Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-003577 10/30/2020

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
S. Motzer
Deputy

CLUB WEST CONSERVANCY FRANCIS J SLAVIN

v.

FOOTHILLS CLUB WEST COMMUNITY ASSOCIATION, et al. CARLOTTA L TURMAN

JUDGE KILEY

UNDER ADVISEMENT RULING

A. Factual Background

In 1989, UDC-Foothills Limited Partnership ("UDC FLP") caused to be recorded a Declaration of Covenants, Conditions and Restrictions (the "Master Declaration") for a master planned community located south of South Mountain Park in Phoenix. Joint Pre-Hearing Statement ("JPS") at p. 2 ¶¶ 1-2. *See also* Exhibit 1. In the Master Declaration, UDC FLP identifies itself as "the owner…and the master developer of" real property to be developed "as a planned area development" known as "Foothills Club West." Exhibit 1 at p. MCR 7 of 85. The name of the association formed pursuant to the Master Declaration is the "Foothills Club West Community Association." JPS at p. 2 ¶¶ 3-4. *See also* Exhibit 1 at pp. MCR 7 of 85, MCR 9 of 85, MCR 10 of 85.

Paragraph 11.2 of the Master Declaration provides that, with limited exceptions, it cannot be amended without the approval of 75% of Foothills Club West lot owners. Exhibit 1 at p. MCR 59 of 85, § 11.2 ("Except as otherwise provided herein…this Declaration may be amended only by the affirmative vote…or written consent of Members owning at least seventy-five percent (75%) of all Lots.").

In 1993, UDC Homes, Inc., ("UDC Homes") and its wholly-owned subsidiary, REA Acquisition Corporation ("REA"), caused to be recorded a Declaration of Covenants, Conditions and Restrictions (the "Golf Course Declaration") for the Foothills Club West Golf Course (the "Golf Course"). JPS at p. 2 ¶¶ 5, 8. *See also* Exhibit 2. At the time of the recordation of the Golf Course Declaration, REA owned the property described therein as the "Golf Course Property." JPS at p. 2 ¶ 6. UDC Homes was the Declarant under the Golf Course Declaration. Exhibit 2 at p. MCR 2 of 57.

The recitals to the Golf Course Declaration provide in part that the owner, REA, and the Declarant, UDC Homes, believe

> that the development of Foothills Club West for residential purposes will be enhanced by the development, operation, and maintenance of the Golf Course Property as a golf course and intend that the Golf Course Property be known as developed as Foothills Club West Golf Course.

Exhibit 2 at p. MCR 2 of 57. The Golf Course Declaration contains the following "use restriction" provision:

> 1.1 Golf Course Usage. At all times on or prior to December 31, 2008, the Golf Course Property and all portions thereof shall be used exclusively for the operation of a public golf course and driving range, recreational facilities related thereto, a golf pro shop, and a clubhouse facility; the use of the Golf Course Property other than for said purposes during such time shall be prohibited. At all times after December 31, 2008, the Golf Course Property and all portions thereof shall be used exclusively for the operation of a golf course and driving range, recreational facilities related thereto, a golf pro shop, and a clubhouse facility; the use of the Golf Course Property other than for said purposes during such time shall be prohibited.

Exhibit 2 at p. MCR 3 of 57. The Golf Course Declaration goes on to provide,

> 4.1 Maintenance of Improvements. The Golf Course Property and the improvements thereto shall be maintained in a first class manner and at a level equal to or exceeding the maintenance level of other upscale, high-end, daily fee, public golf courses in Maricopa County, Arizona.

Exhibit 2 at p. MCR 5 of 57.

Section 6.2 of the Golf Course Declaration provides in part that the Declarant "shall be entitled to release or cancel all or any portion of the Declaration with respect to all or any portion of the Golf Course Property at any time without the consent or approval of any other party." Exhibit 2 at p. MCR 8 of 57, § 6.2.

In September 2010, Defendant Foothills Club West Community Association (the "Association"), through its then-President, Paul Moroz, signed a document entitled "Assignment of Declarant Rights," which was subsequently recorded. *See* Exhibit 8. This document identifies Shea Homes Limited Partnership ("Shea Homes") as the successor-in-interest to the original Declarant, UDC Homes, and states that Shea Homes "desires to assign to the Association, and the Association desires to accept, all of the rights and obligations of the Declarant" under the Golf Course Declaration. *Id*. at p. FCWREV000315. The document concludes that, "[b]y its execution hereof, the Association accepts all [such] rights and obligations." *Id*.

