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9
10 **THE SUPERIOR COURT OF ARIZONA**

11 **COUNTY OF NAVAJO**

12 Gordon Gross and Liliana Gross, husband
and wife; 854 Pine Creek, LLC, an Arizona
13 limited liability company; Bald Eagle
Retreat, LLC, an Arizona limited liability
14 company; 1501 Rainbow View, LLC, an
Arizona limited liability company; Lakeside
15 Family Investments, LLC, an Arizona
limited liability company; Steven A.
16 Kernagis and Sandra K. Kernagis, trustees
of the Steven and Sandra Kernagis Trust
17 Dated March 17, 2014; Thomas P. Zehring
and Jeannette Rose Zehring, trustees of the
18 Zehring Living Trust Dated March 1, 2001;
and Jeannette Zehring; Ronald D. Kyer, Jr.
19 and Desiree Kyer, husband and wife,

21 Plaintiffs,

22 vs.

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

25 Defendant.

Case No.: S0900 CV202200042

NOTICE TO COURT RE APPEAL

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2 Defendant, The Shores at Rainbow Lake Community Association, provides
3 notice to this Court and all parties that a precautionary Notice of Appeal has been
4 filed. Upon the Court of Appeals docketing of the appeal (and assignment of a Court
5 of Appeals' Case Number), Defendant intends to file Motion to Revest Jurisdiction to
6 allow this Court to consider and decide the pending Motion for New Trial.

7 The Notice of Appeal was filed because of a discrepancy between the file-
8 stamped copy of the Judgment provided by the Clerk of the Court, which shows a
9 stamped-in docketed¹ date of December 6, 2022 and the December 1, 2022 date shown
10 on the Arizona Supreme Court's Public Access to Court Information docket as the date
11 the judgment was filed. See <https://apps.supremecourt.az.gov/publicaccess/>

12 If the December 6, 2022 date shown on the stamped-in copy of the Judgment
13 provided by the Clerk of the Court as required under Rule 58(c)(2)(C) accurately states
14 the date the Judgment was *entered*, then the pending Motion for New Trial delays the
15 30-day deadline to file a Notice of Appeal. However, if the Judgment was filed by the
16 Clerk on December 1, 2022, then December 1, 2022 may be the actual date the judgment
17 is deemed "entered" under Rule 58(b)(2)(A) regardless of the date the Clerk of the
18 Court docketed the judgment.

19 Because the Court of Appeals has an independent duty to determine its
20 jurisdiction, and its jurisdiction is defined by statute and cannot be extended by
21 stipulation or agreement of the parties, Defendant was cautious and filed a Notice of
22 Appeal based on the possibility the file-date shown on the Supreme Court's Public
23

24 ¹ Prior versions of the Rules of Civil Procedure spoke of the date the clerk made a notation
25 in the civil docket as the date a judgment was "entered." See *Jackson v. Sears, Roebuck & Co.*,
26 83 Ariz. 20, 22-23 (1957). The word "docket" is no longer used in Rule 58, describing the date
a judgment is entered.

1 Access to Court Information docket is the date the Judgment was “entered” as that
2 term is used in Rule 58.

3 With apologies to the Court and Plaintiffs for any confusion caused by the
4 precautionary filing of the Notice of Appeal, Defendant will request the Court of
5 Appeals reconstitute jurisdiction with the Superior Court to allow this Court to render a
6 decision on the pending Motion for New Trial.

7 DATED this 29th day of December, 2022.

8 JENNINGS HAUG KELEHER MCLEOD LLP

9
10 /s/ James L. Csontos

11 Jack R. Cunningham

12 James L. Csontos

13 Attorneys for The Shores at Rainbow Lake
14 Community Association,

15 Copy of the foregoing mailed
16 and emailed this 29th day of December 2022, to:

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