§ 12-1116, 1122.

88. Because no offer for nonpossessory interests has been made, SRP has not made any offer for "just compensation" as required by A.R.S. § 12-1116.

89. SRP's deposit of money or bond in the Eminent Domain Litigation is allegedly and ostensibly for the "benefit of *each* person having an interest in *each* parcel of land sought to be condemned," A.R.S. § 12-1116(I), but SRP did not include Plaintiffs in the Eminent Domain Litigation Complaint, nor did it otherwise account for the just compensation of Plaintiffs' property rights and interests harmed by SRP's taking.

90. Moreover, SRP sought and obtained immediate possession of the Common Area, which is appropriate only if all interested parties had been named and noticed in eminent domain suits.

91. The Order of Immediate Possession effectively condemned and substantially impaired the Plaintiffs' appurtenant easement rights in the Common Area. The impairment occurred as of April 14, 2025, regardless of the later completion or energization of the transmission line. Prejudgment interest accrues from that date.

92. Each Plaintiff's easement interests in the Common Area were part of the larger parcel.

93. Each Plaintiff has a nonpossessory interest in the condemned Common Area.

94. Each Plaintiff has an appurtenant easement right in the condemned Common Area.

95. Such appurtenant easements create to the benefit of the dominant estate owners' use of their land and attach to the estate.

96. Each Plaintiff's appurtenant easement was severed by condemnation of the Common Area, resulting in severance damages, including the reduction in the fair market value of each Plaintiff's remaining property.

97. Plaintiffs have nonpossessory interests in the Homeowner Properties, including severance, proximity, and other damages incident to the taking and severance of the Common Area from the rights and interests of the Plaintiffs.

98. While some provisions in the CC&Rs authorize the HOA to "dedicate, convey, transfer or encumber" the Common Area in specific ways under certain circumstances, the HOA has not exercised that authority or acted pursuant to those provisions to authorize SRP's taking. *See* **Exhibit 4** at Section 4.1.

99. In particular, the condemnation of the Common Area and the construction of power lines therein was never "approved" by the HOA's Board, as Section 4.2 of the CC&Rs requires before any "electrical lines, … or other utility or service lines [may] be installed or located on the Common Area."

100. Neither the condemnation of the Common Area, the Order of Immediate Possession, nor any of SRP's actions with regard to the Plaintiffs' property interests was taken pursuant to, or justified by, any provision in the CC&Rs.

101. The Order of Immediate Possession is based on the Eminent Domain Litigation Complaint and alleges and ostensibly estimates damages "to *all* owners, possessors, or persons having *an interest* in the Property sought to be condemned by this action," Eminent Domain Litigation, Order of Immediate Possession, at 4, **Exhibit 5**. However, in reality, SRP did not include Plaintiffs in the Eminent Domain Litigation Complaint, and SRP did not recognize, let alone take any steps to ascertain or account for in the Appraisal used in the Eminent Domain Litigation, nor provide just compensation to Plaintiffs for their property rights and interests harmed by SRP's taking. *See* **Exhibits 3, 5, & 8**.

102. The amount deposited with the court in the Eminent Domain Litigation to compensate the HOA does not include the just compensation of property rights and interests of the Plaintiffs who have been harmed by SRP's taking. *See* **Exhibit 5 & 8**.

103. SRP substantially interfered with Plaintiffs' property rights and interests, lessened the value of their Property, lessened their access, lessened their control, lessened their use and enjoyment, and otherwise interfered with their property rights and interests via the taking by eminent domain.

104. SRP's siting of the Project, choice of above-ground lines, and other decisions regarding the project violate the statutory requirement that "[w]here land is required for public use, … it shall be located in the manner which will be the most compatible with the greatest public good and the least private injury." A.R.S. § 12-1115(A).

105. SRP knew or should have known of Plaintiffs' interests and related due process, statutory, and constitutional rights, and Plaintiffs' other rights under the law, as the CC&Rs for the Common Area were attached to the Eminent Domain Litigation and were recorded as a matter of public record.

106. SRP disregarded Plaintiffs' rights, and it sought and received immediate possession of the Common Area without naming the Plaintiffs or the other HOA homeowners as defendants in the Eminent Domain Litigation, and without depositing funds to compensate Plaintiffs or the other HOA homeowners affected by the Eminent Domain Litigation.

107. SRP took immediate possession of the Common Area on April 14, 2025, upon the Court's entry of the immediate possession order, pursuant to A.R.S. § 12-1123(B).

108. SRP's Transmission Line Construction team commenced work on the Project on or about June 21, 2025, undertaking pre-construction activity and potholing the Common Area.

109. Thus, SRP took immediate possession without ever addressing the rights and interests of the Plaintiffs.

110. SRP should not have been granted an Order of Immediate Possession. *Supra.*

111. On information and belief, SRP completed the Project-related construction along the Gary Road portion of the Common Area on or about June 23-26, 2025.

112. On information and belief, SRP completed Project-related construction along Charbray Drive between approximately June 30 and July 9, 2025.

113. Each Plaintiff's property is adjacent and proximate to the Common Area.

114. Such construction and power lines violated both the positive and negative easements (including the buffer) rights of each Plaintiff and inferred with and denigrated the rights and interests protected by those easements.

115. SRP's construction included the installation and/or replacement of large copper-colored power poles very near Plaintiffs' Properties and also the connection of a network of a multitude of power lines running along and above Plaintiffs' properties.

116. SRP's taking of the Common Area to construct improvements for the benefit of a new and unrelated construction project provided no benefit to the Plaintiffs homeowners' property interests. *See* Eminent Domain Litigation, Complaint at 6.

117. The SRP poles and lines were constructed within four months of the Eminent Domain Litigation Complaint being filed (March 13, 2025) and with three months of immediate possession being granted on April 14, 2025, providing Plaintiffs with a short amount of time to consider selling (let alone successfully selling) their single-family residences. This compressed timeline foreclosed any meaningful opportunity for Plaintiffs to mitigate damages through sale or relocation.