In October 2018, the Association, through its then (and current) President, Michael Hinz, signed a document entitled "First Amendment to Declaration of Covenants, Conditions and Restrictions for Foothills Club West Golf Course" (the "First Amendment"), which was subsequently recorded. *See* Exhibit 9. The First Amendment purports to amend the Golf Course Declaration by adding a new paragraph ("New Paragraph 6.2") which establishes a mechanism for a vote of the Association's members to amend Paragraph 1.1 of the Golf Course Declaration to authorize a change, to a non-golf use, of the Golf Course Property. Specifically, the First Amendment reads in pertinent part:

> Now, therefore, [the] Association amends the [Golf Course Declaration] as follows:
>
> 1. Article 6, paragraph 6.2 shall be amended to add the following new second paragraph therein:
>
> In the event of any proposed amendment to this Declaration to change, modify or amend Article 1, paragraph 1.1 to allow the use of the Golf Course Property to be other than used exclusively for the operation of a public golf course and driving range, recreational facilities related thereto, a golf pro shop and a clubhouse facility (including a restaurant), no such proposed change, modification or amendment of article 1, paragraph 1.1 shall be effective unless each of the following two conditions are met. First, a majority of the Association's Board of Directors who are physically present at a meeting of the Board of Directors for such purpose vote to approve the amendment of Article 1, paragraph 1.1 to allow the use of the Golf Course Property to be other than used exclusively for the operation of a public golf course and driving range,

> recreational facilities related thereto, a golf pro shop and a clubhouse facility (including a restaurant). In the event the first condition is met, second, at an annual meeting or duly noticed special meeting of the Association's Owners (as defined in Article 1, paragraph 1.37 of the [Master Declaration]) in which thirty-one percent (31%) of the total Association Owners shall constitute a quorum, fifty percent (50%) of the Owners, plus one additional Owner, vote, in accordance with the provisions of Article 3 of the [Master Declaration], to allow the use of the Golf Course Property to be other than used exclusively for the operation of a public golf course and driving range, recreational facilities related thereto, a golf pro shop and a clubhouse facility (including a restaurant).

Exhibit 9 at p. MCR 1 of 27.

Plaintiff Club West Conservancy (the "Plaintiff") alleges that the Association and the other Defendants, all of whom are members of the Association's Board of Directors (the "Board"), "have taken unauthorized actions to maneuver themselves into a position of apparent authority to amend the Golf Course Declaration to allow non-golf uses to occur on the [Golf Course]." Application for Temporary Restraining Order and Application for Preliminary Injunction ("Application") at p. 4. The Plaintiff seeks a preliminary injunction to bar the Association and the members of the Board (collectively, the "Defendants") from amending any of the applicable documents, or scheduling or holding a vote pursuant to the First Amendment, to authorize the use of the Golf Course Property for non-golf purposes.[1]

B. Applicable Legal Principles

The purpose of a preliminary injunction is generally to preserve the *status quo* pending a trial on the merits. *See, e.g.*, *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir. 2009). *See also Cracchiolo v. State*, 135 Ariz. 243, 247, 660 P.2d 494, 498 (App. 1983) (vacating temporary injunction after finding that it "does not preserve the status quo"). A preliminary injunction is properly issued, in other words, to prevent the case from becoming moot before it

[1] In its initial filings in this matter, the Plaintiff appeared to seek relief of broader scope, asking the Court to enjoin the Defendants "from engaging in *any conduct…directly or indirectly regarding, pertaining to or affecting* the Foothills Club West Golf Course." Application for Temporary Restraining Order With Notice and Application for Preliminary Injunction at pp. 1-2 (emphasis added). This proposed injunction, as phrased, was so all-encompassing that it would, if adopted, have infringed on the constitutionally-protected free speech rights of the Defendants by barring them from even engaging in conversations with the Golf Course owner or others about the Golf Course and its future. At the hearing on October 21, 2020, however, the Plaintiff made clear that the relief it seeks is of far more limited scope, and is not intended to encompass such constitutionally-protected activities.

can be heard and resolved on its merits. *See Planned Parenthood Ariz., Inc. v. Betlach*, 899 F.Supp.2d 868, 876 (D.Ariz. 2012) ("A preliminary injunction…seeks to preserve the relative positions of the parties until a trial on the merits can be held.") (citation and internal quotations omitted).

