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10 Attorneys for Defendant The Shores at
11 Rainbow Lake Community Association

12 **SUPERIOR COURT OF ARIZONA**

13 **COUNTY OF NAVAJO**

14 Gordon Gross And Liliana Gross,
15 husband and wife; 854 Pine Creek, LLC,
16 an Arizona limited liability company;
17 Bald Eagle Retreat, LLC, an Arizona
18 limited liability company; 1501 Rainbow
19 View, LLC, an Arizona limited liability
20 company; Lakeside Family Investments,
21 LLC, and Arizona limited liability
22 company; Steven A. Kernagis And
23 Sandra K. Kernagis, trustees of The
24 Steven And Sandra Kernagis Trust
25 Dated March 17, 2014; Thomas P.
26 Zehring And Jeannette Rose Zehring,
trustees of The Zehring Living Trust
Dated March 1, 2001; and Jeannette
Zehring,

Plaintiffs,

vs.

The Shores at Rainbow Lake
Community Association, an Arizona
nonprofit corporation,

Defendant.

Case No.: S0900CV202200042

ANSWER TO COMPLAINT

1 For its Answer to Plaintiffs' Complaint, defendant The Shores at Rainbow Lake
2 Community Association an Arizona nonprofit corporation ("Rainbow Lake
3 Community"), admits, denies, and alleges as follows

4 **PARTIES, JURISDICTION AND VENUE**

5 1. Answering ¶¶ 1-9 of Plaintiffs' Complaint, Rainbow Lake Community
6 admits the allegations alleged therein.

7 **DISCOVERY TIER**

8 2. Answering ¶ 10 of Plaintiffs' Complaint, Rainbow Lake Community
9 disputes the complexity of this litigation requires a Tier 3 designation.

10 **FACTUAL ALLEGATIONS, AND ALL CLAIMS FOR RELIEF**

11 3. Answering ¶ 11 of Plaintiffs' Complaint, Rainbow Lake Community
12 admits Plaintiffs' are owners within the subdivision the Shores at Rainbow Lakes,
13 admits all property included within the subdivision is designated as residential
14 property, but denies all Plaintiffs are properly described as "homeowners." Rainbow
15 Lake Community affirmatively alleges three of Plaintiffs are limited liability companies
16 which, upon information and belief, some were formed to conduct the business of real
17 estate and rental or leasing.

18 4. Answering ¶ 12 of Plaintiffs' Complaint, Rainbow Lake Community
19 admits none of Plaintiffs are full time residents or occupiers of the properties and
20 further admits Plaintiffs use their property to generate rental income, including by
21 renting by the day as transient lodging. Rainbow Lake Community is without
22 sufficient knowledge or information upon which to form a belief as to the truth of the
23 remaining allegations contained therein and, on that basis, deny the same.
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1 5. Answering ¶ 13-of Plaintiffs' Complaint, Rainbow Lake Community
2 denies the allegations contained therein. Rainbow Lake Community affirmatively
3 alleges it consists of 188 lots, of which 164 lots have single-family homes or are unbuilt
4 lots and 24 lots have attached housing.

5 6. Answering ¶ ¶ 14 and 15 of Plaintiffs' Complaint, Rainbow Lake
6 Community admits the allegations contained therein.

7 7. Answering ¶¶ 16-18 of Plaintiffs' Complaint, Rainbow Lake Community
8 is uncertain what Plaintiffs mean by and therefore denies the Amendment to the Master
9 Declaration described therein constitutes "an indirect amendment to the townhome
10 declaration." Rainbow Lake Community admits the remaining allegations contained
11 therein.

12 8. Answering ¶ 19 of Plaintiffs' Complaint, Rainbow Lake Community
13 admits owners who lease their property are required to provide notice of the duration
14 and term of the lease. Rainbow Lake Community admits prior to the passage of the
15 Amendment, the Covenants did not include an express provision stating how long or
16 how short a lease could be. Rainbow Lake Community denies the remaining
17 allegations contained therein. Rainbow Lake Community affirmatively alleges the
18 Covenants expressly restrict the ability of owners to lease only to Single Families
19 (defined in the Covenants) and the lease use must be limited "exclusively to Single
20 Family residential use."
21

22 9. Answering ¶¶ 20 and 21 of Plaintiffs' Complaint, Rainbow Lake
23 Community is without sufficient information to form a belief as to the truth of the
24 allegations regarding the number of properties within the Community that "are
25 occupied full-time by the owners," and on that basis denies the same.
26

1 **RELEVANT PROVISIONS OF THE MASTER DECLARATION**

2 10. Answering ¶ 22 of Plaintiffs’ Complaint, Rainbow Lake Community
3 denies the allegations contained therein. Rainbow Lake Community affirmatively
4 alleges that the Amended and Restated Declaration of Covenants, Conditions, and
5 Restrictions, as amended, contains a Section 2.30 that is different from the one quoted
6 in the Complaint.