118. Even if Plaintiffs had promptly moved to sell their properties before SRP's erection of power poles and lines, the market in Spring 2025 was in a "pause" due to high mortgage rates and Plaintiffs would have had to disclose SRP's taking and contemplated

power pole and line erection as part of the sale process, likely chilling demand and further depressing property values.

119. Plaintiffs were therefore deprived of any reasonable opportunity to mitigate damages through sale or relocation prior to the permanent installation of the HVTL infrastructure.

E. SRP Failed To Comply With *Foothills Reserve*.

120. SRP filed its Eminent Domain Litigation Complaint on or about March 13, 2025, and at the time of filing, knew or should have known of the Arizona Supreme Court's January 28, 2025, opinion in *Foothills Reserve. Foothills Reserve* predated the March 17, 2025 filing of the Order to Show Cause; predated the April 14, 2025 Order for Immediate Possession; and predated the June 2025 commencement of SRP's powerline construction. *See infra.*

121. In *Foothills Reserve*, the Arizona Supreme Court held an individual homeowner may recover just compensation for severance damages due to the taking of a HOA common area. *See generally Arizona v. Foothills Reserve Master Owners Ass'n, Inc.*, 259 Ariz. 92 (2025), *see infra* for analysis.

122. Severance damages accrue to the portion of the property not sought to be condemned, including easements that form a parcel that is severed from the condemned portion.

123. Severance damages compensate the property owner for any reduction in the fair market value of the remaining property not taken as well as any other incidental damages caused by the taking.

124. Such severance damages may include damages relating to proximity, noise, light, use and enjoyment of the common area, use and enjoyment of their separate properties, aesthetics, and negative safety perceptions, as well as any other damages incidental to the taking.

F. Plaintiffs Have Suffered Significant Damages As A Result of SRP's Taking.

125. Each Plaintiff is entitled to just compensation for the taking. *See* Ariz. Const. art. 2, § 17. Just compensation includes "the amount of money necessary to put the property owner in as good a financial position as if the property had not been taken." *Foothills Reserve*, 259 Ariz. at 97 ¶ 11 (citing *City of Phoenix v. Wilson*, 200 Ariz. 2, 5, ¶ 8 (2001)). It also includes a damage formula that complies with the constitutional guarantees of just compensation. *Calmat of Ariz. v. State ex rel. Miller*, 176 Ariz. 190 (1993).

i. Plaintiffs' Damages Are Evidenced By Their Declarations

126. Plaintiffs' declarations demonstrate the details of just compensation including severance rights, proximity rights, and other losses to Plaintiffs' rights and interests. *See generally* **Exhibit 6**. Such losses include the buffer proximate to their homes, the loss of common area that buffered the installation of the any improvements, and expressly that of electrical installation, the loss of access and use, the loss of control, and the loss of enjoyment. *Id.*

127. Plaintiffs' declarations demonstrate the proximity damages pertaining to the location, visibility, noise, and other issues related to the power lines and power pole installation and proximity to their properties. *Id.*

128. Plaintiffs' declarations also demonstrate their loss of use, access, and enjoyment of the land on which the easement ran on the Common Area, such as those related to exercise, family walks, flying kites, a walk path, and other activities. *Id.*

129. These declarations also demonstrate the impact upon Plaintiff homeowners related to the power poles and power lines that were installed and the larger power pole replacement that occurred subsequent to the taking by SRP that resulted in lessened views, obstructions, disturbances, anticipated health risks, and other injuries. *Id.* Such factors are routinely considered by buyers and appraisers in determining fair market value, particularly in market pricing and appraisal analysis.

130. Plaintiffs' declarations further demonstrate their health and safety concerns and the likely concern of others pertaining to the installation of the power lines and power poles, including those pertaining to the value, or perceived value, of their properties. *Id.*

131. Plaintiffs' declarations evidence the time, energy, and funds Plaintiffs' have invested to improve their properties as part of their enjoyment, use, access, and property rights and interest, pertaining to the common area and the buffer thereof, and which have been lost or impaired due to the installation of the power lines and power poles. *Id.*

132. Plaintiffs' declarations demonstrate the losses they have suffered related to Plaintiffs' property improvements including swimming pools, gardens, play areas, firepits, patios, and other outdoor improvements. *Id.*

133. Plaintiffs' declarations demonstrate their own loss of quiet, privacy, beauty, and views, as well as their sense of ease, restoration, peacefulness, and other enjoyments and uses. *Id.*

134. Plaintiffs' declarations also demonstrate the resulting impacts on their use and enjoyment with family, hosting events, relational involvements, and other uses. *Id.*

135. Plaintiffs' declarations demonstrate their concerns about the loss of value and appeal of their properties based on the installation of the power lines and power poles and the resulting loss of the positive and negative easements. *Id.* Such severance damages also include reduction in the fair market value of their remaining property. *See* A.R.S. § 12-1122(A)(2).

136. Each Plaintiff is entitled to just compensation for each and every injury to their positive and negative easement rights and interests, and each separate damage suffered thereto including severance, proximity, attorneys' fees and costs, interest, taxes, and any and all other damages suffered incidental to the taking.

137. SRP concedes entitlement to just compensation for those with ownership interests in the condemned property. *See* Eminent Domain Litigation at paragraph 12.

ii. Plaintiffs' Damages Are Evidenced By Empirical Studies Finding Powerlines' Significant Negative Effect On The Fair Market Value Of Real Estate

138. Without question, contemporary culture and society are inextricably linked to electrical equipment, highlighting the importance of electricity transmission infrastructure.

