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

6 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
7 IN AND FOR THE COUNTY OF MOHAVE

8 NANCY KNIGHT,
9 Plaintiff,
10 vs.

NO.: CV-2018-04003

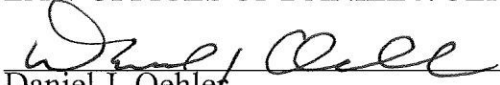
**OBJECTION TO MOTION
FOR LEAVE TO AMEND
COMPLAINT**

11 GLEN LUDWIG and PEARL LUDWIG, Trustees
12 of THE LUDWIG FAMILY TRUST; FAIRWAY
13 CONSTRUCTORS, INC.; MEHDI AZARMI;
14 JAMES B. ROBERTS and DONNA M.
15 ROBERTS, husband and wife; JOHN DOES 1-10;
16 JANE DOES 1-10; ABC CORPORATIONS 1-10;
17 and XYZ PARTNERSHIPS 1-10.
18 Defendants.

17 COME NOW, Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of THE
18 LUDWIG FAMILY TRUST, FAIRWAY CONSTRUCTORS, INC., an Arizona corporation,
19 and MEHDI AZARMI, by and through their attorney, the undersigned, and object to
20 Plaintiff's Motion for Leave to Amend Plaintiff's Complaint filed April 12, 2021. This
21 Objection is supported by the attached Memorandum of Points and Authorities and is filed
22 in accordance with the provisions of Arizona Rules of Civil Procedure Rules 9, 12 and 15.

23 Plaintiff's current Motion to Amend should be denied and Defendants awarded their
24 reasonable attorney fees and costs incurred.

25 RESPECTFULLY SUBMITTED this 26th day of April, 2021.

26 LAW OFFICES OF DANIEL J. OEHLER
27 
28 Daniel J. Oehler,
Attorney for Defendants

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Rule 15 of the Arizona Rules of Civil Procedure (ARCP), and more specifically, Rule
3 15(a)(2), indicates that the court is to allow an amendment of plaintiff’s pleadings when
4 justice requires. See, MacCollum v. Perkinson, 185 Ariz. 179, 185, 913 P.2d 1097, 1103
5 (App. 1996). The MacCollum, supra, court states, however, that while amendments are to
6 be liberally allowed, such amendments should not be granted in a situation where the Court
7 finds that the requested amendment results in undue delay, bad faith, undue prejudice, or
8 futility in the amendment.

9 In the matter that is currently before this Court, Plaintiff’s original case was filed in
10 January 2018, almost three and one-half years prior to Plaintiff’s current effort to amend
11 Plaintiff’s Complaint. In the course of pleadings that have occurred in this matter since filing
12 in January of 2018, Plaintiff has filed no fewer than 32 prior substantive motions dealing
13 with Plaintiff’s various efforts at “amendment,” “reconsideration,” “injunction,” “declaratory
14 judgment,” and “clarification.” All substantive motions have been denied (see **Exhibit A**).
15 Defendants, in response to the pleadings filed over this lengthy period have been required
16 to expend in excess of \$100,000 in legal fees and costs. Plaintiff’s current Motion for Leave
17 to Amend, of which there have been four previous similar motions, lists not fewer than 11
18 new specifically named defendants and, of course, continues to list John Does 1-10, Jane
19 Does 1-10, ABC Corporations 1-10 and XYZ Partnerships 1-10.

20 In addition to the listed and specifically named new proposed defendants, Plaintiff
21 suggests in multiple locations within the Amended Complaint Plaintiff’s apparent future
22 interest in including a multitude of additional specific defendants that, as the case may be,
23 may in fact be violative of Rule 9 of Arizona’s Rules of Civil Procedure. Plaintiff has
24 alleged the conduct of unnamed additional defendants as having committed “fraud” and
25 possible “bribery.” Such allegations under Rule 9(b) must be plead with particularity setting
26 forth the circumstances constituting “fraud” or “mistake.” Yet, in the multiple instances
27 where Plaintiff is discussing “fraud,” Plaintiff is dealing with parties who are not named at
28 the time of filing the Amended Complaint such as the developer of the subdivision in which

1 Plaintiff and Plaintiff's spouse reside, Tract 4163. Plaintiff admits that Plaintiff's home has
2 CC&R setback violations and Plaintiff alleges that these CC&R setback violation by
3 unspecified, unnamed defendants are "under investigation " for "fraud and possibly bribery"
4 in the approval and/or recommendation for approval by Mohave County employees that the
5 Mohave County Board of Supervisors pass Resolution 98-348 and that these actions caused
6 her 10 foot rear yard setback violation, and a failure of duty regarding yet another unnamed
7 Mohave County employee defendant regarding inspections of Plaintiff's side yard and rear
8 yard compliance requirements. See Plaintiff's proposed Amended Complaint, p. 7, lines 13-
9 18. Regarding the company that developed Plaintiff's subdivision, namely, T&M
10 Development, Plaintiff is suggesting or alleging "fraudulent" or "potential fraudulent
11 conduct," breaches of duty and other negligence on the part of yet an additional nonparty, the
12 County of Mohave, State of Arizona. None the less, Plaintiff for some reason as of this
13 moment has not included the developer of Plaintiff's own subdivision as a newly included
14 defendant.

