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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT, Plaintiff, vs. GLEN LUDWIG and PEARL LUDWIG, Trustees of THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; MEHDI AZARMI; JAMES B. ROBERTS and DONNA M. ROBERTS, husband and wife; JOHN DOES 1-10; JANE DOES 1-10; ABC CORPORATIONS 1-10; and XYZ PARTNERSHIPS 1-10. Defendants.	NO.: CV-2018-04003 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** *Honorable Lee F. Jantzen*

COME NOW, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; MEHDI AZARMI, hereinafter collectively referred to as "Defendants," and for their dispositive Motion for Summary Judgment directed to Count 2 of Plaintiff's Complaint (Count 2 is the remainder of Plaintiff's original Complaint, Count 1 having previously been dismissed with prejudice by this Court on June 11, 2018), and by and through Defendants' undersigned counsel, Daniel J. Oehler, of the Law Offices of Daniel J. Oehler, hereby submit their Motion for Summary Judgment pursuant to the Arizona Rules of Civil Procedure ("ARCP"), Rule 56. The Defendants request that this Court grant summary judgment in favor of these Defendants on the basis that there is no issue of material fact that the provisions of the Covenants, Conditions and Restrictions ("CC&Rs") recorded on or about December 18,

1989, in Book 1641, Pages 895-901, in the Official Records of Mohave County at Recorder's Fee No. 89-67670 (Tract 4076-B), and subsequently those Covenants, Conditions and Restrictions recorded on October 19, 1990, in Book 1808, pgs. 509-514, Fee No. 90-73717 regarding Tract 4076-D, have been abandoned and are no longer enforceable. The subject covenants have been ignored since recordation and at least over a continuous period exceeding 29 years resulting in an abandonment, and as such under Arizona law are fully waived and unenforceable.

This Motion is supported by the attached Memorandum of Points and Authorities; Defendants' Statement of Facts submitted herewith; the Affidavits in support of Defendants' facts are appended hereto. The facts as herein set forth reflect a complete desertion of the original development plan for Tract 4076-B and its two derivative subdivisions, Tract 4076-D and Tract 4163. The facts clearly and succinctly show that this desertion or defection has gone forward over multiple decades regarding virtually every major or significant element of the original covenants. The irrefutable facts before this Court as interpreted by the Arizona Court of Appeals, the Arizona Supreme Court in the cases cited herein, as well as the Restatement of the Law, Property Restatement (Third) of Property, Servitudes, and other treatises hereinafter referenced, clearly establish that the subject covenants are unenforceable, and this matter and all claims before this Court should be dismissed.

RESPECTFULLY SUBMITTED this 6th day of December, 2019.

LAW OFFICES OF DANIEL J. OEHLER

Daniel J. Oehler,
Attorney for Defendants

I. STATEMENT OF THE CASE

Count 1 of Plaintiff's Complaint has been dismissed with prejudice. Count 2 of Plaintiff's Complaint is the singular count before this Court and therefore the factual and legal scope of this Motion for Summary Judgment.

The specific relief sought by Plaintiff pending before this Court is Plaintiff's request

for injunctive relief. The injunctive relief in question centers exclusively around the CC&Rs which were recorded in conjunction with the creation and development of a subdivision known as Desert Lakes Golf Course & Estates Tract 4076-B (hereinafter simply referred to as Tract 4076-B). As a result of the law of this case previously decided by the Honorable Derek Carlisle in his Order of June 11, 2018 (**Exhibit A**), the subdivision in which Plaintiff resides has been determined to be a derivative subdivision of parcels included in Tract 4076-B, although the subject parcels (VV and KK) were "abandoned" and later resubdivided into the subdivision in which the Plaintiff resides known as Desert Lakes Golf Course & Estates Tract 4163 (hereinafter referred to simply as "Tract 4163") which was developed and recorded in 2002 approximately 13 years after the development of Tract 4076-B. At the time of development of Tract 4163, no subdivision CC&Rs were recorded nor implemented for Tract 4163. The Carlisle Order of June 11, 2018, found that Tract 4163 was derivative of Tract 4076-B and therefore the Tract 4076-B CC&Rs followed the land and were binding upon any "derivative tract" that was a later re-subdivision of the lots and/or parcels located within the original Tract 4076-B.

Defendants filed an original Motion to Dismiss Plaintiff's Complaint for lack of standing alleging that Plaintiff resides and owns real property only in Tract 4163 which has no recorded CC&Rs and did not have proper "legal standing" to attempt to enforce recorded CC&Rs for any subdivision in which Plaintiff did not own any land. Judge Carlisle, after extensive briefing and oral arguments, found that Count 1 of Plaintiff's Complaint dealt with a subdivision known as Desert Lakes Golf Course & Estates Tract 4076-A where Plaintiff was not an owner, and dismissed Count 1 with prejudice. As to Count 2, the Carlisle Court found that Plaintiff had standing as Plaintiff's subdivision Tract 4163 was a subdivision of two parcels that were originally in Tract 4076-B and that the CC&Rs covering Tract 4076-B recorded in 1989 "ran with the land" and therefore Tract 4163 was covered by and applied to Plaintiff's Tract 4163 (see **Exhibit A**, Carlisle Order) all as above referenced.

Subsequently, and as a result of extensive research and time that has thereafter been required of this file, it has been determined that beyond and well before Tract 4163 was

re-subdivided out of Tract 4076-B in 2002, that certain lots and a portion of Parcel KK within original Tract 4076-B were also later resubdivided to become known as Desert Lakes Golf Course & Estates Tract 4076-D in 1990 into 12 lots (see **Exhibit B**). Thus, under the law of this case as ruled upon and set by the Honorable Derek Carlisle, Defendants, in an effort to fully address all current and potential future issues for the purpose of this Motion, have included Tract 4076-D within the facts hereinafter set forth. The Carlisle Order determined that Tract 4163 is derivative of Tract 4076-B, therefore Plaintiff legally also has potential standing to include both Tract 4076-D owners and lots as well as Tract 4163 owners and lots within this litigation. The exact circumstances therefore apply to Tract 4076-D should Plaintiff at some point choose to raise the issue of her lot ownership standing in this second and additional derivative subdivision.

We now turn to the relief and attempt to synopsize the request by Plaintiff in the remaining Count 2 of Plaintiff's Complaint and how factually this matter has evolved thus far through the series of court pleadings and rulings.

Count 2 is captioned "Injunctive Relief." Plaintiff makes reference to a nonspecific set of CC&Rs, however, for the purpose of this Motion and as a result of the "law of the case," the only CC&Rs that exist and that are the only CC&Rs that can be applicable to Plaintiff's case are those that were recorded in conjunction with the subdivision known as Desert Lakes Golf Course & Estates Tract 4076-B and those recorded over the top of Tract 4076-B's CC&Rs via the recordation of a separate set of covenants that were recorded at the time of Final Plat recordation for Tract 4076-D. The principally duplicative Tract 4076-D covenants are attached hereto and designated **Exhibit C**. It should be noted that because the Tract 4076-D covenants are substantially the same as the Tract 4076-B and although they apply to a different and separately described set of lots, the earlier covenants and the facts dealing with their enforceability are the same as those dealing with Tract 4076-B.

Paragraph 61 of Plaintiff's Complaint states:

> "Plaintiff is entitled to preliminary and permanent injunctions enjoining Defendants from all current signage violations on unimproved lots."

The second tier relief requested in Count 2 that is at least arguably applicable is found in paragraph 62 of Plaintiff's Complaint which reads as follows:

> "Plaintiff is entitled to preliminary and permanent injunctions enjoining Defendants from any existing or future violations of the CC&Rs, including but not limited to setback reductions and signage on unimproved lots."

Next, in paragraph 63 in Count 2 of Plaintiff's Complaint, Plaintiff requests reasonable compensation and specifies that it should consist of or be based upon but not limited to Plaintiff's:

> "Filing fees, compensation for hours of research, emails, letters and postage, and for physical and emotional distress from the battle to protect her Desert Lakes community from CC&R violations."

Thereafter, Plaintiff sets forth a general prayer for relief that, in theory, applied to both her dismissed Count 1 and the surviving Count 2. Plaintiff specifically asks the Court to make a finding that Defendants violated the CC&Rs for an undesignated subdivision in paragraph A. For the purpose of this dispositive motion and per the Carlisle Order of June 11, 2018, the CC&Rs in question are the 1989 recorded CC&Rs that at the time covered Tract 4076-B and via inference, the 1990 recorded CC&Rs that were added for Tract 4076-D as well.

Paragraph B of the prayer for relief is not applicable as the property located at 5732 Clubhouse Drive pursuant to the Order of Judge Carlisle, "the law of the case" is not in a subdivision for which Plaintiff has standing and was an issue exclusively within dismissed Count 1 of her Complaint. (See **Exhibit A**, Carlisle Order.)

Paragraph C of Plaintiff's prayer for relief requests the issuance of an injunction immediately and permanently removing all signage on unimproved lots in an undisclosed subdivision and which can only be attributable to Desert Lakes Golf Course & Estates subdivision Tract 4076-B and/or, as a result of the law of this case, the two derivative subdivisions Tract 4163 and/or Tract 4076-D, above discussed.

Plaintiff goes on to ask for actual and consequential damages including but not limited to "compensation and reimbursement."

