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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MOHAVE**

12 NANCY KNIGHT,

13 Plaintiff,

14 vs.

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

22 Defendants.

NO.: CV-2018-04003

**RESPONSE TO PLAINTIFF'S
SIXTH MOTION FOR LEAVE
TO AMEND COMPLAINT
FOR AFFIDAVIT FRAUD**

23 COME NOW, the Defendants, GLEN LUDWIG and PEARL LUDWIG, Trustees of
24 THE LUDWIG FAMILY TRUST, FAIRWAY CONSTRUCTORS, INC., and MEHDI
25 AZARMI, by and through their attorney, the undersigned, and for their Response to
26 Plaintiff's sixth Motion for Leave to Amend Complaint this time for alleged affidavit fraud
27 and in accordance with the attached Memorandum of Points and Authorities request that the
28 Court deny Plaintiff's Motion. These responding Defendants further request an entry of an
award for all attorney's fees and costs incurred in the preparation of this sixth motion to
amend that has been filed by the Plaintiff.


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1 This Response is supported by the attached Memorandum of Points and Authorities
2 and is filed in accordance with the provisions of the Arizona Rules of Civil Procedure
3 (ARCP), Rules 8, 9, 12 and 15.

4 RESPECTFULLY SUBMITTED this 23rd day of November, 2022.

5 LAW OFFICES OF DANIEL J. OEHLER

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7 

8 Daniel J. Oehler,
9 Attorney for Defendants

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Rule 15, ARCP, has been interpreted on many occasions in many cases and validates
12 the general premise that leave to amend should be liberally granted when justice so requires.
13 The Arizona Supreme Court as cited by the Plaintiff in Owen v. Superior Court, 133 Ariz.
14 75, 649 P.2d 278 (82), denial of such an application/motion, however, should be entered
15 when as a result of the amendment “undue delay, bad faith, dilatory motive, repeated failure
16 to cure deficiencies by previous amendments or undue prejudice to the opposing party
17 occurs.” Virtually every reason specified by the Supreme Court in Owen, supra, is present
18 before this Court. Plaintiff, on page 1 of Plaintiff’s pending Motion, admits that Plaintiff’s
19 purpose in amending the Complaint is to provide that “full disclosure” is available to the
20 indispensable parties and readers of the documents and that in the Plaintiff’s opinion the First
21 Amended Complaint is necessary to insure such full disclosure. See, p. 1, lines 20-24 of
22 Plaintiff’s Motion filed September 29, 2022. Plaintiff admits the Plaintiff’s purpose for the
23 amendment is to entice the necessary and indispensable lot owners to join the Plaintiff’s
24 Unincorporated Association, of Defendants’ fraudulent conduct and provide:

25 “[f]ull disclosure on the benefits of the UA for replacing the
26 Architectural Committee whose term of service expired over
27 twenty years ago is intended to alleviate concerns of
28 abandonment of the Declaration and provide a means to protect
property owners form law suits. The amended complaint also
strikes errors of assumption that are a part of the original
January 2018 Complaint in an effort to alleviate confusion.”

1 Plaintiff's conclusion at p. 5, lines 18-25 where Plaintiff's admits Plaintiff's purpose
2 is to "expose property owners to their option for remedy by applying to the committee [i.e.,
3 Plaintiff's Unincorporated Association] for an exception or variance. This case and
4 Amended Complaint are expected to clear the poisoned waters sufficiently to provide for
5 volunteers to serve on the committee." Plaintiff clearly outlines her actual reasoning in
6 asking the Court some five-plus years after filing the original Complaint in 2018 as to why
7 Plaintiff is desiring once again to amend the subject Complaint. Certainly expanding the
8 scope of the litigation into which Plaintiff has been ordered to join the approximate 500
9 necessary and indispensable parties will result from adding a potential tort claim or, as the
10 Plaintiff would prefer, a criminal complaint within the civil pleadings that are currently
11 before the Court and quite obviously, Plaintiff's motive is dilatory, and admittedly in bad
12 faith, and is seeking to instill upon the 500+ new parties undue prejudice to the opposing
13 party, i.e., the existing Defendants.

14 Plaintiff affirmatively alleges that the covenants which are the subject matter of the
15 underlying litigation and the specific reason why all owners of lots within the three specific
16 subdivision tracts, 4076-B, 4076-D and 4163 (Plaintiff's tract) have been brought into this
17 matter is to determine whether or not the covenants have been abandoned as a result of lack
18 of enforcement over the period of time between 1989 and at earliest the initiation of this
19 litigation. Does the fact that approximately 116 homes, or approximately two thirds of the
20 homes that have been built within the three subject tracts violate the rear yard setback; does
21 the fact that 100% of the homes in Plaintiff's subdivision Tract 4163 violate the rear yard
22 setback; does the fact that 80% of the homes in Tract 4076-D violate the rear year setback,
23 do these represent an abandonment of the restrictions? Take into further consideration the
24 multiple violations of minimum square footage, paint color violations, materials used for the
25 side and rear walls of the homes by approximately 80% or more of the homes that have been
26 constructed, gate access violations by approximately 60% of the golf course homes, and ask
27 if there has been a 30+ year abandonment. This is the issue that is before the Court. This is
28 the issue that will be the subject matter and impactful of all of the lot owners in each of the

1 three tracts. Plaintiff's allegations of what Plaintiff calls "affidavit fraud" is nothing but a
2 nonsense red herring as hereinafter explicitly laid out.

3 Attached for the Court's ease of review are the nine Affidavits that have been filed
4 herein by one of the Defendants, Mr. Azarmi, along with eight additional affiants. Plaintiff
5 is accusing the subject affiants of knowingly violating the provisions of A.R.S. §39-161, a
6 criminal offense (see **Exhibit A**). Plaintiff's proposed Amended Complaint is alleging that
7 each of the eight Affiants be added to the 500+ parties thus far ordered to be brought into this
8 case are effectively guilty of a Class 6 felony and has actually demanded criminal prosecution
9 be initiated by the Mohave County Attorney and the Bullhead City Police Department.

10 Attached hereto as **Exhibit B** are photocopies of the nine Affidavits (without exhibits)
11 that are the subject matter of Plaintiff's Motion and proposed Amended Complaint.

