

1 2. At an administrative hearing, the party asserting a claim, right, entitlement,
2 or affirmative defense has the burden of proof, and the standard of proof on all issues in
3 this matter is that of a preponderance of the evidence. Arizona Administrative Code R2-19-
4 119.

5 3. A preponderance of the evidence is:

6 The greater weight of the evidence, not necessarily established by the
7 greater number of witnesses testifying to a fact but by evidence that has the
8 most convincing force; superior evidentiary weight that, though not sufficient
9 to free the mind wholly from all reasonable doubt, is still sufficient to incline a
10 fair and impartial mind to one side of the issue rather than the other.

11 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

12 4. The CC&Rs are a contract between the parties and the parties are required
13 to comply with its terms. See *Johnson v. The Pointe Community Association*, 205 Ariz.
14 485, 73 P.3d 616 (App. 2003).

15 5. In Arizona, when a restrictive covenant is unambiguous, it is enforced to give
16 effect to the intent of the parties. See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125
17 P.3d 373, 376 (2006); see also *Grubb & Ellis Management Services, Inc. v. 407417 B.C.,*
18 *L.L.C.*, 213 Ariz. 83, 138 P.3d 1210 (App. 2006) (the tribunal must give effect to a
19 contract's clear and unambiguous terms).

20 6. An association shall not unreasonably withhold approval of a construction
21 project's architectural plans. See A.R.S. § 33-1817(B)(3).

22 7. Article VI, Section 6.5 of the CC&Rs provides, in pertinent part, as follows:

23 Application for Approval. Any Owner desiring approval of the Architectural
24 Committee for the construction, installation, addition, alteration, repair,
25 change or replacement of an Improvement which would alter the exterior
26 appearance of the Improvement, shall submit to the Architectural
27 Committee a comprehensive, complete and detailed written request for
28 approval specifying in detail the nature and extent of the construction,
29 installation, addition, alteration, repair, change or other work which the
30 Owner desires to perform ("Application"). Any Owner requesting the
approval of the Architectural Committee shall also submit the Architectural
Committee any additional information, plans and specifications required by
the Design Guidelines. In the event that the Architectural Committee fails to
approve or disapprove an Application for approval within sixty (60) days

1 after the Application, *together with all supporting information, plans and*
2 *specifications required by the Design Guidelines have been submitted to it,*
3 approval will not be required and this Section will be deemed to have been
4 complied with by the Owner who had requested approval of such plans.

5 Emphasis added.

6 8. Article V, Section 5.2 of the CC&Rs provides, in pertinent part, as follows:

7 Building Type and Size. No building shall be constructed or permitted to
8 remain on any lot other than one detached Single Family Residence not to
9 exceed two stories in height and a private one to five car garage.

10 9. The facts of this matter were not in dispute. The Application was submitted
11 on September 15, 2020, additional information was provided on October 6, 2020, and the
12 Denial Notice was issued on November 19, 2020.

13 10. Based on the evidence presented, the Application was not complete until
14 Petitioner provided a response to the October 5, 2020 request from Sycamore Estates.
15 Accordingly, Sycamore Estates was not required to approve or deny the Application until
16 December 5, 2020. As the Denial Notice was issued on November 19, 2020, it was issued
17 prior to the deadline and was, therefore, valid.

18 11. Upon consideration of all of the evidence presented at hearing, the
19 Administrative Law Judge concludes that Petitioner failed to establish that Respondent
20 failed to comply with its CC&Rs in a matter that constituted a violation of the governing
21 documents.

22 ORDER

23 **IT IS ORDERED** that Petitioner's petition is denied.

24 NOTICE

25 Pursuant to A.R.S. § 32-2199.02(B), this Order is binding on the
26 parties unless a rehearing is granted pursuant to ARIZ. REV. STAT.
27 section 32-2199.04. Pursuant to A.R.S. § 41-1092.09, a request for
28 rehearing in this matter must be filed with the Commissioner of the
29 Department of Real Estate within 30 days of the service of this Order
30 upon the parties.

1 Done this day, August 2, 2021.

2 /s/ Tammy L. Eigenheer
3 Administrative Law Judge
4

5 Transmitted by either mail, e-mail, or facsimile August 2, 2021, to:

6 Judy Lowe, Commissioner
7 Arizona Department of Real Estate
8 100 N. 15th Avenue, Suite 201
9 Phoenix, Arizona 85007

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