When considering whether to issue a preliminary injunction, "a court must consider whether the moving party has shown: (1) a strong likelihood of success at trial on the merits, (2) the possibility of irreparable injury not remediable by damages, (3) a balance of hardships in its favor, and (4) public policy favoring the injunction." *Apache Produce Imports, L.L.C. v. Malena Produce, Inc*., 247 Ariz. 160, 164, 447 P.3d 341, 345 (App. 2019), *citing Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990). "The critical element in this analysis is the relative hardship to the parties." *Shoen*, 167 Ariz. at 63, 804 P.2d at 792.

A court considering a request for a preliminary injunction may apply a "sliding scale" requiring the moving party to establish either "the presence of serious questions and that the balance of hardships tips sharply in favor of the moving party" or "probable success on the merits and the possibility of irreparable injury." *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12, 219 P.3d 216, 222 (App. 2009) (citations, internal quotations, and internal punctuation omitted). The term "serious questions" refers to questions that "are substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation." *Nat'l Ass'n of Manufacturers v. U.S. Dep't of Homeland Security*, __ F.Supp.3d __, 2020 WL 5847503 at *4 (N.D.Cal., Oct. 1, 2020) (citation and internal quotations omitted). As the Ninth Circuit has observed,

> [f]or the purposes of injunctive relief, "serious questions" refers to questions which cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo lest one side prevent resolution of the questions…by altering the status quo.

Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988).

The moving party need not, in other words, prove that its claims will ultimately carry the day in order to establish the presence of "serious questions." *See Valenzuela v. Gan*, 2015 WL 13333372 at *1 (D.Ariz., Jan. 21, 2015) ("serious questions going to the merits" requires "a lesser showing than likelihood of success on the merits"). On the contrary, the moving party may establish "serious questions" without showing "a certainty of success, nor even…a probability of success," as long as the party establishes "a fair chance of success on the merits" *Marcos*, 862 F.2d at 1362 (citation and internal quotations omitted). "The 'serious questions' standard permits [a court] to grant a preliminary injunction in situations where it cannot determine with certainty that the moving party is more likely than not to prevail on the merits of the underlying claims,

but where the costs outweigh the benefits of not granting the injunction." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1133 (9th Cir. 2011) (citation and internal quotations omitted).

C. The "Serious Questions/Balance of Hardships" Test

Turning to the first prong of the "serious questions/balance of hardships" test, the Court finds that, in two respects, the Plaintiff has established the requisite presence of serious questions going to the merits of its claims against the Defendants.

First, the evidence presented at the preliminary injunction hearing on October 21, 2020 (the "Hearing") calls into question whether the Association validly accepted the assignment of the Declarant's rights under the Golf Course Declaration, and whether the First Amendment to the Golf Course Declaration is effective.

There is no dispute that public policy favors conducting the affairs of a planned community openly and transparently, and that a planned community's governing board can properly meet outside the presence of the community's members only in limited circumstances. *See* A.R.S. § 33-1804(A), (F). Specifically, a planned community's board may properly meet in executive session only to obtain legal advice, to discuss pending or contemplated litigation, to discuss personal information relating to an individual member, employee or contractor of the community, or to discuss a member's appeal of a violation citation or a penalty imposed by the community. A.R.S. § 33-1804(A)(1)-(5). Nothing in A.R.S. § 33-1804 authorizes the board of a planned community to meet, or take action in, executive session under any other circumstances.

The evidence presented at the Hearing establishes that the Board's acceptance of the assignment of the Declarant's rights under the Golf Course Declaration was done in executive session. Likewise, the evidence establishes that, when the Board purported to adopt the First Amendment in 2018, it did so, again, in executive session. No evidence has been presented that either the acceptance of the assignment of the Declarant's rights, or the subsequent amendment of the Golf Course Declaration, was described in any notice to members as required by A.R.S. § 33-1804(B). *See* A.R.S. § 33-1804(B) ("A notice of any annual, regular or special meeting of the members shall also state the purpose for which the meeting is called, including the general nature of any proposed amendment to the declaration or bylaws…"). Even if the notice required by A.R.S. § 33-1804(B) were given, accepting an assignment of the Declarant's rights under the Golf Course Declaration and amending that declaration are not the types of actions that are identified in A.R.S. § 33-1804 as actions that may properly be taken in executive session. *See* A.R.S. § 33-1804(A)(1)-(5). The Court therefore finds serious questions about the validity of the Association's acceptance of the Declarant's rights under the Golf Course Declaration, and about the validity of the subsequent adoption of the Third Amendment.