12 **Affidavit 1** was executed by Tracy Weisz on November 8, 2019. The Weisz Affidavit
13 is the most inclusive of all nine affidavits. The egregious conduct rising to the level of fraud
14 on the part of this affiant is nonetheless the easiest and simplest to address. Plaintiff's
15 allegation of fraud centers exclusively on a scrivener's error of listing the affiant's broker's
16 state identification number which is required of every licensee to "hang their sales license
17 with a broker and the broker's identification number was inserted rather than Tracy Weisz'
18 identification number. Upon discovery of this error, the correct sales license was substituted
19 via a properly filed notice. Plaintiff calls this fraud. Plaintiff's allegation is pure nonsense
20 once again. The purpose of providing the license information to start with is simply to
21 indicate the experience of the affiant and the knowledge and educational experience of the
22 affiant did not allege that she was a broker but rather stated in paragraph 1 of her affiadvit
23 as follows:

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

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1 **Affidavit 2** was executed by Eric Stephan. Mr. Stephan is a long time registrant of
2 the Arizona State Board of Technical Registration and a licensed land surveyor. Mr. Stephan
3 stated in his Affidavit, signed before a notary on November 12, 2019, that “Subdivision Tract
4 4163 has no CC&Rs of any type attributable to that subdivision.” That statement is correct
5 in that there are no Tract 4163 CC&Rs that were recorded by the developer of the subject
6 subdivision. Rather, as a result of the two parcels (not lots but parcels) of land that were not
7 subdivided in Tract 4076-B, none of the individual lot prohibitions in the 4076-B CC&Rs
8 were necessarily attributable to the new subdivision that was created multiple years later and
9 is known as Tract 4163. Plaintiff refers to the Eric Stephan Affidavit, because of Mr.
10 Stephan’s interpretation of the applicability of the 4076-B CC&Rs to Tract 4163 is an
11 egregious and fraudulent claim for which Mr. Stephan should be criminally charged.
12 Plaintiff alleges Mr. Stephan cannot have that opinion, yet he does and if called upon will
13 explain his position. Plaintiff also complains that the egregious Stephan Affidavit that in
14 paragraph 10 in pertinent part reads: “The rear yard encroachments vary in this subdivision
15 [referring to Tract 4163] from as close as six feet of the rear property line to as far from the
16 rear line as 13 feet.” Plaintiff’s comment in the pending Motion on line 28.5 of p. 14 through
17 line 2 of p. 15 reads: “He [referring to Mr. Stephan] also appears to be unable to differentiate
18 a rear yard from a side yard claiming one lot in Tract 4163 has a six foot rear yard setback
19 (his paragraph 10). A reasonable person would read Mr. Stephan’s statement that one of the
20 homes in Tract 4163 is as close as six feet to the rear property line, which is exactly what Mr.
21 Stephan said, and others are as far from the rear yard line as 13 feet.” Plaintiff defines
22 Stephan’s Affidavit as fraudulent.

23 **Affidavit 3.** The next Affidavit is that of Ann Pettit, an Arizona licensed realtor since
24 1984 and a licensed real estate broker within the community since 1988. Plaintiff mentions
25 throughout the thousands of pages of pleadings in this case Ms. Pettit on multitudes of
26 occasions and consistently preaches her disdain for Ms. Pettit and now wishes to defame Ms.
27 Pettit and make her a party. There are two specific paragraphs in the Pettit Affidavit,
28 paragraphs 8 and 15 that appear to be the subject of Plaintiff’s disdain. Paragraph 8 reads:

1 “8. That your Affiant is unaware of any objections to
2 this process over the past approximate 30 years until July of
3 2019 when, amongst other things, a person by the name of
4 Nancy Knight complained of this process to the Arizona
5 Department of Real Estate who referred her to the Mohave
6 County Ordinance Enforcement.”

7 Here, the Affiant was discussing Plaintiff’s complaint to the Arizona State Department
8 of Real Estate regarding Ms. Pettit’s real estate firm known as US Southwest, which has been
9 a subject matter of multiple Plaintiff motions for declaratory judgment, injunctive relief, etc.,
10 from 2018 through the present. Plaintiff’s fraud allegation in regard to paragraph 8, which
11 in Plaintiff’s opinion constitutes fraudulent criminal conduct, is that in Plaintiff’s opinion of
12 the law, the covenants in question prohibit “for sale” or “for lease” signs on unimproved lots.
13 Plaintiff has attached to Plaintiff’s Motion a copy of the standard real estate sign in question
14 that Plaintiff describes as “She is promoting her development services boutique of real estate
15 businesses on this sign.” See p. 9, lines 26-27 of Plaintiff’s current Motion. Indeed, this is
16 criminal conduct in the mind set of the Plaintiff.

17 Plaintiff further complains of Ms. Pettit fraudulently stating in paragraph 15 that:

18 “15. Mohave County regulations for SDR zoned
19 properties allow the projection of a covered patio a distance of
20 50% of the applicable rear yard setback which in the case of
21 Desert Lakes Golf Course & Estates Tract 4076-B would allow
22 a covered patio to extend to within a distance of 10 feet from the
23 rear yard property line.”

24 Plaintiff’s interpretation of the law in the pending Motion appears on page 10, lines
25 16-17 and reads: “Pettit falsely claims that Desert Lakes SD/R zoned properties allow a 50%
26 projection into the rear yard for patio covers.” Plaintiff continues to dispute that statement
27 with the comment on p. 10, line 18, “This is a county claim too in support of Azarmi’s
28 business interests.” Indeed there is a dispute between Ms. Pettit and the Plaintiff. Facts
establish Mohave County regulations for SDR zoned properties allow the projection of a
covered patio a distance of 50% of the applicable rear yard setback. That is a fact. To the
Plaintiff, such a statement that in fact has occurred on almost two-thirds of the constructed
homes within the three subject tracts apparently is not a fact as far as the Plaintiff is

1 concerned, it is criminal conduct and fraud to say what has happened and what Mohave
2 County ordinances allow.

3 **Affidavit 4.** The next Affidavit was executed by a local general contractor, Douglas
4 McKee who does business as Grand Canyon Development and has been appropriately
5 licensed as a general building contractor since 1994. Mr. McKee's Affidavit was signed on
6 November 12, 2019, advising that he has built multiple single family homes in Tracts 4076-B
7 for various of his clients. Paragraph 3 of the McKee Affidavit is the subject matter of the
8 affidavit fraud claim that is now being espoused by the Plaintiff. The McKee Affidavit
9 reads:

10 "3. That all homes your affiant has built have been
11 fully permitted by Mohave County Development Services and
12 all homes built by your Affiant have included covered
patios/projections into the rear yard setback of 20 feet generally
to a distance of 10 feet."