15 Potential ARCP Rule 9 deficiencies appear in other areas of Plaintiff's proposed
16 Amended Complaint alleging "... attempted violations with possible fraud, bribery, coercion
17 or other action committed upon Development Services personnel who signed off on his
18 (T&M Development's) permit applications in violation of Resolution 93-122 for 20 foot
19 setbacks front and rear." See proposed Amended Complaint, p. 13, lines 14-18. One can
20 only assume that Plaintiff's reference to "Development Services" can only mean Mohave
21 County Development Services.

22 Further and continuing Plaintiff's ARCP Rule 9 deficiencies, Plaintiff alleges "fraud
23 upon the Court" on line 27 of page 13 in her proposed Amended Complaint, and an "illegal
24 act of long term posting of deteriorating signage owned by current Defendant Fairway
25 Constructors." See proposed Amended Complaint, p. 13, lines 27-28, p. 14, line 1. Yet
26 Plaintiff fails to identify the statutory basis of the illegal act of which Plaintiff complains.

27 Plaintiff alleges at page 15 of the proposed Amended Complaint undesignated
28 purported misconduct attributable to an unnamed defendant in stating, "for some unknown

1 reason yet to be determined by investigation, Development Services is now ignoring the
2 special development zoning for new home construction applications submitted by Azarmi.”
3 See proposed Amended Complaint, p.15, lines 1-6. Note, that the “Development Services”
4 can only be construed to reference the County of Mohave Development Services that
5 apparently would later be brought before this Court but currently is simply an unnamed
6 potential John Doe defendant. See also Rule 9 violation wherein Plaintiff is alleging
7 Defendant Azarmi with apparent “collusion by Director Hont...” at p. 23, lines 14 and 15 of
8 the proposed Amended Complaint. Each of the above are potential violations of Rule 9
9 ARCP and weigh heavily upon the ARCP Rule 15 limitation regarding the Court’s duty to
10 insure that allowing an amendment will not result in undue delay, undue prejudice to the
11 existing parties litigant. This matter has already suffered major undue delay as a result of the
12 32 prior denied motions that have inundated this file.

13 Indeed, should this the Plaintiff’s 33rd Motion be granted, the entire complexity of this
14 three and one-half year \$100,000+ of attorney fees that have been incurred will be brought
15 to an instant halt, at least 11 and, pursuant to Rule 19 ARCP, some additional 200+
16 residences and the 360± individual owners thereof in Desert Lakes Golf Course & Estates
17 Tract 4076-B, Tract 4076-D, and Tract 4163, will be required to be brought in by Plaintiff
18 as additional and mandatory parties defendant or plaintiff.

19 This Court will recall documentation and pleadings of record that include such facts
20 submitted under oath to the Court by an Arizona Registered Land Surveyor avowing that his
21 review of documentation concerning the three tracts in question reflect the fact that as of
22 2019, there were 181 total residential structures constructed on the lots in the subdivisions
23 in question and that are the subject matter of this litigation, and out of the 181 total homes,
24 116 of those homes have existing construction into the rear yard setback, including, most
25 interestingly, Plaintiff’s own residence that is constructed 11 feet into the CC&R rear yard
26 setback which the Plaintiff seeks to enforce against the existing Defendants, the Amended
27 Complaint additional Defendants, but apparently carving out of the litigation her spouse and
28 approximately 116 other violating residences. See, Defendant’s Motion for Summary

1 Judgment Affidavit of Eric Stephen dated November 12, 2019 (attached hereto as **Exhibit B**
2 without exhibits). See also, the Affidavit of existing Defendant Azarmi who under oath in
3 2019 avowed to the Court that the current Defendants, out of the 181 homes in question, had
4 constructed 17 of those subject residences over the 30+ years that Desert Lakes Golf Course
5 & Estates Tract 4076-B has been in existence. See, Defendant's Motion for Summary
6 Judgment, Affidavit of Mehdi Azarmi dated November 15, 2019, ¶3 (attached hereto as
7 **Exhibit C** without exhibits). Note, there is a difference of seven homes referenced in the
8 Surveyor Stephen's Affidavit dated November 12, 2019, and the Azarmi Affidavit
9 referencing 188 homes. The difference results from the fact that several homes were
10 constructed between the satellite aerial views which formed the basis of Surveyor Stephen's
11 Affidavit and the actual number of residences on the ground which are referenced in the
12 Azarmi Affidavit.