Paragraph E of Plaintiff's prayer for relief requests "compensation to all property owners for diminished value, to be determined by the court or at the time of trial, due to the taking of front and/or rear views as a result of Defendants' construction that violated the CC&Rs of Desert Lakes. (Note: Plaintiff has failed to include as plaintiffs or defendants the approximately 240+ lot owners within each of the three subdivisions, Tracts 4076-B, 4076-D or 4163, each of whom are necessary and indispensable parties to this action.)

Plaintiff next requests "a declaratory judgment forgiving any CC&R construction violations that were not the fault of the purchaser of the home who unknowingly purchased a home that had been built, in error or deliberately by any builder, as out of compliance with the CC&Rs," yet this prayer requests relief for approximately 240 landowners who are not parties to this action.

Finally, Plaintiff, a pro per claimant, asks for recovery of Plaintiff's attorney's fees and costs pursuant to law and A.R.S. §§12-349 and ARCP Rule 11.

The above then represents the entirety of the issues before this Court and to which the submitted "Statement of Facts" and subsequently the attached "Statement of Law" as applied to the Statement of Facts.

While it should be noted that the prayer for relief sought by Plaintiff in Plaintiff's cause of action requests various forms of relief or perhaps benefits or detriments/penalties effectively to approximately 240+ property owners, i.e., all existing owners in Tract 4076-B, Tract 4163 and Tract 4076-D, for alleged "diminished value of their property," or perhaps diminished future value of their property interests, and has also requested judicial relief "on behalf of all existing property owners" in each of these three separate subdivisions in the event the respective properties violate any of the recorded CC&Rs, Plaintiff has, once again, failed to join any property owners, or any builders other than the single set of property owners served to date, namely Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of THE LUDWIG FAMILY TRUST, having omitted the remaining approximate 239 owners who will be either affirmatively or negatively impacted by the rulings sought by the Plaintiff. The purpose of this Motion for Summary Judgment is <u>not</u> to focus on

Plaintiff's failure to join indispensable parties under ARCP Rule 19, but rather on a dispositive basis of whether, given the facts, do the Plaintiff's rights under the law applied to the facts permit Plaintiff or anyone to enforce the subject CC&Rs?

II. QUESTION

The fact issue before the Court is: whether the 1989 Tract 4076-B CC&Rs are enforceable or have they been forsaken, deserted and abandoned as a result of non-enforcement to the extent that the overall development plan for the subdivision as interpreted by a reasonable person indicates that the substantive elements of the covenants and their applicability to these subdivisions have long since become unenforceable?

The issue is not whether the CC&Rs in question were valid upon recordation in 1989 or 1990. The question is are they enforceable or were they enforceable at any time on or after the filing of this litigation in January 2018 based on the massive, consistent and ongoing violations uniformly throughout each of the applicable tracts over the past 30 years?

This Memorandum will not, therefore, touch upon the issue of "validity," "standing" nor the issue mentioned in passing, failure to join indispensable parties, as each are irrelevant to this dispositive Motion.

IV. LEGAL STANDARDS AND THE LAW

A. Motion for Summary Judgment

A party is entitled to summary judgment only when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. See, ARCP, Rule 56(c)(1). Summary judgment is appropriate when the record shows that there is no real dispute as to any material fact and the moving party is entitled to judgment as a mater of law. United Bank of Arizona v. Allyn, 167 Ariz. 191, 194-195, 805 P.2d 1012, 1015-1016 (App. 1990). Facts are viewed in favor of the non-moving party. However, when a moving party establishes an appropriate *prima facie* cause of action, the party opposing the motion has the burden to demonstrate by competent admissible evidence that a reasonable dispute of material fact exists that, if true, would preclude the requested relief. Orme School v. Reeves, 166 Ariz. 301, 802, P.2d 1000, 1008 (1990); Deutsch Credit Corp. V. Case Power

& Equipment Co., 179 Ariz. 155, 158, 876 P.2d 1990, 1993 (App. 1994); Tansen v. Webber, 166 Ariz. 364, 368, 802 P.2d 1063, 1067 (App. 1990), review denied; State v. Meecham, 173 Ariz. 474, 478, 844 P.2d 641, 645 (App. 1992). To obtain summary judgment, the movant must establish that all inferences which could rationally be drawn from the established facts are such as to exclude any genuine issue. Mast v. Standard Oil Co. of California, 140 Ariz. 1, 5, 680 P. 2d 137, 141 (1984). A resolution of legal issues in controversy is left to the court. Fendler v. Texaco Oil Co., 17 Ariz. App. 565, 499 P.2d 1179, 1181 (1972).

The Defendants herein, the moving parties for this Motion for Summary Judgment, are obligated to merely point out via specific references to the relevant facts that no evidence exists to support the essential element or elements of Plaintiff's claims. Orme School, supra, at 311. These moving Defendants need not affirmatively establish the negative of an element. Id. The resolution as hereinabove stated of legal issues, including disputed legal conclusions, are for the Court to decide as a matter of law. Fendler, supra, at 567.

B. Status of Enforceability of CC&Rs Giving Rise to Plaintiff's Claims

The law in the State of Arizona dealing with the enforcement of codes, covenants and restrictions has developed over the years to its current state that requires a showing that the objectives of the declarant, in this case the developer, in the covenants has in general terms been abandoned in practice. This is particularly true in dealing with restrictions that include non-waiver provisions. Subdivision Tract 4076-B includes the following non-waiver provision in paragraph 20, which in pertinent part reads:

> "... No failure of the Trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof."

As far back as the early 1950s, the Arizona Supreme Court in Whitaker v. Holmes, 74 Ariz. 30, 243 P.2d 462 (Sup. Ct. 1952), stated that although restrictive covenants should typically be upheld and the covenants should be given and interpreted in accordance with the meaning of the particular words set forth in those covenants, there are situations in which the restrictions have been defeated. More specifically, the Whitaker, supra, Supreme Court

stated that:

> "The plaintiffs have lost their right to enforce such restrictions by reason of the change in the conditions and character of the restricted area, and that the purpose for which said restrictions were created have been defeated and it would now be oppressive and inequitable to give said restrictions effect." At p. 464.

The facts before our Court fall squarely within this early view of our Supreme Court as set forth in Whitaker, supra.

Two years subsequent to the Arizona Supreme Court opining in the Whitaker, supra,, case, the Arizona Supreme Court in Condos v. Home Development Company, 77 Ariz. 129, 267 P.2d 1069 (1954), found before it a set of CC&Rs that included a non-waiver provision wherein the CC&Rs specifically set forth terminology similar to that that is before our Court today that if in fact there was a violation of a provision of the CC&Rs that was not addressed by the enforcing entity, that such inaction by the homeowners association or architectural committee or individual property owners, would not or should not necessarily be considered an impediment to later enforcing the same restriction, unless those restrictions had in practice literally been abandoned.

The fact situation that is before this Court today and is evidenced by the Statement of Facts and the multiple Affidavits in support of this Motion for Summary Judgment make it abundantly clear that such a "non-waiver" provision would not protect the enforceability of the covenants nor be effective in a situation where there was effectively a complete, longstanding abandonment of the entire set of restrictions. Our Court in Condos, supra, stated:

> "Whether the restrictions imposed upon the use of lots in this subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions, defeat the purposes for which they were imposed and consequently amount to an abandonment thereof." Id., at p. 1071.

This would in fact result in a waiver of such restrictions. Noted in the Condos, supra, decision was an argument of waiver based upon "several prior violations" of the restrictions and the court in fact held that "several prior violations" in the case then before the court did

not destroy the fundamental character of the neighborhood. Such is certainly not the case in the matter before today's Court. Today, we are not looking at several prior violations, but rather, in many categories, 70%, 80%, 90%, and in some instances 100% of the homes have one or more covenant violations and the majority of the approximate 181 constructed residences have 2, 3 or more major violations (SOF, generally, and all nine appended Affidavits). In fact, in Condos, supra, the "several" violations consisted of a large subdivision that had been developed in Tucson, Arizona, and the evidence presented reflected the fact that there had been:

> "... some testimony of two or three churches in the area which for the most part were residences in which religious services were conducted. Chicken farms complained of by the defendants under the evidence shrank to a mere half dozen roosters for sale at one home with perhaps a few hens for domestic use. Second hand stores were narrowed to one residence where some few chairs, stoves, etc., were offered for sale, and nine outside toilets were shown to exist in the entire area." Id., at p. 1071.

The court in Condos, supra, did not consider each of the above generally short term and relatively minor events as significant covenant restriction violations.

Our Supreme Court in 1954 opined on the facts set forth in Condos, supra, stating that:

> "Assuming, however, that all of the violations claimed by the defendants occurred, they are not of such a character and extent to indicate an abandonment of the entire restrictive plan. Under such circumstances, owners of lots may therefore enjoin violations of other restrictive covenants." Cuneo v. Chicago Title & Trust Company, 337 Ill. 589, 169 N. E. 760, 764 [involving restriction violations in a subdivision in the City of Chicago]. Condos, supra, at p. 1072.
>
> The Cuneo, supra, court went on to state that:
>
> "Each of these restrictions is separate and independent of the other, and it can scarcely be said that, because some of the lot owners on Castlewood Terrace have violated the building line restrictions, if they have, the balance of the lot owners stood by and permitted it to be done, all restrictions have been abandoned.
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> * * *

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> Though it be conceded that the building line restriction has in this particular been violated by some of the lot owners on Castlewood Terrace, there is no evidence of the breach of any other of these several restrictions. Abandonment or acquiescence in the violation of one restriction does not amount to the abandonment of other separate and distinct restrictions material and beneficial to the owners of lots affected by them. Citing cases." Condos, supra, at p. 1072.