Second, the Court finds serious questions about the validity of the Third Amendment's purported addition of New Paragraph 6.2 to the Golf Course Declaration because New Paragraph 6.2's "amendment" provision is inconsistent with the analogous provision of the Master Declaration.

Paragraph 1.1 of the Golf Course Declaration provides for the continued use of the Golf Course Property as a golf course. *See, e.g.*, Exhibit 2 at p. MCR 3 of 57, ¶ 1.1. The First Amendment purports to amend the Golf Course Declaration by adding New Paragraph 6.2, which purports to authorize an amendment of Paragraph 1.1 of the Golf Course Declaration by the vote of a simple majority of the votes cast provided that at least 31% of the Association's members vote. Under New Paragraph 6.2, therefore, an amendment to the Golf Course Declaration to authorize the development of the Golf Course Property for non-golf purposes could be passed with the support of less than 16% of the Association's members.

As noted above, however, Paragraph 11.2 of the Master Declaration provides that, with limited exceptions, amendments cannot be made to the Master Declaration without the approval of 75% of the Association's members. Exhibit 1 at p. MCR 59 of 85, § 11.2. New Paragraph 6.2 thus purports to authorize the amendment of the Golf Course Declaration with the support of far fewer members of the Association than would be required under the Master Declaration. The Plaintiff disputes the Association's authority, "as the purported [D]eclarant under the Golf Course Declaration," to "reduc[e] the percentage of approval by the Association members from 75% of all owners to a majority of 31% of the owners" to approve an amendment to the Golf Course Declaration "to allow non golf uses to replace the Golf Course use." Application at p. 4.

As the Association has acknowledged, the Golf Course Declaration is a "tract declaration" as that term is used in the Master Declaration. *See* Exhibit 10, Fifth Amendment to [Golf Course Declaration], at p. MCR 2 of 5 ("[T]he Golf Course Declaration was and is a 'Tract Declaration' as that term is defined in Section 1.49 of the [Master Declaration]."). Pursuant to Section 1.49 of the Master Declaration, a "tract declaration" must "in all cases be consistent with and subordinate to this Declaration." Exhibit 1 at p. MCR 15 of 85, § 1.49. To permit the amendment of a tract declaration by a simple majority is, at least arguably, inconsistent with Paragraph 11.2 of the Master Declaration. The Court finds that the Plaintiff has established the requisite "serious questions" as to whether the First Amendment's provision for amendment by less than a supermajority of the Association's members violates the mandate of Section 1.49 of the Master Declaration that tract declarations like the Golf Course Declaration must be consistent with the Master Declaration.

The Defendants argue that the Board adopted the First Amendment "to give the Association's membership a say in the future of the Golf Course Property" as well as "to protect

against attempts by future declarants to unilaterally change the use of the property." JPS at p. 15. While the Court does not doubt that the Board acted with good intentions in seeking to add New Paragraph 6.2 to the Golf Course Declaration, the Board's good intentions cannot supersede the dictates of the Master Declaration. *Cf. Pyeatte v. Pyeatte*, 135 Ariz. 346, 351, 661 P.2d 196, 201 (App. 1983) (role of court in interpreting contract is not "that of contract maker," and court cannot rewrite contract terms "simply to accomplish a purportedly good purpose").

The Defendants assert that the Board properly adopted the First Amendment because, as Declarant under the Golf Course Declaration, the Association enjoys the unfettered right to unilaterally amend the Golf Course Declaration in any way it sees fit. The Defendants' assertion on this point is not, however, accurate. Even assuming that the Association validly accepted the Declarant's rights, it is not accurate to say that the Golf Course Declaration gives the Declarant unfettered amendment rights. Paragraph 6.2 of the Golf Course Declaration empowers the Declarant to "*release or cancel* all or any portion of this Declaration with respect to all or any portion of the Golf Course Property at any time without the consent or approval of any other party." Exhibit 2 at p. MCR 8 of 57, ¶ 6.2 (emphasis added). Paragraph 6.2 of the Golf Course Declaration thus gives the Declarant the right to unilaterally *eliminate* existing provisions of the Golf Course Declaration. Paragraph 6.2 of the Golf Course Declaration says nothing, however, about amending the Golf Course Declaration *to add new provisions*, nor does any other provision of the Golf Course Declaration provides for its amendment by the addition of new provisions. Nothing in the terms of the Golf Course Declaration itself, therefore, authorized the Board to add a new "amendment" provision to the Golf Course Declaration that differs from the "amendment" provision of the Master Declaration.

