defenses that may be warranted under the facts as this matter progresses.

WHEREFORE, having fully answered the Petition, the Townsends pray that the Court enter its Judgment:

A. Dismissing the Petition with prejudice;

B. Awarding the Townsends their costs and attorney fees herein;

C. Awarding the Townsends pre and post-judgment interest on all amounts awarded to them herein; and

D. Awarding such other and further relief as the Court deems proper under the circumstances.

COUNTERCLAIM FOR BREACH OF CONTRACT, FOR DECLARATORY JUDGMENT, EJECTMENT OR, ALTERNATVIVELY, FOR UNLAWFUL DETAINER OR ALTERNATIVELY PETITION BY OWNER FOR WRIT OF RESTITUTION UNDER THE UNIFORM OWNER RESIDENT RELATIONS ACT

COMES NOW Counter-Plaintiffs Melvin L. Townsend and Phyllis L. Townsend (hereinafter to referred to as "Plaintiffs" of "Townsend") by and through their counsel of record, the Garrison Law Firm, LLC (Jake A. Garrison), and for their cause of action against Counter-Defendant Robert F. Sartori and Katherine F. Sartori (hereinafter referred to as "Defendants" or "Sartori"), state as follows:

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiffs are residents of Torrance County, New Mexico.

2. Defendants, upon information and belief, are residents of Torrance County, New Mexico.

4. The transaction which forms the basis of this Complaint pertains to certain real property located at 25 Floyd Rd, McIntosh, New Mexico, Torrance County, and more particularly described as follows:

> **Lot designated Sixty-nine-R (69-R) within Section Eleven (11), Township Seven (7) North, Range Eight (8) East, N.M.P.M., of ANTELOPE SPRINGS RANCHES, a subdivision, as the same are shown and designated on that certain Corrective Replat prepared by Timothy Ray Oden, N.M.R.P.L.S. #8667 on April 19, 1989, filed of record on February 7, 1990 at 10:41 o'clock, A.M., as document number 85919, and filed in Cabinet B, Slide 254, Plat Records of Torrance County, New Mexico.**

(hereinafter referred to as the "Premises")

5. Defendant entered into possession of the Premises under a Real Estate Contract (hereinafter referred to as the "Contract") dated March 20, 2012 by and between Plaintiffs as Seller and Defendants as Purchaser. (See Contract attached hereto and made a part hereof as Exhibit "A")

6. Defendant failed to make the payments due on February 20, 2015 through July 20, 2015, nor any payments after that time, and Plaintiff's attorney mailed a demand letter to Defendant, on behalf of Plaintiff, on September 15, 2015 for the February 20, 2015 through July 20, 2015 payments along with fees and costs as provided for in the Contract. (See demand letter attached hereto and made a part hereof as Exhibit "B")

7. Defendants did not make the demanded payment within thirty (30) days after the demand was mailed Certified Mail-Return Receipt Requested, and Regular First Class Mail, as required under Paragraph 8B of the Contract.

8. Due to Defendants failure to comply with the Contract, Plaintiff terminated their interest by filing an Affidavit of Uncured Default and Election of Termination on October 22, 2015 in Book 333, Page 2593, as document number 21522756, the records of the Torrance County Clerk, Torrance County, New Mexico; and thereafter, after notifying the escrow company of the uncured default, received the original Special Warranty Deed from Defendants to Plaintiffs, and filed the same on October 22, 2015, in Book 333, Page 2596, as document number 215227567, the records of the Torrance County Clerk, Torrance County, New Mexico (See Affidavit of Uncured Default and Election of Termination and Special Warranty Deed attached hereto and made a part hereof as Exhibits "C" and "D" respectively).

9. Defendant was notified that the Contract was terminated by service of a Notice of Termination of Real Estate Contract and Tenancy-at-Will dated October 26, 2015, which was hand delivered to Defendant Katherine F. Sartori. (hereinafter referred to as the "Notice of Termination", see Notice of Termination attached hereto and made a part hereof as Exhibit "E")

10. Defendant failed to either pay rent to Plaintiff or vacate the property pursuant to the Notice of Termination described herein, and was, accordingly, provided with appropriate notice to quit contained within the Notice of Termination.

11. Defendant continues to retain possession of the Premises contrary to the rights of Plaintiff.

12. Under the terms of the Contract, Plaintiffs are entitled to evict Defendants for continuing to retain possession of Plaintiffs' property contrary to Plaintiffs' right to possession.

13. Under New Mexico law, Plaintiffs are entitled to reasonable attorney's fees plus legal costs of this action due to the fact that Plaintiffs have been required to bring this action in order to protect their rights under the Contract.