139. But power transmission and distribution lines – especially those of the above ground, overhead variety – also pose many problems for nearby homeowners and hesitations for prospective real property purchasers, including:

a. Loss of rental or resale appeal based on reduced ability to rent or sell the property at a competitive rate due to infrastructure stigma and the other injurious factors, specified below.

b. Loss of quiet enjoyment/nuisance based on persistent humming, buzzing, or vibration from high-voltage lines, and/or sounds of movement of the polls and lines, which impair the peaceful use and enjoyment of the Homeowner Properties;

c. Health and safety concerns related to perceived or real risks of exposure to electromagnetic fields ("EMFs")[1] and potential for fire risk (as emphasized in numerous, devastating California fires)[2] and risk of falling poles, and related reduction in desirability by potential buyers;

d. Loss of use and enjoyment of indoor and outdoor areas, including diminished ability to use yards, patios, or pools due to noise, visual blight, or safety concerns;

[1] Even setting aside the strength of the scientific evidence on health risks associated with EMF exposure, it is recognized in the appraisal of real estate that the market value of property located near power lines remains subject to a material discount in value.

[2] *See* Jeremy White, *Many of California's Most Destructive Fires Were Caused by Power Lines*, N.Y. TIMES, Jan. 13, 2025.

e. Loss of the negative easement to the Common Area that add a buffer against construction, development, or other use of the Common Area.

f. Impacts on development potential, such as limitations on future improvements (e.g., second stories, Accessory Dwelling Units, pools) due to setback requirements or aesthetic impact;

g. Proximity to unsightly and/or noisy infrastructure, including power lines and power poles; and

h. Loss of aesthetic value/visual intrusion from the loss of scenic views or increased visual blight caused by poles, wires, and equipment;

See Declarations of Plaintiffs as **Exhibit 6** as to specificity of damages.

140. Appraisal studies, tax appraisals, court cases, and numerous economic studies have evidenced that properties close to power lines are significantly devalued compared to other properties in the same area that are not proximate to power lines. *See, e.g.*, David Wyman & Chris Mothorpe, *The Pricing of Power Lines: A Geospatial Approach to Measuring Residential Property Values*, Journal of Real Estate Research (2020) (finding pricing discounts of 44.9% for properties adjacent to power lines, and a pricing discount of 17.9% for non-adjacent vacant properties up to 1,000 feet away from the power lines using a sample of 5,455 vacant lots sold in Pickens County, South Carolina); David R. Bolton, *Properties Near Power Lines and Valuation Issues: Condemnation or Inverse Condemnation?*, SOUTHWESTERN LEGAL FOUNDATION INSTITUTE ON PLANNING, ZONING AND EMINENT DOMAIN, November 17–19, 1993, p. 13 (study of Houston-area homes in the early 1990s finding assessed values of 100 homes adjacent to power lines 12.8–30.7% lower than other homes in the same neighborhoods, with a subdivision average difference of 20.795% in decline in assessment); Delaney and Timmons, *High Voltage Power Lines. Do They Affect Residential Property Value?*, THE JOURNAL OF REAL ESTATE RESEARCH, Vol. 7, No. 9, at 323-324 (Summer 1992) (finding that 84 percent of surveyed appraisers

determined that power lines reduce the value of residential property located near said lines and that the value of a property near powerlines is, on average, 10% lower than the market value for comparable properties not subject to the influence of these lines); Colwell, *Power Lines and Land Value*, THE JOURNAL OF REAL ESTATE RESEARCH, Vol. 5, No. 1, at 125 (Spring 1990) (finding "that value increases away from transmission lines on lots without the easement and that there are value effects due to the easement as well as those that relate purely to the proximity of power lines .... The negative impact of power lines is large in close proximity, but declines as distance increases."); Chalmers, J. A. (2012b). High-Voltage Transmission Lines and Rural, Western Real Estate Values. The Appraisal Journal, Winter, 2012: 36. Available from NorthWestern Energy. Retrieved May 11, 2012, from http://www.northwesternenergy.com/documents/ElectricTransmission/HighVoltageValues.pdf (statistical analysis indicates an average discount of 15 percent in the sale price of the properties within 1,000 feet of the center line of the power line); Francois Des Rosiers, *Power Lines, Visual Encumbrance and House Values: A Microspatial Approach to Impact Measurement*, JOURNAL OF REAL ESTATE RESEARCH 23, no. 3 (2002): 275–301 (finding a 9.6% reduction in value for a home adjacent to a power line and facing a pylon). Plaintiffs cite these studies not as a substitute for property-specific valuation, but to corroborate market behavior reflected in Plaintiffs' forthcoming expert appraisals.

141. While many homeowner problems and potential buyer hesitations may be mitigated by burying power lines, SRP unfortunately decided to cut its own costs by constructing the Project's power poles and lines above ground.

iii. Plaintiffs' Damages Are Evidenced By The CC&Rs Restricting Use Of The Common Area

142. The valuation of the Common Area should account for, among other impacts, easements in the Common Areas that are held by all HOA homeowners by virtue of the CC&Rs. Specifically, the easements that authorize HOA members to enter and use the

Common Areas for enjoyment and the easements that restrict the Common Area's use and development for purposes inconsistent with such enjoyment. *See* **Exhibit 4** at Sections 4.1 & 9.3.

143. The CC&Rs recognize Plaintiffs' rights and interests in the ability to control the Common Area, their use and enjoyment related thereto, the express restriction of electrical lines on such Common Area. *See* CC&R at Sections 4.2, 5.11, and 5.13, **Exhibit 4**.

144. The CC&Rs also created a buffer from improvements or other installations upon the Common Area, including the express prohibition of electrical lines.

