

1 **Final agency action regarding decision below:**

2
3 **ALJCERT ALJ decision certified as final**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 JOHN W. GRIGGS,

8 Petitioner,

9
10 vs

11 EXECUTIVE TOWERS HOMEOWNERS
12 ASSOCIATION,

13 Respondent.

No. 15F-H1516004-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

14
15 **HEARING:** January 6, 2016, at 1:00 p.m.

16 **APPEARANCES:** John W. Griggs (“Petitioner” or “Mr. Griggs”) appeared on his
17 own behalf; Executive Towers Homeowners Association (“Respondent”) was
18 represented by Christina N. Morgan, Esq., VialFotheringham LLP.

19 **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

20
21 **FINDINGS OF FACT**

22 **BACKGROUND AND PROCEDURE**

23 1. The Department of Fire, Building and Life Safety (the “Department”) is
24 authorized by statute to receive Petitions for Hearings from members of homeowners’
25 associations and from homeowners’ associations in Arizona.

26 2. Respondent is a homeowners’ association whose members own
27 condominiums in the Executive Towers, a high-rise condominium development located
28 in central Phoenix, Arizona, that was built in 1964.

29 3. Petitioner owns a residence in and is a member of Respondent.
30

1 4. Petitioner filed a petition with the Department alleging that Respondent had
2 violated paragraph 13 of its Covenants, Conditions, and Restrictions (“CC&Rs”) by
3 taking the following actions:

4 On 5/28/15 our HOA Board approved a Motion to remodel
5 Suite 7 (a revenue-generating Common Element) to convert
6 it into a Fitness Center without the required majority vote of
7 the whole membership and the “prior approval of the holders
8 of all mortgages and the beneficiaries under all trust deeds
9 then encumbering one or more of the Apartments.”

10 5. Respondent’s attorney filed an answer to the Petition, denying any violation of
11 paragraph 13 of the CC&Rs or applicable statute. Respondent’s answer provided, in
12 relevant part, as follows:

13 It is my understanding that [Respondent] originally
14 maintained a fitness center in the basement recreation room,
15 and the fitness center was previously removed from the
16 basement and converted to leasable storage spaces, without
17 member approval. [Respondent] has leased other portions of
18 the Common Elements to commercial tenants.
19 Unfortunately, [Respondent] has found it difficult to lease
20 space and collect past due lease payments from commercial
21 tenants.

22 The latest tenant occupying the space in question relocated
23 to a slightly smaller suite in the building that had been
24 vacant, and [Respondent] solicited feedback from the
25 Owners about using the recently vacated suite for a fitness
26 center in two open meetings. In April 2015, [Respondent]
27 sent out a survey to the Owners. Sixty-one percent (61%) of
28 the Owners returned the surveys. Of those who returned the
29 survey, the Owners favored using the space as a fitness
30 center by a 3-1 margin. Consequently, [Respondent]
changed the use of the space to a fitness center. . . .

Although [Respondent] did not need permission from the
Owners, [Respondent] still respected the Owners’ wishes. A
majority of the Owners already voted to use the space for a
fitness center. Requiring a formal vote of the Owners is form
over substance.

1 “Common Elements” means the “general common
2 elements”, as that term is defined in Section 33-551, Arizona
3 Revised Statutes,¹ together with store spaces on the first
4 level, building office on the first level, basement laundry,
5 parking garage, common parking areas, storage areas,
6 basement recreation and massage rooms, swimming pool
7 and swimming pool furniture and equipment, hospitality room
8 on the first level, outside walks and driveways, landscaping,
9 and all other portions of [the property], except the
10 Apartments.

11 10. Section 1.10 of the CC&Rs provides as follows:

12 Majority” or “Majority of Owners” means the owners of more
13 than 50 percent of the undivided ownership of the Common
14 Elements. Any specified percentage of the Owners means
15 that percentage of undivided ownership in the Common
16 Elements.

17 Members’ votes are counted according to the size of their condominium units, with the
18 votes of owners of larger units counting proportionately more than the votes of owners
19 of smaller units.

