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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

BrickHouse Trust, Dated October 27, 2011,
by and through Nicholas A. and Kathleen A.
Heth, trustees,

Plaintiff,

vs.

Continental Country Club, Inc., an Arizona
non-profit corporation; Jon Held, an
individual; Kathy Mitchell, an individual;
Chuck Thompson, an individual; Bobby
Goitia, an individual; William McGrath, an
individual; Wesley Dunlap, an individual;
Terry Makinster, an individual, DeeDee
Malmstone; an individual, Josie McCarthy, an
individual; and DOES 1 through 10 and ABC
Entities 1-10,

Defendants.

No. S0300CV202100446

**PLAINTIFF BRICKHOUSE TRUST'S
MOTION FOR PARTIAL JUDGMENT
ON THE PLEADINGS RE: CLAIM
FOR DECLARATORY JUDGMENT**

(Assigned to the Hon. Stacy Krueger)

Div. 3

(Oral Argument Requested)

In this action, Plaintiff challenges Defendants' amendment to the governing covenants, conditions, and restrictions ("CC&Rs") that creates an entirely new restrictive covenant on Plaintiff's real property which prohibits rentals for a period of less than thirty days. On March 22, 2022, the Arizona Supreme Court issued its controlling opinion in *Kalway v. Calabria Ranch HOA, LLC*, 2022 WL840185 (Ariz. 2022), holding that "a homeowner's association," *like the Defendants here*, "cannot rely on a general-

1 amendment-power provision in its covenants, conditions, and restrictions,” as
2 *Defendants did here*, “to place restrictions on landowner’s use of their land” where the
3 original declaration did not provide “sufficient notice” to future homeowners “that they
4 might be subject to such obligations.” *Id.* at ¶¶ 1 and 14. Because the declaration that
5 governed Plaintiff’s property at the time of Plaintiff’s purchase did not authorize
6 amendments to add new restrictions and, moreover, did not give any notice, let alone
7 “sufficient notice,” of the potential for a restrictive covenant limiting the right to rent
8 Plaintiff’s residence—a right that is expressly confirmed in the subject declaration,
9 Defendants’ amendment adding a new restriction that prohibits rentals for less than 30
10 days is invalid under *Kalway*. Accordingly, Plaintiff respectfully requests, pursuant to
11 Rule 12(c), that the Court enter a declaratory judgment that “blue pencils” the amended
12 CC&Rs, “striking [the invalid] severable provisions.” *Id.* at ¶ 8.¹

13 **I. MATERIAL FACTS**

14 **A. Plaintiff Owns Real Property in Continental Country Club**

15 In 2017, Plaintiff’s Trustors purchased a single-family residence (the Property”)
16 located in Continental Country Club, Inc. (“CCC”). Second Amended Complaint
17 (“SAC”), ¶ 1. At the time of purchase, the Property was governed by and subject to the
18 CC&Rs set forth in the Amended and Unified Declaration of Restrictions recorded with
19 the Coconino County Recorder’s Office at document number 3399677, recorded on
20 August 25, 2006 (the “Unified Declaration”). SAC, ¶ 15. The Unified Declaration is
21 attached hereto as Exhibit A.² The Unified Declaration states that it is intended to “carry

22
23 ¹ Pursuant to Rule 12(j), a Good Faith Consultation Certificate has been filed concurrently
herewith.

24 ² Because the Unified Declaration is a recorded document that is referenced in the SAC
25 and attached as Exhibit H to Defendants’ Answer, the Court may consider the Unified
26 Declaration without converting this Rule 12(c) motion to one for summary judgment
under Rule 12(d). *See* Rule 10(c), Ariz. R. Civ. P. (“a written instrument that is an exhibit
to a pleading is a part of the pleading for all purposes”); *Workman v. Verde Wellness*

1 out a general scheme of improvement and development” to “complement and enhance”
2 Flagstaff’s “natural beauty and attractiveness” and “guide further development and use ...
3 to be in harmony with and appear indigenous to its natural surroundings.” *Id.* at p. 1. The
4 general purpose statement contains no language suggesting to a reasonable purchaser that
5 the CC&Rs were intended, or could potentially be amended, to prohibit the rental of entire
6 lots for periods of less than 30 days.

7 **B. The Unified Declaration Does Not Place a Temporal Restriction On**
8 **Renting or Leasing Plaintiff’s Property**

9 The Unified Declaration does not impose a temporal limitation on Plaintiff’s
10 right to rent or lease the entire lot to a single family. *Id.* To the contrary, the Unified
11 Declaration confirms each owner’s natural right to rent or lease their property (for any
12 period of time) by clarifying that certain restrictions in the Unified Declaration **do not**
13 **prohibit** renting or leasing an entire lot to a single family. For example, the Unified
14 Declaration prohibits certain commercial trades or businesses, but clarifies that “leasing of
15 a Lot by an Owner thereof shall not be considered a trade or business within the meaning
16 of this section.” Unified Declaration at § 2, Ex. A. Likewise, while the placing of certain
17 “signs, billboards, or objects” on an owner’s lot is prohibited, the Unified Declaration
18 expressly authorizes “a person desiring to ... rent, or lease a Lot or house” to place a sign
19 indicating the property is available. *Id.* at § 7, Ex. A. Lastly, although prohibiting
20 “boarders or renter[s] of a portion of any of said lots,” the Unified Declaration confirms
21 that “an entire lot, together with improvements thereon, **may be rented** only to a single
22 family.” *Id.* at § 12, Ex. A. No other provision in the Unified Declaration touches on or
23 relates to renting or leasing the owners’ property.

25 *Center, Inc.*, 240 Ariz. 597, 601, ¶ 10 (App. 2016); *Strategic Development and Const., Inv.*
26 *v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 64, ¶ 13 (App. 2010).

1 **C. Defendants Relied On the Unified Declaration's General-**
2 **Amendment-Provisions to Amend the CC&Rs**

3 Defendants adopted the new restriction prohibiting rentals for less than 30 days
4 pursuant to the general-amendment-power provisions in the Unified Declaration.
5 Specifically, the Unified Declaration has two general-amendment-power provisions, both
6 of which are substantively identical. In § 15, the Unified Declaration states that “[a]ll
7 changes to these Restrictions” require the “written approval of the Owners of two-thirds
8 (2/3) of the lots in the Subdivisions and two-thirds (2/3) of the Association’s Board of
9 Directors.” (emphasis added). Similarly, § 20 states: “These Restrictions ... shall be
10 binding upon all owners of record ... unless revoked or amended at any time by the
11 written approval of the Owners of not less than two-thirds (2/3) of the Lots in the
12 Subdivision” and “not less than two-thirds (2/3) of the Association’s Board of
13 Directors[.]” *Id.* (emphasis added). Thus, neither of these provisions creates a right in
14 the two-thirds majority to establish a new or additional restriction that is not contained in
15 the Unified Declaration. To the contrary, by expressly referencing “these Restrictions,”
16 both amendment provisions contemplate changes to the existing restrictions only.

17 Since at least 2012, residences in Continental Country Club have been used for
18 rentals for periods of less than 30 days. Plaintiff’s property has been used for both
19 personal vacation purposes and for short term rentals since 2017. SAC, ¶ 1.
20 Recognizing that the Unified Declaration does not contain a temporal restriction on the
21 rental of an entire property, Defendants, in 2012 and 2018, attempted to obtain the
22 owners approval to amend the Unified Declaration to prohibit rentals for a period of less
23 than 30 days. SAC, ¶¶ 28-41. Both of these efforts were rejected by the owners. *Id.*

24 Despite the owners expressing their lack of support for such a restriction on
25 their properties, Defendants embarked on a third attempt to amend the Unified
26 Declaration in 2020. SAC, ¶¶ 69 and 70. On July 10, 2020, Defendants circulated

1 “written consent forms” requesting that the owners approve an amendment to the Unified
2 Declaration to prohibit rentals for less than 30 days. SAC, ¶ 71.³

3 The first official counting of written consent forms was conducted by the
4 Defendants on February 23, 2021—seven months after the written consents were first
5 circulated. SAC, ¶ 101. After completing the counting, Defendants announced that the
6 proposed amendment had not garnered the necessary support of two-thirds of the owners.
7 SAC, ¶102. Defendants, however, continued their effort to amend the Unified
8 Declaration and left the voting open indefinitely. On September 28, 2021—more than
9 fourteen months after the process began, Defendants announced that they had received a
10 sufficient number of written consent forms in favor of the proposed amendment and,
11 thereafter, caused the “Certificate of First Amendment to the Amended and Unified
12 Declaration of Restrictions Continental Country Club” to be recorded with the Coconino
13 County Recorder’s Office at document number 3929838 on September 29, 2021 (“First
14 Amendment”). SAC, ¶ 114. The First Amendment is attached hereto as Ex. B.⁴

15 **D. The First Amendment Adds a New Restriction That Prohibits**
16 **Rentals for Less Than 30 days and Adds Other New Restrictions**

17 Unlike the Unified Declaration, the First Amendment purports to place a
18

19 ³ In addition to being inconsistent with the voting requirements in the Unified Declaration
20 and Defendants’ Bylaws, the “written consent” process employed by the Defendants: (1)
21 did not use unique identifying numbers to ensure only valid written consents were
22 counted, *Id.*, (2) allowed written consents by owners who had sold their property to be
23 counted, SAC, ¶¶ 86-87, (3) excluded written consents from owners who purchased their
24 property after July 10, 2020, and (4) identified no deadline for the return of the July 10,
2020 written consent form, resulting in an open-ended amendment process, SAC, ¶¶ 90-
91. In addition, Plaintiff’s lawsuit challenges the validity of Rules adopted by Defendants
that purport to prohibit rentals for less than 30 days. These issues, however, are not
relevant to the issue raised in this Motion.