7 11. Answering ¶ 23 of Plaintiffs’ Complaint, Rainbow Lake Community
8 denies the allegations contained therein. Rainbow Lake Community affirmatively
9 alleges that within Section 2.18 of the Amended and Restated Declaration of Covenants,
10 Conditions, and Restrictions is found a sentence providing as follows:

11 The leasing of a residence by the Owner thereof shall not be considered
12 a trade or business within the meaning of this section.”

13 Rainbow Lake Community affirmatively alleges many other sentences are found in this
14 Section, including that even if leased, the Lot must still be “devoted exclusively to
15 Single Family residential use,” and even more sentences are found in the entire
16 Amended and Restated Declaration of Covenants, Conditions, and Restrictions,
17 including all amendments. Rainbow Lake Community further and affirmatively alleges
18 any of the sentences found in this Section or others are expressly subject to being
19 redefined, modified or amended.
20

21 12. Answering ¶ 24 of Plaintiffs’ Complaint, Rainbow Lake Community
22 admits the allegations contained therein.

23 13. Answering ¶ 25 of Plaintiffs’ Complaint, Rainbow Lake Community
24 denies the allegations contained therein. The Rainbow Lake Community affirmatively
25 alleges the Declarations provide for one vote per lot and not per member.
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2 14. Answering ¶ 26 of Plaintiffs' Complaint, Rainbow Lake Community
3 admits the allegations contained therein.

4 15. Answering ¶ 27 of Plaintiffs' Complaint, Rainbow Lake Community
5 denies the allegations contained therein. Rainbow Lake Community affirmatively
6 alleges Section 9.2(A) provides as follows:

7 (A) Except for amendments made pursuant to Subsection (B) of this Section,
8 the Declaration or the Project Plat may only be amended by the written
9 approval or the affirmative vote, or any combination thereof, of Owners
10 representing not less than sixty-seven percent (67%) of the votes in each class
of membership.

11 Rainbow Lake Community further alleges Section 9.2 contains other provisions
12 regarding amendments.

13 **HISTORY OF VACATION RENTALS**

14 16. Answering ¶ 28 of Plaintiffs' Complaint, Rainbow Lake Community
15 admits Navajo County enjoys cool summers and beautiful winters. Rainbow Lake
16 Community further admits vacation rentals have occurred in Navajo County.
17 Rainbow Lake Community denies the remaining allegations contained therein.
18 Rainbow Lake Community affirmatively alleges that, in this case, a very, very small
19 minority of owners are seeking to engage in offering their properties for daily rental,
20 which is prohibited by the terms of the First Amendment to the Amended and Restated
21 Declaration of Covenants, Conditions, and Restrictions.

22
23 17. Answering ¶ 29 of Plaintiffs' Complaint, Rainbow Lake Community
24 admits the Community is a private, gated community intended to provide resort like
25
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1 conditions to the owners and their families or, if leased, to the tenants and their families.

2 Rainbow Lake Community denies the remaining allegations contained therein.

3 18. Answering ¶ 30 of Plaintiffs' Complaint, Rainbow Lake Community is
4 without sufficient knowledge to form a belief as to what each of its owners may have
5 done prior to becoming owners within the community, and on that basis, denies the
6 same.

7 19. Answering ¶ 31 of Plaintiffs' Complaint, Rainbow Lake Community
8 admits the allegations contained therein.

9 20. Answering ¶ 32 of Plaintiffs' Complaint, Rainbow Lake Community is
10 without sufficient knowledge or information upon which to form a belief as to any
11 hidden intent of the corporate or individual owners named as Plaintiffs in this action.
12 Upon information and belief Rainbow Lake Community alleges none of the contract
13 documents used in the purchase of the homes and none of the applicable Covenants
14 describe any such hidden intent.