This then gives us some ability to ascertain a situation where there have been a few relatively minor covenant and even lot line violations in a subdivision where the CC&Rs include a non waiver covenant and the fact that a few violations do not represent an abandonment of the entire set of CC&Rs. This is completely opposite of the fact situation before this Court wherein, for a period of approximately 30 years, there has been no recorded or known effort of any type from any association, from any committee, from any property owner to enforce a single covenant set forth in the declarations and, indeed, there have been consistent major, significant, material ongoing violations in excess of 64% of all homes constructed therein, not only dealing with one major covenant violation such as the rear yard setback requirements (SOF ¶¶19-26; Stephan Affidavit) and as is evidenced by the cumulative additional Affidavits attached hereto, but also the vast majority of other material covenants such as fencing requirements, fencing prohibitions, roof mounted antennas, gate access to the golf course (SOF ¶¶38-51; Weisz Affidavit), the total abandonment of the provisions of Article I of the covenants (SOF ¶¶2-8; Azarmi Affidavit; McKee Affidavit; Kukreja Affidavit), multiple violations of the minimum square footage mandates (SOF ¶¶45-49), and continuous signage violations (SOF ¶¶27-36. Azarmi Affidavit; McKee Affidavit; Kukreja Affidavit; Pettit Affidavit). See also, SOF ¶44; Morse Affidavit regarding Plaintiff's personal violations of rear yard fencing, painting, use of chain link fence as well as the residence that Plaintiff purchased in Tract 4163 that is built in violation of the CC&Rs rear yard setback as close as nine feet to the golf course, and violates both the Mohvae County and CC&R side setback requirements (Morse Affidavit). Covenant 5 requires tempered glass in certain specific locations, yet this mandate appears to have been ignored (SOF ¶51; Green Affidavit).

Impact has also occurred via the legislative action set forth in the passage of A.R.S. §33-441 that voids and prohibits a portion of covenant paragraph 12 of Tract 4076-B CC&Rs effectively leaving this issue to an interpretation of Mohave County's sign ordinances as to whether the words on Defendants owned lot is or is not advertising, given the history of covenant 12 versus all other significant covenants having been ignored, abandoned and forsaken continuously for almost three decades. (SOF ¶¶29-35.)

The Condos, supra, court, then, stated:

> "The only question presented, as we view it, which deserves our consideration is whether the restrictions imposed upon the use of lots in this subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions, defeat the purposes for which they were imposed and consequently to amount to an abandonment thereof." At p. 1071.

The Condos, supra, court further quoted from Benner v. Tacony Athletic Ass'n., 338 Pa. 577, 196 A.390, 393 (1938), observing:

> "It is only when violations are permitted to such an extent as to indicate that the entire restrictive plan has been abandoned that objection to further violations is barred. Nor will indulgence work a waiver or estoppel against the enforcement of restrictions which are distinct and separate from those previously violated." At p. 1073.

The content of the Affidavit of Surveyor Eric Stephan dba Cornerstone Land Surveying, RLS 29274, is indicative of the extent of the rear yard covenant abandonment. Mr. Stephan's review of the 186 existing homes which are the subject matter of this litigation shows that 116 have projections into the rear 20 foot setback, in some instances to a distance as close as six feet of the rear property line. The vast majority of the homes built to date violate this covenant. Further, the requirement of a rear yard fence with specific specifications that for a distance of 15 feet on either side of each lot, the fence be no higher than five feet and constructed out of wrought iron, painted black, and across the rear property line, the same specifications apply, have been consistently violated as is evidenced by the Affidavits of Tracy Weisz, Alan Patch, Robert L. Morse and Mehdi Azarmi. See also SOF ¶¶19-26; 38-44.

The restriction that no access to the golf course for those homes located adjacent to the golf course have been consistently violated to the extent that the majority of homes have either no fence of any type restricting access to the golf course which is itself a covenant 8 violation or, in the alternative, have gates opening onto the golf course which is also a violation (Weisz Affidavit; Pettit Affidavit; SOF ¶¶38-44). Further, that even the fence recently constructed by the Plaintiff (SOF ¶44; Morse Affidavit) violates the covenant 8 fencing restrictions, not only in regard to the fencing products used by the Plaintiff, but further in regard to vertical height restrictions, painting restrictions and, of course, Plaintiff's construction and utilization of chain link fencing (Morse Affidavit).

It is unquestioned that the sentinel case in regard to how restrictive covenants should be interpreted in the State of Arizona was issued by our Supreme Court in Powell v. Washburn, 211 Ariz. 553, 125 P.3d 373, in 2006. The Powell, supra, court held that a deed restriction is a covenant that runs with the land and that it is a contract, citing, Ahwatukee Custom Estates Mgmt. Ass'n. v. Turner, 196 Ariz. 631, 634, 2 P.3d 1276, 1279 (App. 2000), and several other Arizona cases at p. 375 the Powell, supra, court found that the interpretation of a contract is generally a matter of law. The Powell, supra, court favorably quoted Whitaker v. Holmes, supra:

> "... (stating that when interpreting restrictive covenants, 'the courts not only look to the meaning of the particular words but also to the other surrounding circumstances') (citation omitted)."

opining favorably on the general principal that the court should look beyond the words of the restrictive covenants to all of the surrounding facts, circumstances, purposes and restrictions.

When that exercise is completed in the case before this Court, it is abundantly clear that the general purpose of the overwhelming majority of the substantive restrictions were intended to originally limit construction in the view corridor, in particular, of the golf course. That purpose has been negated at least 116 times (SOF ¶16; Stephan Affidavit) regarding home construction into the rear setback, and 127 times of the 139 total golf course homes fencing violations totaling 91% of the time (75+49=126÷139=91%) to date and with and in

the majority of homes constructed (Weisz Affidavit). The setback requirements, both side yard and rear yard, have consistently and constantly been forsaken, not only by home construction projections into the rear and side yards, but also in regard to a consistent and constant, regular and unilateral abandonment of the covenants represented by the three decade acquiescence of the property/lot owners regarding the fencing restrictions including fencing product (such as that installed by the Plaintiff, i.e., chain link barricade), fence heights (such as the Plaintiff's block and iron and ±15' high chain link barricade), the absence of any fence, and limited access fences throughout the entirety of the subdivision (SOF ¶44; Morse Affidavit; Weisz Affidavit).

The Powell, supra, court went on to specifically adopt the Restatement of the Law, Property Restatement (Third) of Property, Servitudes, which evidences according to the Powell, supra, court, the:

> "... longstanding Arizona case law holding that enforcing the intent of the parties as the 'cardinal principal' in interpreting restrictive covenants." Powell, supra, at p. 377.

Citing such cases as Arizona Biltmore Estates Ass'n. v. Tezak, 177 Ariz. 449, 868 P.2d 1032; see also, Whitaker, 74 Ariz. 32, 243 P.2d 463; O'Malley v. Central Methodist Church, 67 Ariz. 245, 247, 254, 255, 194 P.2d 444, 446, 451 (1948), all of which clearly indicate that one must look to the original intent of the parties, in this case, the developer, in recording the subject CC&Rs in 1989, and then make inquiry as to whether or not those intentions have in practice been followed. The clear, unequivocal, absolute, unarguable answer to that question that is before this Court is in the negative. The uniform building lines, uniform fence requirements, uniform paint color, golf course access restriction, have been negated through the build out construction on more than 75% of the lots being complete at this time with a general violation percentage north of 64% on the rear yard setback and 90+% regarding fencing (SOF ¶¶19-36; Stephan Affidavit; Weisz Affidavit). The original intent of the developers has not been enforced, not been utilized, not been required by any association, by any committee, by any entity of any type, by any owner, continuously for almost 30 years. The results of the plan development are evidenced through the data, documentation and

statistics presented in the nine fact Affidavits and Statement of Facts submitted herewith.

As recently as the Powell, supra, case issued by the Supreme Court, the Powell court has favorably cited the case of O'Malley, supra, a Supreme Court of Arizona decision entered in 1948. The O'Malley court provided the following guideline that must be used in regard to the matter before this Court in dealing with the issue of whether or not injunctive relief could be entered in regard to the enforcement of restrictions, our Supreme Court in O'Malley, supra, stated:

> "If the statements therein are supported by the surrounding circumstances connected therewith a general plan or scheme would be established, and the provisions thereof enforceable by defendants, if not abandoned." (Emphasis supplied.) Id., 451.

In the case before this Court, the covenants for which injunctive relief is being sought, most specifically setback violations and signage violations, have indeed been abandoned and have been abandoned for at least 29 to 30 years past. O'Malley, supra, distinctly and to the point states:

> "If the restrictions upon all lots similarly located are not alike, or some lots are not subject to the restrictions, while others are, then the burden would be carried by some owners without a corresponding benefit. The burden follows the benefit, and where there is no benefit, there should be no burden. Sanford v. Keer, 80 NJ.J. Eq. 240, 83 A. 225, 40 L.R.A., N.S., 1090; Edgewater Beach Hotel Corporation v. Bishop, 120 Fla. 623, 163 So. 214." Id., at 451-452.

The O'Malley, supra, court went on to state:

> "When there is no benefit there should be no burden. If the benefit be destroyed the burden should end." Id., at 452.