25 ⁴ Like the Unified Declaration, the First Amendment is a publicly recorded document and
is attached as an Exhibit to Defendants’ Answer. Thus, it can be considered by the Court
in deciding this Rule 12(c) motion without conversion under Rule 12(d). *See* Rule 10(c),
26 Ariz. R. Civ. P.; *Workman*, 240 Ariz. at ¶ 10; *Strategic Development*, 224 Ariz. at ¶ 13.

1 temporal limitation on the owners' right to rent their entire property to a single family
2 and adds a provision requiring that the owners "ensure" that "occupants will comply
3 with" the CC&Rs and Defendants' Rules. Specifically, the First Amendment to the
4 Unified Declaration "adds paragraph 26 to the Declaration," which is a new restrictive
5 covenant stating that:

6 All Lots that are rented must comply with all the following
7 restrictions:

8 a) No Lot and/or portion of a lot may be Rented, or
9 advertised to be Rented, for a term of less than (30)
10 consecutive days, and no new lease may begin less than
11 thirty (30) days after the start date of the prior lease.
12 However, Owners may continue to Rent their Lot for less
than thirty (30) day periods until the first of the following
events occur: (i) one (1) year (365 consecutive days) from
the date this amendment is recorded; or (ii) upon title
change to the Lot and/or transference of title to the Lot in
any form.

13 b) "Rent" is defined as lease, sublease, license, occupancy
for consideration, vacation rental, or timeshare.

14 c) The Owner must ensure that all Rentals and occupants
15 of such Rentals comply with all of the terms of these
Restrictions and the Rules and Regulations of the
Association.

16 First Amendment, p. 1, Ex. B.

17 **II. Legal Argument**

18 Pursuant to Rule 12(c), Plaintiff is entitled to entry of judgment in its favor on
19 its claim for declaratory judgment. Specifically, Plaintiff requests a judgment declaring
20 that certain provisions of the First Amendment (as explained herein) are stricken.

21 **A. Rule 12(c) Standard**

22 After the pleadings have closed, a party may file a motion requesting judgment
23 on the pleadings. Rule 12(c), Ariz. R. Civ. P. In deciding such a motion, "the court may
24 consider as true such allegations of the complaint as are admitted by the answer." *Pac. Fire*
25 *Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376 (1958). In addition, a court may

1 consider “a written instrument that is an exhibit to a pleading,” Rule 10(c), Ariz. R. Civ. P.,
2 and “public records referenced in a Complaint,” *Wilbur-Ellis Co. v. Arizona Dep’t of*
3 *Revenue*, 2019 WL 275772, at *2 (App. 2019) (memorandum decision). If the record sets
4 forth a claim for relief and the answer fails to assert a legally sufficient defense, the
5 “plaintiff is entitled to judgment.” *Pac. Fire Rating Bureau*, 83 Ariz. at 376.

6 Here, the sole issue presented is a legal issue: whether the new restrictions in the
7 First Amendment are invalid under the “sufficient notice” test in *Kalway*. The
8 interpretation of CC&Rs is a question of law. *Kalway* at ¶9. Because the Court will
9 decide this issue by examining the plain language of the Unified Declaration and First
10 Amendment, it is appropriately decided as a matter of law on a Rule 12(c) motion. As
11 explained herein below, this Motion should be granted.

12 **B. Contractual Interpretation of CC&Rs Under Arizona Law**

13 A declaration containing CC&Rs “constitute[s] a contract between the
14 subdivision’s property owners as a whole and the individual lot owners.” *Dreamland*
15 *Villa Community Club, Inc. v. Raimsey*, 224 Ariz. 42, 47, ¶ 19 (App. 2010); *Wilson v.*
16 *Playa de Serrano*, 211 Ariz. 511, 513, ¶ 7 (App. 2005). Declarations containing CC&Rs
17 are “special types of contracts,” where “unknown terms which are beyond the reasonable
18 expectations of the parties” are invalid and unenforceable. *Kalway* at ¶ 14.

19 Restrictive covenants on real property are construed narrowly and interpreted to
20 reflect the reasonable expectations of the affected homeowners. *Id.* at ¶ 1. Amendment
21 provisions in a declaration are likewise construed narrowly and may not be read to
22 subject a minority of landowners to unforeseen or unexpected restrictions. *Kalway* at ¶
23 19. Specifically, generic amendment provisions that only allow changes to the *existing*
24 covenants do not authorize “adding ... new covenants which have no relation to the
25
26

existing ones." *Lakeland Prop Owners Ass'n v. Larson*, 459 N.E.2d 1164, 1169 (Ill. App. 1984); *Wilkinson v. Chiwawa Communities Ass'n*, 327 P.3d 614, 622 (Wash. 2014).

C. Arizona Common Law Governing Amendments to CC&Rs

Arizona "permits the amendment of CC&Rs" in accordance with the "voting scheme specified in the original declaration." *Kalway* at ¶ 10 (citing A.R.S. § 33-1817(A)). In addition to any limitations stated in the original declaration, the right to amend CC&Rs is limited by the "common law, which prohibits some amendments even if passed" in accordance with the voting process in the declaration. *Id.*

Under the common law, amendments to CC&Rs without the unanimous consent of the owners are invalid unless the original declaration "give[s] sufficient notice of the possibility of a future amendment; that is, amendments must be reasonable and foreseeable." *Id.* This common law limitation on amendments prevents the creation of "new affirmative obligations where the original declaration did not provide notice to the homeowners that they might be subject to such obligations." *Id.* at ¶ 14.

A "general-amendment-power provision" in a declaration is not itself "sufficient notice" of the possibility of additional restrictions. *Id.* at ¶¶ 13 and 17. The "law will not subject a minority of landowners to unlimited and unexpected restrictions on the use of their land merely because the covenant agreement permitted a majority to make changes to existing covenants." *Id.* at ¶ 15 (internal quotations removed). Instead, courts must look "to the original declaration" to determine if it gave "notice that a restrictive covenant or affirmative covenant exists and that the covenant can be amended to refine it, correct an error, fill in a gap, or change it in a particular way." *Id.* at ¶¶ 16-17. That is, "future amendments cannot be 'entirely new and different in character,' untethered to an original covenant." *Id.* at ¶ 17 (quoting *Lakeland*, 459 N.E.2d at 1167); *see also Wilson*, 211 Ariz. at 513, ¶ 7 ("If the recorded declaration does not contain or at

1 least provide for later adoption of a particular restriction or requirement, that restriction
2 or requirement is invalid.”)

3 The “sufficient notice” test is an “objective inquiry” and any “doubts [are]
4 resolved against the validity of a restriction.” *Id.* at ¶ 17. Applying the “sufficient notice”
5 test to the new restrictions that had been approved by all eligible voters except for the
6 plaintiff, *Kalway* held that “very few of the challenged amendments survive.” *Id.* at ¶ 18.
7 The table below summarizes the *Kalway* Court’s ruling on the challenged amendments:

8 Original CC&R	Amendment	Court’s Ruling ⁵
9 Placed no limitation 10 on the size of garages or living spaces	Limited dwellings to 60% living space and 40% garages	Struck limit on size of residence because original declaration did not “put a property owner on notice” of potential restriction. <i>Id.</i> at ¶ 22-23.
11 Used, but did not 12 define, “garage”	Defined “garage”	Permissible. <i>Id.</i> at ¶ 24.
13 Prevented building 14 structures within setback area	Prohibited making any improvements within setback area	Struck because “non-structures” added to set back requirement due to lack of notice. <i>Id.</i> at ¶¶ 25-27.
15 Did not address 16 subdivision or voting rights	Prohibited voting by lots created subdivision	Struck due to lack of notice and because “loss of voting power for new lots” would “potentially less[en] the value of ... lots.” <i>Id.</i> at ¶¶ 28-29.
17 Permitted keeping six 18 “livestock” per 3.3 acres and did not 19 define livestock.	Broadly defined “livestock” and limited owner to 15, regardless of lot size	Revised to strike definition and limitation per lot because the limitation was “different in kind.” <i>Id.</i> at ¶¶ 30-34.
20 Placed no limitation 21 on “non-dwelling structures”	Limited “non- dwellings” to 2500 sq. ft. and prohibited obstructing views	Declared invalid because “nothing in original declaration put a reasonable homeowner on notice[.]” <i>Id.</i> at ¶ 35.
22 Did not require 23 approval of improvement plans	Required majority approval of plans	Declared invalid because Declaration “did not provide ... notice.” <i>Id.</i> at ¶ 36.

24
25 ⁵ The court also acknowledged that other provisions had been invalidated by the trial
26 court, including a provision authorizing compliance and enforcement provisions, noting
that those rulings had not been challenged by either party on appeal. *Kalway* at fn. 2.

Did not restrict subdivisions or improvements	Required approval of subdividing lot and improvements	Declared invalid because Declaration did not provide sufficient notice. <i>Id.</i> at ¶¶ 37-40.
Did not require managing deadwood, undergrowth and other fire hazards	Required managing deadwood, undergrowth and other fire hazards	Declared invalid, even though “provision might be advisable.” <i>Id.</i> at ¶ 41.

In summary, *Kalway* established five principles when applying the “sufficient notice” test. First, amendments creating new restrictions untethered to an existing provision in the original declaration are invalid. *Id.* at ¶¶ 22, 25, 35-41. Second, new restrictions that are similar but “different in kind from that in the original declaration” must also be stricken. *Id.* at ¶¶ 32-33. Third, an amendment that defines terms in the original declaration in a manner inconsistent with a reasonable owner’s understanding are invalid because such amendments “unreasonably alter[] the nature of the original CC&Rs and was not portended by them.” *Id.* at ¶¶ 30-32. Fourth, a new restriction that “potentially lessen[s] the value” of the owner’s property will be closely scrutinized. *Id.* at ¶ 28. Fifth, if the original declaration lacks “sufficient notice” of a new restriction, the new restriction is invalid even if it would be “advisable” and advance an important purpose. *Id.* at ¶ 41. As explained herein below, each one of these principles supports invalidating the new restrictions in the First Amendment.