145. Plaintiff Homeowners' property rights and interests as recognized by the CC&Rs have been taken by SRP and have resulted in damages to Plaintiffs.

iv. Plaintiffs' Damages Are Recognized By The Arizona Supreme Court

146. In January 2025, the Arizona Supreme Court held that when homeowners associations' common areas (such as the Common Area) are taken through eminent domain, as occurred here, homeowners are entitled to just compensation for the taking based on their severance damages and also their proximity damages caused by the homes' proximity to the improvement, and any loss suffered incidental to the taking. *See Arizona v. Foothills Reserve Master Owners Ass'n, Inc.*, 259 Ariz. 92 (2025).

147. In *Foothills Reserve*, the Arizona Supreme Court held that individual homeowners may recover just compensation for the diminution in value to their properties resulting from the condemnation of HOA-owned common areas, where such homeowners hold appurtenant easements over the condemned area. The Court clarified that such easements are not mere licenses, but legally protected property interests sufficient to trigger constitutional compensation protections under Article 2, § 17 of the Arizona Constitution.

148. Plaintiffs' claims here are even stronger as to the damage concepts related to buffer, adjacency, and proximity, than the homeowners' claims in *Foothills Reserve*. As in

Foothills Reserve, each Plaintiff owns a residential property that (i) is adjacent and proximate to the condemned Common Area, and (ii) benefits from express positive and negative easement rights in the Common Area pursuant to the recorded CC&Rs governing the HOA. These easements expressly authorize each Plaintiff to use and enjoy the Common Area, and the Common Area's character and usability are integral to the aesthetic, recreational, and market value of Plaintiffs' individual parcels, as well as a buffer to construction, development, and use of the Common Area. Plaintiffs' case is stronger because all of Plaintiffs' Homeowner Properties are proximate to the Common Area, whereas in *Foothills Reserve* most of the plaintiffs' properties were proximate but not adjacent to the condemned common area. Those Plaintiffs whose properties are adjacent have been injured by a significant visual intrusion upon their properties. Unlike in *Foothills Reserve*, the condemned Common Area here directly abuts every Plaintiff's property.

149. Like in *Foothills Reserve*, SRP's exercise of eminent domain over the Common Area substantially burdened and interfered with Plaintiffs' easement rights, *i.e.* by constructing visually intrusive, above-ground 69kV transmission infrastructure directly along Plaintiffs' Homeowner Properties—without any compensation to the individual homeowners. Moreover, the resulting interference with views and quiet enjoyment, negative safety perceptions, and damage to resale potential have directly impaired the fair market value of Plaintiffs' homes, particularly for Plaintiffs' whose homes were buffered to construction, development, and other use upon the easements.

150. *Foothills Reserve* recognizes such injuries as compensable "severance damages," "proximity damages," and damages incident to SRP's taking of the Common Area. Just as the homeowners in *Foothills Reserve* were entitled to these damages due to the impairment of their use and enjoyment rights and the consequential loss in home value, so too are Plaintiffs here. Indeed, the facts here are even more compelling because, for example, the proximity is immediate (direct adjacency), the visual and functional impacts

are substantial (tall metal poles and power lines), and the loss in value can be quantified by accepted real-estate valuation methods.

151. Accordingly, the holding in *Foothills Reserve* not only supports, but compels, an award of just compensation to each Plaintiff for (A) the impairment of their easement rights, (B) the measurable reduction in the value of their homes, and (C) any other damages incidental to the taking as a result of SRP's condemnation of the Common Area and construction of the Project.

152. Such other monies incidental to taking are attorneys' fees and costs, expert fees, interest, taxes, and other damages that have occurred incidental to and because of proceedings related to the taking. *See, e.g.*, A.R.S. §§ 11-972(B); 12-1128, 12-1129; 44-1201.

153. The Arizona Supreme Court's January 2025 decision in *Foothills Reserve* put SRP on notice that their actions would violate Plaintiffs' rights. The ownership of the homeowners at Circle Cross are recorded and a matter of public record. But SRP did not send a letter of interest to buy the homeowners' easement rights or pass a resolution to acquire their rights through eminent domain, nor seek to join the homeowners in the Eminent Domain Litigation. *See supra* regarding appraisal and procedural exclusion.

v. Plaintiffs Are Entitled To Severance And Proximity Damages

154. A fundamental principle of appraisal is that all relevant factors affecting just compensation must be considered in the evaluation of any property. Therefore, if proximity to a power line affects the value, then this effect is of relevance in assessing just compensation.

155. The Plaintiffs' Homeowner Properties have lost significant fair market value ("FMV") as a result of SRP's condemnation of the Common Area and completion of the Project thereon. Each Plaintiff is entitled to "the amount of money necessary to put the

property owner in as good a financial position as if the property had not been taken." *Foothills Reserve*, 259 Ariz. at 97 ¶ 11 (citation omitted).

156. In addition to loss of FMV, Plaintiffs are entitled to damages each injury suffered including those for noise, light, proximity, loss of use and enjoyment, loss of aesthetics, health hazards created as a direct result of taking through condemnation, and any other damages incidental to the taking. *See, e.g.*, *State ex. Rel. Miller v. J.R. Norton Co.,* 158 Ariz. 50 (App. 1988); *Selective Resources v. Pinal County*, 145 Ariz. 151 (App 1984); *State v. Foothills Master Owner Ass'n*, 259 Ariz. 92 (2025); § 12-1122(A)(2); Ariz. Const. art. 2 § 17.

157. Such damages also include monies for damages suffered by Plaintiffs' including the attorneys' fees and costs, expert and appraisal costs, interest, taxes, and any other damages the occurred incidental to and because of the proceeding on the taking that will put each in as good a position as prior to SRP's taking.

G. <u>Plaintiffs Are Entitled To Just Compensation For Their Damages, Including For SRP's Actions That Increased Plaintiffs' Damages</u>.

158. Each Plaintiff is entitled to just compensation for each and every injury to their positive and negative easement rights and interests, and each separate damage suffered incident to and because of the proceedings related to the taking.

159. SRP concedes entitlement to just compensation for those with ownership interests in the condemned property. *See* Eminent Domain Litigation at paragraph 12.