15 21. Answering ¶ 33 of Plaintiffs' Complaint, Rainbow Lake Community
16 admits that companies such as Vrbo and Airbnb have greatly profited off the expansion
17 of real estate investment companies such some of the Plaintiffs' in this action, and Vrbo
18 and Airbnb (and others) have monetarily encouraged investment owners to use homes
19 limited to single family residential use to be used as hotel-like daily rentals complete
20 with fresh towels and miniature bottles of shampoo. Although Plaintiffs allege that
21 for-profit companies like Vrbo and Airbnb have "revolutionized" the establishment of
22 short-term rentals, Rainbow Lake Community alleges that the majority of its owners
23 believe these companies have exacerbated what might have been a minor annoyance
24 into a constant drone of large groups of strangers coming and going from the gated
25
26

1 Community each weekend. Although for-profit companies such as Vrbo and Airbnb
2 allow those who use their services to rent homes for daily rentals, Rainbow Lake
3 Community and the majority of its owners do not. Rainbow Lake Community denies
4 any remaining allegations contained therein.

5 22. Answering ¶ 34 of Plaintiffs' Complaint, Rainbow Lake Community
6 denies each Plaintiff purchased a lot. Rainbow Lake Community is without sufficient
7 knowledge or information upon which to form a belief as to any hidden intent of the
8 corporate or individual owners named as Plaintiffs in this action. Upon information
9 and belief Rainbow Lake Community alleges none of the contract documents used in
10 the purchase of the homes and none of the applicable Covenants describe any such
11 hidden intent. Rainbow Lake Community affirmatively alleges it provides up-to-date
12 information about the straw poll, the pending Amendment and the passage of the
13 Amendment to buyers and potential buyers of lots within the Community.
14

15 23. Answering ¶ 35 of Plaintiffs' Complaint, Rainbow Lake Community
16 denies the allegations contained therein.

17 24. Answering ¶ 36 of Plaintiffs' Complaint, Rainbow Lake Community
18 admits being aware that some and maybe all of the corporate and individual Plaintiffs
19 have used their properties to earn income by offering daily rental rates similar to hotels,
20 and denies the remaining allegations contained therein. Rainbow Lake Community
21 affirmatively alleges a sufficient number of owners raised concerns about the hotel-like
22 use of property to cause Rainbow Lake Community to investigate the problem, to take
23 a straw poll of all owners and, once the overwhelming majority of owners expressed
24 their desire to limit the problems caused by hotel-like use of the properties, to obtain
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1 the consent or votes from 67% of the Owners to define the right to lease to mean the
2 right to lease to a single family, and for no term less than 30-days.

3 25. Answering ¶ 37 of Plaintiffs' Complaint, Rainbow Lake Community
4 admits some of the Plaintiffs personally use their property on a regular basis and
5 admits some of Plaintiffs have engaged in the business of offering their properties
6 under a daily rental rate on what could be called a sporadic basis. Rainbow Lake
7 Community is without sufficient knowledge or information to form a belief as to the
8 remaining allegations contained therein, and on that basis denies the same.

9
10 **THE IMPROPER TACTICS USED TO "PASS" THE AMENDMENT**

11 26. Answering ¶ 38 of Plaintiffs' Complaint, Rainbow Lake Community
12 admits the allegations contained therein.

13 27. Answering ¶ 39 of Plaintiffs complaint, Rainbow Lake Community denies
14 the allegations contained therein. Rainbow Lake Community affirmatively alleges its
15 straw ballots stated, in part, as follows:

16
17 The Board is requesting that each household respond to the straw poll
18 indicating whether it supports or opposes a restriction on short-term
19 rentals, such as the one above. While each member likely has a strong
20 opinion one way or the other, the Board encourages you to consider the
21 pros and cons before responding. While short term-rentals can cause
22 increased noise, cars, trash, etc. in the community, they can also provide
23 income for individuals who otherwise could not afford to buy a
24 vacation/retirement home in our community. Thus, while it may be
beneficial to have fewer renters in our neighborhood, prohibiting short-

25 28. Answering ¶ 40 of Plaintiffs complaint, Rainbow Lake Community admits
26 the purpose of the straw poll was to measure the expectations and intent held by a

1 majority of the owners. Rainbow Lake Community denies the remaining allegations
2 therein. Rainbow Lake Community affirmatively alleges is memorandum regarding
3 the straw poll stated, in part, as follows:

4 CC&R amendments in The Shores at Rainbow Lake require the approval of
5 at least sixty seven percent (67) of the lot owners. In an effort to determine
6 whether there is sufficient support in our community for this type of
7 amendment, the Association's Board of Directors is conducting a straw
8 poll. A straw poll or straw vote is an unofficial vote, used to show the
9 popular opinion on a certain matter. The results of the straw poll will be
used to help the Board decide whether or not to put a short-term rental
restriction to a vote of the members.