And further, the O'Malley, supra, court stated:

> "Where the restrictions are not universal, or after frequent violations of the restrictions have been permitted, then the neighborhood scheme will be considered abandoned." Id., at 453.

O'Malley, supra, while discussing a situation where restrictions in a particular project subdivision were incorporated directly into some deeds that had issued, but not all, fits

squarely within the four corners of the issue before this Court. The O'Malley, supra, court stated:

> "* * * Although some of the lots may have written restrictions imposed upon them and others not, if the general plan has been maintained from its inception and if it has been understood, accepted, relied upon, and acted upon by all in interest, it is binding and enforceable on all inter se. * * *
>
> The foregoing statement does not conform to the facts and surrounding circumstances in this case at all. Unrestricted lots have not been improved in conformity with restrictions, but contrary thereto. Infraction of the terms of the restrictions and not compliance seems to have been the general rule on such lots.
>
> Applying the facts in this case to the general principals of law applicable, it is readily apparent that the restrictions under consideration herein cannot be enforced inter se as covenants of a general plan or scheme." Id., at 453.

The O'Malley, supra, court went on to state:

> "The covenant of the grantees to protect all lot owners was broken and cannot be enforced." Id., at 453.

Similarly, although the original developers contemplated and actually set in print the fact that an architectural committee would continue in place from inception through a point in time "one year subsequent to the issuance of the state report" for Tract 4076-B (1989-January 1991), no record has been located of any actions actually taken by the subject architectural committee. This committee was, under the covenants, armed with the authority and ability to "grant approvals for exceptions or variances to this Declaration." See the subject CC&Rs attached to the Statement of Facts as Exhibit C, p. 2, ¶5, wherein it states: "... it shall remain the prerogative within the jurisdiction of the committee to review applications and grant approvals for exceptions or variances to this Declaration." No written record has been located regarding the issuance of any waivers, variances or amendments, albeit, it would appear from the outset either waivers and/or variances were issued, or the Declarations were fully ignored from the outset and, of course, subsequent to the one year expiration of the originally named architectural committee, no subsequent owners' committee was formed, nor did any individual or number of individuals assert any effort to enforce,

impose, restrict, waive, grant waivers or variances for the following almost 30-year period to the point in time of this litigation (SOF ¶¶2, 3, 5-8).

Generally, under Arizona case law, in a fact situation where there have been multiple, frequent, continuous, longstanding violations of subdivision recorded restrictions and they have been permitted without objection, the subject restrictions will be considered abandoned and unenforceable. See, Riley v. Stoves, 22 Ariz. App. 223, 229 -230, 526 P.2d 747, 753-754 (1974). This holds true in a situation where the violations constitute a complete abandonment and in such situation, a non waiver provision will not be enforced. See, Burke v. Voicestream Wireless Corp II, 207 Ariz. 393, 398 ¶22, 87 P.3d 81, 86 (App. 2004); and College Book Centers, Inc., v. Carefree Foothills Homeowners Association, 225 Ariz. 533, 539 ¶18, 241 P.3d 897, 903 (App. 2010). The latter clearly stated that in the event of a non waiver provision, a restriction remains enforceable despite the fact that there have been prior violations only so long as the violations did not constitute a complete abandonment of the CC&Rs.

College Book Centers, Inc. v. Carefree Foothills Homeowners' Ass'n, 225 Ariz. 533, 241 P.3d 897 (Ariz. App., 2010), is a relatively recent case that deals with a non-waiver provision within the covenants that were the subject matter of the litigation. Here, the court is dealing with a set of CC&Rs that included, as we have before us today, a non-waiver provision. The Court of Appeals opined that:

> "... when CC&Rs contain a non-waiver provision, a restriction remains enforceable, despite prior violations, so long as the violations did not constitute a 'complete abandonment' of the CC&Rs." Id., at p. 903.

The College Book Centers, supra, court went on to describe/interpret what is specifically meant by a "complete abandonment:"

> "... abandonment of deed restrictions occurs when 'the restrictions imposed upon the use of the lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed.'" Id., at p. 903.

This case centers around the fact that the CC&Rs in question prohibited "non-residential structures." The non-residential structure at issue was the development of a road across one of the subdivision lots. The appellee desired to build a road across one of the subdivision lots to access an adjoining property. The owners association denied the request. The College Book Centers, supra, litigation resulted from that denial. The appellee claimed that the association had previously either agreed to or simply did not enforce the covenant that prohibited non-residential structures from being constructed in that two other roads had previously been constructed within the subdivision without objection. The argument, then centered around whether or not there was a waiver of the right to enforce the restriction of "no non-residential structures." Was there a waiver by the association/owners of the prohibition against non-residential construction via the consent for the creation of two other roads. The College Book Centers, supra, court found that:

> "Thus, to establish waiver by the HOA, Vanyo (the appellee) was required to prove there were frequent violations of the CC&R provisions prohibiting non-residential structures. Id., at p. 901.

The court ultimately found that:

> "... Thiele and Applegate roadways do not constitute frequent violations such that a jury might reasonably infer waiver." Id., at p. 902.

This Court must weigh, then, the fact of whether there were indeed frequent violations as defined, at least in part, by the College Book Centers, supra, court. Were there and are there frequent violations dealing with the substantive and material covenants for Desert Lakes Golf Course & Estates Tract 4076-B and its derivatives? Indeed, the attached fact memoranda supported by the nine Affidavits attached clearly indicate that: (a) the subdivision is in excess of 75% built out (Weisz Affidavit); (b) that there has been no attempts to enforce any of the subject CC&Rs nor any enforcement entity for almost three decades (SOF generally; all Affidavits); (c) that major restrictions such as rear yard setback violations exceed 64% of the total homes built in the projects (SOF ¶21; Stephan Affidavit); (d) that the rear yard fencing mandates of the covenants, including architectural style, color

and height, have, in excess of 90% of all homes, been ignored in regard to one or more of the covenant criteria (SOF ¶¶38-44; Weisz Affidavit). See also Fact Sheet Synopsis attached hereto as **Exhibit D**.

The court in College Book Centers, supra, went on to discuss in some graphic detail the effect of a non-waiver provision such as the provision that we are dealing with today and clearly indicating that in a non-waiver set of covenants, the restriction violations are enforceable despite the situation where there are prior violations, but only:

> "... so long as the violations did not constitute a 'complete abandonment' of the CC&Rs. Id., at 399, ¶26, 87 P.3d at 87. Complete abandonment of deed restrictions occurs when 'the restrictions imposed upon the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions [and] defeat the purposes for which they were imposed[.]' Id. (quoting Condos v. Home Dev. Co., 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954))."

See also, Sw. Cotton Co. v. Valley Bank, 26 Ariz. 559, 563, 227 P. 986, 988 (1924), where that court described of how, when and where a waiver occurs stating:

> "A waiver occurs when one in possession of any right ... does or forbears the doing of some things inconsistent with the existence of the right or his intention to rely upon it."

See also, Swain v. Bixby Village Golf Course, Arizona Court of Appeals Division One, No. 1 CA-CV 18-0397 (9/19/2019). The Swain decision affirmatively referenced College Book Center, Inc., supra, in the Court of Appeals most recent decision dealing with restrictive covenants while it simultaneously favorably referred to the Powell v. Washburn, 211 Ariz. 553, 125 P.3d 373 (2006), decision of the Arizona Supreme Court, and finally, favorably quoting the Restatement (Third) of Property: Servitudes, including §4.1(1). It must be said that the Powell, supra, case and to some extent the Swain, supra, case discuss interpretation of the intent of the original covenant declarant; intent is really not the case that is currently before this Court. The Swain, supra, court, in particular, reiterated the holding of Decker v. Hendricks, 97 Ariz. 36, 396 P.2d 609 (1964), in quoting from that case:

> "To obtain relief from the covenant, then, TTLC needed to prove that changes occurred that were 'so fundamental or radical' that they 'defeat[ed] or frustrate[d]' the covenant's

purposes." Decker, supra, at p. 612; Swain, supra, at ¶31.

The Swain, supra, court went on to discuss further considerations regarding whether a covenant should be enforced when it stated:

> "Whether a covenant should be enforced depends on equitable considerations, such as the parties' relative hardships, the parties' misconduct, public interest, and adequacy of other remedies." Citing, Flying Diamond Air Park, LLC v. Meienberg, 215 Ariz. 44, 47 ¶10, 156 P.3d 1149, 1152 (App. 2007).

The facts before this Court show that more than 64% of the homes in the three subdivisions in question encroach into the 20 foot covenant setback. This is particularly important given the fact that these separate subdivisions are built out to the extent of 96% for Tract 4163, 83.3% for Tract 4076-D, and 72% for Tract 4076-B (SOF ¶¶19-26; Weisz Affidavit; Stephan Affidavit). Further proof of the total covenant abandonment is reflected in the fact that these same three subdivisions in order listed above have the following covenant violation factors of one or more violations of 100%, 100%, and 97.84%, respectively (SOF generally ¶¶19-51; Weisz Affidavit; Patch Affidavit; Stephan Affidavit; Azarmi Affidavit). This is substantially greater than the two prior violations discussed in the College Book Center, Inc., supra, case or minuscule and minimum violations involved in the O'Malley, supra, decision. We are here talking about more covenant-violating properties than covenant-complying properties by a wide margin (see, generally all SOF and all Affidavits).