160. Additionally, SRP caused increased damages to Plaintiffs by making decisions that, based on information and belief, were driven by SRP's desire for profits rather than the mitigation of damages to Plaintiffs.

161. If SRP had buried the power lines, Plaintiffs' damages would have been significantly reduced, but SRP chose not to do so.

162. Additionally, SRP chose not to include the Plaintiffs in its Eminent Domain Litigation, necessitating additional damages to each Plaintiff related to bringing their claims independently and retaining their own expert witness and legal counsel, each of which resulted in additional costs and fees.

163. If SRP had properly included the Plaintiffs in the Eminent Domain Litigation and SRP's appraisal, Plaintiffs may have been able to determine their losses without the need for counsel and appraisals. But, upon information and belief, SRP chose is own expedience and profits over the property rights and property interests of Plaintiffs.

164. Further, nothing in the Order to Show Cause briefing, hearing, or proposed order even considered Plaintiffs or ways in which their damages or other losses could have been mitigated.

165. On information and belief, SRP did not consider or choose to mitigate the damages to the HOA homeowners by burying the power lines, but rather sought the inexpensive and expedient route for its own benefit.

166. On information and belief, SRP has failed to meet all the legal requirements of notice, appraisals, timing, and other eminent domain takings requirements established by Arizona statute and the Arizona and U.S. constitutions.

167. On information and belief, SRP took no meaningful steps to ensure that the rights of Plaintiffs were included in the Eminent Domain Litigation, assessed in the SRP Appraisal, nor considered as to Plaintiffs' rights and interests in easements, severance, or proximity damages.

H. <u>Plaintiffs Are Entitled to Damages, With Interest Accruing As Of The Date of SRP's Taking</u>.

168. Plaintiffs are entitled to damages based on the date of the Order of Immediate Possession, April 14, 2025, subject to the constitutional guarantees of just compensation. *See Calmat*, 176 Ariz. 190; § 12-1123(B); Ariz. Const. art. 2 §17. This date represents the

constitutional date of taking (and the triggering of prejudgment interest) regardless of later construction milestones.

169. Upon information and belief, SRP chose to initiate an expedited taking despite the fact the activation of the power lines running through the Common Area would not occur for nearly a year after the initiation of the Eminent Domain Litigation and the subsequent Order of Immediate Possession, and will occur no earlier than January 2026.

170. Plaintiffs are owed at least the above-stated amounts of money in damages, and owed further all nonpossessory, severance, proximity, and other damages incidental to SRP's taking and in an amount to be determined at trial that will provide just compensation to each Plaintiff for the damage he/she has suffered as a result of SRP's taking.

I. Plaintiffs Are Each Entitled To Damages For All Fees, Costs, Interests, Tax Liability, And Any Other Monies Associated With SRP's Taking And This Litigation.

171. Each Plaintiff is entitled to just compensation for SRP's taking. *See* Ariz. Const. art. 2, § 17.

172. Each Plaintiff is also entitled to "the amount of money necessary to put the property owner in as good a financial position as if the property had not been taken." *Foothills Reserve*, 259 Ariz. at 97 ¶ 11 (citation omitted).

173. Plaintiffs are entitled to such damages based on the date of the Order of Immediate Possession, April 14, 2025, and also subject to the constitutional guarantees of just compensation. *See Calmat*, 176 Ariz. 190; § 12-1123(B); Ariz. Const. art. 2 §17.

174. Plaintiffs are entitled to such monies based on claims pursuant to this inverse condemnation proceeding, including costs, disbursements and expenses, attorney, appraisal and engineering fees, and such further relief. *See* A.R.S. §§ 11-972(B); 11-961 (SRP as acquiring agency); 12-1128, 12-1129; *see also* Ariz. Const. art. 2, § 17; *Foothills Reserve*, 259 Ariz. at 97 ¶ 11.

175. Plaintiffs are also entitled to pre- and post-judgment interest. A.R.S. § 44-201.

COUNT ONE

(Inverse Condemnation)

176. Plaintiffs incorporate every allegation of the Complaint as if herein again alleged in full.

177. SRP's failure to include Plaintiffs in its Eminent Domain Litigation necessitated this inverse condemnation proceeding.

178. An inverse condemnation is "[a]n action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings." *Inverse condemnation*, Black's law Dictionary (12th ed. 2024). That is precisely what has occurred here.

179. A "direct" or "straight" condemnation is one in which the condemning government entity files an eminent domain complaint against the owner of the property to be condemned and is later granted possession of the property. *See, e.g.*, A.R.S. §§ 12-1111, *et seq.*

180. An "inverse" condemnation, by contrast, is one in which the government entity takes the subject property without filing a complaint, and it is the landowner who thereafter files suit to obtain just compensation. *See, e.g.*, *A Tumbling-T Ranches v. Flood Control Dist. of Maricopa Cnty*, 222 Ariz. 515, 525 ¶ 18 (App. 2009) ("If the government has not filed a condemnation action to acquire the private property, the property owner's remedy is to sue for inverse eminent domain to recover the fair market value of the property interest taken or damaged.").

181. Arizona allows for landowner's who bring an inverse condemnation actions in state court to recover just compensation for violations of the Takings Clause. *See* Ariz. Const. art. 2, § 17; *Calmat*, 176 Ariz. at 192 ("This constitutional provision is self-executing. An injured party must therefore be compensated, even though no specific statutory procedure

governs this recovery.") (citations omitted); *see also, e.g.*, A.R.S. §§ 28-7102, 28-7052 (inverse condemnation statutes for takings involving highway or airport construction); A.R.S. §§ 10-2085, 10-2151, 28-7382 (statutes authorizing inverse condemnation actions related to electricity, broadband, and telecommunication infrastructure).