COUNT I
BREACH OF CONTRACT

14. Plaintiffs reaffirm and reallege the allegations contained in Paragraphs 1 through 13 as if fully set forth herein.

15. Plaintiffs entered into the Contract which clearly states "[i]f Buyer fails or neglects to cure any default within thirty (30) days after the date Seller's Default Notice is mailed, then Seller may . . . terminate Buyer's right in the Property and retain all sums paid as liquidated damages to that date for the use of the Property, and all rights of Buyer in the Property will end." (See Exhibit A, ¶8C.(1)(b))

16. The Contract further states that "Upon termination of Buyer's rights in the Property, Buyer has no continuing right to possession. If Buyer remains in possession of the Property after Buyer's rights in the Property have been terminated, Buyer will then become a tenant at will, for a rental amount equivalent of the regularly scheduled installment payment due and payable under this Contract, with the first such rental payment due immediately, in advance, and such tenancy being subject to termination by either party upon thirty (30) days separate prior written notice." (See Exhibit A, ¶8E.)

17. Plaintiff had the requisite notice hand delivered to Defendant Katherine F. Sartori to notify the Defendants the tenancy at will had been terminated and rent was due pursuant to the terms of the Contract in the amount of $775.00 in order for Defendants to be able to remain in possession for thirty days upon payment of rent within 3 days. (See Exhibit D, Notice of Termination)

18. Defendants failed to pay rent, as required under the Contract, and owe Plaintiffs rent, in the amount of $775.00 ($25.83 per day) per month from October 26, 2015 until they vacate the premises.

19. The Defendants failed to pay impounds for property taxes, as agreed in the Contract, and owes taxes for the tax year of 2015 in the amount of $1.83 per day from January 1, 2015 until October 22, 2015 (294 days) at which time their ownership was terminated, leaving taxes due in the total amount of $538.02; and, Defendants also failed to pay the solid waste bill.

WHEREFORE, Plaintiffs prays for judgment of this Court, awarding Plaintiffs the following:

a. immediate possession of premises;

b. past due rent from October 22, 2015 until possession is restored to Plaintiffs;

c. For property taxes unpaid by Defendants;

d. additional damages as may be determined at a later time once the cost to repair physical damage to the property has been assessed after possession has been restored to Plaintiffs; and

e. Plaintiffs should be awarded costs, attorneys fees, and such further relief as this Court deems just and proper.

COUNT II
DECLARATORY JUDGMENT

Plaintiffs reaffirm and reallege the allegations contained in Paragraphs 1 through 19 as if fully set forth herein.

20. This count is brought pursuant to the Declaratory Judgment Act, Sections 44-6-1 through 44-6-15 NMSA 1978.

21. The District Court has the power to declare the rights, status and other claims of Plaintiffs.

22. A dispute exists as to the legal relationship between Plaintiffs and Defendant.

23. Plaintiffs have a right to possession of the subject real property and are entitled to an award of damages equal to rent in the amount called for in the Contract along with attorney's fees and costs for having to file this action.

WHEREFORE, Plaintiffs prays for declaratory judgment of this Court, declaring the rights, duties, and other legal relations between Plaintiffs and Defendant, and that such judgment of this Court should declare and, decree that Defendant has no legal or equitable claims against Plaintiffs in regard to the aforementioned Real Estate Contract, that Defendant shall be held to have neither a right in title nor a leasehold interest in the subject property, and that Plaintiffs should be awarded costs, attorneys fees, and such further relief as this Court deems just and proper.

COUNT III
EJECTMENT

24. Plaintiffs reaffirm and reallege the allegations contained in Paragraphs 1 through 24 as if fully set forth herein.

25. This Count is brought pursuant to §§42-4-1 through 42-4-13 NMSA 1978.

26. While the Defendants were in possession of the premises pursuant to the Contract, the Contract was terminated due to Defendants' default, after proper notice was given on October 26, 2015 and on that day; the Defendants became tenants at will with rent due in the amount of the prior monthly payment under the Contract.

27. The Defendants failed to pay the required rent after receiving proper notice and have retained possession and occupancy of the subject premises contrary to the rights of the Plaintiffs.

28. The Defendants owe the Plaintiffs rent in the amount of $775.00 per month ($25.83 per day) from October 26, 2015 until the date they vacate the premises.

29. The Plaintiffs are entitled to recovery of the rents due along with damages and costs.

30. Upon this Court's order to grant possession to the Defendants, a writ of possession should be issued, directing the sheriff to deliver to the plaintiff the possession of the premises, and also collect the damages and costs, through execution on this Court's order.