13 Attached and marked as **Exhibit D** is Plaintiff's existing three-plus year pending
14 request for relief (filed January 18, 2018) for which Plaintiff seeks an order from this Court.
15 In general terms, it alleges that the 1989 CC&Rs are enforceable. The Court should weigh
16 the issues therein set forth against the issues now attempting to be raised by the Plaintiff.

17 **COUNT 1 BREACH OF CONTRACT**

18 Count 1 in the proposed Amended Complaint is dealing with the alleged enforceability
19 of the setback requirements.

20 **COUNT 2 BREACH OF CONTRACT**

21 A new Count 2 in the proposed Amended Complaint is alleging Breach of Contract
22 dealing with Defendants erecting or maintaining of advertising signage in alleged violation
23 of paragraph 12 of the CC&Rs. See proposed Amended Complaint, p. 33, ¶91, lines 10-11,
24 which ties specifically to the "fraud on the Court and illegal actions" referenced in ¶36 of the
25 Plaintiff's proposed Amended Complaint, as well as direct involvement of Mohave County
26 Development Services position as to the alleged signage violation.

27 **COUNT 3 CLAIM FOR DECLARATORY RELIEF**

28 Generally, Plaintiff's proposed Complaint is alleging, generally, that the 1989 CC&Rs

1 are enforceable today despite their having been violated consistently for 32+ years rendering
2 them abandoned.

3 **COUNT 4 INJUNCTIVE RELIEF**

4 In Plaintiff's proposed Complaint, Plaintiff's demand for relief that amongst other
5 things seeks an order directing the named Defendants "... to remove any and all conditions,
6 structures, projections or activities on said land that violates any restriction or covenant as
7 provided in the recorded CC&Rs." See proposed Amended Complaint, Demand for Relief,
8 p. 37, ¶E, lines 6-9. It must be assumed that the Plaintiff is talking about Desert Lakes Golf
9 Course & Estates Tracts 4076-B, 4076-D and 4163 in Plaintiff's reference "on said lands."
10 Should Plaintiff's proposed Amended Complaint be allowed, Plaintiff will absolutely be
11 required to not only add the currently designated 11 new additional defendants, but ultimately
12 approximately 360 additional residential owners assuming each residence is owned by a
13 typical husband and wife or two or more co-owners, and Plaintiff's successful prosecution
14 would result in each and every violating residence (of which there are at least 116-the
15 majority of existing homes) would, at least in part, be destroyed or substantially altered to
16 bring them into CC&R compliance on the rear setback issue alone including the residence
17 of the Plaintiff with at least 11 feet of Plaintiff's home being removed. Note further that
18 virtually every home in these three subdivisions would or could be further impacted by any
19 ruling by the Court finding enforceability of the CC&Rs in that almost every home
20 previously constructed has one or more existing CC&R violations. See Affidavit of Tracy
21 Weiss dated November 8, 2019 filed with this Court with Defendants' Motion for Summary
22 Judgment (a copy of which is attached hereto as **Exhibit E** (without exhibits)).

23 **SUMMARY**

24 The Plaintiff's proposed Amended Complaint will cause years of further delay, the
25 involvement of hundreds of additional defendants and/or plaintiffs and result in hundreds of
26 thousands of dollars of increased litigation fees and costs and multiple millions of dollars of
27 property destruction.

28 The additional delays of this aging Complaint would be monumental not only

1 regarding the Rule 19 issue, but also the obvious desire of the Plaintiff to deliver before this
2 Court at least one governmental agency and the need resultant therefrom to litigate the
3 provisions and potential applicability of A.R.S. §12-821.01.

4 Plaintiff's Motion should be denied as have Plaintiff's previously filed Motions to
5 Amend. The enforceability of these CC&R provisions have long since been waived and fully
6 abandoned. The subject covenants cannot be enforced in general against the substantial
7 majority of the property owners nor exclusively against the separate Defendants that have
8 been targeted by the Plaintiff.

9 RESPECTFULLY SUBMITTED this 26th day of April, 2021.

10 LAW OFFICES OF DANIEL J. OEHLER

11 

12 Daniel J. Oehler,
13 Attorney for Defendants

14
15 **COPY** of the foregoing emailed
16 this 26th day of April, 2021, to:

17 Honorable Lee F. Jantzen
18 Mohave County Superior Court
19 Division 4
20 401 E. Spring Street
21 Kingman, Arizona 86401
22 (928) 753-0785 Danielle
23 dlecher@courts.az.gov

24 Attorney for Plaintiff

25 J. Jeffrey Coughlin
26 J. Jeffrey Coughlin, PLLC
27 1570 Plaza West Drive
28 Prescott, Arizona 86303
(928) 445-4400
(928) 445-6828 fax
jjcpllc@gmail.com