182. Thus, under Arizona law, Plaintiffs should have been compensated by SRP for its taking even if they were unaware of and did not enforce their rights. Here, SRP failed to include Plaintiff Homeowners in the Eminent Domain Litigation, so the Plaintiff Homeowners had to seek their own enforcement via inverse condemnation.

183. To prevail on an inverse condemnation claim, "a plaintiff must prove a governmental entity constructed or developed a public improvement that substantially interfered with the plaintiff's property right." *Id.* (citing *Maricopa Cnty. Mun. Water Conservation Dist. No. 1 v. Warford*, 69 Ariz. 1, 11 (1949)).

184. As to this element of Plaintiffs' claims, SRP admits in its Eminent Domain Litigation Complaint that it is a governmental entity with the right and authority to acquire real property by eminent domain. *See* Eminent Domain Litigation at paragraph 9.

185. SRP sought "to condemn real property and property interests for a Power Transmission Easement" in the "Circle Cross Ranch Community Association," Eminent Domain Litigation at paragraphs 2, 4.

186. SRP sought and later received, via an Order of Immediate Possession, by eminent domain, the condemned Common Area in the HOA.

187. SRP did not include the Plaintiffs and other HOA homeowners in the Eminent Domain Litigation.

188. SRP also did not include the rights and interests of such Plaintiffs and other homeowners in the SRP Appraisal.

189. Thus, SRP substantially interfered with Plaintiffs' property rights and interests by not just taking the property by eminent domain but also by doing so without including

Plaintiffs' property rights and interests as part of the Eminent Domain Litigation, including by causing measurable reductions in fair market value.

190. On information and belief, had SRP appropriately included Plaintiffs and other HOA homeowners in the Eminent Domain Litigation, and justly compensated those homeowners' interests and rights, this inverse condemnation litigation would not have been necessary.

191. Each Plaintiff herein held rights to that Common Area and easements appurtenant to a larger parcel that included each Plaintiffs' physical real properties, facts known to SRP as part of the HOA CC&Rs pertaining to those rights and which were recorded.

192. SRP did not name any of the Plaintiffs in its suit. *See* A.R.S. § 12-1117 (discussing parties to include in a complaint); *cf.* A.R.S. § 12-1118 (permitting separate actions).

193. Each of the Plaintiffs herein is a person occupying and having an interest in property taken by SRP and an interest in damages for the taking thereof. *See* A.R.S. § 12-1120.

194. Each of the Plaintiffs now must appear, plead, and defend his/her/their property and interests therein, and seek the just compensation for damages via this litigation. *See* A.R.S. § 12-1120; Ariz. Const. art. 2 § 17.

195. SRP has not made any written offers to purchase the Plaintiffs' property or interest in property as discussed herein and required by A.R.S. § 12-1116(A)(1).

196. SRP has not made any offer to any of the Plaintiffs for any compensable damages as discussed herein and as required by A.R.S. § 12-1116(A)(1).

197. SRP has not provided any appraisal to any of the Plaintiffs pertaining to their interests as plead herein and as required by A.R.S. § 12-1116(A)(1).

198. The SRP Appraisal that was prepared related to the Common Area did not account for Plaintiffs' interests and rights related to the Common Area.

199. Nor did SRP provide any estimates of just compensation to any of the Plaintiffs pertaining to their individual rights and interests as required by § 12-1116(A)(1).

200. SRP, therefore, failed to meet every notice requirement for each Plaintiff under § 12-1116(A), which required at least 20 days' notice to a party before commencement of eminent domain litigation affecting the party's property.

201. SRP knew or should have known of Plaintiffs' rights and interests, as Plaintiffs' rights were recorded.

202. SRP knew or should have known of the statutory and constitutional requirements in seeking to take Plaintiffs' property and interests in property.

203. Additionally, SRP knew or should have known of its obligations to Plaintiffs because *Foothills Reserve* was published prior to the initiation of the Eminent Domain Litigation, the immediate possession of the Common Area, and the construction of power line infrastructure thereon.

204. SRP failed to comply with the statutory and constitutional requirements of eminent domain prior to its instigation of the Eminent Domain Litigation, prior to its initiation of immediate possession, prior to its taking, and prior to the construction of powerline infrastructure on the Common Area.

205. Although SRP is permitted to bring joint or separate condemnations actions pursuant to A.R.S. § 12-1118; the statutory and constitutional requirements for any and all interested parties was triggered as of no later than the date of SRP's taking via the Order of Immediate Possession, April 14, 2025.

206. Further, the Order of Immediate Possession expressly applies to, and estimates damages to, "all owners, possessors, or persons having an interest in the Property sought to

be condemned by this action." *See* Eminent Domina Litgation, Order of Immediate Possession, at 4.

207. Plaintiffs are each such "owners, possessors, or persons having an interest in the Property [(the Common Area)] sought to be condemned by this action."

208. The SRP Appraisal amount as submitted does not include Plaintiffs' property rights and interests.

209. SRP knew or should have known that all parties with interests that would be damaged by the proposed taking (*i.e.*, Plaintiffs) were not represented in SRP's damage estimates.

210. Based on information and belief, SRP did not ensure that the SRP Appraisal included all rights and interests.

211. The deposit amount in the Order for Immediate Possession does not account for the damages to Plaintiffs' property rights and interests.

212. Further, based on information and belief, there is no evidence that SRP considered how to mitigate the damage to any of the homeowners with rights and interest to the condemned property as there appears to have been no consideration of burying the powerlines or of the need to ensure the property rights of Plaintiff Homeowners as to notice, appraisals, timing, and other statutory and constitutional protections pertaining to the Eminent Domain Litigation.

213. SRP did not meet the constitutional, case law, and statutory requirements of eminent domain before filing the Eminent Domain Litigation, at the time of its request for immediate possession, at the time the Order of Immediate Possession was granted, or at the time of its construction of power line infrastructure upon the Common Area. *Supra.*

214. Based on information and belief, then, SRP should not have been granted an Order of Immediate Possession. *Supra.*

215. SRP knew or should have known of Plaintiffs interests, due process, statutory and constitutional mandates, and their other rights under the law.