D. Defendants’ New Restrictions Are Invalid

The First Amendment purports to add “new affirmative obligations” to Plaintiff’s Property that are “untethered to” any existing restriction in the Unified Declaration. These amendments are invalid because: (1) the Unified Declaration’s general-amendment-power provisions did not authorize the creation of new restrictive covenants and, additionally, (2) the Unified Declaration did not provide “sufficient

1 notice” of the possibility of these new restrictions. Thus, the new restrictions are invalid
2 and must be stricken.

3 *i. The First Amendment’s new restriction prohibiting rentals for*
4 *less than 30 days is invalid and must be stricken*

5 The First Amendment’s new restriction prohibiting rentals for less than 30 days
6 is invalid. First, it was not authorized under the express terms of the Unified Declaration.
7 Specifically, the general-amendment-power in the Unified Declaration is narrow in
8 scope, as it is limited to amendments to “these restrictions” in the Unified Declaration.
9 Unified Declaration, §§ 15, 20, Ex. A. Therefore, the general-amendment provisions do
10 not permit “the addition of new covenants which have no relation to existing ones.”
11 *Wilkinson*, 327 P.3d at ¶ 25; *Lakeland*, 459 N.E.2d at 1169 (“the provision permitting the
12 change of covenants found in the instant deed clearly directs itself to changes of existing
13 covenants, not the adding of new covenants which have no relation to existing ones.”).
14 Because Defendants’ amendment adds a new temporal restriction on rentals that has “no
15 relation” to the restrictions in the Unified Declaration, it exceeds the authority to amend
16 the Unified Declaration and, therefore, is invalid.

17 Second, even if amendments to add new affirmative obligations had been
18 authorized under the Unified Declaration, the “sufficient notice” test and the five
19 principles established in *Kalway* require striking the restriction prohibiting rentals for less
20 than 30 days. Under the first of the *Kalway* principles, said restriction is invalid because
21 it is a new restriction untethered to any existing provision in the Unified Declaration.⁶
22 As set forth above, the Unified Declaration does not place any restrictions—temporal or
23 otherwise—on an owner’s right to rent or lease an entire residence. To the contrary, the

24
25 ⁶ Notably, the subject restriction in the First Amendment does not purport to revise, refine,
26 fill in, clarify or amend an existing paragraph in the Unified Declaration. Instead, it is an
entirely new paragraph—paragraph 26—with an entirely new restriction on rentals.

1 Unified Declaration’s provisions that mention renting and leasing confirm that certain
2 negative covenants contained therein do **not** impair the owners’ natural property right to
3 rent or lease an entire lot. *See* Unified Declaration, §§ 2, 7, and 12. Moreover, the
4 Unified Declaration does not provide notice to future owners that the right to rent an
5 entire lot to a single family for a period of less than 30 days could be restricted in a future
6 amendment. As the Court in *Kalway* explained, the Unified Declaration’s “general-
7 purpose” statement and the “general-amendment-power” provisions are not themselves
8 “notice of future amendments” to enable restricting Plaintiff’s right to rent its entire lot to
9 a single family for any period of time.⁷ *Kalway* at ¶ 19-21. Thus, the First Amendment
10 is invalid in its entirety.

11 Likewise, under the second and third *Kalway* principles, Defendants cannot
12 argue that a restriction prohibiting rentals for less than 30 days is permissible because it
13 merely clarifies terms and restrictions inferred in, but not expressly stated in, the
14 Unified Declaration. Such an argument would fail for no less than two reasons. First,
15 restrictive covenants substantively identical to the relevant provisions in the Unified
16 Declaration have been interpreted by courts across the country and these courts—
17 almost uniformly—have found that covenants limiting permissible uses to “residential”
18 or “single family” uses do not preclude renting property for periods of less than 30
19 days.⁸ Thus, the new restriction on rentals in the First Amendment is “different in kind
20

21 ⁷ Here, the general purpose statement in the Unified Declaration supports striking the new
22 restriction from the First Amendment. The two exclusive purposes identified in the
23 Unified Declaration—i.e., “complement[ing] and enhanc[ing]” Flagstaff’s “natural beauty
24 and attractiveness” and being “harmon[ious] with and appear[ing] indigenous to its natural
25 surroundings”—do not suggest to a reasonable purchaser that the restrictions might also
include a minimum rental period. And this is not surprising, given that Continental
County Club includes a public golf course and numerous multi-family residences,
including two Wyndham timeshare properties. Thus, the types of use that occur in
Continental Country Club are consistent with the owners using their lots for rentals for
periods of less than thirty days.

26 ⁸ *See, e.g., Wilkenson*, 327 P.3d at 620 (holding that if a renter uses a home “for the

1 from that in the” Unified Declaration.⁹ Second, any ambiguity or doubt as to the proper
2 interpretation of the Unified Declaration’s restrictions must be “resolved against the
3 validity of a restriction” and in favor of Plaintiff’s less restrictive, reasonable
4 interpretation.¹⁰ *Kalway* at ¶¶16 and 32. Thus, the new restriction prohibiting rentals
5 for less than 30 day is invalid.

6 The fourth *Kalway* principle also weighs strongly in favor of striking the
7 restriction on rentals of less than 30 days. Flagstaff is a popular tourist destination,
8 “seeing over 5,000,000 visitors per year.”¹¹ Since at least 2012, owners of property in
9 Continental County Club have been offsetting some costs of their residence by renting
10 their entire lot to single families for periods of less than 30 days. Indeed, on March 16,
11 2021, Defendants’ General Manager “noted that approximately 60% of [the] community
12 is second-home ownership resulting in a tendency for relaxed outlook (getting
13

14
15 purposes of eating, sleeping, and other residential purposes,” then “this use is residential,
16 not commercial, no matter how short the duration” and invalidating amendment that
17 attempted to add new restriction to CC&Rs that prohibited rentals for less than 30 days);
18 *Estates at Desert Ridge Rails Homeowners’ Ass’n v. Vazquez*, 300 P.3d 736, 741 (Nev.
19 2013) (holding that restriction limiting uses to “residential” or “residential purposes” have
20 “routinely been interpreted” not to preclude use of property for short term rentals); *Craig*
21 *Tracts Homeowner’s Ass’n, Inc. v. Brown Drake, LLC*, 477 P.3d 283, 285-86 (Mont.
22 2020) (“the majority of other jurisdictions ... have found that “residential purposes”
provisions do not prohibit short term rentals.”).

23 ⁹ A.R.S. § 33-1806.01(A) expressly confirms the right to use a property for rental purposes
24 and states that the owner “shall use it in accordance with the declarations rental time
25 period restrictions.” Thus, Arizona law creates a reasonable expectation in an owner that
26 rentals of any duration are permissible unless expressly restricted in the original
declaration. Thus, when that right is not already subject to a restriction in the original
declaration, it cannot be imposed non-consensually through a general-amendment
provision.

¹⁰ The First Amendment defines the word “rent” to include “lease, sublease, license,
occupancy for consideration, *vacation rental or timeshare*.” (emphasis added).
Defendants presumably contend that this definition is a reasonable understanding of the
word “rent.” As such, this definition further confirms that a reasonable owner would have
understood the Unified Declaration, which expressly permits rentals and does not place
any temporal restrictions on said use, to authorize the exact type of use (i.e., vacation
rentals) that the First Amendment’s temporal restriction on rentals is designed to prohibit.

¹¹ <https://www.flagstaff.az.gov/2/Community-Overview>, last visited April 1, 2022.

1 away/vacation home[s]).” SAC, ¶ 23 and Ex. I to Defendants’ Answer to SAC. A new
2 restriction, like the one in the First Amendment, prohibiting the use of the owners’
3 properties for rentals for periods of less than 30 days when the owners are not using them
4 as second homes would substantially impair this well-established practice, “thus
5 potentially lessening the value of these lots.” *Kalway* at ¶ 28. Under the strict scrutiny
6 required by *Kalway* when a new affirmative obligation has a potential negative impact on
7 the value of the owners’ lots, the new temporal restriction on rentals fails the “sufficient
8 notice” test and must be stricken.

9 Lastly, Defendants cannot argue that the new temporal limitation on rentals is
10 justified by supposed concerns over neighborhood welfare that were the alleged impetus
11 for Defendants’ decade-long campaign to take natural property rights away from owners
12 who elect to permissibly and responsibly rent their residence for a period of less than 30
13 days. In *Kalway*, certain of the attempted amendments to the CC&Rs required managing
14 the lots to prevent forest fires. Even though such restrictions were deemed “advisable”
15 by the Court, and undoubtedly would have furthered the important purpose of protecting
16 life and property, these amendments were invalid because they did not satisfy the
17 “sufficient notice” requirement. *Kalway* at ¶ 41.

18 Here, on the other hand, the new restriction on rentals for less than 30 days in
19 the First Amendment is not “advisable” nor is it necessary to further a legitimate purpose.
20 Arizona recognizes the significant benefits of short-terms rentals and has made it
21 unlawful for counties, cities and towns to do what Defendants are attempting to do in the
22 First Amendment. A.R.S. §§ 9-500.39 and 11-269.17. The legislature has, instead, taken
23 a measured approach by adopting reasonable requirements designed to ensure owners
24 and renters are complying with the CC&Rs and local and state laws. A.R.S. § 33-
25 1806.01. But even if the new restriction on rentals for less than 30 days were considered

1 advisable and served a vital purpose (which it does not), *Kalway* holds that Defendants'
2 new restriction on rentals must be stricken under the “sufficient notice” test, as even a
3 legitimate purpose is not a valid basis for creating a new restriction.

4 Because the general-amendment provisions in the Unified Declaration did not
5 authorize the Defendants to add new restrictions to the Unified Declaration and, in any
6 event, the Unified Declaration did not provide “sufficient notice” to future owners,
7 including Plaintiff, of the possibility of a temporal limitation on the owners’ right to rent an
8 entire lot to a single family, this new restriction in the First Amendment should be stricken.