20 11. Paragraph 4 of the CC&Rs defines Respondent Association in relevant
21 part as follows:

22 The Association has been, or will be, formed so as to
23 constitute the “council of co-owners”, as that term is defined
24 in section 33-551, Arizona Revised statutes, and to serve as
25 the governing body of all of the Owners for the maintenance,
26 repair, replacement, administration and operation of the
27 Property²

28 12. Paragraph 4.2 of the CC&Rs provides as follows:

29 Board’s Determination Binding. In the event of any dispute
30 or disagreement between any Owners relating to the
Property, or any question of interpretation or application of
the provisions of the [CC&Rs] or Bylaws, the determination

¹ A.R.S. § 33-551 has been repealed and replaced by A.R.S. § 33-1202, which defines “common elements” as “all portions of a condominium other than the units.”

² A.R.S. § 41-1202 does not define the term, “council of co-owners,” but provides that “‘Association’ or ‘unit owners’ association’ means the unit owners’ association organized under § 33-1241” and “[b]oard of directors’ means the body, regardless of its name, designated in the declaration and given general management powers to act on behalf of the association.” A.R.S. § 41-1202(4) and (5).

thereof by the Board shall be final and binding on each all of such Owners.

13. Paragraph 5 of the CC&Rs provides, in relevant part, as follows:

Each Owner shall have the right to use the Common Elements Such rights to use and possess the Common Elements shall be subject to and governed by the provisions of [the CC&Rs] and the Bylaws. The Association shall have the authority to lease or to grant concessions with respect to parts of the Common Elements, subject to the provisions of the [CC&Rs]. . . .

14. Paragraph 12 of the CC&Rs provides, in relevant part, as follows:

Maintenance, Repairs and Replacements. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Apartment. Maintenance, repairs and replacements of the Common Elements shall be furnished by the Association as part of the common expenses, subject to the Bylaws and rules and regulations of the Association. . . .

15. Paragraph 17 of the CC&Rs provides, in relevant part, as follows:

The common elements shall be used only for access, ingress and egress to and from the respective Apartments by the Owners residing therein and their guests, household help and other authorized visitors and for such other purposes as are incidental to the residential use of the Apartments; provided, however, that the garage, laundry, building office, hospitality room and other special areas shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements will not be obstructed, damaged or unreasonably interfered with by any Owner.

16. Article 4, § 6 of Respondent's Bylaws provides as follows:

Except as otherwise specifically provided in the [CC&Rs], the Board shall not approve any capital expenditure in excess of \$5,000 unless required for emergency, repair, protection or operation of the Common Elements, nor enter into any contracts for more than two years without the prior approval of two-thirds of the total ownership of the Common Elements.

HEARING EVIDENCE

1
2 17. The original plans for the Executive Towers included commercial space for a
3 restaurant and coffee shop on the first floor. A barber shop and Botox clinic currently
4 occupy these commercial spaces.

5 18. During the 1980's, there was an exercise room or gym in the basement of
6 the Executive Towers. At some point in the late 1980's, Respondent's board converted
7 the gym in the basement to storage space that was available for residents to lease.

8 19. Mr. Early testified that he has served on Respondent's board for more than
9 three years, although he is currently not a Board member. Because board members'
10 terms of office are only for one year, Mr. Early compiled a compendium of the board
11 decisions that were available at the time, dating from approximately 1996, which the
12 board's current members could consult about prior policies.

13 20. Mr. Early testified that the board did not refer the decision to convert the
14 basement gym into storage space to the membership for a majority vote.

15 21. Mr. Early testified that the board has a history of repurposing common
16 elements to better serve the needs of the membership without referring the decisions to
17 the membership for a majority vote, including the following: (1) To convert the top floor
18 of the parking garage to a tennis court; (2) To convert a shallow "kiddie pool" into a
19 social pool that is approximately 4' deep, with benches along the sides; (3) To construct
20 a separate mailroom, rather than have the mailroom be part of the sales office; and (4)
21 To convert an area of stair landings for trash pickup after residents could no longer use
22 the chutes to incinerators.

23 22. At some point, additional spaces on the ground floor were converted to
24 commercial spaces that were available to lease. Mr. Parente testified that two tenants
25 formerly occupied the spaces, but failed to pay rent for two years. Respondent finally
26 evicted the remaining tenant. After the tenant vacated the premises, another tenant
27 wished to move into its smaller space, leaving space suite 7 vacant.