216. Disregarding the rights and interests of each and every of the Plaintiffs, SRP condemned their property interests, took immediate possession of the same, and commenced construction without ever addressing the rights and interests of Plaintiffs.

217. SRP additionally failed to address the rights and interests of the Plaintiffs after being provided Notices of Claim, to which an earlier draft of this Complaint was attached.

218. SRP's condemnation of the Common Area and completion of the Project thereon substantially interfered with Plaintiffs' rights and interests in the Common Area and each Plaintiff's rights in each's residential real property. Specifically, the condemnation adversely affected each property's market value, aesthetic views, quiet enjoyment, health and safety, use and development potential, and in other ways damaged every Plaintiff via damages incidental to the taking.

219. In addition, SRP substantially interfered with Plaintiffs' rights because SRP even now has not included, compensated, appraised, or otherwise followed Arizona law in providing for Plaintiffs' rights and interests as addressed herein. *See* Ariz. Const. art. 2 § 17; A.R.S. §§ 12-1111 to 12-1130.

220. SRP's actions necessitated Plaintiffs' inverse condemnation litigation because SRP took actions that substantially interfered with Plaintiffs' property rights in (a) the Common Area, and (b) each of the Plaintiff's individual residential real properties without first compensating Plaintiffs. Although SRP initiated a direct condemnation action against the HOA for the taking of the Common Area (*i.e.*, the Eminent Domain Litigation), SRP failed to include or to compensate individual homeowners—such as Plaintiffs—whose nonpossessory easement rights in the Common Area were damaged, negatively impacting the individual property values, and otherwise adversely impacting the Plaintiffs whose

interests are materially impaired by the taking, the immediate possession of the Common Area, and the construction of the Project.

221. Plaintiffs possess legally cognizable property interests in the Common Area by virtue of appurtenant easements under the HOA's recorded CC&Rs, which grant Plaintiffs enforceable rights to use and enjoy the Common Area. SRP's construction of towering above-ground 69kV transmission poles—ranging in height from 61 to 74.5 feet—along the Common Area, directly adjacent to Plaintiffs' backyards, has substantially diminished the use, enjoyment, and value of Plaintiffs' individual properties. As such, this is not merely an indirect impact or consequential harm; it is a direct, substantial interference with protected property interests.

222. Moreover, under *Foothills Reserve*, the Arizona Supreme Court held that individual homeowners may recover "severance damages," "proximity damages," and other damages incidental to the taking, when the taking of HOA common areas materially diminishes the value of the homeowners' homes. Here, the impact on Plaintiffs is not speculative or de minimis: it is substantial and includes aesthetic blight, interference with quiet enjoyment, perceived and actual safety and health risks, and substantial decreases in fair market property value—all directly resulting from SRP's taking. Accordingly, Plaintiffs are entitled to recover just compensation for the taking of their property interests under Article 2, § 17 of the Arizona Constitution and the precedent established in, *inter alia*, *Foothills Reserve*.

223. Even without statutory protections or the Arizona Supreme Court's *Foothills Reserve* opinion, Plaintiffs are entitled to compensation for SRP's taking, as the constitutionally protected right for just compensation for a government taking is "self-executing" and "an injured party must therefore be compensated," even if no specific statutory procedure governs the recovery. *See Calmat*, 176 Ariz. at 192.

224. As a result of SRP's conduct, it owes Plaintiffs an amount to be proven at trial, as well as an award for pre- and post-judgment interest at 10% *per annum* under A.R.S. § 44-1201 from the date of the order of immediate possession on April 14, 2025, pursuant to A.R.S. § 12-1123(B) and any other additional amount to meet the constitutional, statutory, and case law guarantees of just compensation required by SRP's taking.

225. Such an award also includes a separate award for Plaintiffs' reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, expert, and engineering, and any other fees actually incurred due to the taking are sought. *See, e.g.*, A.R.S. §§ 11-972(B); Ariz. Const. art. 2, § 17; *Foothills Reserve*, 259 Ariz. at 97 ¶ 11.

226. Plaintiffs request an award of attorneys' fees and other costs whether litigation is dismissed or settled prior to jury award. *See* A.R.S. §§ 12-1128 (addressing apportionment), 12-1129 (addressing award of attorneys' fees and other costs prior to jury award).

COUNT TWO

(Nuisance)

227. Plaintiffs incorporate every allegation of the Complaint as if herein again alleged in full.

228. "[A] nuisance is a condition which represents an unreasonable interference with another person's use and enjoyment of his property and causes damage." *Graber v. City of Peoria*, 156 Ariz. 553, 555 (App. 1988).

229. "What constitutes an unreasonable interference with another person's use and enjoyment of his property is determined by the injury caused by the condition and is not determined by the conduct of the party creating the condition." *Id.* (citing *City of Phoenix v. Johnson*, 51 Ariz. 115 (1938)).

230. For another's actions to rise to the level of nuisance, the interference with another's use and enjoyment of land must be "substantial, intentional and unreasonable

under the circumstances." *Nolan v. Starlight Pines Homeowners Ass'n*, 216 Ariz. 482, 489, ¶ 32 (App. 2007).

231. "[N]uisance ordinarily implies a continuity or recurrence of action over a substantial period of time." *Nolan v. Starlight Pines Homeowners Ass'n*, 216 Ariz. 482, 489 ¶ 32 (App. 2007) (quoting *Kubby v. Hammond*, 68 Ariz. 17, 25 (1948)).

232. It is well established in Arizona that government entities can be liable for nuisance, even when they are acting pursuant to statutory authority. *See, e.g.*, *Bradford v. City of Tucson*, 573 P.3d 557, 560–64 (App. 2025). This is true regardless of whether the government entity acquired the property in question through the condemnation process or otherwise.