The percentages and numbers above referenced represent facts that are compelling, frequent, continuous, longstanding covenant violations. The violations are not of a single covenant, but rather, all significant and material covenants therein set forth.

At this point in time, restricting the remaining approximate 60 unimproved lots from building a covered patio as is permitted by Mohave County Development Guidelines into the rear yard setback as has occurred with the vast majority of homes constructed in all three subdivisions to date, will devalue each of the remaining lots significantly and to the financial detriment of each lot owner and, at the same time, provide no substantive benefit to the

already encroaching majority of existing hoes (SOF ¶¶26, 33; Kukreja Affidavit; McKee Affidavit). Similarly, the uniformity objective of wrought iron, paint color, fence height within 15 feet of the golf course and gate access have long ago been lost as has the no "for sale/build to suit" covenant provision that if not entirely via statutory prohibition (ARS §33-441) via years of prior practice become unenforceable except as may be prohibited via any applicable Mohave County ordinance (McKee Affidavit; Kukreja Affidavit; Azarmi Affidavit; Pettit Affidavit).

CONCLUSION

The covenants hereinabove discussed include a "non waiver" clause in ¶20 of the Tract 4076-B covenants and ¶19 of the Tract 4076-D covenants. Therefore, under the cases issued by the courts of record in the State of Arizona, it is necessary for the Defendants herein to establish an abandonment of the developer's original intent and the purpose for the covenants in the first place to insure sight lines and uniformity.

Defendants have delivered to this Court a factual analysis dealing with virtually every major covenant including in order of significance covenants involving setbacks, rear yard (golf course) fencing heights, fencing material, gate access, paint color for wrought iron, signage, side yard fencing, minimum living area square footage, use of antenna, glazing requirements and mandate for rear yard fencing on golf course lots. All of these are covenant issues and, generally speaking, the three subdivisions in question have been constructed in direct, continuous and long lasting violation of each of these covenants. Sixty four percent (64%) of the homes violate the rear yard covenant. Almost 100% of the constructed homes have violated the fencing, height, color, construction product, gate access, fence type, i.e., Plaintiff's own use of chain link, fence height violations, roof or eve mounted antenna, and so on.

There remain approximately 60 unimproved lots (Weisz Affidavit) throughout the three subdivisions. The plan to secure uniformity of setbacks, minimum size homes, uniform golf course fencing, color, etc., cannot be accomplished at a point in time after construction of approximately 181 homes that have already been built over the past approximate 30 years

violating the covenants, while now Plaintiff seeks to enforce those abandoned provisions on the remaining approximate 24% of the lots yet to be built out. The original intent was forsaken long ago and certainly prior to the time that these three subdivisions have been 75% built out and to a far different standard than that called out in the 1989/1990 CC&Rs that for the first time are now called into question. Abandonment of the covenants has most certainly occurred. The covenants that were within the authority of the various developers at the outset have been forsaken over time. The intent that was apparently present in 1989 has been lost and the right of all to enforce these restrictions has been extinguished.

Defendants have previously been successful in securing the dismissal of Count 1 of Plaintiff's original Complaint. Defendants have been required to respond to a multiplicity of Plaintiff's subsequent motions over the past approximate 18 months. Defendants are entitled to an award of their fees and costs herein incurred under the provisions of the contract issue sought to be enforced by Plaintiff, which under the clear and succinct facts, obvious to a reasonable person, that the covenants Plaintiff seeks to enforce were long ago abandoned by the lot and parcel owners within all three subdivisions in controversy warrant an award of Defendants fees and costs incurred defending Plaintiff's enforcement actions in accord with the provisions of he covenants Plaintiff sought to enforce. Defendants are further entitled to attorney's fees and costs under A.R.S. §12-341.01.

RESPECTFULLY SUBMITTED this 6th day of December, 2019.

LAW OFFICES OF DANIEL J. OEHLER

Daniel J. Oehler,
Attorney for Defendants

COPY of the foregoing emailed this 6th day of December, 2019, to:

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By: Patricia L. Emond
Patricia L. Emond, Legal Assistant

Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

Exhibits to Motion for Summary Judgment

Exhibit	Date	Description
A	06/11/2018	Order Honorable Derek Carlisle
B	10/17/1990	Final Plat Desert Lakes Golf Course and Estates Tract 4076-D
C	1990	CC&Rs for Desert Lakes Golf Course and Estates Tract 4076-D
D	Undated	Fact Sheet Synopsis

Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

Motion for Summary Judgment

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE DEREK CARLISLE, SUPERIOR COURT JUDGE
DIVISION II *mk
DATE: JUNE 11, 2018

COURT NOTICE / ORDER / RULING

NANCY KNIGHT, et al. **Plaintiff(s),** **and** **GLEN LUDWIG, et al.** **Defendant(s).**	**CASE NO. CV2018-04003**

On April 4, 2018, the plaintiff filed a motion for stay of execution of summary judgment. The defendants filed a response on April 11 opposing the motion, arguing that no judgment had been entered when the motion was filed. The motion for stay of execution was filed prior to any judgment being entered.

IT IS ORDERED denying the motion for stay of execution of judgment.

On April 11, the defendants lodged a proposed form of order, which included proposed findings. The defendants contemporaneously filed an application for attorney's fees and supporting affidavit. On April 13, the plaintiff filed an objection to the defendants' proposed order and lodged proposed findings of her own. The plaintiff filed an objection to the defendants' application for attorney's fees on April 17. The defendants filed an objection to the plaintiff's proposed findings and order.

With respect to the issue of attorney's fees, the Court finds that the defendants would generally be entitled to attorney's fees since the CCR's are a contract. However, one of the factors the Court has to consider is whether the successful party prevailed on all relief sought. *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567, 570 (1985). The second count has not been resolved, so the Court cannot determine whether the defendants have prevailed on all the counts. The issue of attorney fees should be resolved when all of the counts have been resolved. *See, e.g.,* Rule 54(g)(3)(B) of the Arizona Rules of Civil Procedure ("ARCP") ("If a decision or

judgment adjudicates fewer than all claims and liabilities of a party, a motion for fees must be filed no later than 20 days after any decision is filed that adjudicates all remaining claims in the action."). The proper time to determine attorney's fees is when the case has been resolved.

The Court recognizes that dismissal of count one resolves the case with respect to the Roberts defendants. However, the defendants did not include the Rule 54(b) language in the proposed order. Additionally, although the defendants estimated how much of the fees incurred were devoted to count one, the defendants did not provide the Court with any breakdown of the amount of fees for which the Roberts defendants were responsible.

IT IS ORDERED denying the defendants' application for attorney's fees without prejudice, subject to being resubmitted when count two has been resolved or the case has been dismissed.

The Court has reviewed the findings and orders submitted by each party. The primary difference is whether count one should be dismissed with prejudice. The Court finds it is appropriate to dismiss count one with prejudice.

IT IS ORDERED granting the defendants' objections to the plaintiff's proposed findings and order. The Court will not sign the plaintiff's proposed findings and orders.

IT IS ORDERED denying the plaintiff's objections to the defendants' proposed findings and order. The Court has signed the defendants' proposed findings and orders, deleting the paragraph regarding attorney's fees.

On May 2, the plaintiff filed a motion to amend the complaint. The defendants filed a response and the plaintiff filed a reply. Although the proposed amended complaint contained some cosmetic changes, the primary modification was that the plaintiff was seeking reimbursement for the expense of the taxpayers in determining whether to grant one of the defendant's request for a variance of the set back requirements. Additionally, the plaintiff sought relief for other property owners. The Court finds that the plaintiff's attempts to expand the scope of this case should be denied. The plaintiff has presented no authority for the proposition that she has the authority to represent the taxpayers or other property owners. Therefore, the amendment would be futile.

IT IS ORDERED denying the motion for leave to amend the complaint.

Finally, on May 21, the defendant filed a proposed finding of fact and order with respect to count two. However, count two has not been resolved. The plaintiff has not even requested a hearing pursuant to ARCP Rule 65(a). The Court will take no action on the proposed findings of fact and order with respect to count two.

cc:

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Plaintiff

Daniel J. Oehler*
Attorney for Defendants
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Honorable Derek Carlisle
Superior Court Judge

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Daniel J. Oehler, Arizona State Bar No.: 002739
Attorney for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT, Plaintiff, vs. GLEN LUDWIG and PEARL LUDWIG, Trustees of THE LUDWIG FAMILY TRUST; FAIRWAY CONSTRUCTORS, INC.; MEHDI AZARMI; JAMES B. ROBERTS and DONNA M. ROBERTS, husband and wife; JOHN DOES 1-10; JANE DOES 1-10; ABC CORPORATIONS 1-10; and XYZ PARTNERSHIPS 1-10. Defendants.	NO.: CV-2018-04003 **FINDINGS AND ORDER DISMISSING COUNT 1 OF PLAINTIFF'S COMPLAINT**

The Defendants having filed a Motion to Dismiss, the Plaintiff having filed a Response to Defendants' Motion, and Defendants having filed a Reply to the Plaintiff's Response, the Court, having considered the pleadings and filing of all parties, set this matter for oral argument. The Plaintiff appeared in person and the Defendants appeared through their attorney, Daniel J. Oehler, the Defendants, James A. Roberts and Donna M. Roberts, were also present before the Court on April 2, 2018, at the time set for hearing;

