

DOCKETED

MAY 17 2023

SUPERIOR COURT

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9
10 **SUPERIOR COURT OF ARIZONA**

11 **NAVAJO COUNTY**

12 GORDON GROSS and LILIANA GROSS,
husband and wife; 854 PINE CREEK, LLC,
an Arizona limited liability company; BALD
13 EAGLE RETREAT, LLC, an Arizona limited
14 liability company; 1501 RAINBOW VIEW,
LLC, an Arizona limited liability company;
15 LAKESIDE FAMILY INVESTMENTS,
LLC, an Arizona limited liability company;
16 STEVEN A. KERNAGIS and SANDRA K.
17 KERNAGIS, trustees of the STEVEN AND
SANDRA KERNAGIS TRUST DATED
18 MARCH 17, 2014; THOMAS P. ZEHRING
and JEANNETTE ROSE ZEHRING, trustees
19 of the ZEHRING LIVING TRUST DATED
MARCH 1, 2001; and JEANNETTE
20 ZEHRING; RONALD D. KYER, JR. and
21 DESIREE KYER, husband and wife,

22 **Plaintiffs,**

23 vs.

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

26 **Defendant.**

Case No.: S0900CV202200042

AMENDED FINAL JUDGMENT

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

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

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

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

20 3. A copy of the First Amendment to the Amended and Restated Declaration of
21 Covenants, Conditions and Restrictions for The Shores at Rainbow Lake, executed on February
22 26, 2021, and recorded with the Navajo County Recorder on March 3, 2021, at Instrument No.
23 2021-04383 with the portion found by this Court to be invalid shown as ~~STRICKEN~~ is attached
24 to this Judgment as Exhibit A.

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

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

**FIRST AMENDMENT
TO AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDmONS 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. &§Id 2, Section 2.30 shall be deleted in its entirety and replaced with the following:

2.30. Leasing of Lots) :!

Of less than sixty-seven percent (67%) of the total votes in each class of membership;

(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

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 21st day of February, 2021.

THE SHORES AT RAINBOW WE-COMMUNITY ASSOCIATION, an Arizona nonprofit corporation

By: [Signature]
Title: **President**

STATE OF ARIZONA)
) ss.
COUNTY OF NAVAJO)

This instrument was acknowledged before me this 21st day of February, 2021, by Jesse B. [Signature] in his capacity as President of The Shores at Rainbow Lake Community Association for the purposes stated herein.

[Signature]
Notary Public
My Commission Expires: YVWUJ li do?--