By: 
Patricia L. Emond, Legal Assistant

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

Objection to Motion for Leave to Amend Complaint

EXHIBIT A

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

EXHIBIT A

Motions to amend complaint:

1. 05/02/2018 motion for leave to amend complaint for count 2
2. 10/22/2018 motion for leave to amend complaint/reconsider
3. 06/19/2019 motion for leave to amend complaint
4. 09/04/2020 motion for leave to amend complaint
5. 04/12/2021 motion for leave to amend complaint (*pending*)

Motions to amend or set aside court orders/rulings:

1. 06/20/2018 motion to alter or amend orders 3 and 4
2. 10/18/2019 motion for leave to amend reconsideration of dismissal of count 1
3. 12/17/2019 motion for corrections hearing date 10/16/2019
4. 12/17/2019 motion for corrections for court notice order ruling 10/30/2019
5. 04/10/2020 motion for reconsideration for corrections to court order/minutes
6. 03/12/2020 motion to set aside dismissal of count 1 for fraud upon the court

Motions for reconsideration/clarification of court orders:

1. 08/27/2018 motion for clarification
2. 04/12/2019 motion for reconsideration of declaratory judgment (12/19/2018)
3. 04/26/2019 motion for reconsideration of dismissal of count 1 (6/11/2018)
4. 08/27/2019 motion for reconsideration of dismissal of count 1
5. 09/27/2019 motion for reconsideration of declaratory judgment (signage)
6. 11/12/2019 motion for clarification of court order/reconsideration rulings dated 10/30/2019
7. 02/28/2020 motion for reconsideration of dismissal of count 1 based on new evidence and adjudicate count 2 by authority of Arizona Constitution
8. 02/28/2020 motion for clarification of procedure
9. 04/10/2020 motion for reconsideration for corrections to court order/minutes
10. 05/05/2020 motion for clarification of Plaintiff's rights to be argued on 5/11/2020
11. 05/11/2020 motion for reconsideration of dismissal of count 1
12. 08/17/2020 motion for court clarification of rationale for dismissal of count 1

Motions to compel and/or amend Defendants' pleadings:

1. 06/18/2018 motion to compel Defendants' answer
2. 08/06/2018 motion to compel Defendants' disclosure
3. 02/24/2020 motion to compel Defendants to amend reply

Additional failed motions:

1. 04/04/2018 motion for stay of execution
2. 11/13/2018 motion for injunctive relief
3. 12/19/2018 motion for declaratory judgment
4. 04/12/2019 motion for declaratory judgment on signage
5. 05/11/2020 motion to dismiss Defendants' motion for summary judgment
6. 06/01/2020 motion for summary judgment to forgive specific CC&R violations

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

Objection to Motion for Leave to Amend Complaint

EXHIBIT B

AFFIDAVIT

Comes now, your affiant, ERIC STEPHAN, and upon his oath, states and alleges as follows:

1. Your affiant is licensed through the Arizona State Board of Technical Registration, Registered Land Surveyor License No. 29274. Your affiant has continuously held this licensure status since 1995 through the present.

2. During the month of July 2019, your affiant reviewed the attached aerial views of each lot (see Exhibit A attached) in Desert Lakes Golf Course & Estates Tract 4076-B, Desert Lakes Golf Course & Estates Tract 4076-D, Desert Lakes Golf Course & Estates, Unit E, Tract 4163. Tract 4163 is a resubdivision of a portion of Planning Area VV and a part of KK depicted in Tract 4076-B. Subdivision Tract 4163 has no CC&Rs of any type attributable to that subdivision. Desert Lakes Golf Course & Estates subdivision Tract 4076-D is also a derivative subdivision of subdivision Tract 4076-B. It consists of 11 golf course lots and 1 non golf course frontage lot. This derivative subdivision was recorded on October 17, 1990 and the CC&Rs attributable thereto were recorded on October 19, 1990 in Book 1808, Page 509 in the Official Records of Mohave County at Fee No. 90-73717. See **Exhibit A** attached to this Affidavit. The tract 4076-D CC&Rs are substantially identical to the CC&Rs utilized in subdivision Tract 4076-B.

3. The objective of your affiant's review was to determine the distance between the closest rear projection of each constructed residence to the rear property line (the rear yard setback) in Desert Lakes Golf Course & Estates Tract 4076-B, Desert Lakes Golf Course & Estates Tract 4076-D, and Desert Lakes Golf Course & Estates, Unit E, Tract 4163. Each of these three are separate individually recorded subdivisions.