Because (1) the Association acknowledges that the Golf Course Declaration is a tract declaration, (2) the Master Declaration provides that tract declarations must be consistent with, and subordinate to, the provisions of the Master Declaration, and (3) the Master Declaration permits amendment only by a "supermajority" vote, the Court finds serious questions as to the validity of the First Amendment, which purports to add a new "amendment" provision to the Golf Course Declaration that is not consistent with that of the Master Declaration.

Turning to the second prong of the "serious questions/balance of hardships" test, the Court finds that the balance of hardships overwhelmingly favors the Plaintiff. On this point, the Court finds persuasive the testimony of witnesses Ellen Davis and Matthew Tyler that an amendment to the Golf Course Declaration authorizing the development of the land for non-golf uses would have an immediate negative impact on the value of the lots adjacent to the Golf Course, including lots owned by the Plaintiffs' members.

Although the Association asserts that no negative impact will be felt unless and until construction of homes on the golf course actually commences, the Court sees no basis for this

assertion. Any reasonable prospective home buyer would take into consideration not only the present state of the neighborhood, but future development that may occur there. An amendment to the governing documents to authorize residential development of the current Golf Course Property would certainly factor into a prospective home buyer's decision as to whether to buy a lot on the Golf Course, and how much to offer for that lot.

The Defendants argue that an amendment to the Golf Course Declaration would have no adverse effects on the home value of the Plaintiff's members because, they assert, the governing documents already put prospective buyers on notice that the Golf Course Property may be developed for non-golf uses. In support of its assertion on this point, the Association cites Article 12, § 12.1 of the Master Declaration, the "disclaimer" provision of the Master Declaration.

In pertinent part, Paragraph 12.1 of the Master Declaration gives notice that "no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing ownership, operation or configuration of, or right to use, any golf course within, near or adjacent to the Property." Exhibit 1 at p. MCR 70 of 85, ¶ 12.1.[2] According to the

[2] Paragraph 12.1 of the Master Declaration provides as follows:

> Disclaimers Regarding Golf Courses: All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing ownership, operation or configuration of, or right to use, any golf course within, near or adjacent to the Property, whether or not depicted on the Master Development Plan or any other land use plan, sales brochure or other marketing display or plat. No purported representation or warranty, written or oral, in such regard shall ever be effective without an amendment hereto executed by Declarant. Further, the ownership, operation or configuration of, or rights to use, any such golf course may change at any time and from time to time for reasons including, but not limited to: (a) the purchase or assumption of operation of any such golf course by an independent Person; (b) the conversion of any such golf course's membership structure to an equity club or similar arrangement whereby the members of such golf course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of such golf course; (c) the conveyance, pursuant to contract, option or otherwise, of such golf course to one or more affiliates, shareholders, employees or independent contractors of the Declarant; or (d) the conveyance of any such golf course to the Association or to one or more Subsidiary Associations. As to any of the foregoing or any other alternative, no consent of the Association, any Subsidiary Association or any Owner shall be required to effectuate such transfer (except for the consent of the Association in the event of a transfer to the Association or of the applicable Subsidiary Association in the event of a transfer to such Subsidiary Association). No Owner or Occupant shall have any ownership interest in any such golf course solely by virture of: (i) his, her or its membership in the Association or

Association, the language of Paragraph 12.1 of the Master Declaration disclaiming any representations about the continued "operation" of, "configuration" of, or "right to use" the Golf Course Property gives notice that the Golf Course Property may be developed for non-golf purposes.

While it is true that Paragraph 12.1 of the Master Declaration gives notice that the Golf Course may cease operating on the Golf Course Property, that is not the same as giving notice that the Golf Course Property may be redeveloped for other, non-golf uses. Closing a golf course is not the same as building houses on it. Likewise, Paragraph 12.1 of the Master Declaration gives notice that members may lose their "right to use" the Golf Course, but does not state that the use of the Golf Course Property may change to non-golf purposes. The language of Paragraph 12.1 of the Master Declaration thus does not give notice that residential development may occur on the Golf Course Property.