9 ***ii. The First Amendment, subpart c, is invalid and should be***
10 ***stricken***

11 In addition to adding a new restriction prohibiting rentals for less than 30 days, the
12 First Amendment adds a new affirmative obligation requiring that the owners “ensure” that
13 “all Rentals and occupants of such Rentals” comply with the CC&Rs and the Defendants’
14 Rules. *See* Exhibit B. This provision of the First Amendment is also a new affirmative
15 obligation imposed on the owners that is untethered to any provision in the Unified
16 Declaration. Because this new restriction exceeds the Defendants’ authority under the
17 general-amendment provisions in the Unified Declaration and does not satisfy the
18 “sufficient notice” test established in *Kalway*, this new restriction must also be stricken.

19 **III. Conclusion**

20 For the reasons set forth herein, Plaintiff is entitled to judgment on the
21 pleadings on its claim for declaratory relief. Plaintiff respectfully requests that the Court
22 enter a judgment blue-pencilling the First Amendment as follows:

23 ~~26. All Lots that are rented must comply with all the~~
24 ~~following restrictions:~~

25 ~~a) No Lot and/or portion of a lot may be Rented, or~~
26 ~~advertised to be Rented, for a term of less than (30)~~
~~consecutive days, and no new lease may begin less than~~

1 ~~thirty (30) days after the start date of the prior lease.~~
2 ~~However, Owners may continue to Rent their Lot for less~~
3 ~~than thirty (30) day periods until the first of the following~~
4 ~~events occur: (i) one (1) year (365 consecutive days) from~~
5 ~~the date this amendment is recorded; or (ii) upon title~~
6 ~~change to the Lot and/or transference of title to the Lot in~~
7 ~~any form.~~

8 b) "Rent" is defined as lease, sublease, license, occupancy
9 for consideration, vacation rental, or timeshare.

10 e) ~~The Owner must ensure that all Rentals and occupants~~
11 ~~of such Rentals comply with all of the terms of these~~
12 ~~Restrictions and the Rules and Regulations of the~~
13 ~~Association.~~

14 A proposed form of judgment has been submitted herewith.

15 RESPECTFULLY SUBMITTED this 12th day of April, 2022.

16 **JENNINGS, STROUSS & SALMON, PLC**

17 By: Eric D. Gere

18 Eric D. Gere

19 One E. Washington Street, Suite 1900

20 Phoenix, Arizona 85004-2554

21 *Attorneys for Plaintiff*

22 Original of the foregoing filed with
23 the Clerk of the Court and a Copy of the
24 foregoing mailed and emailed on this
25 day of 12th day of April, 2021, to:

26 Edith I. Rudder, Esq.

Eadie.rudder@carpenterhazlewood.com

Tessa Hustead, Esq.

Tessa.hustead@carpenterhazlewood.com

Carpenter, Hazelwood, Delgado, & Bolen, LLP

1400 East Southern Avenue, Ste. 400

Tempe, AZ 85282-5691

Attorneys for Defendants

/s/ Tana Davis-Digeno

EXHIBIT “A”

When recorded return to:
Continental Country Club
2380 N. Oakmont Dr
Flagstaff AZ 86004

Official Records of Coconino County 3399677
Candace Owens - Recorder 08/25/2006 12:41 PM Pgs: 19
CONTINENTAL COUNTRY CLUB SR \$28.00


AMENDED AND UNIFIED DECLARATION OF RESTRICTIONS CONTINENTAL COUNTRY CLUB

WHEREAS, it is recognized that the lands in Flagstaff, Arizona, evince a natural beauty and attractiveness;

WHEREAS, the real property hereinafter described as a part of Continental Country Club & Estates development which has been planned by Continental Homes, Inc., an Ohio corporation (hereinafter referred to as "Developer") with the design to carry out a general scheme of improvement and development which will complement and enhance this natural beauty; and

WHEREAS, this Declaration is intended to guide the further development and use of Continental Country Club and Estates so that it will continue to be in harmony with and appear indigenous to its natural surroundings;

WHEREAS, Continental Country Club and Estates, an Arizona non-profit corporation ("Association"), by and through its members, wishes to consolidate the Declarations of Restrictions for various subdivisions within Continental Country Club and Estates;

NOW, THEREFORE, the Association, by the approval of its members as required by the Declarations of Restrictions, hereby amends and restates in their entirety the Declarations of Restrictions set forth in Exhibit A attached hereto, and governs the Subdivisions set forth in Exhibit B attached hereto. Additionally, by recording this Amended and Unified Declaration of Restrictions, the Association hereby consolidates and replaces all of the prior recorded Amended and Unified Declarations of Restrictions listed in Exhibit D attached hereto.

Furthermore, to establish a general uniform plan for the nature of the use and enjoyment thereof, the Association hereby declares the following express covenants, restrictions, reservations and conditions shall attach to all of said Lots and shall constitute covenants running with the land for the mutual benefit and protection of the Developer and all subsequent Grantees of said Lots:

1. As used herein, unless the context otherwise requires:

- a) "Articles" and "Bylaws" mean Articles of Incorporation and Bylaws of the Association as amended from time to time;
- b) "Association" means Continental Country Club and Estates, an Arizona non-profit corporation, its successors and assigns;

- c) "Board" means the Board of Directors Of the Association;
- d) "Developer" means Continental Homes, Inc., an Ohio corporation or any successor to all or substantially all of the interests of said corporation in the Development;
- e) "Development" means the Continental Country Club and Estates Development as designated and modified by the Developer from time to time which now consists of the Subdivision;
- f) "Lot" and "said Lot" and the plurals thereof mean numbered lots in the Subdivision (all Tracts being specifically excluded from these Restrictions);
- g) "Member" means a social member of the Association;
- h) "Owner" or "Owners" means the holder of fee title to any Lot, any purchaser under an agreement of sale or contract of purchase, and the beneficiary of any trust owning or purchasing any of said Lots, but excludes those having an interest merely as security for the performance of an obligation;
- i) "Subdivision" or "Subdivisions" mean all subdivisions included within this Declaration, as set forth in Exhibit B attached hereto.

2. Said Lots are hereby restricted to single family dwellings for residential use only by one family. No trade or business may be conducted on any Lot, except that an Owner or other resident of a Lot may conduct a business activity upon the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (ii) the business is conducted inside the house, (iii) the business employs only residents of the home (iv) nothing is done to alter the residential appearance of the home, (v) no mechanical equipment is used in the production or manufacturing of any product; any equipment used shall be of a type normally used for a domestic hobby, (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Property; (iii) the business activity does not involve persons coming onto the Lot, the door-to-door solicitation of Owners or other residents in the Property, nor shall there be any deliveries or outside services beyond those normal to residential use, (iv) the business complies with all of the City of Flagstaff ordinances for operating a home business and (v) the business activity is consistent with the residential character of the Property and does not constitute nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common areas regarding the business activity. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Lot by the Owner thereof shall not be considered a trade or business within the meaning of this section. All buildings or structures erected upon the Properties shall be of new construction and no building or structure shall be moved from

other locations onto the Properties. All structures on any lot shall be approved by the Architectural Committee in accordance with the provisions contained within this document. No structures of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any portion of the Properties at any time as a residence, either temporarily or permanently.

- a) Businesses operated from the home shall not include barber shops, beauty parlors, veterinary offices, medical or dental offices, real estate offices, day care centers, motor vehicle repairs or brokering or any similar type activities.

- 3. No person or entity shall commence or maintain any improvements of any nature upon any of said Lots, including without limitation, excavation, site preparation, tree removal, demolition of existing improvements, landscaping, fences, walkways, roadways, driveways, signs, exterior lights, foundations, exterior painting regardless of whether the existing color had been previously approved, walls or buildings of any nature either temporary or permanent, or any alterations or additions to the exterior of any improvements previously approved by the Association without the prior written approval of the Architectural Committee and the Board of Directors, unless the Board gives the Architectural Committee the power to make the final decision for specific types of improvements or alterations (in which case, the written approval of the Architectural Committee only shall be required). If the Board of Directors does not appoint an Architectural Committee, all powers of the Architectural Committee set forth in this Declaration are to be exercised by the Board. The Architectural Committee shall have the power to establish Architectural Guidelines setting forth guidelines for construction on the Lots. However, any such Architectural Guidelines must be approved by the Board of Directors before they become effective. All plans shall be submitted in writing to the Architectural Committee, and shall include the plans and specifications of the proposed improvement showing the nature, kind, shape, height, materials, color, location and any other material attributes of the proposed improvements. If the Architectural Committee approves the improvements, in its sole and absolute discretion, it shall deliver such approval to the Board of Directors (unless the Board has directed the Architectural Committee to make the final decision as to the specific type of improvement), who shall make the final determination and provide the approval or disapproval to the Owner in writing. Approval by the Architectural Committee and the Board of Directors is limited solely to such written approval and may not be given orally, by any other writing, or by implication or waiver. Approval of one (1) set of plans and specifications for a particular lot shall not be deemed to constitute approval of the same or similar plans and specifications, or any other or different plans and specifications for another lot. The rights in said Lots which are conveyed to grantees shall be subject to the following restrictions at all times; in no event shall the Architectural Committee or the Board of Directors approve any buildings or improvements, nor shall any buildings or improvements be constructed or maintained upon any of said Lots which violate any of the following restrictions:

- a) All buildings or structures erected on said Lots shall be of new construction, and no building or structure shall be moved or removed from other locations onto said premises. Upon commencement of construction, the Owner shall proceed with reasonable dispatch and due diligence to complete any dwelling or structure. Not more than one single family structure may be erected on any individual Lot; provided, however, said structure may contain guest and servant quarters together with an attached private garage or carport. No outbuildings shall be erected, placed or maintained on any Lot. Every residential structure hereinafter constructed shall have a fully enclosed floor area devoted to living purposes, exclusive of porches, terraces and

garages of not less than 1,000 square feet, with the exception of Marina del Lago and Woodridge where, in accordance with the original Declarations for the respective communities, the enclosed floor area shall be 2,500 square feet and 1,500 square feet respectively. "Floor area" shall mean all of that area which has a ceiling height of not less than 6 feet 6 inches. All structures must include at least one standard size single carport or garage.