4. The original Desert Lakes Golf Course & Estates Tract 4076-B consisted of 225 single family lots and several parcels. Several lots have been "combined" for the use of a single residence; hence, the exact number of actual lots include those upon which a single family residence has been built are fewer than the originally platted lots. In its current configuration, there are fewer than 225 available residential lots as a result of owners combining two lots into a single home site.

5. The number of original single family platted lots in Desert Lakes Golf Course & Estates, Unit E, Tract 4163 as platted was 32. All lots within this subdivision have been fully built out with single family residences with the exception of Lot 5 which is undeveloped. Seven of the 32 original lots in this Tract 4163 have been combined and used for a single residence, thereby reducing the number of residences available for construction from 32 to 25.

6. The number of lots in Tract 4076-D is 12 upon which there are located 10 homes. Two lots in this subdivision are unimproved.

7. The purpose of this study was to determine whether any construction such as a covered patio protruded into the rear yard setback of 20 feet and if so, the extent of the encroachment into the rear yard for each residence and then determine the number of homes in Desert Lakes Golf Course & Estates Tract 4076-B, Desert Lakes Golf Course & Estates Tract 4076-D, and Desert Lakes Golf Course & Estates, Unit E, Tract 4163 where projections of the homes into the setback have occurred.

8. Exhibit B reflects the result of my study on a lot-by-lot basis of every residence constructed in these three subdivisions as of the date of the GIS map.

Affidavit of Eric Stephan (Continued)

9. Your affiant determined that of the 181 single family residences in the three combined separate subdivision tracts as of the date of this study, 116 homes include construction of the actual home or covered patio over portions of the 20 foot rear setback ranging as close as six feet to the rear property line and averaging 12 feet of the rear property line.

10. Your affiant determined in regard to subdivision Tract 4163 that 100% of the residences constructed therein have projections into the rear yard averaging 10 feet. All lots in this subdivision have been built upon excepting only Lot 5. The rear yard encroachments vary in this subdivision from as close as six feet of the rear property line to as far from the rear line as 13 feet.

11. Your affiant determined in regard to subdivision Tract 4076-D that the subdivision consists of 12 residential lots, 11 of which are golf course frontage lots. Ten lots of this subdivision have been built upon. Of these ten residences, eight have constructed projections (patios) into the 20 foot rear setback called out in both the Tract 4076-B and Tract 4076-D CC&Rs hereinabove referenced with encroachments varying as much as 12 feet to one foot into the rear yard.

12. Your affiant has reviewed the provisions of paragraph 6 of the CC&Rs for Desert Lakes Golf Course & Estates Tract 4076-B dated December 6, 1989, and recorded December 18, 1989 at in the Official Records of Mohave County, Arizona, at Fee No. 89-67670, and Desert Lakes Golf Course & Estates Tract 4076-D, recorded October 17, 1990. These documents restrict/prohibit construction of buildings and projections closer than 20 feet of the rear property line of each lot. There are currently 116 residential units that fail to comply with this provision set forth in the subject Declarations.

Further, your affiant sayeth not, this 12 day of November, 2019.

Eric R. Stephan

Eric Stephan, R.L.S., 29274

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

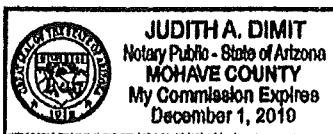
SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 12th day of November, 2019, by Eric Stephan, known or proved to me to be the person whose name is subscribed in the within instrument and acknowledged that he executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.

Judith A. Dimit

Notary Public,

My Commission Expires: 12-01-2019



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

Objection to Motion for Leave to Amend Complaint

EXHIBIT C

AFFIDAVIT

Comes now, your affiant, the Defendant, MEHDI AZARMI, and upon his oath, states and alleges as follows:

1. Your affiant is the Vice President of Defendant, Fairway Constructors, Inc., an Arizona corporation, and has been Vice President since on or about August 16, 1991.

2. Fairway Constructors, Inc., has constructed in excess of 900 homes in the Fort Mohave, Mohave Valley and Bullhead City area between 1990 to the present.

3. That your affiant, through Defendant, Fairway Constructors, Inc., has built homes in the various Desert Lakes Golf Course and Estates different subdivisions including 17 in Desert Lakes Golf Course and Estates Tract 4076-B during the company's licensing period over the past 29 years. We have not built any homes in Desert Lakes Golf Course and Estates Tract 4163 nor have we built any homes in Desert Lakes Golf Course and Estates Tract 4076-D. Of the 186 homes that have been built in these three subdivisions, Defendant, Fairway Constructors, Inc., has built .09139785% (17÷186) of the homes over the past 29 years.