10 29. Answering ¶ 41 of Plaintiffs' Complaint, Rainbow Lake Community
11 denies the allegations contained therein.

12 30. Answering ¶ 42 of Plaintiffs' Complaint, Rainbow Lake Community
13 admits some of the owners expressed opinions for or against the proposed amendment
14 to other owners and admits the owners favoring the proposed amendment vastly
15 outnumbered the few that were opposed. Rainbow Lake Community is without
16 information to form a belief as to whether anyone was "accosted" in public. Rainbow
17 Lake Community denies all remaining allegations contained therein.

18 31. Answering ¶ 43 of Plaintiffs' Complaint, Rainbow Lake Community
19 admits "the required number of consent forms being submitted to propose an
20 amendment to the Master Declaration." Rainbow Lake Community denies the
21 remaining allegations contained therein.

22 32. Answering ¶ 44 of Plaintiffs' Complaint, Rainbow Lake Community
23 admits the allegations contained therein.
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1 33. Answering ¶¶ 45 and 46 of Plaintiffs' Complaint, Rainbow Lake
2 Community admits "Consent" form allowed an owner to show their consent to the
3 proposed Amendment and admits requesting owners to return consents within two
4 months. Rainbow Lake Community denies all remaining allegations contained therein.

5 34. Answering ¶¶ 47-49 of Plaintiffs' Complaint, Rainbow Lake Community
6 denies the allegations contained therein. Rainbow Lake Community affirmatively
7 alleges that at approximately the time the straw poll was being conducted, a Good
8 Neighbor Policy committee was formed. There were eight owners on the committee,
9 including four who rent their properties like hotels and four owners who do not. A
10 Board member participated as moderator. The purpose of the committee was to arrive
11 at a set of Good Neighbor Policies similar to what other communities have and that
12 would apply to rentals regardless of length and apply to all members. Rainbow Lake
13 Community further alleges during the second meeting of this committee, one of the
14 owners who used his property like a hotel (and who is no longer an owner in the
15 Community) spoke rudely to the Board member serving as moderator, and the Board
16 member dropped off the Good Neighbor Policy committee.
17

18 35. Answering ¶ 50 of Plaintiffs' Complaint, Rainbow Lake Community
19 admits the 2021 Amendment to the CCRs passed with a greater than 2 to 1 ratio of those
20 consenting to the 2021 Amendment. Rainbow Lake Community denies the remaining
21 allegations contained therein.
22

23 36. Answering ¶ 51 of Plaintiffs' Complaint, Rainbow Lake Community
24 admits Tom Pyzdek owns property within the Community and also contributed his
25 opinions and other written materials to the local newspaper, White Mountain
26 Independent. Rainbow Lake Community further admits Mr. Pyzdek provided a guest

1 opinion column to the White Mountain Independent in January 2021 in which he
2 expressed his views and his intent to approve the proposed Amendment, as was
3 approved by a 2-1 majority of the other owners. Rainbow Lake Community is without
4 sufficient knowledge or information to form a belief as to the truth of whether other
5 owners read the guest column prior to submitting their consent forms or relied upon
6 the information contained in the guest opinion column, and on that basis denies the
7 same. Rainbow Lake Community denies all remaining allegations contained therein.

8
9 37. Answering ¶ 52 of Plaintiffs' Complaint, Rainbow Lake Community
10 admits one or more of the small minority of investment owners provided a contrary
11 opinion as to the suitability of having daily or weekend rentals within the private gated
12 community contributed to the desirability of the Community, including a very well-
13 written letter to the editor submitted by Albert Callie, in which he concluded:

14 While there may be a guest or owner that breaks a neighborhood rule, the
15 people that visit are just like the owners who want to enjoy all the natural
16 beauty of the lakeside community.