13 Plaintiff's claim constitutes a felony charge against Mr. McKee. Plaintiff believes that
14 Mr. McKee is wrong in saying "all homes built" by McKee and Grand Canyon Development
15 have encroached into the rear 20 foot setback since Plaintiff alleges that she has located two
16 homes built by Grand Canyon in 2015 that purportedly do not have encroachments into the
17 20 foot rear yard setback. Plaintiff believes and therefore alleges that if in fact Plaintiff's
18 information is correct, that the Affiant's possible error on an issue that occurred in 2015
19 represents known criminal conduct evident at the time of executing the Affidavit in
20 November of 2019. Plaintiff opines that the Affiant knew that he had built or possibly had
21 built two homes four years earlier where encroachments did not occur. (Note that as of this
22 writing, the accuracy of Plaintiff's statements have not yet been validated.) Plaintiff goes on
23 to state that because of "Plaintiff has real evidence of affidavit fraud acquired by the Plaintiff
24 through Mohave County Request for Public Information (RFPI) where two homes he
25 [McKee/Grand Canyon Development] built in Desert Lakes in 2015 complied with the SD/R
26 zoning and the CC&R setbacks." This represents criminal felony conduct on the part of
27 McKee as representative of Grand Canyon Development and felony complaints were
28 attempted in fact by the Plaintiff by contacting Mohave County Attorney Matt Smith and

1 alleging the felonious conduct by Mr. McKee in his Affidavit. See, ¶11, p. 13 of Plaintiff's
2 current Motion. Plaintiff admits that the Mohave County Attorney refused to investigate
3 Plaintiff's demands and was told to take it to local law enforcement. Plaintiff did just that
4 and took Mr. McKee's Affidavit to the Bullhead City Police Department on February 18,
5 2022. See, p. 13, line 28 and p. 14, lines 1-8 of Plaintiff's pending Motion. Note also the
6 subdivisions in controversy are not within the Bullhead City limits. In any event, Plaintiff
7 was unsuccessful with the Bullhead City Police Department and the outrageous intentional
8 fraudulent statement that may or may not be 100% correct and, perhaps, when Mr. McKee
9 used the term "all", he should have mentioned with the exception of two, if in fact Plaintiff
10 is correct or accurate in her current allegations.

11 **Affidavit 5** was prepared and signed by Robert L. Morse. Mr. Morse is a licensed
12 civil engineer licensed by the Arizona State Board of Technical Registrants. Mr. Morse is
13 also a registered land surveyor. The Plaintiff did not like the substance of the Morse
14 Affidavit that was signed under oath on September 24, 2019, because in paragraph 8, Mr.
15 Morse included the language:

16 "…the underlying original subdivision out of which Tract 4163
17 was created via an abandonment of Tract 4076-B and the
18 resubdivision of Parcel VV and Parcel WW of Tract 4076-B
now known as Tract 4163."

19 If Plaintiff ever reviews and fully understands the history of the creation of Tract 4163
20 and Tract 4076-B, Plaintiff may find what Mr. Morse believes, that his statement in
21 paragraph 8, is and was correct. Plaintiff in ¶12, p. 14 of her Motion, alleges the
22 fraudulent/criminal conduct of Engineer Morse commencing on lines 14-17 which read:

23 "He fraudulent claims Plaintiff's land was abandoned from
24 Tract 4076-B. Parcel VV was never abandoned from Tract
25 4076-B. A portion of Parcel KK **WAS** abandoned from the golf
26 course to be appended to Parcel VV for 23 lots maximum as
Tract 4076-E with at least 6000 square feet lot sizes."
(Emphasis supplied.)

27 This, in Plaintiff's opinion, represents criminal conduct and fraudulent representations
28 by Mr. Morse. Added, Plaintiff at lines 22-24 further describes Mr. Morse, in the Plaintiff's

1 opinion, as:

2 “This affiant appears to be a completely incompetent licensed
3 surveyor who was solicited to sign an affidavit written by
4 someone else. Prosecution for fraud is necessary for
disclosure.”

5 **Affidavit 6.** The next Affidavit was signed by Sunil Kukreja on November 20, 2019.
6 The subject Affidavit was notarized by Sandra Martin in the State of Florida on the subject
7 date. Plaintiff makes a multitude of comments about this affiant that appear to be principally
8 based upon speculation at best admitting amongst other things that Plaintiff is currently
9 attempting to bring fraud allegations against the affiant in Plaintiff’s Yavapai County Case
10 No. CV-2022-00177. The commentary included by Plaintiff is not about the “affidavit
11 fraud” upon which the proposed Amended Complaint centers with one exception. Plaintiff
12 claims fraud by the affiant is established because “He was apparently confused about the
13 month of signing his Affidavit or it was fraudulently modified. The stricken date of
14 September 20 was changed to be November 20, 2019 and the Notarized date is also alleged
15 to have been fraudulently modified.” To Plaintiff’s though process, the notary or Mr.
16 Kukreja are guilty of fraud because the month of signing was crossed out and changed by the
17 affiant and/or the notary. Plaintiff’s position is legal nonsense.

18 **Affidavit 7.** The next Affidavit was signed by Greg Green on October 7, 2019. Greg
19 Green is the President of Desert Glass & Mirror, a licensed contractor licensed by the
20 Arizona Registrar of Contractors since 1989 who held/holds a residential glazing license.
21 This affiant identified in his Affidavit that he had replaced multiple windows in Desert Golf
22 Course and Estates subdivisions, including Tract 4076-B, indicating that he estimates
23 replacement of some 50-100 broken windows have been replaced by his company over
24 approximately 30 years. Here, the CC&Rs, that are believed to be abandoned by the
25 Defendants include a covenant that requires in certain applications the use of tempered glass
26 on windows that face the golf course and the affiant states therein that his customers, the lot
27 owners and homeowners, have not requested and he has not replaced golf course windows
28 with tempered glass. Plaintiff’s fraud allegation against Mr. Green is not specific. Plaintiff

1 simply states on p. 13, lines 19-20 of the pending Motion that: "Plaintiff will seek proof of
2 those claims at trial and possible remedy in the interest of public safety." In the mind of
3 Plaintiff, Plaintiff thinks Plaintiff may at some point in the future be able to specifically
4 deliver to the trier a fraud allegation against Mr. Green, but for now it is fraud and Mr. Green
5 will be/should be added as a Defendant.

6 **Affidavit 8** is that of Alan Patch, a resident of Tract 4076-D of Desert Lakes Golf
7 Course and Estates that was signed on October 1, 2019. In the Patch Affidavit, Mr. Patch
8 describes his residence and the walls that have been constructed in regard to his residence.
9 Mr. Patch makes reference to a surrounding property as well as his own property that was not
10 built by the Affiant but was purchased from the original owner by the Affiant indicating that
11 the Patch rear yard encroaches 5'4" or is within 14'6" of the rear property line. He also
12 describes the heights of his block walls. Each of these issues, the block walls and the
13 encroachment into the rear yard setback violate the CC&Rs. He describes his neighbor's
14 property that he believes extends towards his back yard a distance of approximately 10 feet
15 where the covenants demand 20 feet. He describes the height of his walls as well as the
16 products with which his walls were constructed as again violating the original 1989
17 covenants. Plaintiff's objection and basis for including an allegation of affidavit fraud
18 against Mr. Patch and proposing that Mr. Patch be joined as a possible fraudulent defendant
19 appears at line 9, p. 13, ¶9, and states:

20 "While not charged with fraud, he has subjected himself to
21 investigation of his fences for violations. He is attempting to
support a claim of abandonment. He has failed."