- b) All colors and outside lights and lighting fixtures shall be indigenous to the natural surroundings and shall be subject to the Architectural Guidelines adopted by the Architectural Committee.
- c) No building or structure shall be erected, placed or maintained on any lot nearer than the distances stated in the below chart. This chart is developed from the setback requirements set forth in the original Declarations. The setback requirements herein provided may be waived by delivery of the Architectural Committee of a recordable certificate to a petitioning Owner, wherein the Association makes a finding that the setback requirements would create an undue hardship, or where a variation thereof would be in the best interest of the Owner and the subdivision as a whole.

Subdivision	Distance to street	Distance to Golf/open space	Distance to rear line	Distance to Side line	Minimum separation between houses
Continental Unit I	20	25	20	10	20
Continental Unit II	20	25	20	10	20
Elk Run	20	25	20	10	20
Evergreen	20	25	20	10	20
Marina del Lago	25	25	20(1)	15	30
Morningstar	20	25	20	10	20
Lakeside Acres I	25	25	25	25	32
Lakeside Acres II	20	25	-	-	20
Lakeside Acres III	20	25	-	-	20
Sunridge	20	25	20	8	20
Woodridge	25		25	10 (2)	20 (2)

Notes: (1) Original Declaration read distance to water.
(2) No distance specified in original Declaration.

- d) No structure shall be erected, placed or maintained at a height greater than the height in the chart below, set forth in feet, which is based on the height requirements set forth in the original Declarations. The height requirements herein provided may be waived by delivery of the Architectural Committee, of a recordable certificate to a petitioning Owner, wherein the Association makes a finding that the setback requirements would create an undue hardship, or where a variation thereof would be in the best interest of the Owner and the subdivision as a whole.

Subdivision	House on golf course	House not on golf course	Allowable waiver house on golf course	Allowable waiver house not on golf course
Continental Unit I	20	28	28	32
Continental Unit II	20	28	28	32
Elk Run	20	28	28	32
Evergreen	20	28	28	32
Marina del Lago	35	35	-	-
Morningstar	20	28	28	32
Lakeside Acres I	28	28	28	32
Lakeside Acres II	20	28	28	32
Lakeside Acres III	20	28	28	32
Sunridge	20	28	28	32
Woodridge	(1)	(1)	(1)	(1)

Notes:

(1) No height restrictions in original declaration. However, owners must follow city codes.

e) No temporary structure of any nature shall at any time be placed upon or stored on any of said Lots; provided, however, that (i) the Architectural Committee may grant permission to maintain a temporary structure upon a designated Lot to be used in connection with the construction of an approved house for a period not exceeding four (4) months. An owner may petition the Architectural Committee for an additional four (4) months, which the Architectural Committee may grant in its sole discretion.

f) Solid Fences, walls and hedges around the perimeter of the lot will not be permitted under ordinary circumstances, and in no event shall a fence, wall or hedge be erected, installed or maintained nearer than 25 feet of any property line bordering on a golf course property as designated by the Association. As regulated by the rules and regulations, the following fencing may be approved by the Architectural Committee:

- i. Split rail fences for landscape purposes.
- ii. Privacy fences for purposes such as: dog run, private courtyards and storage.
- iii. Privacy screens as detached landscape features to block or screen views.
- iv. Ornamental wrought iron fences, if consistent with other landscape features. All other types of metal fences, such as chain link or wire, are prohibited.

g) No tree greater than three (3) inches in diameter may be removed at any time from any Lot without the written approval (i) of the Board, or (ii) in connection with the approval of improvements to be placed upon the Lot. Approval for removal may be made conditional upon the planting of replacement trees upon the Lot or in some other area of the Development or surrounding area designated by the Architectural Committee.

4. None of said Lots shall be subdivided into smaller lots, and no portion of any of said Lots or any easement or other interest therein shall be conveyed, leased or otherwise disposed of without the prior written approval of the Association. The ownership of two or more adjacent Lots shall, with the written approval of the Association, be deemed to constitute a single Lot for the purposes of these restrictions.
5. Due to the large number of trees in this subdivision and the possibility of forest fires and damage by Bark Beetles from time to time, each of the Owners of said Lots shall at all times maintain his entire Lot cleared of hazardous vegetable growth, dead wood, and other flammable or host materials. Additionally:
 - a) All buildings upon said Lot shall have not less than two garden hose outlets with adequate hoses so as to permit a stream of water to be directed at all sides and the roof of said building and all trees and other structures upon such Lot;
 - b) Each Owner shall own and maintain a sufficient number of fire extinguishers to adequately protect the improvements upon the Lot;
 - c) No Owner shall maintain any flammable materials or otherwise use his Lot in a manner which would create a fire danger to any of said Lots;
 - d) Each Owner shall be bound by all fire protection rules and regulations issued by the Developer or Association; upon said Lots.
 - e) Spark arrestors shall be installed and maintained at all times on all chimneys upon said Lots.
6. No animals or fowl of any kind shall be raised, bred, or kept on any of said Lots; provided, however, that ordinary domestic dogs, cats and birds will be permitted so long as (a) such pets are kept within the boundaries of the Lot of their owner and do not offend or annoy other Lot owners or people working or playing on the golf course, (b) such pets are not kept, bred or maintained for any commercial purpose, and (c) no kennels, pens or similar structures or enclosures are constructed or maintained upon any of said Lots other than those approved by the Architectural Committee. Horses are permitted on Lakeside Acres Unit I on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 43, 44, 45, 46, 106, 107, 108, pursuant to the original Declaration, upon which from 1 to 3 horses may be maintained, housed, or otherwise accompanied pursuant to the following limitations:
 1. Horses must be contained in a specific area not to exceed 50' x 100', the location of such area must first be approved by the Architectural Committee and may not vary without written permission of the Architectural Committee.
 2. In no case shall the corral and/or stabling facilities be closer than 100 feet from any residential structure, nor closer than 50 feet from adjacent property.
 3. All food products, including but not limited to, hay, must be housed in a suitable structure approved by the Architectural Committee.The number of horses (up to 3) permitted on said lots shall depend on the accommodations provided, said accommodations and the number of horses they shall contain shall be governed by the Architectural Committee and said Committee shall not unreasonably withhold permission or approvals.
7. No advertising signs, billboards, or objects determined to be unsightly by the Architectural Committee shall be erected, placed or permitted to stand upon any of said Lots; provided that

(a) a person desiring to sell, rent or lease a Lot or house may place one sign indicating property availability upon said Lot which shall not exceed an area of four (4) square feet. Signs stating the name and address of the owner shall not require approval pursuant to the Architectural Committee, provided that such signs shall be made of wood or some equally permanent material, shall not be self illuminated, luminescent or fluorescent, shall not exceed an area of two (2) square feet, and shall be attached to the home. Political, garage sale and other such signs shall be regulated by the rules and regulations adopted by the Board.

8. No outside speakers, amplifiers or other sound producing equipment shall be permitted to be installed or maintained on any Lot. No radio antenna shall be permitted to be installed or maintained on the exterior of any dwelling or structure or other improvement. Television antenna and satellite dishes and other antennas controlled by the Federal Communications Commission shall be installed and maintained only pursuant to rules and regulations adopted by the Board. No open fires or burning shall be permitted on any Lot and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use in customary fashion of outdoor barbeques or grills or outdoor fireplaces, unless such use is prevented or restricted by fire protection rules or regulations.
9. No tanks of any kind, elevated above the surface of the ground or visible in any manner, shall be erected, placed or permitted on any of said Lots. No exterior clothesline equipment shall be permitted on any of said Lots. All rubbish, trash or garbage shall be kept in airtight containers and not allowed to accumulate on any of said Lots. Woodpiles, service yards, and said rubbish, trash or garbage containers shall be kept screened by adequate planting so as to conceal them from view of streets and of neighboring parcels, including the golf course or any other recreation areas. Incineration of rubbish, trash, garbage or vegetation shall not be permitted.
10. No recreational vehicles, house trailer, horse trailer (other than on the Lots specified in paragraph 6), utility/work trailer, recreational vehicle trailer (jet ski, snowmobile or similar), mobile home, motorized motor home camper, camper truck, tent, boat or bus, or vehicles or trailers used for similar activities shall at any time be placed upon, stored or lived in, on any of said Lots nor on any street adjacent to any of said Lots; vehicles of the nature listed above may be kept on a Lot for a period of seventy-two (72) hours in any fourteen (14) day period in order to perform maintenance or cleaning of the vehicle.
 - a) Automobiles, trucks and other vehicles used in day-to-day transportation shall be parked in the garage, carport, driveway, or designated hard all-weather parking surface approved by the Architectural Control Committee. Such vehicles shall not be parked at any other location upon the lot.
11. No obnoxious or offensive activity may be carried on or permitted on any of said Lots, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood including without limitation annoying or offensive sounds or odors. No hazardous activities shall be conducted upon any of said Lots, nor shall any improvements which are unsafe or hazardous to any person or property be permitted. None of said Lots shall be used for any business, professional, commercial, religious or institution purpose except as specifically provided herein.
12. No boarders or renters of a portion of any of said lots shall be permitted, but an entire lot, together with the improvements thereon, may be rented only to a single family.