17 Because there is an HOA, the owners set rules and regulations for rentals
18 to avoid problems that communities can have if they do not monitor their
19 neighborhoods. The right to responsibly rent a property should not be
20 taken away if guests agree to abide by the rules and regulations of the
21 association

22 The Shores and The Cove is a premiere neighborhood in Pinetop-Lakeside
23 due to the natural beauty of the wooded lots, the well-maintained homes
24 and the splendor of Rainbow Lake. It remains one of the best
25 neighborhoods in Pinetop-Lakeside and allowing other families to enjoy
26 the natural beauty of Rainbow Lake should not be restricted.

1 Rainbow Lake Community further alleges other owners voiced opinions against the
2 adoption of the proposed Amendment. Rainbow Lake Community denies all further
3 allegations contained therein.

4 38. Answering ¶ 53 of Plaintiffs' Complaint, Rainbow Lake Community
5 admits that it did not provide a notice to the Community about the opinion column or
6 letter to the editor submitted by Mr. Pyzdek and Mr. Callie to the local newspaper and
7 contained a false statement. Rainbow Lake Community also admits it did not attempt
8 to correct any of the statements published in the local newspaper. Rainbow Lake
9 Community denies the remaining allegations contained therein.

10 39. Answering ¶¶ 54 and 55 of Plaintiffs' Complaint, Rainbow Lake
11 Community denies the allegations contained therein.

12 40. Answering ¶ 56 of Plaintiffs' Complaint, Rainbow Lake Community
13 admits it collected consents from owners approving the Amendment at a greater than
14 2 to 1 margin. Rainbow Lake Community denies that any particular consent was "the
15 deciding vote" and affirmatively alleges it was support from the entire overwhelming
16 majority of owners that required Rainbow Lake Community to record the Amendment
17 with the County Recorder's Office. Rainbow Lake Community denies the remaining
18 allegations contained therein.

19 41. Answering ¶ 57 of Plaintiffs' Complaint, Rainbow Lake Community
20 admits that after receiving more than the required 2 to 1 margin of consent, on February
21 26, 2021, the committee association's president executed the First Amendment to the
22 Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the
23 Shores at Rainbow Lake. Rainbow Lake Community denies the duly passed
24 amendment was one "prohibiting short term rentals" as alleged in the Complaint and
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1 affirmatively alleges rentals as short as 30 days are permitted. Rainbow Lake
2 Community admits the Amendment received more than the required amount of
3 consents prior to the close of all voting. Rainbow Lake Community affirmatively
4 alleges the First Amendment to the Amended and Restated Declaration of Covenants,
5 Conditions, and Restrictions was recorded on March 3, 2021, which was several days
6 after more than two-thirds super-majority of the owners consented to the Amendment.

7
8 42. Answering ¶¶ 58 and 59 of Plaintiffs' Complaint, Rainbow Lake
9 Community is without sufficient knowledge or information upon which to form a
10 belief as to the truth of the allegations contained therein and, on that basis, denies the
11 same. Rainbow Lake Community affirmatively alleges it received an unsigned letter
12 dated March 4, 2021 provided on behalf of one or more people who identified
13 themselves as "the rental owners of The Shores & Cove" and a copy that letter was
14 attached as Exhibit A to the documents received with Plaintiffs' Complaint.

15 **RECORDING AND ENFORCEMENT OF THE AMENDMENT**

16 43. Answering ¶ 60 of Plaintiffs' Complaint, Rainbow Lake Community
17 admits recording the Amendment with the Recorder's Office of Navajo County on
18 March 3, 2021 at Instrument No. 2021-04383. Rainbow Lake Community is without
19 sufficient knowledge or information upon which to form a belief as to what Plaintiffs'
20 mean by "notwithstanding the above" with regarding to the March 3, 2021 recording
21 especially because the allegations set forth immediately above this paragraph describe
22 a March 15 communication that occurred after March 3, 2021, and on that basis
23 Rainbow Lake Community denies the remaining allegations contained therein.

24
25 44. Answering ¶ 61 of Plaintiffs' Complaint, Rainbow Lake Community
26 admits a portion of the Amendment accurately quoted therein. Rainbow Lake

1 Community affirmatively alleges that additional language is also found in the recorded
2 Amendment.

3 45. Answering ¶ 62 of Plaintiffs' Complaint, Rainbow Lake Community
4 admits paragraph 62 accurately quotes a portion of a newsletter that Plaintiffs marked
5 as Exhibit B.