22 **Affidavit 9.** Finally, we arrive at Affidavit 9. This Affidavit is an Affidavit of the
23 Defendant, Mehdi Azarmi. As is with the situation with all other Defendants, possibly
24 excepting Affiant Patch, Defendant Azarmi goes to great lengths to state under oath issues
25 relevant to the case of abandonment of the CC&Rs that are here in controversy. The final
26 paragraph of the Azarmi Affidavit signed on November 15, 2019, is paragraph 10, and it
27 reads:

28 "10. Simply stated, the covenants that were recorded in

1 December 1989 have not been enforced from the outset, have
2 been clearly ignored since at least 1991 and the abandonment
3 has continued throughout the ±30 year history of these
4 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.”

5 What is the conduct or statement or fact that makes the Azarmi Affidavit in the
6 opinion and mind of the Plaintiff a violation or potential violation of A.R.S. §39-161
7 implementing potential criminal felony sanctions against Defendant Azarmi. Here we turn
8 to p. 8 of Plaintiff's current Motion and find commencing on lines 19-___, the following
9 opinion of the Plaintiff:

10 “Defendant Azarmi, is further charged with affidavit fraud for
11 the completely fraudulent claim at paragraph 10 that the
12 ‘covenants have not been enforced from the outset’ when his
13 own attempt to violate the CC&Rs through Mohave County
14 Resolution 2016-125 was prevented by the Plaintiff in 2016
15 pursuant to a property owner's implied duty at paragraph 20 of
the CC&Rs; that Frank Passantino prevented a parcel from
multifamily zoning; that T&M Mohave Properties prevented
Azarmi from annexing his Fairway Estates HOA into Desert
Lakes; that Plaintiff remedied fence violations through a law
suit in 2016 CV-2016-04026.”

16 Note that under the standards professed by the Plaintiff to establish “affidavit fraud”/a
17 violation of A.R.S. §39-161 a felony, Plaintiff herself certainly qualifies by including in
18 Plaintiff's pending Motion the outrageous and blatantly erroneous statement at line 28, p. 8
19 that reads: “He signed his Affidavit (referencing Defendant Azarmi) on November 15,
20 2018,” although Plaintiff knew well that the affiant signed the document one year later on
21 November 15, 2019. Most people certainly attorneys would consider this errant date error
22 a scrivener's error as would the undersigned, however, should not the Plaintiff's errors be
23 handled the same way the Plaintiff professes to handle a scrivener's error – as a clear
24 indication of “fraud.”

25 So, out of the nine filed Affidavits, only Mr. Patch is not being allegedly charged with
26 affidavit fraud although Plaintiff proposes to include Mr. Patch in Plaintiff's proposed
27 Amended Complaint which is the subject matter of Plaintiff's current Motion (see, Plaintiff's
28 proposed First Amended Complaint, p. 1, caption).

1 A hundred-plus rear yard setback violations have occurred. Fence height or lack of
2 fences in violation of the covenants have not been enforced, that no gate access to the golf
3 course covenants have not been enforced, the color palettes used through the subdivisions
4 and required via the covenants have not been enforced, the specific material requirements for
5 front and rear yard walls have not been enforced, the prohibition against the use of chain link
6 fence within the covenants have not been enforced and have graphically been demonstrated
7 to the Court via the chain link fence used by the Plaintiff. The admissions by the Plaintiff
8 that the Plaintiff's home exceeds the 20 foot setback requirement by more than 10 feet of the
9 rear yard, that even the Plaintiff's side yard setback requirement has not been complied with
10 and is out of compliance with the CC&Rs. Simply put and accurately put, the covenants
11 recorded in 1989 have not been enforced from the outset of the development of these three
12 subdivision tracts. Mr. Azarmi's statement in his Affidavit is absolutely correct.

13 SUMMARY

14 Plaintiff's current amendment request has no more credence in fact or law than any
15 of Plaintiff's five previous (perhaps more than five) similar requests and in fact is even of
16 less credibility than any of Plaintiff's prior motions as is revealed by examining Plaintiff's
17 fraud charges.

18 Plaintiff's requests are "futile" and represent "futility" which in and of itself is an
19 appropriate basis for this Court to deny Plaintiff's Motion for Leave to Amend. As stated
20 in Timmons v. Ross Dress for Less, Inc., 234 Ariz. 569, 572, ¶17, 324 P.3d 855, 858 (App.
21 2014), where the Court of Appeals found:

22 "Motions to amend should be granted unless the court finds
23 specific cause, such as futility, to deny the amendment." Id.

24 Indeed, Plaintiff's requests for relief and demands for judgment are futile and beyond
25 that which the Court, under any circumstance, can legally grant. In addressing these issues,
26 the Arizona Court of Appeals, as recently as 2017, in Twin City Fire Ins. Co. v. Leija, 403
27 P.3d 587 (Ariz. App. 2017), not only cited Timmons, supra, but also found that the superior
28 court did not abuse its discretion in denying a motion to amend in stating:

1 “Although mere delay may not justify denial of leave to amend,
2 ‘[n]otice and substantial prejudice to the opposing party are
3 critical factors in determining whether an amendment should be
4 granted.’ Owen v. Superior Court, 133 Ariz. 75, 79, 649 P.2d
5 278, 282 (1982) (quoting Hageman v. Signal L.P. Gas, Inc., 486
6 F.2d 479, 484 (6th Cir. 1973)). ‘[P]rejudice is ‘the
7 inconvenience and delay suffered when the amendment raises
8 new issues or new parties into the litigation.’ Spitz v. Bache &
9 Co., Inc., 122 Ariz. 530, 531, 596 P.2d 365, 366 (1979) (quoting
10 Romo v. Reyes, 26 Ariz.App. 374, 376, 548 P.2d 1186 (1976).”
11 Twin City Fire Ins. Co., supra, at p. 595.