28 23. Mr. Parente testified Respondent advertised the empty suite 7 on Craigslist
29 and on a sign outside the building for at least six months, but that Respondent was
30 unable to lease the space to a new tenant. Mr. Parente testified that although 3 or 4

1 prospective tenants made inquiries, the Executive Towers is no longer a popular
2 commercial area and most commercial tenants wish to operate their businesses closer
3 to downtown, on Portland Place.

4 24. Mr. Parente testified that he was concerned about relying on leased income
5 to supplement assessments from residents because the lease amount per square foot
6 for the commercial spaces was going down.

7 25. Mr. Parente testified that the amenities of all the comparable high-rise
8 condominiums and hotels in central Phoenix included gyms or fitness centers. The
9 price per square foot for units in the Executive Towers was significantly lower than in
10 comparable properties. Real estate agents, prospective tenants, and prospective
11 purchasers frequently did not inquire further when they heard that the Executive Towers
12 did not have a fitness center.

13 26. Mr. Parente testified that he obtained quotes to convert suite 7 into a fitness
14 center and presented his idea to the board at the May 28, 2015 meeting. The May 28,
15 2015 minutes reflect that board members unanimously voted to submit the issue to
16 membership through a survey, in relevant part was follows:

17 *A motion was duly made and seconded that pending a*
18 *majority vote of Members returning a survey who support*
19 *converting Suite 7 to a Fitness Center, to reallocate the use*
20 *of the north section of Suite 7 into a Fitness Center and*
21 *enter a two (2) year lease with Fitness4Home (Allstate*
22 *Capital) for cardio and strength training equipment with lease*
23 *payments approximately \$702.63/month and a FMV*
24 *purchase option at the end of the lease capped at*
approximately \$2,270.04 plus \$329.00 administrative fee.
To be included on the ballot a detail of the potential
additional monthly cost and the potential loss of a portion of
*the monthly retail rental income.*³

25 27. Mr. Parente testified that Respondent was not required to obtain input from
26 residents to repurpose suite 7 to a fitness center. Respondent sent out the survey
27 because at the May 28, 2015 meeting, some residents stated that no one wanted a
28 fitness center and that only two people had ever gone to the gym that used to be in the
29 basement of the Executive Towers.

30 ³ Petitioner's Exhibit 4 at 7.

1 28. Ms. Jerzy testified that she has lived at the Executive Towers since 1978
2 and has been a member of the board since 2001. Ms. Jerzy testified that when there
3 was a gym in the basement, only one tenant and his son used the gym to practice
4 karate. Ms. Jerzy testified that although the change from the gym to storage in the
5 basement did not go to the full membership for a vote, any change in the common
6 elements should be approved by a vote of a majority of Respondent's members.

7 29. Mr. Griggs testified that he did not see any advertisements for vacant
8 commercial space in the Executive Towers. Even if Respondent had advertised the
9 space without success in leasing it, Mr. Griggs testified that membership should have
10 approved any change in the use of the space.

11 30. Ms. Pollack testified that she regularly attends Respondent's board
12 meetings. At the May 28, 2015 meeting, several members came forward to tell the
13 board that it was overstepping its bounds and that assessments were rising due to its
14 irresponsibility and failure to respond to members' legitimate concerns. Ms. Pollack
15 testified that the board manipulates the outcome of its votes and meetings. Ms. Pollack
16 testified that members of the board who do not agree with the board's president are
17 disrespected.

18 31. Ms. Pollack testified that a fitness center should not be a priority and that
19 Respondent should not have constructed the fitness center until it could afford
20 additional improvements. Ms. Pollack acknowledged that she was not aware that
21 Respondent had advertised and had been unable to lease suite 7 to a commercial
22 tenant.

23 32. On or about June 4, 2015, the Board distributed a survey to the 160
24 apartments in the Executive Towers about whether they favored converting a portion of
25 Suite 7 into a fitness center and explaining the anticipated cost and possible loss of
26 rental income. Respondent's letter stated, in relevant part, as follows:

27 The included survey was developed for the purpose of
28 requesting a yes/no vote for adding a fitness center. The
29 fitness center is a small expense to the Association,
30 therefore, the Board is soliciting feedback from the owners.