6 46. Answering ¶ 63 of Plaintiffs' Complaint, Rainbow Lake Community
7 admits all of the words quoted in paragraph 63 can be found in the January 14, 2022
8 letter that was sent to all property owners within the Community. However, the
9 January 14, 2022 letter did not combine all words into one paragraph, and there are
10 additional words found in the January 14, 2022 letter that Plaintiffs omitted from the
11 words quoted in their Complaint.
12

13 47. Answering ¶¶ 64 and 65 of Plaintiffs' Complaint, Rainbow Lake
14 Community admits initiating a violation hearing for two owners not complying with
15 the Amendment approved by a 2 to 1 vote, and admits the hearing procedure was not
16 properly followed and that resulted in Rainbow Lake Community cancelling the
17 procedure. Rainbow Lake Community admits it would consider a fine in the amount
18 of damages and other enforcement measures and that it reserves its right to properly
19 notice a hearing in the future. Rainbow Lake Community affirmatively alleges it
20 notified the owners within the Community that it would temporarily halt conducting
21 enforcement hearings under the First Amendment to the Amended and Restated
22 Declaration of Covenants, Conditions, and Restrictions pending further notice.
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COUNT I
(Quiet Title)

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3 48. Answering ¶ 66 of Plaintiffs' Complaint, Rainbow Lake Community
4 incorporates herein by reference its Answer as set forth above.

5 49. Answering ¶ 67 of Plaintiffs' Complaint, Rainbow Lake Community
6 admits the allegations contained therein.

7 50. Answering ¶ 68 of Plaintiffs' Complaint, Rainbow Lake Community
8 admits that Plaintiffs' property, like the property of all other owners within the
9 community "shall be held, sold and conveyed subject to the easements, restrictions,
10 covenants, and conditions contained in this Declaration (the master CC&Rs) which are
11 for the purpose of protecting the value and desirability of, and which shall run with
12 said real property and be binding on all parties having any right, title or interest in said
13 real property or any part thereof, their heirs, successors, and assigns and shall inure to
14 the benefit of each owner thereof." Rainbow Lake Community denies all remaining
15 allegations contained therein.
16

17 51. Answering ¶ 69 of Plaintiffs' Complaint, Rainbow Lake Community is not
18 certain what Plaintiffs' are trying to allege in this paragraph and is therefore without
19 sufficient knowledge or information upon which to form a belief as to the truth of the
20 allegations contained therein and, on that basis, denies the same. Rainbow Lake
21 Community affirmatively alleges that it does not hold title to Plaintiffs' property, but
22 does hold title to common areas that Plaintiffs and other owners enjoy, and that all
23 property is subject to the terms of the Amended and Restated Declaration of Covenants,
24 Conditions, and Restrictions as they have been and may be from time to time amended.
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1 52. Answering ¶ 70 of Plaintiffs' Complaint, Rainbow Lake Community
2 denies the 2008 unreported decision in *Horton v. Hartsook* could possibly have
3 considered the 2021 amendment or considered or dealt with any claims or defenses
4 asserted by Rainbow Lake Community because Rainbow Lake Community was not a
5 party that action. Rainbow Lake Community denies all remaining allegations
6 contained therein.

7 53. Answering ¶¶ 71, 72, 73 and 74 of Plaintiffs' Complaint, Rainbow Lake
8 Community denies all factual allegations contained therein, and further denies any
9 legal conclusions expressed therein.

10 54. Answering ¶ 75 of Plaintiffs' Complaint, Rainbow Lake Community
11 admits having received twenty or more days prior to the Complaint an unsigned
12 "quitclaim deed and notice of invalidity" and \$5. Rainbow Lake Community further
13 admits being requested to execute the quitclaim deed and the notice of invalidity and
14 admits it did not. Rainbow Lake Community denies any remaining allegations
15 contained therein.

16 55. Answering ¶ 76 of Plaintiffs' Complaint, Rainbow Lake Community
17 denies that it "ignored Plaintiffs' request" and affirmatively alleges that it, in fact,
18 listened to, considered and evaluated Plaintiffs request. Rainbow Lake Community
19 further alleges that after such consideration, Rainbow Lake Community did not accept
20 Plaintiffs' demands.

21 56. Answering ¶¶ 77 and 78 of Plaintiffs' Complaint, Rainbow Lake
22 Community denies the allegations contained therein.
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COUNT II

(Breach of Implied Covenant of Good Faith and Fair Dealing)

57. Answering ¶ 79 of Plaintiffs’ Complaint, Rainbow Lake Community incorporates herein by references its Answer as set forth above.