12 Clearly, new issues are being raised by the Plaintiff in her proposed Amended
13 Complaint and beyond these new issues, each of which represent futile efforts on the part of
14 the Plaintiff. Plaintiff’s proposed amendments should not be allowed where they are but a
15 futile gesture. As stated by Walls v. Arizona Department of Public Safety, 170 Ariz. 591,
16 826 P.2d 1217 (Ariz. App., 1991), the Arizona Court of Appeals in dealing with a previously
17 entered summary judgment followed by a request to amend the pleadings, the Court found:

18 “On this same issue, the court in Eria v. Texas Eastern
19 Transmission Corp., 377 F.Supp. 344, 345 (E.D.N.Y. 1974),
20 stated as follows: ‘While it is true that leave to amend a pleading
21 is usually freely given, ... if the amended pleading could be
22 defeated by a motion for summary judgment, [the court’s]
23 grant[ing] [of] leave to amend would be a futile gesture.’
24 Therefore, the trial court did not abuse its discretion in denying
25 Walls’ leave to amend his complaint.” Walls, supra, at p. 1223.

26 Plaintiff’s request should be denied and for the reasons above this Court should
27 immediately award Defendants their fees and costs including the fees and costs previously
28 incurred in responding to each of Plaintiff’s prior failed motions to amend, motions for
injunctive relief, motions for declaratory judgment, motions for reconsideration, and motions
to amend orders.

RESPECTFULLY SUBMITTED this 23rd day of November, 2022.


LAW OFFICES OF DANIEL J. OEHLER


Daniel J. Oehler,
Attorney for Defendants

1 **COPY** of the foregoing emailed
2 this 23rd day of November, 2022, to:

3 Honorable Lee F. Jantzen
4 Mohave County Superior Court
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16 By: 
17 Patricia L. Emond, Legal Assistant

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

Response to Sixth Motion for Leave to Amend Complaint

EXHIBIT A

**ARS 39-161 Presentment of false instrument for filing;
classification (Arizona Revised Statutes (2022 Edition))**

§ 39-161. Presentment of false instrument for filing; classification

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in section 13-2001.

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

Response to Sixth Motion for Leave to Amend Complaint

EXHIBIT B

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.

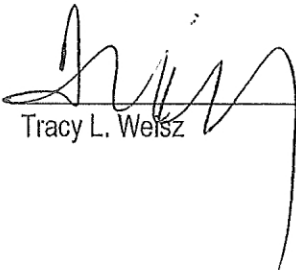
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Affidavit of Tracy L. Weisz (continued)

16. Your affiant, having reviewed the records of Defendant Fairway Constructors would advise that from the period of 1990 through the date of this Affidavit, the Defendants have constructed for its clients 17 homes in subdivision Tract 4076-B, no homes in subdivision Tract 4076-D (there are only 10 homes in this tract), and no homes in subdivision Tract 4163.

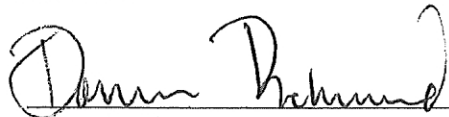
Further, your affiant sayeth not, this 8 day of November, 2019.


Tracy L. Weisz

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 8 day of November, 2019, by Tracy L. Weisz, known or proved to me to be the person whose name is subscribed in the within instrument and acknowledged that she executed the same for the purpose therein contained.

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


Notary Public,
My Commission Expires:



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

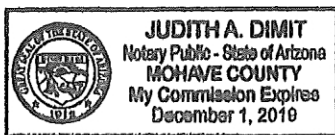
STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

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



AFFIDAVIT

Comes now, your affiant, ANN PETTIT, and upon her oath, states and alleges as follows:

1. That your affiant has been an Arizona licensed realtor continuously since 1984 and a licensed real estate broker continuously since 1988.
2. That your affiant has been actively pursuing her profession in the Bullhead City, Fort Mohave and Mohave Valley marketplace since 1984.
3. That your affiant, as the owner and broker of record at U.S. Southwest, has had over time multiple licensed associate real estate agents and/or associate brokers with U.S. Southwest, and there are currently 50 licenses directly associated with your affiant's three office locations all in accord with the attached **Exhibit A** to this Affidavit. U.S. Southwest is either the largest or certainly one of the largest real estate brokerage firms in Mohave County, Arizona.
4. That commencing in approximately 1990, your affiant has listed, either personally or with agents working in your affiant's offices, many undeveloped residential lots in Desert Lakes Golf Course & Estates, specifically including Tract 4076-B.
5. That from at least the early 1990s, your affiant and your affiant's licensed realtors have advertized their client's unimproved and listed lots in all Desert Lakes Golf Course & Estates tracts, including Tract 4076-B, and consistently utilized the standard real estate sale signs, with and without riders, and posted the subject signs on our customers/clients' lots, all in conformity with other real estate office listings in the Desert Lake Golf Course & Estates area.
6. That your affiant and affiant's office has for not less than 20 years last past utilized signs in many residential projects including most if not all of the various Desert Lakes Golf Course & Estates tracts, specifically including Tract 4076-B. The subject signage where the lot owner is a builder and/or developer who provides their "will build to suit" sign of appropriate size and your affiant's real estate firm provides a rider for additional contact information. Such signs including riders are within the standard regarding signage measurements allowed by applicable Mohave County or Bullhead City Code Ordinances. (See, **Exhibit B**, letter to Plaintiff from ADRE regarding signage issue being a Mohave County sign ordinance issue. See also, Mohave County's interpretation of Mohave County's ordinance **Exhibit C**.)
7. That during the entire time hereinabove referenced (1990-present), your affiant is aware of real estate firms having listed unimproved lots throughout the various Deserts Lakes Golf Course & Estates subdivisions, including Tract 4076-B, have consistently advertized the listed lots availability by installing a standard real estate sign thereon.
8. That your Affiant is unaware of any objections to this process over the past approximate 30 years until July of 2019 when, amongst other things, a person by the name of Nancy Knight complained of this process to the Arizona Department of Real Estate who referred her to the Mohave County Ordinance Enforcement.

Affidavit of Ann Pettit (continued)

9. That your affiant attaches hereto examples of various unimproved lots in Desert Lakes Golf Course & Estates, including Tract 4076-B, that your affiant has been able to recover from past records dating back to 2003 that included signage located thereon. See **Exhibit D** attached.

10. That your affiant is aware that in 2009, the Arizona State Legislature passed a law prohibiting the enforcement of CC&R provisions that include sign restrictions and authorizing use of a standard size real estate sign not to exceed 18" x 24" along with a rider not to exceed 6" x 24" on all residential lots within the State.

11. That your affiant is and has been a member of the Bullhead City Planning & Zoning Commission and is familiar with general zoning and residential construction issues.

12. That your affiant has handled real estate transactions either as the real estate agent or agent's broker between 1984 and the present that have included a minimum of many unimproved residential lots, including many Desert Lakes Golf Course & Estates lots, specifically including Desert Lakes Golf Course & Estates Tract 4076-B.

13. That many of Desert Lakes Golf Course & Estates Tract 4076-B lots are in the range of 7,000 square feet, typically measuring 70 feet x 100 feet, and many 60 feet x 100 feet.