The Association has been receiving feedback from the

1 current owners, potential owners and realtors that a fitness
2 center is considered a necessity in today's real estate
3 market.

- 4 • We are the only high rise in Phoenix without a fitness
5 center and fitness centers have become a standard in
6 multi-family complexes and hotels.
- 7 • The fitness center is a marketable amenity for owners
8 wishing to sell or rent their units.
- 9 • A fitness center located within Executive Towers can
10 reduce outside membership expenses for residents.

11 The Board has reviewed several proposals from vendors,
12 and selected a proposal that provides commercial quality
13 fitness equipment for the Association. All equipment is
14 covered with a two (2) year or greater equipment warranty.
15 The space under consideration would occupy approximately
16 600 sq. ft. of vacant retail space (Suite 7) in the west wing of
17 the lobby. This space is one of the most impressive in the
18 building with large north facing windows along Clarendon
19 Ave., and will be equipped with a unisex ADA compliant
20 bathroom. The Board has approved the renovation of this
21 space. Once completed it will be used either as our fitness
22 center or we will continue leasing this space for retail use.
23 Please refer to the enclosed attachments for a listing of the
24 equipment and the fitness center floorplan.

25 The remaining 270 sq. ft. not converted to a fitness center
26 will remain available for commercial use. The Association
27 has already been contacted by personal trainers and
28 massage therapists expressing interest in renting this space.
29 Having such professionals in the building would add another
30 welcomed and impressive amenity to the Association.

The approximate cost of a two (2) year equipment lease is
\$16,900, with an end-of-lease purchase price of
approximately \$2,600.00. Based on the square footage
reduction of the rental space, we would reduce the expected
rental revenue in the budget by approximately \$800.00 a
month.

- On average, the combined monthly costs result in
approximately \$10 per unit for the first two (2) years.
- After two (2) years, when the lease is paid off the
monthly cost will be approximately \$5 per unit.

- There is sufficient surplus in this year's Operating Budget to absorb the cost without an increase in our monthly assessments.

Finally, the Association has not been successful in leasing and/or collecting delinquent rental revenue on our larger retail spaces, with the two (2) previous tenants of Suite 6 (aka: Caza Market) have been evicted for non-payment of rent, resulting in the loss of rental revenue for the past thirteen (13) months. Therefore, retail revenue for the vacant retail space (Suite 7) is not a guaranteed source of revenue, but a fitness center will provide a guaranteed benefit to the residents of Executive Towers.⁴

33. The Board next met on June 25, 2015, and reviewed the following general manager update:

Suite 7 Refurbishment – The refurbishment began the week of June 8th. To date, the temporary walls and the flooring was removed. The electrical has been exposed for upgrades and relocations. There will be some minor asbestos remediation done the week of June 22nd to allow for the installation of the new ADA-sized door for the restroom. Electrical work will also be done the week of June 22nd. Remaining work is on hold pending the approval or disapproval of the proposed Fitness Center.⁵

34. The owners of 97 of the apartments, or 61.8315% of the total number of possible votes based on the size of the units, returned the survey.⁶ The owners of 75 of the responding apartments, or 47.8365% of possible votes based on the size of the units, favored converting a portion of Suite 7 into a fitness center. The owners of 21 of the responding apartments, or 13.3375% of possible votes based on the size of the units, opposed converting a portion of suite 7 into a fitness center.⁷

35. After receiving the results of the survey, Respondent completed refurbishing suite 7 into a fitness center. Mr. Russett testified that Respondent spent about \$4,000.00 completing the project, which included removing temporary walls that were not load-bearing, removing a floating floor and placing a rubber floor over the concrete

⁴ Respondent's Exhibit 4 at 1-2.

⁵ Respondent's Exhibit 8 at 3.

⁶ See Respondent's Exhibit 5.

⁷ See Respondent's Exhibit 6.

1 floor, which had been jack-hammered and poorly patched sometime in the past,
2 installing a television set, installing additional electrical on the exterior wall, and
3 remodeling the bathroom to be ADA-compliant. No permits were required to repurpose
4 suite 7 to a fitness center.

