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7 Court Documents: docket@jhkmlaw.com

8 Attorneys for Defendant

9
10 **THE SUPERIOR COURT OF ARIZONA**
11 **COUNTY OF NAVAJO**

12 GORDON GROSS and LILIANA GROSS,
13 husband and wife; 854 PINE CREEK, LLC,
14 an Arizona limited liability company; BALD
15 EAGLE RETREAT, LLC, an Arizona limited
16 liability company; 1501 RAINBOW VIEW,
17 LLC, an Arizona limited liability company;
18 LAKESIDE FAMILY INVESTMENTS,
19 LLC, an Arizona limited liability company;
20 STEVEN A. KERNAGIS and SANDRA K.
21 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,

22 Plaintiffs,

23 vs.

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

26 Defendant.

Case No.: S0900CV202200042

**NOTICE OF LODGING
AMENDED FINAL JUDGMENT**

1 Defendant The Shores at Rainbow Lake Community Association give notice of
2 lodging a form of Amended Final Judgment attached as Ex. A, hereto. Rainbow Lake
3 requests the Court find the lodged Amended Final Judgment is one that complies with
4 [Rule 41](#), [Rule 54](#) and the express directions of the Arizona Supreme Court in [Kalway v.](#)
5 [Calabria Ranch Hoa, Ltd. Liab. Co.](#), 252 Ariz. 532, 537 (2022); and [Valley Med. Specialists v.](#)
6 [Farber](#), 194 Ariz. 363, 372 (1999) (“Arizona courts will ‘blue pencil’ restrictive covenants,
7 eliminating grammatically severable, unreasonable provisions.”) and will satisfy
8 Plaintiffs’ agreement found in the Severability clause which mandates the same result.¹
9 The Judgment lodged would be final and subject to appeal, which by definition makes
10 this document lodged by Rainbow Lake a document the Court of Appeals will
11 determine to be an actual Judgment. See [Rule 54\(a\)](#).²

12
13 RESPECTFULLY SUBMITTED this 13th day of April 2023.

14 JENNINGS HAUG KELEHER MCLEOD LLP

15
16 /s/ James L. Csontos

17 James L. Csontos

18 Attorneys for The Shores at Rainbow Lake
19 Community Association, an Arizona nonprofit
20 corporation, Defendant

21
22 ¹ “**Severability.** Any determination by any court of competent jurisdiction that any provision of
23 this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any
24 of the other provisions hereof.” See 2001 Covenants, at Section 9.4.

25 ² To avoid potential claims to the contrary, by lodging a form of Judgment that provides for the
26 relief allowed by the Court’s September 14, 2022 Order, and acknowledges Plaintiffs’
agreement to dismiss remaining claims, Rainbow Lake is not waiving rights to post-judgment
relief, including appeal.

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A copy of the forgoing mailed
and emailed this 20th day of April 2023 to:

Stockton D. Banfield
Rick K. Carter
Matthew A. Klopp
DYER BREGMAN FERRIS WONG CARTER PLLC
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Attorneys for Plaintiffs

/s/ Annette McLaughlin
Annette McLaughlin

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EXHIBIT A

1 Jack R. Cunningham (No. 004961)

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8 Attorneys for Defendant

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10 **THE SUPERIOR COURT OF ARIZONA**

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25 COMMUNITY ASSOCIATION, an Arizona
nonprofit corporation,

26 Defendant.

Case No.: S0900CV202200042

AMENDED FINAL JUDGMENT

1 This matter having come before the Court on the Cross-Motions for Partial
2 Summary Judgment of Plaintiffs, the Court having heard oral argument on the Cross-
3 Motions on July 19, 2022 and being fully advised in the premises and for the reasons
4 more fully set forth in the Court's September 14, 2022 Ruling on Motion and Cross
5 Motion for Summary Judgment;

6 **IT IS ORDERED, ADJUDGED AND DECREED** as follows:

7 1. The First Amendment to the Amended and Restated Declaration of
8 Covenants, Conditions and Restrictions for The Shores at Rainbow Lake, executed on
9 February 26, 2021 and recorded with the Navajo County Recorder on March 3, 2021 at
10 Instrument No. 2021-04383 (the 2021 Amendment), which amended by replacement
11 Section 2.30 of the Amended and Restated Declaration of Covenants, Conditions and
12 Restrictions for The Shores at Rainbow Lake recorded with the Navajo County
13 Recorder on September 6, 2001 at Instrument No. 2001-17716 **is valid** as to the
14 replacement as shown in the 2021 Amendment of Section 2.30(B), (C) and (D).