58. Answering ¶ 80 of Plaintiffs’ Complaint, Rainbow Lake Community admits the allegations contained therein.

59. Answering ¶ 81 of Plaintiffs’ Complaint, Rainbow Lake Community denies the allegations contained therein. Rainbow Lake Community affirmatively alleges the Arizona Supreme Court has described the covenant of good faith and fair dealing implied in every contract as follows:

As we noted above, the implied-in-law covenant of good faith and fair dealing protects the rights of the parties to an agreement to receive the benefits of the agreement that they have entered into. The denial of a parties’ right to those benefits, whatever they are, will be a breach of the duty of good faith implicit in the contract. Thus, the relevant inquiry always will focus on the contract itself, to determine what the parties did agree to.

Wagenseller v. Scottsdale Mem’l Hosp., 147 AZ 370 (1985).

60. Answering ¶¶ 82 and 83 of Plaintiffs’ Complaint, Rainbow Lake Community denies the allegations contained therein.

61. Answering ¶¶ 84 and 85 of Plaintiffs’ Complaint, Rainbow Lake Community admits this is a claim arising out of contract under A.R.S. § 12-341.01. Rainbow Lake Community denies the remaining allegations contained therein.

AFFIRMATIVE DEFENSES

62. As an affirmative defense to Plaintiffs’ Complaint Rainbow Lake Community alleges the factual allegations found in the Complaint, even if true, would give not rise to liability of this Defendant.

1 63. Rainbow Lake Community affirmatively alleges that it and its president
2 were privileged to comply with the statutory mandate found in A.R.S. § 33-1817, which
3 required Rainbow Lake Community “shall prepare, execute and record a written
4 instrument setting forth the amendment” if the amendment received “the affirmative
5 vote or written consent of a number or owners or eligible voters specified in the
6 declaration[.]”

7 64. Rainbow Lake Community further alleges Plaintiffs’ Complaint seeks an
8 adjudication of rights of all of the members of the community, any one of which has
9 the right to seek enforcement of the Community’s Covenants, without the approval or
10 joinder of Rainbow Lake Community. Because this Court may not adjudicate rights of
11 parties who have not been joined, Plaintiffs’ action may be subject to dismissal as a
12 result of their failure to enjoin indispensable parties.

13 65. Rainbow Lake Community further and affirmatively alleges that its Board
14 is comprised of duly elected members, each of which who are permitted to exercise
15 their discretion when considering and resolving community business. The Board, and
16 therefore the Community, are thus protected by the business judgment rule with regard
17 to acts alleged in the Complaint.

18 66. Rainbow Lake Community further alleges that Plaintiffs and other
19 investment owners fully participated in the straw poll and the procedure of consenting
20 or not consenting to the proposed Amendment, with Plaintiffs or other investment
21 owners speaking out against the passage of the amendment, including but not limited
22 to, publication of articles in the local newspaper describing why the amendment should
23 not pass. After fully participating in the procedure, and after awaiting the results,
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1 Plaintiffs are now just sore losers seeking a second bite of the apple, which is barred
2 under the doctrines of waiver, estoppel and/or assumption of the risk.

3 67. Rainbow Lake Community further and affirmatively alleges that other
4 affirmative defenses may come to light as disclosure and discovery proceeds, and
5 Rainbow Lake Community reserves all affirmative defenses permitted under Rule 8,
6 AZ Rule of Civ. Proc., including accord and satisfaction, estoppel, illegality, laches, or
7 any other matter constituting an avoidance or affirmative defense.

8 **WHEREFORE**, having fully answered Plaintiffs' Complaint, Rainbow Lake
9 Community requests the following relief:
10

11 A. That the Complaint be dismissed as to Rainbow Lake Community and that
12 Plaintiffs take nothing thereby;

13 B. For Rainbow Lake Community's costs and attorney's fees herein incurred
14 and accruing pursuant to ARS §§ 12-341 and 12-341.01;

15 C. For such other and further relief as the court may deem just and proper.

16 DATED this 28th day of March 2022.

17 JENNINGS HAUG KELEHER MCLEOD, LLP

18 /s/ James L. Csontos

19 Jack R. Cunningham

20 James L. Csontos

21 Attorneys for THE SHORES AT RAINBOW
22 LAKE COMMUNITY ASSOCIATION
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1 Copy of the foregoing mailed
and emailed his 28th day of March 2022, to:

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11
12 /s/ Annette McLaughlin
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