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15 Attorneys for Plaintiffs

16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
17 **IN AND FOR THE COUNTY OF NAVAJO**

18 GORDON GROSS and LILIANA
19 GROSS, husband and wife; 854 PINE
20 CREEK, LLC, an Arizona limited liability
21 company; BALD EAGLE RETREAT,
22 LLC, an Arizona limited liability company;
23 1501 RAINBOW VIEW, LLC, an Arizona
24 limited liability company; LAKESIDE
25 FAMILY INVESTMENTS, LLC, an
26 Arizona limited liability company,
27 STEVEN A. KERNAGIS AND SANDRA
28 K. KERNAGIS, trustees of THE STEVEN
AND SANDRA KERNAGIS TRUST
DATED MARCH 17, 2014; THOMAS P.
ZEHRING AND JEANNETTE ROSE
ZEHRING, trustees of THE ZEHRING
LIVING TRUST DATED MARCH 1,
2001; and JEANNETTE ZEHRING,

Plaintiffs,

v.

THE SHORES AT RAINBOW LAKE
COMMUNITY ASSOCIATION, an
Arizona domestic nonprofit corporation,

Defendant.

No.: S0900CV202200042

STATEMENT OF FACTS IN SUPPORT
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT

Re: Validity of Amendment

Plaintiffs (collectively the "Homeowners") submit their Statement of Facts in support of the Motion for Partial Summary Judgment Re: Validity of Amendment.

STATEMENT OF FACTS

1
2 1. Gordon Gross and Liliana Gross are owners of real property located in
3 Navajo County at 2366 Bald Eagle Point, Lakeside, which is within the Shores and subject
4 to the recorded instruments described below. *See* Complaint at ¶1; Answer at ¶1.

5 2. 854 Pine Creek, LLC is the owner of real property located in Navajo County
6 at 854 Pine Creek Drive, Lakeside, which is within the Shores and subject to the recorded
7 instruments described below. *See* Complaint at ¶2; Answer at ¶1.

8 3. Bald Eagle Retreat, LLC is the owner of real property located in Navajo
9 County at 2343 Bald Eagle Point, Lakeside, which is within the Shores and subject to the
10 recorded instruments described below. *See* Complaint at ¶3; Answer at ¶1.

11 4. 1501 Rainbow View, LLC is the owner of real property located in Navajo
12 County at 1501 Rainbow View Drive, Lakeside, which is within the Shores and subject to
13 the recorded instruments described below. *See* Complaint at ¶4; Answer at ¶1.

14 5. Lakeside Family Investments, LLC is the owner of real property located in
15 Navajo County at 2321 Bald Eagle Point, Lakeside, which is within the Shores and subject
16 to the recorded instruments described below. *See* Complaint at ¶5; Answer at ¶1.

17 6. Thomas P. Zehring and Jeannette Rose Zehring, Trustees of the ZEHRING
18 LIVING TRUST, Jeannette Zehring, and Steven A. Kernagis and Sandra K. Kernagis,
19 Trustees of the STEVEN AND SANDRA KERNAGIS TRUST dated March 17, 2014, are
20 owners of the real property located in Navajo County at 685 Pine Creek Drive, Lakeside,
21 which is within the Shores and subject to the recorded instruments described below. *See*
22 Complaint at ¶¶6&7; Answer at ¶1.

23 7. The Shores at Rainbow Lake Community is governed by the Amended and
24 Restated Declaration of Covenants, Conditions and Restrictions for The Shores at Rainbow
25 Lake (the "Declaration"), which is recorded in the Navajo County Recorder's Office at
26 Number 2001-17716. *See* Complaint at ¶14; Answer at 6. Copy of the Declaration attached
27 as Exhibit 1.

28 8. In connection with the Declaration, The Shores at Rainbow Lake Community

1 Association (the “HOA”) is the homeowners association vested with the powers and duties
2 contained in the Declaration and is tasked with administering and enforcing the same. *See*
3 Complaint at ¶15; Answer at ¶6.