The Court, having read the pleadings, Motion, Response and Reply, and having further reviewed the various exhibits and recorded governmental records appended thereto, and having further considered the parties' oral arguments, makes the following findings:

A. Tract 4076-A Desert Lakes Golf Course & Estates is a separate subdivision with separately recorded CC&Rs separate and apart from Tract 4076-B, and separate and apart from the remaining Desert Lakes Golf Course & Estates subdivisions each of which were developed by multiple and different owners/developers over the period of approximately 13 years (1989 - 2002);

B. Desert Lakes Golf Course & Estates and the various Tracts are not a master planned community subject to a single or **master** set of CC&Rs. Each separated subdivision has its separate CC&Rs except only Tract 4163 which has no separately recorded CC&Rs;

C. Plaintiff is not the Declarant, nor is Plaintiff the Declarant's successor or assign, nor is Plaintiff an owner, nor a person owning real property within the subdivision Desert Lakes Golf Course & Estates Tract 4076-A;

D. Defendants, James A. Roberts and Donna M. Roberts, his wife, own their home and reside in Desert Lakes Golf Course & Estates Tract 4076-A (Defendants' Motion to Dismiss Exhibit **C**);

E. Count 1 of Plaintiff's Complaint alleges a breach of **set back** requirements regarding the Roberts' residence alleging claims against all Defendants, including the Roberts Defendants, the prior owners of the lot upon which the Roberts' residence was constructed, Defendants Glen Ludwig and Pearl Ludwig, Trustees of the Ludwig Family Trust, Fairway Constructors, Inc., a former owner of the lot on which the Roberts home was constructed as well as the general contractor of the Roberts' home, and finally, Mehdi Azarmi, the Vice President of Fairway Constructors, Inc. (Defendants' Motion to Dismiss Exhibits **B** and **C**);

F. The Court further finds that the Plaintiff resides in a subdivision known as Desert Lakes Golf Course & Estates Tract 4163 (Defendants' Motion to Dismiss Exhibit **A**);

G. That Tract 4163 is a resubdivision of Parcel VV and a part of abandoned Parcel KK of Desert Lakes Golf Course & Estates Tract 4076-B (Exhibit **H**, Defendants' Reply to Response (p. 4); and Exhibits **M** and **N** to Defendants' Reply to Response);

H. That Plaintiff's ownership in Tract 4163 as an original **parcel** within Tract 4076-B gives the Plaintiff ownership standing to enforce the CC&Rs for Tract 4076-B, the same having been recorded in the Official Records of Mohave County in Book 1641 at Page 895, and the Tract 4076-B wherein the CC&Rs authorize at paragraph 20 **any person or persons owning real property located within the subdivision** to enforce the Tract 4076-B CC&Rs (Exhibit **H**, Defendants' Reply to Response (p. 4); and Exhibits **M** and **N** to Defendants' Reply to Response);

I. The Court specifically finds that the Plaintiff, as a property owner in Tract 4163, is, therefore, also a property owner within Tract 4076-B as required by paragraph 20 Tract 4076-B CC&Rs, above-referenced and designated Exhibit **F** to Defendants' Motion to Dismiss.

NOW THEREFORE, THE COURT ENTERS THE FOLLOWING ORDERS:

1. The Plaintiff lacks standing to bring this action under Count 1 of Plaintiff's Complaint as Plaintiff is not a lot owner nor does Plaintiff own any property within Tract 4076-A;

2. That James A. Roberts and Donna M. Roberts are owners of their home located in Tract 4076-A and are therefore dismissed with prejudice from this action;

3. That Plaintiff's claim against Defendants Glen Ludwig and Pearl Ludwig, Trustees of the Ludwig Family Trust, Mehdi Azarmi, Vice President of Fairway Constructors, Inc., and Fairway Constructors, Inc., under Count 1 of Plaintiff's Complaint are dismissed with prejudice;

4. That Plaintiff has standing to prosecute this action as an owner of land in Tract 4163

which is a resubdivision of a parcel of land originally within Tract 4076-B and therefore is an **owner of land** in Tract 4076-B, and pursuant to Tract 4076-B's CC&Rs as an owner or person owning property is authorized to bring an action to enforce the CC&Rs governing Tract 4076-B as complained of in Count 2 of Plaintiff's Complaint.

DATED this 11th day of June, 2018.

HONORABLE DEREK CARLISLE

cc:

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Knight v. Ludwig, et al.
Mohave County Superior Court
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Motion for Summary Judgment

EXHIBIT B

FINAL PLAT
DESERT LAKES GOLF COURSE AND ESTATES
TRACT 4076-D

BEING THE RESUBDIVISION OF LOTS 75-86, BLOCK F, AND PORTIONS OF PARCEL K-K, DESERT LAKES GOLF COURSE AND ESTATES TRACT 4076-B

A PORTION OF THE SE1/4 OF SECTION 35
T.19N., R.22W.,G.&S.R.B.&M.
MOHAVE COUNTY, ARIZONA

CHAIRMAN OF THE BOARD CERTIFICATE

Assurance:

Satisfactory assurance in the form of AS BUILTS from THE DEVELOPER has been provided in the full amount necessary to guarantee completion of THE improvements in this subdivision.

MOHAVE COUNTY BOARD OF SUPERVISORS
By Hans J. Kirkland
Chairman

CLERK OF THE BOARD CERTIFICATE

I, Pat Chastain, Clerk of the Board of Supervisors of Mohave County, hereby certify that said Board approved the within plat on the 17th day of September, 1990, and accepted on behalf of the public all Parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication.

Pat Chastain
Clerk of the Board

COUNTY CERTIFICATE

This plat has been checked for conformance to the approved Preliminary Plat and any special conditions attached thereto, to the requirements of the Mohave County Subdivision Regulations, and to any other applicable regulations, and appears to comply with all requirements within my jurisdiction to check and evaluate.

By Jim Sweet Date October 16, 1990
By Richard A. Gandy Date October 16, 1990
By Norman Washam Date October 16, 1990

COUNTY RECORDER

State of Arizona }
County of Mohave } S.S.

I hereby certify that the within instrument was filed and recorded at the request of Holland West on this 17th day of October, 1990 at 3 o'clock P. M. and assigned Recordation No. 90-73298 of Mohave County Records.

Witness my hand and official seal this day and year aforesaid.

By Joan McCall 24th
County Recorder
Diane A. Deputy

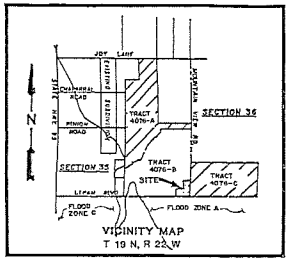
NOTES

1. Basis of bearings is N00°07'28"E along the east line of the southeast quarter of Section 35, T 19 N, R 22 W, Gila and Salt River Base and Meridian as shown on the plat of Desert Lakes Golf Courses and Estates, Tract No. 4076-B, between the monuments described thereon.
2. Benchmark: top of BLM brass cap at the southeast corner of Section 35. Elevation = 952.48 ADOT Datum.
3. According to the F.E.M.A. F.I.R.M. Map 040058-2443C, dated September 16, 1988, all of this platted land is within flood plane area - Zone A.
4. Finished flood elevations (FF) shown hereon are proposed and are set a minimum of one foot above the F.I.R.M. designated flood plain.
5. This plat is a resubdivision of Lots 75-86, Block F, and portions of Parcel K-K, Desert Lakes Golf Course and Estates Tract 4076-B. The original survey markers on said lots have been removed.

LEGEND

- ⊕ Denotes found monument as shown on record survey Book 5, Page 50
- ○ Denotes found original subdivision monumentation
- ⊛ Denotes set No. 4 rebar with cap, LS #23375

All lot corners and lot line angle, PC & PT points monumented with No. 4 rebar with cap marked LS #23375



NOTES:

P.U.E. MEANS PUBLIC UTILITY EASEMENT
D.E. MEANS DRAINAGE EASEMENT

LEGAL DESCRIPTION

A part of the southeast one-quarter of the southeast one-quarter of Section 35, Township 19 North, Range 22 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona, more particularly described as follows:

Beginning at the southeast corner of Lot 87 of Block F of Desert Lakes Golf Course and Estates Tract 4076-B, being a point on the north right-of-way line of Lipan Boulevard;
Thence N00°07'28"E along the east line of said Lot a distance of 103.00 feet to the northeast corner thereof;
Thence continuing N00°07'28"E along said east line extended a distance of 17.00 feet;
Thence S89°56'01"E parallel with said north right-of-way line of Lipan Boulevard a distance of 235.89 feet;
Thence N60°30'54"E a distance of 63.22 feet;
Thence S89°52'32"E a distance of 5.13 feet;
Thence N00°07'28"E parallel with the west right-of-way line of Mountain View Road a distance of 300.00 feet to a point on the south line of Parcel K of said Tract 4076-B extended west;
Thence S89°52'32"E along the extension of said south line a distance of 17.00 feet to the southwest corner of said parcel;
Thence continuing S89°52'32"E along said south parcel line a distance of 115.00 feet to a point on said west right-of-way line;
Thence S00°07'28"W along said west right-of-way line a distance of 443.06 feet to the point of curve;
Thence continuing along said right-of-way line along the arc of said curve to the right, having a central angle of 89°56'31" and a radius of 20.00 feet, a distance of 31.40 feet to the point of tangent on said north right-of-way line of Lipan Boulevard;
Thence N89°56'01"W along said tangent north right-of-way line a distance of 407.87 feet to the point of beginning.