While the Plaintiff's members would suffer an immediate hardship if the governing documents were amended to authorize non-golf uses of the Golf Course Property, the Association has identified no hardship at all that it would suffer if the requested injunction were granted. On the contrary, the Association's President, Mr. Hinz, made clear that there are currently no proposals pending for any change to the permissible use of the Golf Course Property. What hardship could the Association suffer as a result of being enjoined from doing something that the Association states it has no plans to do anyway?

The Court thus finds that the hardship to the Plaintiff and its members greatly outweighs any possible hardship to the Association, and so finds that the second prong of the "serious questions/balance of hardships" test tips heavily in the Plaintiff's favor. *See Marcos*, 862 F.2d at 1362 (holding that the balance of hardships "tipped decidedly" in plaintiff's favor where defendants presented "zero evidence of hardship").

The Court concludes that the Plaintiff has established its entitlement to its requested preliminary injunction under the "serious questions/balance of hardships" test. Because the Plaintiff has established its entitlement to its requested relief under the "serious questions/balance of hardships" test, the Court finds it unnecessary to address the alternative "likelihood of success /irreparable injury" test. The Court notes, however, that denying the requested relief would create a substantial risk of irreparable injury resulting from the diminution in the value of the property owned by the Plaintiff's members. Injury is irreparable if it is

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any Subsidiary Association; or (ii) his, her or its ownership, use or occupancy of any Lot or Parcel, or portion thereof.

Exhibit 1 at p. MCR 70 of 85, ¶ 12.1.

difficult to quantify in monetary terms, *see Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc*., 944 F.2d 597, 603 (9th Cir. 1991), and calculating the amount of the diminution in the value of the homes of the Plaintiff's members would be difficult, to say the least. The Court further notes that the issuance of the requested injunction pending resolution of this case on the merits would have no adverse effect on the public interest. On the contrary, because the public interest favors adherence to statutory "Open Meeting" requirements, *see* A.R.S. § 33-1804, the public interest would be served by preventing the Association from taking action as Declarant under the Golf Course Declaration until the validity of the Association's acceptance of the assignment of the Declarant's rights is established. *See, e.g*., *Sheridan Corp v. U.S*., 94 Fed.Cl. 663 (Fed.Cl. 2020) (granting preliminary injunction in "bid protest" case and holding, *inter alia*, that public interest would be served by ensuring compliance with applicable procurement statutes).

For the foregoing reasons, the Court finds that the Plaintiff has established its entitlement to a preliminary injunction barring the Association and its Board from scheduling or holding a vote of the Board or of the Association's members to amend Paragraph 1.1 of the Golf Course Declaration, or any other provision of the Golf Course Declaration or the Master Declaration, to authorize or permit the Golf Course Property to be used or developed for non-golf purposes. The Court will therefore issue a preliminary injunction to prohibit the Association and the Board from scheduling or conducting such a vote.

As required by Ariz.R.Civ.P. 65(c)(1), the Court will require the Plaintiff to post security, in the amount of $10,000.

In accordance with the foregoing, and pending further order of the Court,

IT IS ORDERED enjoining the Defendants and their agents and employees from scheduling or conducting a vote of the Board, or of the Association's members, to amend Paragraph 1.1 of the Golf Course Declaration, or any other provision of the Golf Course Declaration or the Master Declaration, to authorize or permit the non-golf use or development of the property that is the subject of Paragraph 1.1 of the Golf Course Declaration.

IT IS FURTHER ORDERED that Plaintiffs shall post security in the amount of $10,000.00.

IT IS FURTHER ORDERED setting a Status Conference to discuss the scheduling of further proceedings on **December 9, 2020** at **9:30 a.m**. (**15 minutes allotted**) before this Division.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-003577 10/30/2020

NOTE: Due to issues with COVID-19, counsel and self-represented parties are directed to participate for said hearing by calling this Division's bridge line promptly at the scheduled time.

Bridge Line:
602-506-9695 or 1-855-506-9695

Access Code:
953806

NOTE: All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is $140 for a half-day and $280 for a full day.

/ s / HONORABLE DANIEL J. KILEY

Daniel J. Kiley
Judge of the Superior Court