5 36. Mr. Griggs testified that the total cost of the fitness center is approximately
6 \$9,000 per year for two years and that the final payoff for the equipment will be \$27,000.
7 Mr. Griggs testified that the Board should not have considered repurposing suite 7 to a
8 fitness center without consulting membership because paragraph 13 of the CC&Rs
9 requires the membership's approval for a structural alteration and article 4 § 6 of the
10 bylaws require membership approval for a capital expenditure of more than \$5,000.

11 37. Mr. Griggs testified that paragraph 13 of the CC&Rs and article 4 § 6 of the
12 bylaws required Respondent to obtain the approval of more than 50% of possible votes
13 of members before it repurposed suite 7 to a fitness center. Mr. Griggs testified that
14 even if the survey could be considered a vote, 47.8365% was not a majority.
15 Respondent's members should have been given a choice of how to spend the money.

16 38. Mr. Russett testified that the alterations to suite 7 were not capital
17 improvements because Respondent merely converted an existing amenity to another
18 use, rather than constructing a new amenity, such as construction of a second
19 swimming pool or installation of solar panels.

20 39. Mr. Parente testified that because the operating budget had a surplus, the
21 \$4,000 came from the existing budget and did not result in increased assessments.

22 40. Mr. Russett testified that Respondent increased assessments on its
23 members by 6% during the last year, but that 5% of the increase went to increase the
24 reserve account and that only 1% went to operating expenses.

25 41. Ms. Jerzy acknowledged that none of the renovations were structural
26 because they did not affect the structure of the building. Mr. Griggs argued the word
27 "structural" in paragraph 13 of the CC&Rs may be mental or monetary, not just physical.
28 Mr. Griggs testified that repairing the subfloor was a structural modification.

29 42. Mr. Parente testified that presently, the fitness center uses 30 towels per day
30 and that well over 100 people use the fitness center every week.

1 43. Mr. Parente explained that Respondent felt that it was necessary to
2 repurpose suite 7 to a fitness center during 2015, rather than waiting until all the
3 residents and owners could be approached for their approval because the space was
4 not being used efficiently and Respondent owed a fiduciary duty to protect property
5 values in the Executive Towers.

6 44. Mr. Russett testified that the rent that Respondent would have collected on
7 the unit if Respondent had been able to find a commercial tenant who actually paid the
8 agreed-upon rent would have been about \$800/month or \$9,000/year, which Mr.
9 Russett characterized as "miniscule." Mr. Russett testified that the benefit to the
10 building as a whole outweighed the small amount of potential lost revenue.

11 45. Ms. Pollack testified that the suite 7 could have been rented for \$1,200 to
12 \$1,400 per month and that the construction of the fitness center cost Respondent
13 \$50,000 to \$60,000 in lost revenue. Ms. Pollack testified that her monthly assessment
14 was raised \$150/month and that she now pays Respondent a fee of \$920/month, which
15 she acknowledged includes electricity for her unit.

16 46. Mr. Russett testified that a comparable market analysis showed that the
17 average price per square foot of the units that had been sold in the Executive Towers
18 had increased \$16 since the fitness center was opened,⁸ in part because the amenity
19 made units more attractive to purchasers.

20 47. Ms. Jerzy disagreed that Respondent's role is to increase property values in
21 the Executive Towers. Ms. Jerzy opined that if Respondent increased monthly
22 assessments, it has not done its job to represent members, even if property values
23 increased.

24 **CONCLUSIONS OF LAW**

25 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization
26 to file a petition with the Department for a hearing concerning violations of planned
27 community documents or violations of statutes that regulate planned communities. That
28 statute provides that such petitions will be heard before the Office of Administrative
29 Hearings.

30 _____
⁸ See Respondent's Exhibit 9 and 10.