Parcel contains 101,126 square feet or 2.32 acres, more or less.

OWNER'S STATEMENTS

KNOW ALL MEN BY THESE PRESENTS: That Westitle Corporation, an Arizona Corporation, as TRUSTEE under Trust Agreement No. 1033 for the benefit of Desert Lakes Development, L.P., a Delaware Limited Partnership, only and not personally, has re-subdivided Lots 75-86, Block F, and portions of Parcel K-K, Desert Lakes Golf Course and Estates Tract 4076-B under the name of Desert Lakes Golf Course and Estates, Tract 4076-D, being a part of the southeast one-quarter of the southeast one-quarter of Section 35, Township 19 North, Range 22 West, Gila and Salt River Base and Meridian, Mohave County, State of Arizona, as shown platted hereon, and hereby declares that said plat sets forth the location and gives the dimensions of the lots, blocks and streets constituting same, and that each lot, block and street shall be known by the number and name given each, respectively, on said plat and hereby dedicates to the public the streets as shown on plat and included in the above described premises. Easements and easements only are granted to the public for uses as specified as shown on the plat hereon.

IN WITNESS THEREOF: WESTITLE CORPORATION, as TRUSTEE has hereunto caused its Corporation name to be signed and its corporate seal to be affixed, and the same to be attested by the signature of the undersigned officer, thereunto duly authorized.

WESTITLE CORPORATION, an Arizona Corporation, TRUSTEE

By Robert P. Douglass
Robert P. Douglass,
Trust Officer

NOTARY'S STATEMENTS

State of Arizona }
County of Mohave } S.S.

On this 17 day of Sept, 1990, before me, the Undersigned Officer, ROBERT P. DOUGLASS, personally appeared, and acknowledged himself to the — Trust Officer of Westitle Corporation, an Arizona Corporation, and acknowledged that he being authorized to do so, executed the foregoing instrument for the purposed therein contained, and not personally, by signing the name of the Corporation as Westitle Corporation by himself as such Officer.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

Rita Lambert
Notary Public

My commission expires: _____

SURVEYOR'S CERTIFICATE

This is to certify that the boundary survey on the above described subdivision was made under my direction and supervision and is accurately represented on this plat.

By Larry W. Hedges, R.L.S. No. 23375
9-13-90

ENGINEER'S CERTIFICATE

This is to certify that the design of the above described subdivision was made under my direction and supervision and is accurately represented on this plat.

By William E. Miller, P.E. 12369
9-13-90

SEPTEMBER 12, 1990
PREPARED BY: HOLLAND WEST INC.
8920 SO. HOLLY CIRCLE, SUITE 100
ENGLEWOOD COLORADO 80112
(303) 773-0020

SHEET 1 OF 1

Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

Motion for Summary Judgment

EXHIBIT C

Holland West
PO Box 4699
Bullhead City Az 86442

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

DESERT LAKES GOLF COURSE & ESTATES 4076-D INDEXED

MOHAVE COUNTY, ARIZONA

#90- 73717 BK 1808 PG 509
OFFICIAL RECORDS OF MOHAVE COUNTY, AZ.
JOAN McCALL, MOHAVE COUNTY RECORDER
10/19/90 9:30 A.M. PAGE 1 OF 6
HOLLAND WEST
RECORDING FEE 11.00

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION made and entered into this 18th day of April, 1990, by WesTITLE CORPORATION, an Arizona corporation, as Trustee, under Trust No. 1033, hereinafter designated "The Declarant" which holds the lands hereinafter referred to as the Trustee for the benefit of DESERT LAKES DEVELOPMENT L. P., a Delaware Limited Partnership.

WHEREAS, the Declarant is the owner of DESERT LAKES GOLF COURSE & ESTATES, TRACT 4076-D, County of Mohave, State of Arizona, as per plat thereof recorded on the 17 day of October, 1990 at Fee No. 90-73298, and

WHEREAS, the Declarant intends to sell, dispose of or convey from time to time all or a portion thereof the lots in said Tract 4076-D and desires to subject the same to certain protective reservations, covenants, conditions and restrictions between it and the acquirers and/or users of the lots in said tract.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Declarant hereby certifies and declares that it has established and does hereby establish a general plan for the protection, maintenance, development and improvement of said tract, and that this declaration is designed for the mutual benefit of the lots in said tract and Declarant has fixed and does hereby fix the protective conditions upon and subject to which all lots, parcels and portions of said tract and all interest therein shall be held, leased or sold and/or conveyed by the owners or users thereof, each and all of which is and are for the mutual benefit of the lots in said tract and of each owner thereof, and shall run with the land, and shall inure to and pass with each lot and parcel of land in said tract, and shall apply to and bind the respective successors in interest thereof, and further are and each thereof is imposed upon each and every lot, parcel or individual portion of said tract as a mutual equitable servitude in favor of each and every other lot, parcel or individual portion of land therein as the dominant tenement.

Every conveyance of any of said property or portion thereof in Tract 4076-D, shall be and is subject to the said Covenants, Conditions and Restrictions as follows:

ARTICLE I

COMMITTEE OF ARCHITECTURE

Declarant shall appoint a Committee of Architecture, hereinafter sometimes called "Committee", consisting of three (3) persons. Declarant shall have the further power to create and fill vacancies on the Committee. At such time that ninety percent (90%) of the lots within the subdivision have been sold by Declarant, or within one year of the issuance of the original public report, whichever occurs first, the owners of such lots upon request to the Committee may elect three members therefrom to consist of and serve on the Committee of Architecture. Nothing herein contained shall prevent Declarant from assigning all rights, duties and obligations of the Architecture Committee

to a corporation organized and formed for and whose members consist of the owners of lots within this subdivision.

Notwithstanding anything hereinbefore stated, architectural review and control shall be vested in the initial Architecture Committee composed of ANGELO RINALDI, FRANK PASSANTINO AND STERLING VARNER until such time as ninety percent (90%) of the lots in Tract 4076-D have been sold by Declarant, or within one year of the issuance of the original public report, whichever occurs first. The initial address of said Committee shall be P. O. Box 8858 Fort Mojave, Arizona 86427. Any and all vacancies during such period shall be filled on designation by DESERT LAKES DEVELOPMENT L. P.

No building, porch, fence, patio, ramada, awning or other structure shall be erected, altered, added to, placed upon or permitted to remain upon the lots in Tract 4076-D, or any part of any such lot, until and unless the plan showing floor areas, external designs and the ground location of the intended structure, along with a plot plan and front/rear landscaping plan and a fee in the amount set by the Committee but not less than TEN DOLLARS AND NO/100 ($10.00) nor more than ONE HUNDRED DOLLARS AND NO/100 ($100.00) have been first delivered to and approved in writing by the Committee of Architecture.

It shall be the general purpose of this Committee to provide for maintenance of a high standard of architecture and construction in such manner as to enhance the aesthetic properties and structural soundness of the developed subdivision.

The Committee shall be guided by, and, except when in their sole discretion good planning would dictate to the contrary, controlled by this Declaration. Notwithstanding any other provision of this Declaration, it shall remain the prerogative within the jurisdiction of the Committee to review applications and grant approvals for exceptions or variances to this Declaration. Variations from these requirements and in general other forms of deviations from these restrictions imposed by this Declaration may be made when and only when such exceptions, variances and deviations do not in any way detract from the appearance of the premises, and are not in any way detrimental to the public welfare or to the property of other persons located within the tract, all in the sole opinion of the Committee.

Said Committee, in order to carry out its duties, may adopt reasonable rules and regulations for the conduct of its proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection to any lot owners upon the consent of any one of the members of said Committee. Said Committee shall by a majority vote elect one of its members as chairman and one of its members as secretary and the duties of such chairman and secretary appertain to such offices. Any and all rules or regulations adopted by said Committee regulating its procedure may be changed by said Committee from time to time by a majority vote and none of said rules and regulations shall be deemed to be any part or portion of this Declaration or the conditions herein contained.

The Committee shall determine whether the conditions contained in this Declaration are being complied with.

ARTICLE II

LAND USE

A. General

1. All buildings erected upon the lots within the subdivision shall be of new construction. All such buildings must

be completed within twelve (12) months from the commencement of construction. Mobile homes and all structures built, constructed or prefabricated off the premises are expressly prohibited, including but not limited to modular or manufactured structures and existing structures.

2. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

3. No lot shall be conveyed or subdivided smaller than that shown or delineated upon the original plat map, but nothing herein contained shall be so construed as to prevent the use of one lot and all or a fraction of an adjoining lot as one building site, after which time such whole lot and adjacent part of the other lot shall be considered as one lot for the purposes of these restrictions.

4. All buildings on lots not adjacent to the golf course being Lot 81, Block F shall have a minimum of one thousand four hundred (1,400) square feet of living space, exclusive of garages, porches, patios and basements. Buildings on all other lots, being those lots adjacent to the golf course, in Tract 4076-D shall have a minimum of one thousand six hundred (1,600) square feet of living space, exclusive of garages, porches, patios and basements. No construction shed, basement, garage, tent, shack, travel trailer, recreational vehicle, camper or other temporary structure shall at any time be used as a residence.