13. Each Owner shall maintain the premises and exterior of the improvements on his lot in a manner satisfactory to rules and regulations for this purpose promulgated by the Association. Additionally:
- a) Natural, earth-tone, indigenous colors are encouraged for all exterior colors. Colors should be subdued and muted. Exterior colors shall be approved prior to commencement of work.
 - b) Natural landscape and xeriscape are encouraged. Suitable ground covers include: grass, decorative/landscape rocks, native grass, and similar materials. Weeds are not permitted. Dead or dormant natural grasses and wildflowers must be cut in the fall.
 - c) Lots shall be maintained clear of litter, trash, construction materials, miscellaneous materials, storage of equipment such as lawn mowers, snow blowers and clothes lines unless adequately screened as provided for in paragraph 3.
 - d) Roof and side mounted mechanical equipment including heating, air conditioning and evaporative coolers is prohibited. Units mounted on the ground shall be screened from view from the street.
14. In the event of any violation or breach of, or any default under these Restrictions or the Architectural Guidelines or Rules and Regulations of the Association, any one or more of the following remedies (as may be applicable) shall be available.
- a) In the event of any violation or breach of, or default under, Paragraph 5 of these Restrictions pertaining to fire danger which poses danger or hazard to any other Owners of said Lots or their property, the Association or any Owner of one or more of said Lots shall have the right to go upon such Lot without notice and take such action as may be necessary to alleviate such dangerous or hazardous condition, and any expenses thereby incurred by the Association shall become a lien upon such Lot which may be foreclosed in the manner provided for in Paragraph 17 hereof.
 - b) For any other violations or breach of, or default under, these Restrictions, Architectural Guidelines or Rules and Regulations of the Association, the Association shall have the right after ten (10) days notice in writing to the defaulting Owner to go upon such Lot and take such action as may be necessary to correct such violation, breach or default, including without limitation removal of any unauthorized improvements and restoration of the premises, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner or color, replacement of any trees removed without approval, and cleaning up any unsightly material or debris upon any Lot. Any expenses thereby incurred by the Association shall become a lien upon such Lot which may be foreclosed in the manner provided for in Paragraph 17 hereof;
 - c) The Association, any Owner of one or more of said Lots, or any combination thereof may, in addition to any other remedy available at equity or law, prosecute an action or other proceedings against such defaulting Owner for injunctive relief, specific performance, damages, a judgment for payment of money and collection thereof, or the appointment of a receiver to take possession of the improvements upon such Lot.

By the acceptance of a deed to any Lot, or by signing a contract or agreement for the purchase of the same, each Owner does hereby agree that in addition to the relief prayed for in such action, the defaulting Owner shall be liable for all court costs and a reasonable attorney's fee incurred in the prosecution of such action.

- d) The use of any one or more of the remedies provided for in this Paragraph 14 shall not defeat the lien of a purchase money or construction mortgage or deed of trust made in good faith and for value.
15. All changes to these Restrictions shall require the written approval of the Owners of two-thirds (2/3) of the lots in the Subdivisions and two-thirds (2/3) of the Association's Board of Directors.
16. Each Owner shall automatically become a Member of the Association; provided, however, that:
- a) Membership shall be appurtenant to each Lot and run with the title thereto. Such Membership shall commence upon becoming an Owner and automatically terminate when he ceases to be an Owner, and upon the transfer of his ownership interest to the new Owner succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.
 - b) If there is more than one Owner of any Lot, all of the Owners of such Lot shall designate one person to be the Member;
 - c) If one person owns more than one Lot, the memberships appurtenant to such Lots shall be deemed to have been combined into one membership for purposes of the use and enjoyment of the facilities of the Association, but the owner shall be entitled to one vote, and shall pay all assessments hereinafter provided, for each Lot owned.
 - d) Membership in the Association shall be subject to the Articles and Bylaws of the Association.
 - e) The Association may, in addition to the other remedies hereinafter provided, suspend any Member or limit his voting rights for failure to pay dues and assessments or any violation of the Articles, Bylaws or Rules and Regulations of the Association.
 - f) A Member paying only the assessment provided for in Paragraph 17 hereof shall have only such rights to use the recreational areas of the Association as may be designated by the Board; provided, however, upon payment of such additional sums as may be designated by the Board, such Member shall have such additional rights as the Board may designate.
 - g) The Association may admit non-owners as Members from time to time in accordance with the Bylaws of the Association.
- 17.
- a) Each Owner of any Lot, by acceptance of a deed therefore or by execution, as a buyer, of a contract to purchase a lot, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association annual assessments for maintenance and upkeep and special assessments for capital

improvements, such Assessments to be fixed, established, and collected from time to time as hereinafter provided, the annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment is made.

- b) The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision and the Development and the services and facilities located thereon.
- c) The maximum annual assessment shall be Three Hundred Dollars (\$300) in those subdivisions set forth in Exhibit C attached hereto. In all other subdivisions subject to this document, the maximum annual assessment shall be Two Hundred Dollars (\$200), based upon votes taken by the members under the provisions of the original Declarations; provided, however, that the maximum annual assessment may be exceeded at any time with the assent of two-thirds (2/3) of the Lot owning Members who are voting in person or by proxy at a meeting duly called for this purpose after not less than thirty (30) days' written notice to all such Members.
- d) In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement including the necessary fixtures and personal property related thereto; provided, however, that any such assessment shall have the assent of two thirds (2/3) of the Lot owning Members who are voting in person or by proxy at a meeting duly called for this purpose after not less than thirty (30) days written notice to all such Members.
- e) Both annual and special assessments must be fixed at a rate uniform for all lots and may be collected on a monthly, quarterly, semi-annual or annual basis, as may be determined by the Board of Directors of the Association.
- f) The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance thereof to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and notify the Members within a reasonable time thereafter. The Association shall, upon demand at any time from any interested person, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- g) Any assessments which are not paid when due shall be delinquent. Each member of the Association shall pay to the Association within ten (10) days of receipt of an invoice setting forth the amount of the assessment. In the event any invoice is not paid within thirty (30) days from the date the same is deposited in the United States mail addressed to the Member at his address as shown on the records of the Association, the amount of such invoice shall be and become a lien upon said Lot when the Association causes to be filed in the office of the County Recorder of Coconino County an affidavit of non-payment of such invoice and mails a copy of same by certified mail, return receipt requested, to such Member at his

address as shown on the records of the Association. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest legal rate per annum, and the Association may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against the lot pursuant to Arizona Law pertaining to foreclosure of realty mortgages, and the bringing of one form of action shall not distinguish the Association's rights to bring any other action allowed at law or in equity. The proceeds of a judicial sale following the foreclosure of such assessment lien shall first be paid to discharge court costs, other litigation costs including but not limited to reasonable attorney's fees, all interest accruing thereon, and all other expenses of such sale. Any balance of proceeds after satisfaction of such amounts and all other amounts due shall be paid to the Lot Owner, and the Lot Owner may redeem such Lot after the foreclosure sale as provided for by law.

- h) The lien for all such assessments shall be junior and subordinate to the lien of any purchase money or construction mortgage made in good faith and for value, except for assessed sums which are applicable or attributable to any period after the date upon which the mortgagee, or the trustee or beneficiary under the deed of trust, either takes possession of such Lot, accepts a conveyance of such Lot, files suit to foreclose its lien, or records a notice of trustee's sale.
 - i) The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of annual or special assessments, fees or otherwise) and may carry forward as surplus any balances remaining (rather than apply such surplus to reduction of the annual assessment in future years) in such amounts as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association.
18. There are hereby reserved all easements depicted or referred to in the Plat of the Subdivisions and also an easement consisting of a 10-foot strip of land along all Lot lines of said Lots for all utility purposes, including without limitation, the installation and maintenance of electric lines or transmission equipment, telephone lines, water (domestic and irrigation), sewer (storm or sanitation), and gas lines.
19. Notices provided for in these Restrictions shall be in writing and shall be addressed to the last known address of the Lot owner in the files of the Association. Notices shall be deemed delivered when mailed by United States Postal Service First Class, Registered or Certified Mail addressed to the Lot owner at such address or when delivered in person to such Owner.
20. These Restrictions shall be appurtenant to and run with the land and shall be binding upon all owners of record of said Lots and all persons claiming interest in and to said Lots unless revoked or amended at any time by the written approval of the Owners of not less than two-thirds (2/3) of the Lots in the Subdivisions and not less than two-thirds (2/3) of the Association's Board of Directors. When the amendments have been approved, the President of the Association shall execute and record a certificate of amendment setting forth the amendments. If additional subdivisions within Continental Country Club adopt this Declaration in lieu of their present Declaration by the amendment provision in their Declaration, the President of the Association may, without a vote of the membership, record a Supplemental Declaration that includes the subdivision within the list of Subdivisions attached as Exhibit B, the Declaration for the subdivision within the list of Declarations attached as Exhibit A, and the subdivision within the list of subdivisions attached as Exhibit C, if appropriate.

21. Deeds conveying any Lot may incorporate these Restrictions by reference, but whether or not such reference is made in deeds or other agreements, each and all of these Restrictions shall be valid and binding upon all persons taking or holding any interest in any of said lots.
22. Invalidation of any one of the provisions of these Restrictions by judgment or court order shall in no way affect the validity of any other provision, and the same shall remain in full force and effect.
23. In the event of any ambiguity in a provision of these Restrictions, the interpretation of the Association as to the meaning intended shall prevail.
24. These Restrictions shall not be applicable to any Tracts in the Subdivision.
25. Wherever the context of these Restrictions so requires, words used in the masculine gender shall include the feminine and the neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

The President of the Association hereby certifies that this Amended and Unified Declaration of Restrictions has been adopted by the required percentage of the members whose Declarations are listed on Exhibit A and whose legal descriptions are listed on Exhibit B.

Continental Country Club, Inc.

By: Terry T. Lacy

Its: President

STATE OF ARIZONA)
)
County of Coconino)

The foregoing instrument was acknowledged before me this 25th day of August, 2006 by Terry T. Lacy, the President of Continental Country Club, Inc., an Arizona nonprofit corporation, on behalf of the corporation.