WHEREFORE, Plaintiffs prays this Court for judgment against Defendants as follows:

a. issuance of a writ of possession directing the sheriff or a full-time, salaried deputy sheriff to remove the Defendants from the premises and return possession of the premises to the Plaintiffs.

b. damages in the amount determined by this Court;

c. an award of Plaintiffs' costs and attorney's fees;

COUNT IV
UNLAWFUL DETAINER

31. Plaintiffs reaffirm and reallege the allegations contained in Paragraphs 1 through 31 as if fully set forth herein.

32. The Defendants are tenants at will and have failed to pay rent upon termination of the Contract, as agreed in the Contract, and further have failed to vacate after being properly served with 3 day notice to quit as result of their non-payment of rent.

33. The Defendants are month to month tenants or tenants at will and continue in possession of the premises after thirty days written notice by the owner or his agent or attorney to vacate.

34. This count is brought in the event the Court determines an action under the Uniform Owner Resident Relations Act does not apply in this instance since the provisions of Sections 35-10-1 through 35-10-6 NMSA 1978 shall not apply to actions by a landlord arising out of a residential tenancy governed by the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978].

35. If the Court determines the Defendants are guilty in this civil action for forcible entry or unlawful detainer, judgment shall be entered against them as follows:

a. for damages; and

b. that they be removed from the premises and the Plaintiffs be put in possession.

c. An order that the sheriff or a full-time, salaried deputy sheriff remove the defendant from the premises.

WHEREFORE, Plaintiffs prays this Court for judgment against Defendants as follows:

(a) Damages in the amount determined by this Court;

(b) An order that the sheriff or a full-time, salaried deputy sheriff remove the defendant from the premises and return possession of the premises to the Plaintiffs

(d) For costs and attorney's fees;

(e) For such other and further relief as the Court may deem just and proper in this matter.

COUNT V
PETITION BY OWNER FOR RESTITUTION
(Uniform Owner-Resident Relations Act)

36. Plaintiffs reaffirm and reallege the allegations contained in Paragraphs 1 through 36 as if fully set forth herein.

37. This count is brought in the alternative, in the event the Court determines the Uniform Owner Resident Relations Act applies to the subject matter of this cause rather than the alternative counts for Unlawful Detainer and Ejectment.

38. Plaintiffs are lawfully entitled to possession of the premises located at 25 Floyd Rd, McIntosh, New Mexico, Torrance County.

39. Defendant entered into possession of the premises under a real estate contract which was terminated on June 1, 2015 due to Defendant's default. (See Exhibit C, "Affidavit of Default and Election of Termination") at which time they became tenants-at-will pursuant to the terms of the real estate contract (See Exhibit A, "Real Estate Contract").

40. Section 47-8-8 of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

41. Defendants' tenancy-at-will was terminated on October 26, 2015 when Plaintiff's attorney caused a Notice of Termination of Real Estate Contract and Tenancy-at-Will to be served upon them. (See attached Exhibit E)

42. Defendants failed to pay rent, as required under their tenancy-at-will, failed to vacate the property and are subject to eviction pursuant to New Mexico Law.

43. Section 47-8-8 of the Uniform Owner-Resident Relations Act [47-8-1 NMSA 1978] applies to, regulates and determines rights, obligations and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

44. The terms of the Contract provide the terms of a rental agreement between the Plaintiffs and Defendants in the event of termination of the Contract.

45. Defendants are indebted to plaintiff in the amount of $25.83 per day

from the date of termination of their tenancy-at-will, June 3, 2015, until date of restitution, plus damages as determined by the court.

46. Plaintiffs hold no funds of defendant as a damage deposit under a rental agreement.

47. Plaintiffs request the issues of restitution and damages be heard together with any further damages award being left open for further hearing in the event the Defendants have caused physical damage to the property beyond reasonable wear and tear, which matters may be heard at a later hearing.

WHEREFORE, Plaintiffs prays this Court for judgment against Defendants as follows:

(a) For immediate possession of the Premises;

(b) Rent in the amount of $775.00 per month ($25.83 per day) from October 22, 2015, until the date the premises is vacated by Defendant;

(c) For damages, if any, to be set at a separate trial hereinafter;

(d) For costs and attorney's fees;

(e) For such other and further relief as the Court may deem just and proper in this matter.

Respectfully Submitted,

THE GARRISON LAW FIRM, LLC

Jake A. Garrison (Sup. Ct. 07/182)
Attorney for Phyllis and Melvin L. Townsend
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Albuquerque, NM 87112
Telephone: (505) 417-4799

I hereby certify that on January 7, 2016, I filed the foregoing via electronic means through the CM/ECF system and I mailed a copy of the foregoing to:

Robert F. Sartori, *pro se*
PO Box 24
McIntosh, NM 87032