14. That Mohave County is the permitting jurisdiction through its building and planning departments. The SDR (Special Development Residential) zoning in Tract 4076-B requires a front and rear yard setback minimum of 20 feet and side yard setback of 5 feet leaving a typical residential structure envelope of 60 feet x 60 feet for a 70 feet x 100 feet lot, and a 50 feet x 60 feet pad for a 60 feet x 100 feet lot.

15. Mohave County regulations for SDR zoned properties allow the projection of a covered patio a distance of 50% of the applicable rear yard setback which in the case of Desert Lakes Golf Course & Estates Tract 4076-B would allow a covered patio to extend to within a distance of 10 feet from the rear yard property line.

16. That your affiant is of the opinion that should the owners of the remaining minimum number of undeveloped lots in Desert Lakes Golf Course & Estates Tract 4076-B be prohibited from building out their lots in accord with their typical neighboring existing homeowners, the value of these unimproved lots will be severely reduced and the remaining unimproved lots in Tract 4076-B will become much more difficult to market and the anticipated market value of these lots will be adversely affected.

17. That although your affiant has been actively involved in marketing real estate in the area of Desert Lakes Golf Course & Estates since the point in time of these subdivisions development, your affiant is unaware of any entity, person or association of any type that has been in existence over the past approximate three decades that reviews, approves, regulates, or oversees the construction of homes, improvements, architecture, design, plot plans, fencing, signage, size, setbacks, or any development issues of any type regarding Deserts Lakes Golf Course & Estates Tract 4076-B other than the standard requirements attributable to Mohave County's Zoning Ordinance and the applicable Building Code adopted by Mohave County, currently International Residential Code (2012 Ed.).

Affidavit of Ann Pettit (continued)

18. That your affiant and the real estate sales community doing business in the geographical area of the various Desert Lakes Golf Course & Estates Tracts, including Tract 4076-B, have found that these properties, without an active homeowners association, are more desirable to many people and hence, have become more valuable in the marketplace. See Exhibit E attached.

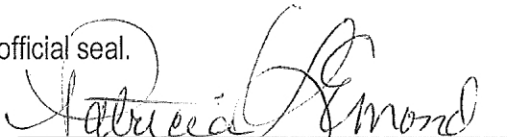
Further, your affiant sayeth not, this 30 day of October, 2019.

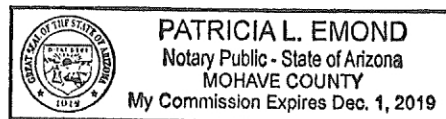

Ann Pettit

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 30th day of October, 2019, by Ann Pettit, known or proved to me to be the person whose name is subscribed in the within instrument and acknowledged that she executed the same for the purpose therein contained.

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


Notary Public,
My Commission Expires: 12-1-2019



AFFIDAVIT


Comes now, your affiant, ALAN PATCH, and upon his oath, states and alleges as follows:

1. That your affiant resides at 1965 E. Lipan Boulevard, in subdivision Tract 4076-D of Desert Lakes Golf Course & Estates having acquired his home in June 2015. Your affiant's home was built in approximately 2002.
2. That your affiant's home was a resale of a residence built by a prior owner.
3. That your affiant's home has a covered patio in the rear yard that extends into the rear yard to a distance of approximately 14' 6" of affiant's rear property line.
4. That your affiant has no side yard fence on the left side of your affiant's residence and on the right side there is a CMU block wall that runs to the golf course wall. Your affiant's golf course wall is constructed of CMU block with a stone overlay, is 32" high and includes a gate to the golf course. Your affiant's neighbor's golf course wall is constructed of concrete blocks and is also 32" high with a golf course gate access.
5. That the lot on one side of your affiant is improved with a residence that also has a rear or back yard covered patio that also extends toward his back yard fence to a distance of approximately 10'.
6. Viewing your affiant's home from the golf course in **Exhibit A** to this Affidavit depicts your affiant's home at 1965 E. Lipan Boulevard, your affiant's neighbor at 1961 E. Lipan Boulevard on the right, the vacant lot that borders your affiant on the left 1971 E. Lipan Boulevard, and the white roof residence at 1977 E. Lipan Boulevard is adjacent to the vacant lot's left side. The rear yard setback on 1977 E. Lipan Boulevard is approximately 9'3" from its covered deck to the rear yard property line.
7. Should the owner of the vacant lot be prohibited to build on his lot with a covered patio that substantially matches his neighbors' existing covered patios, the marketability and therefore value will be severely negatively impacted.
8. That your affiant would not have purchased his home had it not included his backyard patio for which there would not have been an adjacent pad size if the former owner had not been able to utilize at least 10' of the rear yard setback.
9. That your affiant's home has a rear yard fence consisting of block with stone, is 32" high, includes a gate access to the golf course and is equipped with a roof mounted TV antenna. This is predominately similar to most of your affiant's neighbors' golf course homes.
10. Your affiant was favorably motivated to purchase his home when he became aware that there is no HOA and the problems, difficulties and expenses that result from HOA involvement. Your affiant was unaware of there being any building restrictions that have ever been enforced or attempted enforcement

Affidavit of Alan Patch (continued)

thereof until your affiant heard that a neighbor in an adjoining subdivision was attempting to restrict building the few remaining undeveloped lots in Tract 4076-B.


Further, your affiant sayeth not, this 1 day of October, 2019.


Alan Patch

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 1st day of October, 2019, by Alan Patch, 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: 12-1-2019

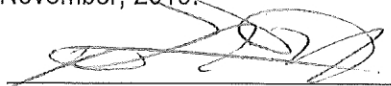


AFFIDAVIT

Comes now, your affiant, DOUGLAS MCKEE dba Grand Canyon Development, and upon his oath, states and alleges as follows:

1. That your affiant is a licensed general residential contractor holding a "B" general license issued by the Arizona Registrar of Contractors since August of 1994. Your affiant also holds an Arizona Registrar of Contractor B-2 general commercial contracting license.
2. Your affiant has, since 1994, built multiple single family homes throughout Desert Lakes Golf Course & Estates Tracts, including Tract 4076-B, for his clients.
3. That all homes your affiant has built have been fully permitted by Mohave County Development Services and all homes built by your Affiant have included covered patios/projections into the rear yard setback of 20 feet generally to a distance of 10 feet.
4. That in the professional opinion of your affiant and given the fact that the vast majority of existing homes include constructed projections into the rear yard setback (as authorized under Mohave County zoning and permitting authority) should any of the minority number of remaining undeveloped lots be prohibited from the same right to construct into the rear setback the value of these unimproved lots will be substantially devalued in that they typically have a small building envelope to begin with and virtually all home buyers are highly desirous of having a covered back yard patio which is generally not available on the relatively small size of lots available in Tract 4076-B. The vast majority of homeowners have already built within the 20 foot rear yard setback as is permitted under past and existing Mohave County guidelines.
5. Your affiant, for affiant's customer/client has built on his customer/client's lots at least two homes with liveable square footage under 1,400 square feet and is familiar with multiple additional residences in these tracts of additional homes less than 1,400 square feet built by others.
6. Your affiant has never heard of, been contacted by, nor otherwise been approached by anyone claiming to be a member of Desert Lakes Golf Course & Estates architectural committee. Nor has your affiant ever been advised by anyone that there is nor that there ever was any CC&R restrictions applicable to Tract 4076-B or any other Deserts Lakes Golf Course & Estates tracts from 1994 to the present regarding any residential or other construction project therein located.
7. Your affiant consistently recalls since at least 1994 that there have been many signs from both contractors and single lot owners throughout all of the various Desert Lakes Golf Course & Estates subdivisions, including Tract 4076-B, offering to build custom homes or simply "for sale" offerings on the unimproved lots they either owned or for which they represented the owners.

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



Douglas McKee

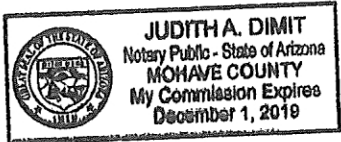
Notarization on Following Page

Affidavit of Douglas McKee (Continued)

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 12th day of November, 2019, by Douglas McKee, 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

AFFIDAVIT

Comes now, your affiant, ROBERT L. MORSE, and upon his oath, states and alleges as follows:

1. Your affiant is licensed through the Arizona State Board of Technical Registration, Civil Engineer License No. 14395 and Registered Land Surveyor License No. 16581. The subject licensure has been continuously maintained since 1982 and 1984, respectively, through the present.

2. Your affiant completed visual and survey review of the properties located at 1795 East Lipan Circle (Lot 10) and 1803 E. Lipan Circle (Lots 8 and 9), Desert Lakes Golf Course & Estates Tract 4163, on the 30th day of December, 2015, and again more recently visited the adjacent property located at 1795 E. Lipan Circle on September 19, 2019.

3. Your affiant has reviewed **Exhibit A**, attached, survey of Lots 8 and 9 of Desert Lakes Golf Course & Estates Tract 4163 completed by Registered Land Surveyor Lance C. Dickson on or about October 9, 2015.

4. Referenced on **Exhibit A** is the ownership of the subject property "William" and "Nancy" Knight.

5. Lance C. Dickson is a Registered Land Surveyor holding Arizona State Board of Technical Registration License No. 46643.

6. Your affiant has reviewed the attached **Exhibit A** and has found the points along the left (northwesterly) property line separating the Knight residence from the neighboring property is 4.60 feet and the distance from the southeasterly corner of the Knight residence to the outside of the block wall is 4.25 feet (please refer to enlarged print reflecting these measurements in attached **Exhibit A1**).

7. The covered patio of the Knight residence at its closest point to the golf course (rear yard setback) is approximately 8.5 feet. (See on ground photograph attached as **Exhibit E**.)

8. Your affiant has reviewed the Declaration of Covenants, Conditions and Restrictions (CC&Rs) for Desert Lakes Golf Course & Estates 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, for Tract 4076-B ("CC&Rs"), the underlying original subdivision out of which Tract 4163 was created via an abandonment of Tract 4076-B and the resubdivision of Parcel VV and Parcel WW of Tract 4076-B now known as Tract 4163.

9. Paragraph 6 of Tract 4076-B CC&Rs (**Exhibit B**) prohibit construction and/or construction projections within 20 feet of the rear property line of any homes/lots within Tract 4076-B, and further prohibits any protrusion of a home within 5 feet of the side yard setback.

10. The Knight residence (Lots 8 and 9) is in violation of the Tract 4076-B restrictions above referenced in both the side yard restriction and significantly (8.5 feet) in regard to the rear yard CC&R setback that require a minimum of 20 feet.

11. Your affiant had occasion to photograph the rear yard fence at the Knight residence located on Lots 8 and 9, Tract 4163, Desert Lakes Golf Course & Estates on the 19th day of September, 2019, and attaches hereto a copy of photographs (**Exhibits C, D, E and F**), each of which reflect the fact that a combination 8x8x16 concrete masonry units (concrete blocks) and wrought iron fence, white in color, with a finished height of 5 feet 4 inches has been constructed across the rear yard (parallel to the golf course) and to an approximate distance of 15 feet along the side yard of the Knight residence. In addition, the subject property has a secondary chain link fence along each side yard 30 feet long and 15 feet high above ground level (**Exhibit G**).

12. The measured height from exterior grade level to the top of the subject fence, concrete and wrought iron portion of the white fence is 5 feet 4 inches.

13. The CC&Rs, in paragraph 8, state:

"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." (Emphasis supplied.)

14. Paragraph 5 of the Tract 4076-B CC&Rs (**Exhibit B**), in pertinent part, states:

"... no exposed radio, radio-telephone, television or microwave receiving or transmitting antennas, masts or dishes; ..."

15. Attached is **Exhibit H** depicting the Knight residence exterior including a dish receiver as the same appeared on September 19, 2019, to your affiant.

16. In sum, the conditions noted by your affiant on or about the 30th day of December, 2015, and subsequently on September 19, 2019, at approximately 11:20 to 11:45 a.m. regarding the Knight residence versus the 1989 CC&Rs applicable to the Tract 4076-B subdivision are as follows:

a. The side yard setback of 5 feet minimum required is in violation, as built actual 4.60 feet and further reduced as the Knight residence structure approaches the rear yard to 4.25 feet;

b. Your affiant has also received a statement by Mrs. Knight wherein she admits in writing that her home is closer than the CC&R required 5 feet from the side yard property line. See **Exhibit I**.

c. The rear yard minimum setback for any building and projection of 20 feet is in violation as the actual projection of the Knight residence into the rear yard is to a distance of approximately 8.5 feet;

d. Wrought iron fencing is required 15 feet from the rear property line along each side yard and parallel to the golf course, black in color and is limited to a maximum of 5 feet in height. Actual for the Knight residence, the fence is a combination of concrete block, wrought iron and chain link, white in color, with chain link measuring to 15 vertical feet in height. The use of chain link is specifically prohibited.

e. Roof mounted dish antennas are prohibited. Knight residence is equipped with a roof mounted dish antenna.


Further, your affiant sayeth not, this 24th day of September, 2019.