1 2. Mr. Griggs as the petitioner bears the burden of proof to establish that
2 Respondent violated its CC&Rs or bylaws by a preponderance of the evidence.⁹
3 Respondent bears the burden to establish affirmative defenses by the same evidentiary
4 standard.¹⁰

5 3. "A preponderance of the evidence is such proof as convinces the trier of fact
6 that the contention is more probably true than not."¹¹ A preponderance of the evidence is
7 "[t]he greater weight of the evidence, not necessarily established by the greater number of
8 witnesses testifying to a fact but by evidence that has the most convincing force; superior
9 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
10 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
11 than the other."¹²

12 4. The best and most reliable index of the meaning of a CC&R or a bylaw is its
13 language and, when the language is clear and unequivocal, it is determinative of the
14 meaning of the CC&R or bylaw.¹³ Each word, phrase, clause, and sentence must be
15 given meaning so that no part of the CC&R or bylaw will be void, inert, redundant, or
16 trivial.¹⁴

17 5. Paragraph 13 of the CC&Rs requires that a majority of members must
18 approve "structural alterations or additions" to the Executive Towers building. A
19 "structural alteration" is "[a] significant change to a building or other structure, essentially
20 creating a different building or structure."¹⁵ Repurposing suite 7 from a commercial
21 leased space into a fitness center did not require a permit, did not require removal of
22 load bearing walls, and did not require the replacement of the subfloor. Petitioner did
23 not bear his burden to establish that paragraph 13 of the CC&Rs required Respondent
24

25 ⁹ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
26 Ariz. 369, 372, 249 P.2d 837 (1952).

27 ¹⁰ See A.A.C. R2-19-119(B)(2).

28 ¹¹ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 ¹² BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

30 ¹³ See *Jansen v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991) (quoted in *Bentivegna*,
206 Ariz. at 587 ¶ 20, 81 P.3d at 1046).

¹⁴ See *Walker v. City of Scottsdale*, 163 Ariz. 206, 210, 786 P.2d 1057, 1061 (App. 1990) (citing *City of
Phoenix v. Yates*, 69 Ariz. 68, 72, 208 P.2d 1147, 1149 (1949); *United States v. Mehrmanesh*, 689 F.2d
822 (9th Cir. 1982)).

¹⁵ BLACK'S LAW DICTIONARY, *supra*, at 85.

1 to obtain the approval of a majority of its members before it repurposed the former
2 commercial space in suite 7 into a fitness center.

3 6. Article 4, § 6 of Respondent's bylaws prohibited the board from approving any
4 capital expenditure over \$5,000 without the approval of two-thirds of the total ownership
5 of the Executive Towers. The terms of the survey stated and Mr. Parente and Mr.
6 Russett credibly testified that the cost of refurbishing the commercial space into a
7 fitness center was \$4,000. Because neither Ms. Pollack, Mr. Griggs, nor Ms. Jerzy
8 appeared to have reliable information about the cost of refurbishment, Petitioner did not
9 present any credible evidence to impeach Respondent's evidence. Therefore,
10 Petitioner did not bear his burden to establish that Article 4, § 6 of the bylaws required
11 Respondent to obtain the approval of the majority of its members before it repurposed
12 the commercial space into a fitness center.

13 7. A "capital expenditure" is "[a]n outlay of funds to acquire or improve a fixed
14 asset."¹⁶ Because Respondent leased the fitness equipment, it was not a fixed asset.
15 Petitioner did not present evidence to controvert that the cost of leasing the fitness
16 equipment is approximately \$800/month or that the cost of the end-of-lease purchase is
17 \$2,600, as stated in the survey. Although if the board had elected to purchase the
18 fitness equipment outright, the cost would have exceeded the \$5,000 capital
19 expenditure limit, both Arizona statute and the CC&Rs afford broad discretion to the
20 board to manage and maintain common elements.¹⁷ Because aggregate lease
21 payments over time is not a capital expenditure, Petitioner did not bear his burden to
22 establish that Respondent made a capital expenditure over \$5,000 to equip the fitness
23 center.

24 **RECOMMENDED ORDER**

25 In view of the foregoing, it is ORDERED that no action is required of Respondent
26 in this matter and that the petition is dismissed.

27
28 ¹⁶ *Id.* at 222.

29 ¹⁷ See A.R.S. § 33-1242(A)(7) ("Subject to the provisions of the [CC&Rs], the association may . . .
30 [c]ause additional improvements to be made as a part of the common elements"); see also CC&Rs ¶¶
4.2, 5, 12, and 17.