15 2. The First Amendment to the Amended and Restated Declaration of
16 Covenants, Conditions and Restrictions for The Shores at Rainbow Lake, executed on
17 February 26, 2021 and recorded with the Navajo County Recorder on March 3, 2021 at
18 Instrument No. 2021-04383 (the 2021 Amendment), which amended by replacement
19 Section 2.30 of the Amended and Restated Declaration of Covenants, Conditions and
20 Restrictions for The Shores at Rainbow Lake recorded with the Navajo County
21 Recorder on September 6, 2001 at Instrument No. 2001-17716 **is invalid** as against
22 owners who took title on or before March 3, 2021 as to the replacement as shown in the
23 2021 Amendment of Section 2.30(A).

24 3. A copy of the First Amendment to the Amended and Restated Declaration
25 of Covenants, Conditions and Restrictions for The Shores at Rainbow Lake, executed
26 on February 26, 2021 and recorded with the Navajo County Recorder on March 3, 2021

1 at Instrument No. 2021-04383 with the portion found by this Court to be invalid as to
2 owners who took title on or before March 3, 2021 shown as ~~STRICKEN~~ is attached to
3 this Judgment as Exhibit A.

4 4. In the exercise of the Court's discretion, the Court denies all parties'
5 requests for attorney fees.

6 5. In accordance with Plaintiffs' request to dismiss all remaining claims, the
7 Court concludes all other claims Plaintiffs alleged or that Plaintiffs could have asserted
8 in this litigation are dismissed with prejudice.

9 6. The Final Judgment signed by the Court on December 1, 2022 is vacated.
10 This Amended Final Judgment amends and replaces the Final Judgment signed by the
11 Court on December 1, 2022.

12 7. No further matters remain pending and this final judgment is entered
13 under Rule 54(c).

14
15 DATED this _____ day of _____, 2023.

16
17 _____
18 Michala M. Ruechel
19 JUDGE OF THE SUPERIOR COURT
20
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EXHIBIT A

2021-04383
Page 1 of 4
Requested By: LAWYERS TITLE PINETOP - 230 E
WHITE
Navajo County Recorder - Michael Sample
03-03-2021 08:07 AM Recording Fee \$30.00

RECORDED AT THE REQUEST OF:

Frank M. Smith & Associates, Inc.

WHEN RECORDED MAIL TO:

**The Shores at Rainbow Lake
c/o Frank M. Smith & Associates
4756 Buck Springs Road
Pinetop, AZ 85935**

DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT.

DOCUMENT TO BE RECORDED:

Covenants, Conditions and Restrictions Amendment

REC-1

**FIRST AMENDMENT
TO AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE SHORES AT RAINBOW LAKE**

**FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE SHORES AT RAINBOW LAKE**

WHEREAS, that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Shores at Rainbow Lake recorded on September 6, 2001 at Document No. 2001-17716 in the official records of Navajo County, Arizona ("Declaration"), in Article 9, Section 9.2, provides that its terms and conditions may be amended by Owners representing not less than sixty-seven percent (67%) of the total votes in each class of membership;

NOW, THEREFORE, Owners representing not less than sixty-seven percent (67%) of the total votes in the Class A Membership and Owners representing at least sixty-seven percent (67%) of the total votes in the Class B Membership have provided their written consent to adopt the following amendment to the Declaration:

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

2.30. Leasing of Lots.

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

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

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

- (i) the commencement date and expiration date of the lease term;
- (ii) the names and contact information of any adults occupying the Lot during the lease term; and

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

(D) Any agreement for the lease of a Lot shall provide that the terms of such lease shall be subject in all respects to the provisions of the Project 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 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 the Association Rules by the Lessees or other persons residing in the Lot and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

2. Except as amended by this instrument, the Declaration shall remain in full force and effect.

The undersigned certifies that this First Amendment to the Declaration was duly adopted by the written consent of Owners representing at least sixty-seven percent (67%) of the total votes in each class of membership on the 26th day of February, 2021.

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

By: [Signature]
Its: President

STATE OF ARIZONA)
) ss.
COUNTY OF NAVAJO)

This instrument was acknowledged before me this 26th day of February, 2021, by Richard B. Whipple in his capacity as President of The Shores at Rainbow Lake Community Association for the purposes stated herein.

Victoria M. Heuett
Notary Public
My Commission Expires: May 18, 2022