4 9. The HOA recorded the Amendment with the Recorder of Navajo County,
5 Arizona at Instrument No. 2021-04383. *See* Complaint at ¶ 60; Answer at ¶43. Copy of the
6 Amendment attached as Exhibit 2.

7 10. The Amendment provides as follows:

8 1. Article 2, Section 2.30 shall be deleted in its entirety and replaced with
9 the following:

10 2.30. Leasing of Lots.

11 (A) After December 31st, 2021, no Lot may be leased for a term
12 less than thirty (30) days.

13 (B) No portion of a Lot may be leased, other than the entire Lot,
14 and then only to a Single Family. For purposed of this Section 2.30, a Single
15 Family may not consist of more than four (4) individuals who are unrelated
16 by blood, marriage or legal adoption.

17 (C) An Owner who leases his Lot shall provide the following
18 information to the Association at least ten (10) days before the
19 commencement of the lease term:

20 (i) the commencement date and expiration date of the lease
21 term;

22 (ii) the names and contact information of any adults
23 occupying the Lot during the lease term; and

24 (iii) the address and telephone number at which the Owner
25 (or Owner’s agent) can be contacted by the Association during the lease term.

26 (D) Any agreement for the lease of a Lot shall provide that the term
27 of such lease shall be subject in all respects to the provisions of the Project
28 Documents and that any failure by the Lessee to comply with the terms of
the Project Documents shall be a default under the lease. Any Owner who
leases a Lot must provide the Lessee with a copies of this Declaration, the
Architectural Committee Rules and the Association Rules and is responsible
for assuring the Lessee’s compliance therewith. The Owner shall be liable
for any violation of this Declaration, the Architectural Committee Rules or

1 the Association Rules by the Lessees or other persons residing in the Lot and
2 their guests or invitees and, in the event of any such violation, the Owner,
3 upon demand of the Association, shall immediately take all necessary actions
4 to correct any such violations.

5 *See* Verified Complaint at ¶61; Answer at ¶44.

6 11. Prior to the Amendment, Section 2.30 of the Master Declaration
7 provided:

8 **Leasing of Lots.** No Owner may lease less than his entire Lot. Upon leasing
9 his Lot, an Owner shall promptly notify the Association of the
10 commencement date and termination date of the lease and the names of each
11 lessee or other person who will be occupying the Lot during the term of the
12 lease.

13 *See* Verified Complaint at ¶22; Answer at ¶10. ¹

14 DATED this 25th day of April, 2022.

15 DYER BREGMAN & FERRIS, PLLC.

16 BY /s/ Stockton D. Banfield

17 Stockton D. Banfield
18 Charles M. Dyer
19 Attorneys for Plaintiff

20 WONG & CARTER, PC.

21 BY /s/ Matthew A. Klopp

22 Rick K. Carter
23 Matthew A. Klopp
24 Attorneys for Plaintiff

25 _____
26 ¹ While the HOA claims to deny the allegations contained in ¶22 of the Verified Complaint,
27 it did already admit to the Declaration being recorded in the Navajo County Recorder's
28 Office at Number 2001-17716. *See* Answer at ¶6. While the HOA did not provide any
explanation beyond stating that the same Declaration "is different from the one quoted in
the Complaint," it appears that the HOA may be denying on the basis of the word "Lease"
being capitalized at the end of the paragraph in the Verified Complaint while "lease" is not
capitalized in the Declaration as recorded. This conclusion stems from the reality that such
capitalization is the only ascertainable discrepancy in the quotation and the Declaration as
recorded. In other words, the HOA has not denied the actual substance of the quotation,
but the capitalization of one word therein. Such triviality is, unfortunately, the "substance"
of the HOA's position in this matter that should not be before the Court at all as the HOA,
acting in good faith and consistent with its obligations to the Community and the
Homeowners.

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ORIGINAL electronically filed via TurboCourt
This 25th day of April, 2022.

COPIES emailed and mailed
This 25th day of April, 2022 to:

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By: /s/ Jineane Rivers