My Commission Expires:

11 August 2010

Marilyn J. Nelson
Notary Public

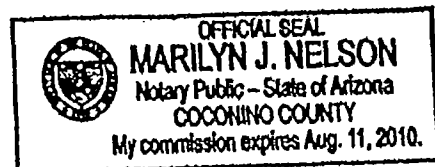


Exhibit A

Continental Country Club Estates Unit One, Lots 1 thru 14, 18 thru 134, 138 thru 224, **CONTINENTAL COUNTRY CLUB ESTATES UNIT ONE**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Book 3 of Maps, Page 7.

Continental Country Club Estates Unit Two, Lots 300 thru 426, **CONTINENTAL COUNTRY CLUB ESTATES UNIT TWO** according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3 of Maps, page 90, 90A and 90B.

Elk Run, Lots 1 through 280, **ELK RUN**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3 of Maps, Pages 151-151J.

Evergreen, Lots 1 through 270, **EVERGREEN**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3 of Maps, Page 146, 146A, 146B, 146C, 146D, 146E, 146F, 146G.

A portion of Tract F, Continental Lakeside Acres, {also known as **Gemini**} legally described as follows:

A parcel of land in Section 19, Township 21 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, being a portion of Tract "F", Continental Lakeside Acres, as recorded in Case 3, Map 124-124C, records of Coconino County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of Lot 7, Morning Star Subdivision, recorded in Case 3, Map 135, Coconino County Records and said corner being monumented by a steel pin and cap marked "Willdan Associates PE 10301" and said Corner also designating the Southerly right-of-way line of Mt. Pleasant Drive;
run thence south 03 degrees 24 minutes 11 seconds West along the West line of said Lot 7, a distance of 130.27 feet to the Southwest corner of Lot 7, monumented by a steel pin and cap marked "Willdan Associates, PE 10301";
thence South 67 degrees 26 minutes 06 seconds West, a distance of 68.56 feet to a point;
thence North 22 degrees 33 minutes 54 seconds West, a distance of 130.32 feet to a point on the Southerly right-of-way line of Mt. Pleasant Drive,
thence along the Southerly right-of-way of Mt. Pleasant Drive, along a curve to the right having a local tangent bearing of North 68 degrees 10 minutes 34 seconds East, a radius of 578.24 feet, a central angle of 11 degrees 32 minutes 55 seconds and an Arc Length of 116.65 feet to the True Point of Beginning.

A portion of Tract F, Continental Lakeside Acres, {also known as **Gemini**} legally described as follows:

A portion of Tract F, CONTINENTAL LAKESIDE ACRES, according to Case 3, Maps 124-124C, and Certificate of Correction recorded in Docket 636, page 646 and amendment to Dedication recorded in Docket 646, page 116, records of Coconino County, Arizona lying within Section 19, Township 21 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, and more particularly described as follows:

FROM the Northwest corner of LOT 7, Morning Star Subdivision, recorded in Case 3, Map 135, Coconino County Records, and said corner being monumented by a steel pin and cap marked "Wildan Associates, PE10 301", and said Corner also designating the Southerly Right of way line of Mt. Pleasant Drive;

thence along the Southerly right of way line of Mt. Pleasant Drive, along a curve to the left having a Local Tangent bearing of South 79°43'29" West, a radius of 578.24 feet, a Central Angle of 11°32'55", and an Arc length of 116.55 feet to the TRUE POINT OF BEGINNING of this description;

thence South 22°33'54" East, a distance of 130.32 feet to a point; thence South 67°26'06" West, a distance of 76.09 feet to a 5/8 inch steel pin and aluminum cap marked "ARENCO, PE 8218 LS 13010"

THENCE North 32°28'58" West a distance of 125.17 feet to a 5/8 inch steel pin marked "ARENCO, PE 8218, LS 13010", said pin being on the Southerly right of way line of Mt. Pleasant Drive;

thence along the Southerly right of way line of Mt. Pleasant Drive along curve to the right having a Local Tangent Bearing of North 58°27'57" East, a radius of 578.24 feet, a central angle of 9°42'37" and an arc length of 98.00 feet to the TRUE POINT OF BEGINNING.

Continental Lakeside Acres, Lots 1 thru 118, inclusive, of CONTINENTAL LAKESIDE ACRES according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3, Maps 124, 124A, 124B, and 124C.

Continental Lakeside Acres II, Lots 119 thru 134, not including Lot 133, of LAKESIDE ACRES II according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3 of Maps, Page 154.

Lakeside Acres III, Lots 1 through 3, LAKESIDE ACRES III, according to the plat filed in the Office of the County Recorder of Coconino County, Arizona, in Case 5 of Maps, Page 29 and 29A.

Marina Del Lago, Lots 1 through 8, inclusive, of **MARINA DEL LAGO**, according to the plat of record in the Office of the Coconino County Recorder in Case 7 of Maps, Map 33, 33A and 33B legally described as follows:

Tract "A" **CONTINENTAL LAKESIDE ACRES**, According to Case 3, Map 124, records of Coconino County, Arizona;

Except the following described property:

BEGINNING at the most Easterly corner of said Tract "A", said point also being on the Southerly right of way of Butler Avenue; thence South $32^{\circ}56'00''$ West 250.00 feet to a point of curvature; thence 119.26 feet (Record), 275.45 (Calc.), along a curve to the right, concave to the North, having a central angle of $132^{\circ}20'10''$, and a radius of 119.26 feet to a point of tangency; thence North $14^{\circ}43'50''$ West 400.00 feet; thence North $57^{\circ}04'00''$ West 28.00 feet; thence North $32^{\circ}56'00''$ East 68.77 feet to the said Southerly right of way of Butler Avenue; thence South $57^{\circ}04'00''$ East, along said right of way, 523.26 feet to the POINT OF THE BEGINNING.

Continental Country Club, Morning Star, Lots 1 thru 7, **MORNING STAR**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3, Map 135.

Sunridge, Lots 1 through 145, **SUNRIDGE**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona in Case 3 of Maps, Pages 139-139E.

Woodridge, Lots 1 through 17, inclusive, **WOODRIDGE**, according to Case 4, Map 110 and 110A, records of Coconino County, Arizona.

Exhibit B

Declaration of Restrictions, Continental Country Club Estates Unit One, recorded at Docket 428, beginning at Page 7, official records of Coconino County, Arizona.

Declaration of Restrictions, Continental Country Club Estates Unit Two, recorded at Docket 577, beginning at Page 484, official records of Coconino County, Arizona

Declaration of Restrictions, Continental Country Club, Elk Run, recorded at Docket 743, beginning at Page 77, official records of Coconino County, Arizona, as amended by the Declaration recorded at Docket 749, beginning at Page 695, as amended by the Declaration recorded at Docket 6876, beginning at Page 944, Official Records of Coconino County Arizona.

Declaration of Restrictions, Evergreen, recorded at Docket 695, beginning at Page 12, official records of Coconino County, Arizona.

Declaration of Restrictions, Continental Lakeside Acres, recorded at Docket 633, beginning at Page 474, official records of Coconino County, Arizona, as amended by the Amendment to Declaration of Restrictions Continental Lakeside Acres recorded at Docket 643, beginning at Page 180, as amended by the Amendment to Declaration of Restrictions Continental Lakeside Acres recorded at recording number 3185891, Official Records of Coconino County Arizona.

Declaration of Restrictions, Continental Lakeside Acres II, recorded at Docket 745, beginning at Page 679, official records of Coconino County, Arizona.

Declaration of Covenants, Conditions and Restrictions for Lakeside Acres III, recorded at Docket 1351, beginning at Page 864, official records of Coconino County, Arizona.

Declaration of Covenants, Conditions and Restrictions, Marina Del Lago, recorded at number 3024754, official records of Coconino County, Arizona.

Declaration of Restrictions Continental Country Club, Morning Star, recorded at Docket 663, beginning at Page 560, official records of Coconino County, Arizona.

Declaration of Restrictions, Continental Country Club, Sunridge Subdivision, recorded at Docket 671, beginning at Page 676, official records of Coconino County, Arizona.

Declaration of Covenants, Conditions and Restrictions, Woodridge, recorded at Docket 1154, beginning at Page 111, official records of Coconino County, Arizona.

Exhibit C

Continental Country Club Estates Unit One, Lots 1 thru 14, 18 thru 134, 138 thru 224, **CONTINENTAL COUNTRY CLUB ESTATES UNIT ONE**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Book 3 of Maps, Page 7.

Evergreen, Lots 1 through 270, **EVERGREEN**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3 of Maps, Page 146, 146A, 146B, 146C, 146D, 146E, 146F, 146G.

A portion of Tract F, Continental Lakeside Acres, {also known as **Gemini**} legally described as follows:

A parcel of land in Section 19, Township 21 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, being a portion of Tract "F", Continental Lakeside Acres, as recorded in Case 3, Map 124-124C, records of Coconino County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of Lot 7, Morning Star Subdivision, recorded in Case 3, Map 135, Coconino County Records and said corner being monumented by a steel pin and cap marked "Willdan Associates PE 10301" and said Corner also designating the Southerly right-of-way line of Mt. Pleasant Drive;
run thence south 03 degrees 24 minutes 11 seconds West along the West line of said Lot 7, a distance of 130.27 feet to the Southwest corner of Lot 7, monumented by a steel pin and cap marked "Willdan Associates, PE 10301";
thence South 67 degrees 26 minutes 06 seconds West, a distance of 68.56 feet to a point;
thence North 22 degrees 33 minutes 54 seconds West, a distance of 130.32 feet to a point on the Southerly right-of-way line of Mt. Pleasant Drive,
thence along the Southerly right-of-way of Mt. Pleasant Drive, along a curve to the right having a local tangent bearing of North 68 degrees 10 minutes 34 seconds East, a radius of 578.24 feet, a central angle of 11 degrees 32 minutes 55 seconds and an Arc Length of 116.65 feet to the True Point of Beginning.