5. All buildings shall have: (i) a maximum building height of Thirty (30) feet from the surface of the lot to the peak of the highest projection thereof; (ii) no more than two stories; (iii) no exposed radio, radio-telephone, television or microwave receiving or transmitting antennas, masts or dishes; (iv) no airconditioning unit on roofs; (v) a closed garage with interior dimensions of no less than twenty (20) feet; (vi) on any roof visible from ground level at any point within Tract 4076-D as its exposed visible surface, clay, concrete or ceramic tile, slate, or equal as may be approved by the Committee on Architecture; (vii) tempered glass in all windows facing fairways and driving range lakes.

6. All buildings and projections thereof on lots not adjacent to the golf course being Lot 81, Block F, shall be constructed not less than twenty feet (20') back from the front and rear property lines and five feet (5') from side property lines. All buildings and projections thereof on Lots adjacent to the golf course being Lots 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, Block F, shall be constructed not less than twenty feet (20') from the front and rear property lines and five feet (5') from the side property lines.

7. Fences and walls shall not exceed six (6) feet in height and shall not be constructed in the street set back area (being twenty feet (20') from the front property line). Fences and walls visible from the street must be decorative and shall not be of wire, chain link, or wood or topped with barbed wire, except that on all lots adjacent to fairway lots the rear fences shall be of wrought iron construction for a total fence height of five feet (5') black in color which shall continue along the side lot line for a distance of fifteen feet (15'). Access to the golf course from lots adjacent to the golf course is prohibited.

8. No individual water supply system (private well) shall be permitted on any lot in the subdivision.

9. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept on any lot, provided, however, that personal pets such as dogs, cats or other household pets may be kept, but shall be fenced or leashed at all times.

10. No lot shall be used or allowed to become in such condition as to depreciate the value of adjacent property. No weeds, underbrush, unsightly growth, refuse piles, junk piles or other unsightly objects shall be permitted to be placed or to remain upon said lot. In the event of any owner not complying with the above provisions, the corporation whose members are the lot owners, Declarant, or its successor and assigns, shall have the right to enter upon the land and remove the offending objects at the expense of the owner, who shall repay the same upon demand, and such entry shall not be deemed a trespass.

11. No sign, advertisement, billboard or advertising structure of any kind shall be erected or allowed on any of the unimproved lots, and no signs shall be erected or allowed to remain on any lots, improved or otherwise, provided, however, that an owner may place on his improved lot "For Sale" signs, "For Lease" signs or "For Rent" signs so long as they are of reasonable dimensions.

12. All dwellings shall install water flush toilets, and all bathrooms, toilets or sanitary conveniences shall be inside the buildings constructed on said property. All bathrooms, toilets or sanitary conveniences shall be connected to central sewer. Septic tanks, cesspools and other individual sewage systems are expressly prohibited. Water and energy conservation devices including but not limited to toilets, shower heads, water heaters, and insulation shall be used whenever feasible. Low water use vegetation shall be used whenever possible in landscaping.

13. The storage of inoperative, damaged or junk motor vehicles and appliances and of tools, landscaping instruments, household effects, machinery or machinery parts, boats, trailers, empty or filled containers, boxes or bags, trash, materials, including used construction materials, or other items that shall in appearance detract from the aesthetic values of the property shall be so placed and stored to be concealed from the view of the public right-of-way and adjacent landowners. Trash for collection may be placed at the street right-of-way line on regular collection days for a period not to exceed twelve hours prior to pickup.

14. Under no circumstances shall any owner of any lot or parcel of land be permitted to deliberately alter the topographic conditions of his lot or parcel of land in any way that would permit additional quantities of water from any source other than what nature originally intended to flow from his property onto any adjoining property or public right-of-way, or redirect the flow.

15. No person shall use any premise in any land use area, which is designed, arranged or intended to be occupied or used for any purpose other than expressly permitted in this Declaration as set forth herein and in part "B" hereof. Multiple family dwellings, including apartments, condominiums, town houses and patio homes are expressly forbidden.

16. None of the premises shall be used for other than residential purposes or for any of the following: storage yard; circuses; carnivals; manufacturing or industrial purposes; produce packing; slaughtering or eviscerating of animals, fowl, fish or other creatures; abattoirs or fat rendering; livery stables, kennels or horse or cattle or other livestock pens or boarding; cotton ginning; milling; rock crushing; or any use or purpose whatsoever which shall increase the fire hazard to any other of the said structures located upon the premises or which shall generate, give off, discharge or emit any obnoxious or excessive odors, fumes, gasses, noises, vibrations or glare or in

any manner constitute a health menace or public or private nuisance to the detriment of the owner or occupant of any structure located within the premises or violate any applicable law.

17. These covenants, restrictions, reservations and conditions shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then owners of not less than seventy-five percent (75%) of the lots on all of the property then subject to these conditions. Notwithstanding anything herein to the contrary, prior to the Declarant having sold a lot that is subject to this instrument, Declarant may make any reasonable, necessary or convenient amendments in these restrictions and said amendments shall supercede or add to the provisions set forth in this instrument from and after the date the duly executed document setting forth such amendment is recorded in the Mohave County Recorder's Office.

18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of the foregoing covenants, conditions or restrictions it shall be lawful for Declarant, its successors or assigns, the corporation whose members are the lot owners or any person or persons owning real property located within the subdivision to prosecute proceedings at law or in equity against all persons violating or attempting to or threatening to violate any such covenants, restrictions or conditions and prevent such violating party from so doing or to recover damages or other dues for such violations. In addition to any other relief obtained from a court of competent jurisdiction, the prevailing party may recover a reasonable attorney fee as set by the court. No failure of the Trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of any of the restrictions, covenants or conditions as set forth herein, or any one or more of them, shall not affect the lien of any mortgage or deed of trust now on record, or which may hereafter be placed on record.

20. In the event that any of the provisions of this Declaration conflict with any other of the sections herein, or with any applicable zoning ordinance, the more restrictive shall govern. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last partners of Desert Lakes Development, or twenty-one (21) years after the death of the last survivor of all of said incorporators children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

21. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

B(1). Special Development Residential
SD-R Single Family Residential, Mobile Homes Prohibited
Land Use Regulations.

Uses Permitted:

Single Family dwelling and accessory structures and uses normally incidental to single family residences, MOBILE HOMES, MANUFACTURED HOMES AND PREFABRICATED HOMES PROHIBITED.

WesTITLE CORPORATION,
as Trustee

By _____

Title: Trust Officer

DESERT LAKES DEVELOPMENT L.P.
a Delaware Limited Partnership

By _____

STATE OF ARIZONA)
) ss
COUNTY OF MOHAVE)

On this, the 12 day of September, 1990, before me the undersigned officer, personally appeared _____, who acknowledged himself to be a Trust Officer of WesTITLE CORPORATION, an Arizona corporation, and that he, as such officer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Trust Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Robin Fisher
Notary Public

OFFICIAL SEAL
ROBIN FISHER
Notary Public - State of Arizona
MOHAVE COUNTY
My Comm. Expires Oct. 28, 1993

STATE OF ARIZONA)
) ss
COUNTY OF MOHAVE)

On this, the 6th day of December, 1989, before me, the undersigned officer, personally appeared FRANK PASSANTINO, Secretary of LAGO ENTERPRISES, INC., who acknowledged himself to be a General Partner in DESERT LAKES DEVELOPMENT, a Delaware Limited Partnership, and that he, as such Incorporator being authorized so do do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as a Incorporator.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: _____

Phyllis J. Varner
Notary Public

OFFICIAL SEAL
PHYLLIS J. VARNER
Notary Public - State of Arizona
MOHAVE COUNTY
My Comm. Expires August 24, 1993

BELLA/04/18/90

Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

Motion for Summary Judgment

EXHIBIT D

FACT SHEET SYNOPSIS

Exhibit A to the Affidavit of Tracy L. Weisz represents the statistical data delineating the status of homes in place today in each of the three subdivisions that are in conflict with the CC&Rs recorded for Tract 4076-B and its derivatives.

Tract 4163		
Number of total lots:	32	(Weisz Affidavit Exhibit C, Map)
Number of total lots combined:	7	
Number of lots with homes:	31	(Weisz Affidavit Exhibit D, GIS Map)
Number of vacant lots:	1	
Percent built out:	96.90%	
Percent violating one or more of the covenants including setback, fencing, gate, antenna minimum square footage	100.00%	
Percent violating rear yard setback (on and off golf course)	100.00%	(Stephan Affidavit)
Tract 4076-D		
Number of total lots:	12	(Motion for Summary Judgment Exhibit B, Plat Map)
Number of total lots combined:	0	
Number of lots with homes:	10	(Stephan Affidavit Exhibit A, GIS Map)
Number of vacant lots:	2	
Percent built out:	83.30%	
Percent violating one or more of the covenants including setback, fencing, gate, antenna minimum square footage	100.00%	
Percent violating rear yard setback (on and off golf course)	80.00%	(Stephan Affidavit)
Tract 4076-B		
Number of total lots:	225	(Statement of Facts Exhibit A, State Report)
Number of total lots combined:	14	(Affidavit of Tracy Weisz)
Number of lots with homes:	152	(Affidavit of Tracy Weisz)
Number of vacant lots:	57	
Percent built out:	72.00%	
Percent violating one or more of the covenants some of the 139 golf course homes that could be reviewed via public access, all but 3 had one or more CC&R violations of setback, fencing, gate, antenna, minimum square footage	97.84%	
Percent violating rear yard setback (on and off golf course)	55.00%	(Stephan Affidavit)