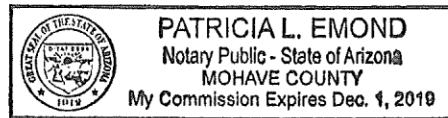

Robert L. Morse, P.E., R.L.S.

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 24th day of September, 2019, by Robert L. Morse, 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: 12-1-2019



AFFIDAVIT

Comes now, your affiant, SUNIL KUKREJA, and upon his oath, states and alleges as follows:

1. Our company, under a Chicago Title Insurance Company Trust, in 1998, purchased approximately 183 lots in Desert Lakes Golf Course & Estates various individual subdivisions, including a significant number of unimproved lots in the subdivision known as Desert Lakes Golf Course & Estates Tract 4076-B. This purchase is evidenced in part via a series of transactions including but not necessarily limited to Exhibit A to this Affidavit.

2. At the time of our purchase and thereafter, there was no homeowners association established and to the best of your affiant's knowledge, there had never been an homeowners association overseeing or established for the purpose of enforcing any declarations or restrictions, nor was there any "committee of architecture" either formal or informal regarding the development of Tract 4076-B. Beyond obtaining an appropriate "building permit" from Mohave County, no other reviewing entities existed.

3. Our company built approximately 100 homes on the Desert Lakes Golf Course & Estates lots. Our homes ranged in size from approximately 1,150 square feet to in excess of 2,000 square feet. Most but not all homes included covered rear yard patios that were typically built in accord with the applicable Mohave County Zoning Ordinance to within 10 feet of the rear yard property line. This was a feature that was of great import to the majority of our customers.

4. During the period of our company's direct and active sales in Tract 4076-B, we consistently used high exposure signage throughout subdivision Tract 4076-B advertising our company's homes including on lot advertising of availability of the subject undeveloped lots for home construction, including the models and our on-site sales facilities.

5. I recall the existence throughout Tract 4076-B of signs by other builders and owners advising the public of the availability of models and lots (which we occasionally sold as future undeveloped home sites to interested buyers).

6. The availability of unimproved lots with "for sale" signs or construction of a future home was used not only by our home building company, but many of the local builders and lot owners through Tract 4076-B. Marketing via signage of this type was the marketing custom used by all.

7. Our homes utilized various fencing materials both adjacent to the golf course as well as off golf course lots, most often utilizing a combination of CMUs (concrete masonry units) or blocks were used with some wrought iron painted to the individual buyer's specifications. Owners who desired to have rear yard gate access to the golf course were always accommodated. Gate access to the golf course was important to most of our clients and very important to many of them.

8. During our company's active construction years at this site commencing in 1999, no objection from any pre-existing homeowner nor any other source was ever received regarding home signs, setbacks, fencing, gate access, paint colors, landscaping, roof-mounted antennae, glazing, the use of chain link fencing or the lack of any rear yard fencing, storage on developed or undeveloped lots, signage and our advertising on both models and unimproved lots.

Affidavit of Sunil Kukreja (continued)

9. The majority of the lots in Tract 4076-B are small averaging ±7,000 square feet. Should lot owners or prospective lot and home purchasers be restricted from building covered decks or patios in accordance with Mohave County regulations in the rear yard setback to a distance of 10 feet, the value of our remaining lots will be severely reduced, as will the property values of all other unimproved lot owners, to the damage of the owners.

Further, your affiant sayeth not, this 20 day of ~~September~~ ^{November}, 2019.



Sunil Kukreja

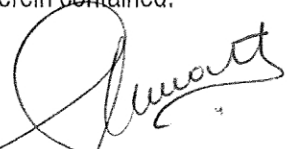
STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI DADE)

~~NOVEMBER~~
~~DECEMBER~~

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 20 day of ~~September~~, 2019, by Sunil Kukreja, 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.

NY License 482 160 892.

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



Notary Public,
My Commission Expires:



SANDRA MARTIN
MY COMMISSION # GG 082213
EXPIRES: July 12, 2021
Bonded Thru Budget Notary Services

AFFIDAVIT

Comes now, your affiant, GREG GREEN, President of Desert Glass & Mirror, Inc., and upon his oath, states and alleges as follows:

1. That your affiant moved to the Bullhead City area in 1989 and opened his sole proprietorship known as Desert Glass & Mirror.

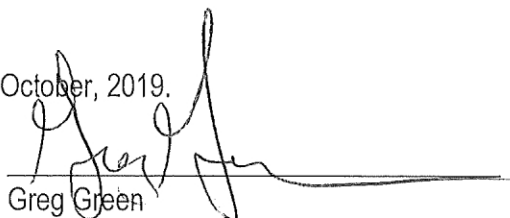
2. That your affiant is now and has been a licensed contractor, licensed by the Arizona Registrar of Contractors continuously since 1989 originally holding a commercial glazing license C-65 as well as a residential glazing license R-65.

3. That your affiant currently holds a combined commercial and residential license CR-65 which permits him to replace and install both commercial and residential windows.

4. That your affiant has installed both original and replacement (broken) windows in virtually all of the multiple Desert Lakes Golf Course & Estates subdivisions, including the subdivision known as Desert Lakes Golf Course & Estates Tract 4076-B, regarding golf course houses and estimates 50-100 broken windows have been replaced.

5. That your affiant cannot recall replacing or installing a single tempered glass window that faces the golf course at any Desert Lakes Golf Course & Estates residences over the 30 years that your affiant has provided glazing services throughout these subdivisions (excluding sliding glass doors or windows within 18 inches of any floor surface or within 12 inches of a door that are required to be tempered under applicable Mohave County adopted building codes).

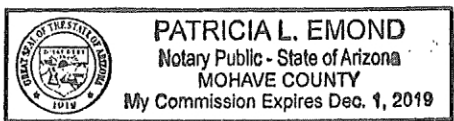
Further, your affiant sayeth not, this 7th day of October, 2019.

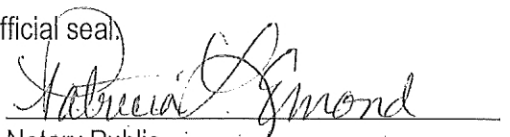

Greg Green

STATE OF ARIZONA)
) ss.
COUNTY OF MOHAVE)

SUBSCRIBED AND SWORN TO before me, the undersigned officer, this 7th day of October, 2019, by Greg Green, 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: 12-1-2019

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, initiated 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

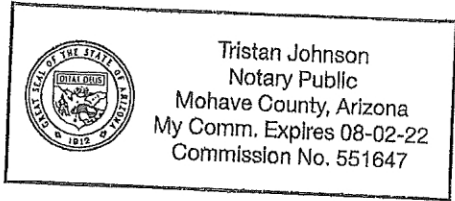
Notarization on Following Page

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, *[Signature]*
My Commission Expires: 8-2-22