4. That your affiant beginning at least as early as 1992 attempted to determine if there was any type of active Architectural Control Committee or any type of oversight by a homeowners association, committee of homeowners, or other type of entity or individuals to whom plans, waiver and variance requests as contemplated in the subdivisions' CC&Rs could or should be presented. This inquiry precipitated out of the fact that there were at that early point in time many homes built into the rear setback, multiple different types of golf course fences, gates onto the golf course, homes of what appear to be very small square footage, "for sale" and development signs on many unimproved lots and similar types of construction throughout the project. Your Affiant found no success in his search effort for answers to these questions. Informally and by word of mouth and only after viewing the significant development that had already taken place in Tract 4076-B, it was clearly obvious that the covenants that had been recorded by the original developers in 1989 and the original named "Committee of Architecture" set up under Article 1 of the CC&Rs had been and was continuing to be fully ignored and forsaken. The original named committee per Article 1 of the subject CC&Rs terms had expired and had disbanded, and no others had apparently been willing to serve on a committee including any general homeowners or lot owners by the date of expiration of the original Committee on January 31, 1991 (one year subsequent to the issuance of the original Arizona Statement Department of Real Estate Subdivision Public Report per **Exhibit A** to this Affidavit, and in accord with the provisions of the CC&Rs recorded December 18, 1989 at Fee No. 89-67669 in the Official Records of Mohave County, on pg. 2, lines 7-9, as reflected in **Exhibit B** to this Affidavit).

5. That your affiant's company, well prior to affiant's initial construction in Tract 4076-B, understood that the subdivision was being regulated exclusively by the then applicable UBC (Uniform Building Code) or its various predecessors or successors as was adopted from time to time by Mohave County, Arizona. It was further readily apparent from a visual review of this subdivision that by 1992 the vast majority of specific CC&R provisions such as the rear yard setback of the golf course lots had uniformly been ignored. Projections into the rear yard in accord with Mohave County Land Use Ordinance regulations had been the rule that was followed by the majority of the multiple general residential contractors and owner builders building or owning lots in Tract 4076-B and/or its derivative that at the time existed (as of 1990) Tract 4076-D.

Affidavit of Mehdi Azarmi (continued)

6. Your affiant knows of no known record of any type, inflated or taken, by the originally named architectural committee in 1989 or at any time thereafter and that multiple owner builders and licensed general contractors have built within Desert Lakes Golf Course and Estates Tract 4076-B throughout the past 30 years in contradiction of virtually every material provision set forth in the 1989 covenants and in complete, continuous, constant and unrestricted disregard of the recorded CC&Rs (Exhibit B).

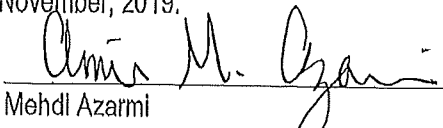
7. Your affiant further became aware that no specific type of fencing in particular on golf course rear yards had been placed into practice and concrete block, wire, steel/wrought iron of various height, shape and color had been used and in some instances owners utilized at least in part chain link fencing. In many instances no rear yard fencing of any type was installed. Finally, the majority of the homes that did have a rear yard fence of some type had erected or built gate access directly to the golf course. In most but not all homes built by your affiant's company, your affiant did not build any fencing in conjunction with the home as most owner clients of affiant chose to address the rear yard fence issue on their own and ultimately did so.

8. That beginning in the mid 1990s, and consistently thereafter, a significant number of realtors, owners, owner-builders, installed "for sale," "will build," and other marketing signage throughout Tract 4076-B and Tract 4076-D. The practice continues today, without objection until the present litigation. This practice has occurred continuously for at least 25 to perhaps 29 years.

9. That as a builder and developer of single family residences, your affiant alleges that should the major provisions of the 1989 CC&Rs (Exhibit B) be reactivated after an almost 30 year abandonment and given the fact that the existing build-out exceeds 75%, the impact on these subdivisions and particularly regarding each of the owners of the remaining unimproved lots (approximately 60) will be materially and negatively impacted as they will, for all practical purposes, be unable to build a covered patio in their rear yard despite the fact that the vast majority of existing golf course homes have capitalized on that benefit as have all other subdivisions in the area.

10. Simply stated, the covenants that were recorded in December 1989 have not been enforced from the outset, have been clearly ignored since at least 1991 and the abandonment has continued throughout the ±30 year history of these subdivisions without known complaint from any interested entity or owner until the filing of this litigation almost 30 years subsequent to the subdivision's CC&R recordation.

Further, your affiant sayeth not, this 15th day of November, 2019.


Mehdi Azarmi

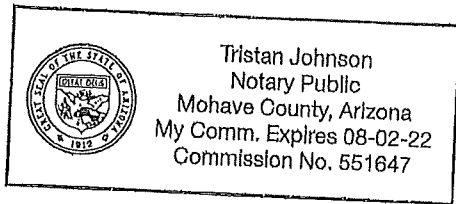
Notarization on Following Page

Affidavit of Mehdi Azarmi (continued)

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 15 day of November, 2019, by Mehdi Azarmi, known or proved to me to be the person whose name is subscribed in the within instrument and acknowledged that he executed the same for the purpose therein contained.