233. Here, SRP's Project constitutes a nuisance because it has caused a substantial, intentional, and continuing interference with Plaintiffs' use and enjoyment of their homes. Specifically, SRP installed above-ground high-voltage power lines and utility poles immediately behind Plaintiffs' Homeowner Properties—altering the character of their neighborhood and impairing their ability to peacefully use their backyards and homes. The presence of large, visually intrusive utility infrastructure has, *inter alia*, disrupted aesthetic views, removed the buffer to development previously provided by the Common Area, introduced potential noise pollution, generated health and safety concerns associated with electromagnetic fields (EMFs) and risk of pole collapse or fire, and stigmatized Plaintiffs' Homeowner Properties in the eyes of prospective renters and buyers. These harms are concrete, substantial, and ongoing. SRP's construction of the Project is permanent and deliberate, and the resulting injuries—visual blight, noise, fear, and lost property value—are continuous in nature.

234. Under Arizona law, such ongoing, substantial interferences with residential use qualify as a nuisance. The fact that SRP opted for above-ground construction, rather than considering underground installation, and failed to include the Plaintiffs in the Eminent

Domain Litigation or the SRP Appraisal, thereby by recognizing their rights and mitigating these harms, further underscores the intentional, substantial, and unreasonableness of the interference by SRP of Plaintiffs' property rights and interests.

235. The Project also violates the statutory requirement that any taking of property private for public use "shall be located in the manner which will be most compatible with the greatest public good and the least private injury." A.R.S. § 12-1115(A).

236. Plaintiffs are therefore entitled to recover for the continuing nuisance caused by SRP's actions.

237. In short, SRP's actions unreasonably interfere with Plaintiffs' use and enjoyment of their respective properties, and SRP therefore owes Plaintiffs an amount to be proven at trial, as well as prejudgment interest at 10% *per annum* under § 44-1201 from the date of the Order of Immediate Possession on April 14, 2025, pursuant to A.R.S. § 12-1123(B).

238. Such award includes a separate award for Plaintiffs' reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, expert, and engineering, and any other fees actually incurred due to the litigation. A.R.S. §§ 11-972(B); Ariz. Const. art. 2, § 17; *Foothills Reserve*, 259 Ariz. at 97 ¶ 11.

COUNT THREE

(Declaratory Judgment)

239. Plaintiffs incorporate every allegation of the Complaint as if herein again alleged in full.

240. With regard to Plaintiffs' claims against SRP, an actual, present, and justiciable controversy exists as to whether Plaintiffs possess compensable property interests in the Common Area that entitle them to just compensation under Arizona law as a result of SRP's condemnation of the Common Area and construction of the 69kV transmission line Project.

241. Plaintiffs contend they each hold appurtenant easement rights over the Common Area by virtue of the HOA CC&Rs; that those rights constitute legally cognizable property interests protected under Article 2, § 17 of the Arizona Constitution; and that SRP's taking of the Common Area, and its exclusion of Plaintiffs from compensation, violates Plaintiffs' constitutional rights.

242. SRP has taken the position, expressly or impliedly, that Plaintiffs are not entitled to any compensation.

243. Plaintiffs are entitled to a judicial declaration that they hold compensable property rights and interests in and related to the Common Area; that the condemnation and construction of SRP's Project on the Common Area substantially impaired those interests and the value of Plaintiffs' Homeowner Properties; that Plaintiffs are entitled to just compensation under Arizona law, including under *Foothills Reserve*; and that SRP increased rather than mitigated the damages suffered by Plaintiffs by failing to include them in the Eminent Domain Litigation or in the appraisal and by choosing not to bury the powerlines, and that SRP's siting of the Project and choice of above-ground powerlines violates A.R.S. § 12-1115(A). *See supra.*

V. DISCOVERY TIER

244. Pursuant to Rule 26.2, Arizona Rules of Civil Procedure, this action is subject to Tier 3 discovery limitations.

VI. DEMAND FOR JURY TRIAL

245. Plaintiffs demand a trial by jury on all issues so triable.

WHEREFORE, Plaintiffs respectfully request the Court enter judgment against SRP as follows:

A. For an order declaring the rights of the parties and declaring that Plaintiffs hold compensable property interests in the Common Area; that the condemnation and construction of SRP's Project on the Common Area substantially impaired those interests

and the value of Plaintiffs' homes; that Plaintiffs are entitled to just compensation under Arizona law; that SRP increased rather than mitigated the damages to Plaintiffs by burying the power lines and failing to meet the statutory, case law, and constitutional protections entitled to homeowners; and that SRP's siting of the Project and choice of above-ground powerlines violates A.R.S. § 12-1115(A).

B. For an order awarding Plaintiffs compensation for the harms they suffered in an amount to be determined at trial;

C. For an award of all attorneys' fees, expenses, and costs under, *inter alia*, A.R.S. §§ 11-972(B), 12-341, 12-341.01, and 12-1128;

D. For an award of pre-judgment interest on all awarded amounts at the rate of 10% *per annum* under A.R.S. § 44-1201(A) accruing from the date of the order of immediate possession on April 14, 2025, pursuant to A.R.S. § 12-1123(B);

E. For an additional award consistent with the guarantees of the Takings Clause, Ariz. Const. art. 2, § 17, after this date;

F. For an award of post-judgment interest at the applicable rate under A.R.S. § 44-1201(B);

G. That each award be separately specified as to the areas of award; and

H. For such other and further relief as the Court deems just and equitable under the circumstances.

RESPECTFULLY SUBMITTED this 13th day of January, 2026.

FRAZIER LAW, PLLC

By: /s/ Grant H. Frazier
Grant H. Frazier
John N. Thorpe
Maddalena S. Savary
Brennan A.R. Bowen
Attorneys for Plaintiffs