A portion of Tract F, Continental Lakeside Acres, {also known as **Gemini**} legally described as follows:

A portion of Tract F, **CONTINENTAL LAKESIDE ACRES**, according to Case 3, Maps 124-124C, and Certificate of Correction recorded in Docket 636, page 646 and amendment to Dedication recorded in Docket 646, page 116, records of Coconino County, Arizona lying within Section 19, Township 21 North, Range 8 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, and more particularly described as follows:

FROM the Northwest corner of LOT 7, Morning Star Subdivision, recorded in Case 3, Map 135, Coconino County Records, and said corner being monumented by a steel pin and cap marked "Wildan Associates, PE10 301", and said Corner also designating the Southerly Right of way line of Mt. Pleasant Drive;

thence along the Southerly right of way line of Mt. Pleasant Drive, along a curve to the left having a Local Tangent bearing of South 79°43'29" West, a radius of 578.24 feet, a Central Angle of 11°32'55", and an Arc length of 116.55 feet to the TRUE POINT OF BEGINNING of this description;

thence South 22°33'54" East, a distance of 130.32 feet to a point; thence South 67°26'06" West, a distance of 76.09 feet to a 5/8 inch steel pin and aluminum cap marked "ARENCO, PE 8218 LS 13010"

THENCE North 32°28'58" West a distance of 125.17 feet to a 5/8 inch steel pin marked "ARENCO, PE 8218, LS 13010", said pin being on the Southerly right of way line of Mt. Pleasant Drive;

thence along the Southerly right of way line of Mt. Pleasant Drive along curve to the right having a Local Tangent Bearing of North 58°27'57" East, a radius of 578.24 feet, a central angle of 9°42'37" and an arc length of 98.00 feet to the TRUE POINT OF BEGINNING.

Continental Lakeside Acres, Lots 1 thru 118, inclusive, of **CONTINENTAL LAKESIDE ACRES** according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3, Maps 124, 124A, 124B, and 124C.

Continental Lakeside Acres II, Lots 119 thru 134, not including Lot 133, of **LAKESIDE ACRES II** according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3 of Maps, Page 154.

Lakeside Acres III, Lots 1 through 3, **LAKESIDE ACRES III**, according to the plat filed in the Office of the County Recorder of Coconino County, Arizona, in Case 5 of Maps, Page 29 and 29A.

Continental Country Club, Morning Star, Lots 1 thru 7, **MORNING STAR**, according to the plat of record in the Office of the County Recorder of Coconino County, Arizona, in Case 3, Map 135.

Woodridge, Lots 1 through 17, inclusive, **WOODRIDGE**, according to Case 4, Map 110 and 110A, records of Coconino County, Arizona.

Exhibit D

This Amended and Unified Declaration of Restrictions for Continental Country Clubs hereby consolidates and thereby replaces all of the following declarations:

Amended and Unified Declaration of Restrictions Continental Country Club (for Continental Country Club Estates Unit One), recorded May 8, 2006 at document number 3382728, official records of Coconino County, Arizona;

Amended and Unified Declaration of Restrictions Continental Country Club (for Continental Country Club Estates Unit Two), recorded June 9, 2006 at document number 3387799, official records of Coconino County, Arizona;

Amended and Unified Declaration of Restrictions Continental Country Club (for Elk Run), recorded August 9, 2006 at document number 3396870, official records of Coconino County, Arizona;

Amended and Unified Declaration of Restrictions Continental Country Club (for Evergreen, Gemini, Lakeside Acres II, Lakeside Acres III, Marina Del Lago, and Woodridge), recorded April 25, 2006 at document number 3380612, official records of Coconino County, Arizona;

Amended and Unified Declaration of Restrictions Continental Country Club (for Continental Lakeside Acres), recorded July 7, 2006 at document number 3392222, official records of Coconino County, Arizona;

Amended and Unified Declaration of Restrictions Continental Country Club, (for Morning Star), recorded July 19, 2006 at document number 3393724, official records of Coconino County, Arizona; and

Amended and Unified Declaration of Restrictions Continental Country Club, (for Sunridge Subdivision), recorded June 30, 2006 at document number 3391152, official records of Coconino County, Arizona.

EXHIBIT “B”

When recorded return to:

Continental Country Club
2380 N. Oakmont Dr.
Flagstaff, AZ 86004

**CERTIFICATE OF FIRST AMENDMENT TO THE
AMENDED AND UNIFIED DECLARATION OF RESTRICTIONS
CONTINENTAL COUNTRY CLUB**

The Amended and Unified Declaration of Restrictions Continental Country Club, recorded at Recording Number 3399677 on August 25, 2006, records of Coconino County, Arizona Recorder, ("Declaration"), is amended to add paragraph 26 to the Declaration as follows:

26. All Lots that are rented must comply with all the following restrictions:

- a) No Lot and/or portion of a Lot may be Rented, or advertised to be Rented, for a term of less than (30) consecutive days, and no new lease may begin less than thirty (30) days after the start date of the prior lease. However, Owners may continue to Rent their Lot for less than thirty (30) day periods until the first of the following events occurs: (i) one (1) year (365 consecutive days) from the date this amendment is recorded; or (ii) upon title change to the Lot and/or transference of title to the Lot in any form.
- b) "Rent" is defined as lease, sublease, license, occupancy for consideration, vacation rental, or timeshare.
- c) The Owner must ensure that all Rentals and occupants of such Rentals comply with all of the terms of these Restrictions and the Rules and Regulations of the Association.

CERTIFICATION

The President of Continental Country Club, Inc. hereby certifies that the above amendment has been adopted with the written approval of the Owners of not less than two-thirds (2/3) of the Lots in the Subdivisions and not less than two-thirds (2/3) of the Association's Board of Directors.

DATED this 28th day of September 2021.

CONTINENTAL COUNTRY CLUB, INC.

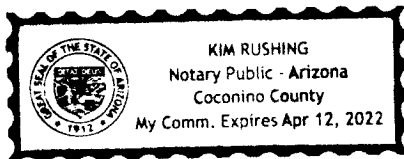
By: Kathy Mitchell
President

STATE OF ARIZONA)
) ss.
COUNTY OF COCONINO)

On this 28th day of September, 2021, before me personally appeared Kathy Mitchell, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that they signed this document.

Kim Rushing
Notary Public

Notary Seal:



Eric D. Gere - 023226
egere@jsslaw.com
JENNINGS, STROUSS & SALMON, P.L.C.
A Professional Limited Liability Company
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Telephone: (602) 262-5911
MinuteEntries@jsslaw.com

Attorneys for Plaintiff BrickHouse Trust

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

BrickHouse Trust, Dated October 27, 2011,
by and through Nicholas A. and Kathleen A.
Heth, trustees,
Plaintiff,

vs.

Continental Country Club, Inc., an Arizona
non-profit corporation; Jon Held, an
individual; Kathy Mitchell, an individual;
Chuck Thompson, an individual; Bobby
Goitia, an individual; William McGrath, an
individual; Wesley Dunlap, an individual;
Terry Makinster, an individual, DeeDee
Malmstone; an individual, Josie McCarthy, an
individual; and DOES 1 through 10 and ABC
Entities 1-10,
Defendants.

No. S0300CV202100446

**PROPOSED ORDER RE: PLAINTIFF
BRICKHOUSE TRUST'S MOTION
FOR PARTIAL JUDGMENT ON THE
PLEADINGS RE: CLAIM FOR
DECLARATORY JUDGMENT**

(Assigned to the Hon. Stacy Krueger)

Div. 3

Plaintiff BrickHouse Trust's Motion for Partial Judgment on the Pleadings regarding its Claim for Declaratory Relief ("Motion") is before the Court, and having been fully briefed by the parties, and good cause appearing,

IT IS HEREBY ORDERED that plaintiff's Motion is granted and that portions of the First Amendment to the Amended and Unified Declaration of Restrictions Continental Country Club are invalid and are hereby stricken as set forth below:

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~~26. All Lots that are rented must comply with all the following restrictions:~~

- ~~a) No Lot and/or portion of a lot may be Rented, or advertised to be Rented, for a term of less than (30) consecutive days, and no new lease may begin less than thirty (30) days after the start date of the prior lease. However, Owners may continue to Rent their Lot for less than thirty (30) day periods until the first of the following events occur: (i) one (1) year (365 consecutive days) from the date this amendment is recorded; or (ii) upon title change to the Lot and/or transference of title to the Lot in any form.~~
- ~~b) "Rent" is defined as lease, sublease, license, occupancy for consideration, vacation rental, or timeshare.~~
- ~~c) The Owner must ensure that all Rentals and occupants of such Rentals comply with all of the terms of these Restrictions and the Rules and Regulations of the Association.~~

The Court expressly finds that the stricken provisions are severable.

Dated: _____

Hon. Stacy Krueger, Judge
Arizona Superior Court, Coconino County

Davis-Digeno, Tana L.

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Tuesday, April 12, 2022 4:45 PM
To: Cruz, Kimberly; Davis-Digeno, Tana L.
Subject: AZTurboCourt E-Filing Courtesy Notification

This message originated from outside of Jennings Strouss. Do not reply, click on any links or open any attachments unless you trust the sender and know the content is safe.

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #6711190 has been DELIVERED to Coconino County.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: S0300CV202100446 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: BRICKHOUSE TRUST, DATED OCT. 27, 2011, BY THROUGH NICHOLAS A. AND KATHLEEN A. HETH.. PLAINTIFF vs JON HELD et al. DEFENDANT

Filed By: Eric D Gere

AZTurboCourt Form Set: #6711190

Keyword/Matter #: 68587-1 (tdd)

Delivery Date and Time: Apr 12, 2022 4:45 PM MST

Forms:

Attached Documents:

Motion: Judgment On Pleadings: P' Brickhouse Trust's Motion for Partial Judgment on the Pleadings Re: Claim for Declaratory

Exhibit/Attachment (Supporting): Exhibit A

Exhibit/Attachment (Supporting): Exhibit B

Proposed Order: Order Re Brickhouse's Mtn for Partial Judgment on the Pldgs Re Claim for Declaratory Judgment