In witness whereof I hereunto set my hand and official seal.



Notary Public,
My Commission Expires: 8-2-22

Knight v. Ludwig, et al.
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Objection to Motion for Leave to Amend Complaint

EXHIBIT D

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

Objection to Motion for Leave to Amend Complaint

EXHIBIT E

AFFIDAVIT

Comes now, your affiant, TRACY L. WEISZ, and upon her oath, states and alleges as follows:

1. Your affiant is a real estate agent licensed by the State of Arizona Department of Real Estate holding agent License No. LC67178800, and has been so licensed since September 1, 2000. Prior thereto, from 1990 through 1994, your affiant held a real estate license in the State of California where your affiant also was employed as a property manager.

2. As part of your affiant's real estate training, your affiant has completed multiple continuing education classes over the years and within the past 12 months has completed 8 classes including but not limited to Buyer's Agency, Ethics and Professionalism, Fair Housing, Disclosure Issues and others.

3. That your affiant commenced work at Fairway Constructors in 1996 as its Assistant Office Manager, and in 1997 was advanced to Office Manager, a position which your affiant has held continuously since that date and in which your affiant is currently employed.

4. Your affiant has worked in the Desert Lakes Golf Course & Estates area for in excess of 23 years and is very familiar with each of the various subdivisions that have been developed in the Desert Lakes general area, specifically including the subdivisions known as Desert Lakes Golf Course & Estates Tract 4076-B, Desert Lakes Golf Course & Estates Tract 4076-D, and Desert Lakes Golf Course & Estates Tract 4163.

5. As a result of your affiant's extensive real estate experience and as office manager of a major residential construction firm, your affiant has had an opportunity to review and work on hundreds of single family plot plans and residential plans from the design stage through completion of construction and is familiar with front, side, and rear yard setbacks, fencing and fence requirements, square footage requirements, landscape, roof designs, including such things as antenna limitations or prohibitions and similar construction elements.

6. That as a material part of your affiant's duties as office manager for Fairway Constructors, Inc., it has been since 1997 and is currently affiant's obligation to contact any active and known homeowners association, entity, architectural committee, person or representative of any community or subdivision that has such a control or approval entity and submit any and all required documentation required prior to commencement of construction of any home.

7. That there never has been any homeowners association, architectural committee, individual representative or entity of any type serving in any formal or informal capacity on behalf of the original Declarant nor any successor to the original Declarant known to exist to your affiant over the past approximate 23 years of affiant's service in regard to Desert Lakes Golf Course & Estates subdivision Tract 4076-B, Tract 4076-D or Tract 4163.

8. The singular review agency that exists for Desert Lakes Golf Course & Estates for each of the three subdivisions is the building permit issuing authority of Mohave County, Arizona, the county in which these subdivisions are located. This fact has been in place during at least the entire tenure of your affiant since the year 1996 when your affiant's duties included architectural committee review processing.

Affidavit of Tracy L. Weisz (continued)

9. To be simply and succinctly stated by your affiant, for the approximately 23 year period of affiant's direct work in the home building industry dealing with Desert Lakes Golf Course & Estates Tract 4076-B (note your affiant has not processed nor been involved in any home construction in subdivision Tract 4163 or subdivision Tract 4076-D), there has never been an architectural committee, nor any alternate successor entity, person, nor subdivision representative serving in the stead of the original architectural committee or its successor approving, reviewing, amending, regulating, granting variances waivers and exceptions as discussed in Article I of the CC&Rs for Tract 4076-B and Tract 4076-D (note subdivision Tract 4163 has no CC&Rs exclusive to that subdivision), nor in any manner enforcing, implementing, modifying, restricting, approving, regulating any codes, covenants or restrictions of any type within any of these subdivision Tracts.

10. That your affiant was requested by the Law Offices of Daniel J. Oehler to inventory and photograph the actual constructed homes in the three subdivisions known as Desert Lakes Golf Course & Estates Tract 4076-B, Desert Lakes Golf Course & Estates Tract 4076-D, and Desert Lakes Golf Course & Estates Tract 4163 for the purpose of determining the number, if any, there were of contradictions between the CC&Rs recorded on December 18, 1989, in Book 1641, pgs. 895-901, Fee No. 89-67670, for Tract 4076-B and the two smaller derivative subdivisions developed from parcels within subdivision Tract 4076-B now known as Tract 4163 and what has actually been constructed over the following 29 years within the CC&Rs recorded on October 19, 1990, in Book 1808, pgs. 509-514, Fee No. 90-73717, for Tract 4076-D, regarding rear yard/golf course fencing issues and golf course access set forth in paragraph 8 of the CC&Rs for Tracts 4076-B and 4163, and paragraph 7 for Tract 4076-D, as well as roof violations in paragraph 5 of the CC&Rs for all three subdivisions. Your affiant thereafter commenced rear yard inspections that could be accomplished via public access from Desert Lakes Golf Course of all golf course lots rear yard fences during the week of August 26, 2019. Your affiant sets forth hereinafter the following results:

a) Of the 97 golf course homes constructed in the three subdivision in issue, 93 of these homes violate one or more of the rear yard fencing requirements, prohibitions set forth in Article II, paragraph 8 of the Tract 4076-B 1989 recorded CC&Rs. On a breakout basis, see **Exhibit A** which incorporates affiant's physical onsite inventory that includes 75 homes that have either solid block or incorporated a mixture of block and additional fencing materials; 41 homes with some wrought iron, however, not painted black as required; 54 homes that have constructed a prohibited gate access to the golf course; 49 residences that either have simply no rear yard fencing or deficient height fencing or that have utilized prohibited fencing materials such as chain link.

b) There are a total of 25 buildable lots out of 32 original lots in Tract 4163, 24 homes having been built thereon with one vacant lot. One hundred percent (100%) of the golf course lots have mesne fence violations. One hundred percent (100%) of the 25 constructed homes in this subdivision Tract 4163 encroach into the 20 foot rear yard setback established by/in the CC&Rs covering the lands subdivided in Desert Lakes Golf Course & Estates Tract 4076-B from which Tract 4163 is derivative.

11. From the public right of ways serving Tract 4076-B and its two derivative subdivisions, your affiant was able to determine the presence of 111 homes in direct violation of Article 11, paragraph 5 of the CC&Rs regarding the use of prohibited exposed dish antenna.

Affidavit of Tracy L. Weisz (continued)

12. Your affiant has had the opportunity to determine the total number of original lots in subdivision Tract 4076-B from the original Arizona State Report (**Exhibit A**) that reflects the number of 225 and has further determined the number of original lots in subdivision Tract 4163 that total 32 (**Exhibit B**), and finally the number of lots in Tract 4076-D total 12. Multiple of the lots have been combined to accommodate one single family residence. As an example, all lots in subdivision Tract 4163 have been built on with one exception, Lot 5. See **Exhibit C**. Out of the original 32 lots, this subdivision is fully built out with 24 homes and one remaining vacant lot (see paragraph 10(b), above). Similar events have occurred in subdivision Tract 4076-B where at least seven lots have been combined to form a single developed residential lot, specifically, Mohave County Assessor Parcel Numbers 226-13-025A, 011A, 007A, 130A, 124A, 148A and 161A. This reduces the total lot count in this subdivision from the original 225 to no more than 218. It is then possible to determine the percentage of undeveloped lots in subdivision Tract 4076-B verses developed lots. Tract 4163 has one vacant lot. Tract 4076-D has two vacant or undeveloped lots.

13. Your affiant has physically reviewed the built out homes in the three subdivisions and has found that there are 97 homes built fronting on the Desert Lakes Golf Course. As stated previously in paragraph 10 of this Affidavit, there are a total of 139 golf course frontage lots when you combine the three Tracts 97 homes and 47 vacant. This mathematically equates to a built out factor of slightly more than 69.784%. As identified in the Affidavit of Eric Stephan, 64% of all homes located in the three subdivisions have built into the 20' rear yard setback, and the majority of the homes that encroach into the rear yard CC&R setback are amongst the 139 homes on the golf course. Your affiant's findings reflect that 97.12% of these golf course homes have rear yard fencing that violate the 1989 CC&Rs. Individual category by category of these violations consist of 80.4% using block with other materials; 43% have failed to follow the prescribed paint color; 57.7% have built gate access to the golf course; and 50.5% have fully failed to build any rear yard fence at all or violated the height mandates set forth in the CC&Rs.

14. Your affiant has further found that in respect to the 97 homes constructed in these three subdivisions that have golf course frontage, 71% have exposed dish or other types of prohibited antenna. Including all homes within these three subdivisions (golf course and interior) there are 186 homes with 111 antenna violations totaling 59.7%

15. Your affiant was unable to physically access the rear yard conditions of those homes constructed on the non-golf course or interior lots that total approximately 107 lots, excepting the lots reduced as a result of combining in subdivision Tract 4163 from 21 to 16, however, an examination of **Exhibit D** clearly reflects that each of these homes have been constructed within 10 feet or closer of the rear yard property line. See also the Affidavit of Eric Stephan of Cornerstone Land Surveying dated October 16, 2019. The nature and extent of fence construction in these areas was not able to be ascertained by your affiant, although utilizing the public roads, your affiant determined that a minimum of 8 dish antennas were found amongst these 16 interior residences.

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