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No. 22F-H2221003-REL

ADMINISTRATIVE LAW JUDGE DECISION

Respondent.

APPEARANCES: Petitioner Kathy Padalino appeared on her own behalf. Kelsey Dressen, Esq. represented Respondent Legend Trail Parcel A.

FINDINGS OF FACT

2. On or about September 7, 2021, the Department issued a Notice of Hearing in which it set forth the issue for hearing as follows:

3. At hearing, Petitioner testified on her own behalf. Respondent presented argument and submitted three exhibits into evidence.

1 4. Petitioner co-owns her home with another individual, Vance Gribble. Mr.
2 Gribble obtained the access code to the gate and has shared it with Petitioner as co-owner
3 of the property, however, Mr. Gribble has requested that Petitioner not share the code
4 with her friends and family. Therefore, Mr. Gribble has placed restrictions on Petitioner's
5 use of the personal access code for their shared Lot.

6 5. Petitioner asserted at hearing that Respondent is in violation of the CC&Rs
7 because Respondent has denied her, individually, a personal access code for the gate
8 into the community.

9 6. Petitioner alleged that Respondent violated Article 2 Section 2.4 of the
10 CC&Rs that provides:

11 **Access Gates** The Declarant intends to construct card activated access
12 gates at the entrances to the Project in order to limit access and provide
13 more privacy for the Owners and Residents. Each Owner and Resident of a
14 Residential Unit acknowledges for themselves and their families and guests
15 that the access gates do not guarantee the safety or security of the Owners
16 and Residents or their families and guests or guarantee that no
17 unauthorized Person will gain access to the Project.

18 7. Petitioner asserted that as an owner and member, she is entitled to her own
19 personal and individual access code. Petitioner testified that she "searched for a rule" that
20 sets forth that only one gate code per lot is permitted, and could not find any such rule and
21 requested that Respondent provide her that information.

22 8. Petitioner acknowledged that she currently has four modes with which she
23 can access the community: i) Petitioner has remote access through a fob in her vehicle; ii)
24 Petitioner has the four digit code provided by Respondent to Mr. Gribble; iii) Petitioner has
25 a vendor code provided by Respondent; and iv) Petitioner has a functioning gate opener.
26 There is also the availability of a call box. Petitioner testified that she believes she is
27 entitled to another four digit code. Petitioner asserted that it is inconvenient when she has
28 guests staying at her home for a period of time, to not have a code she can provide for
29 them that is operational 24 hours per day, seven days a week, as the vendor code only
30 works during certain hours and days.

1 9. Respondent does not dispute that Petitioner is an Owner as defined in
2 Article 1 Section 26, or a Member as set forth in Article 4 Section 4.6. Respondent
3 disputes that it has violated the CC&Rs and that Petitioner is entitled to an additional four
4 digit code.

5 10. Pursuant to Article 4 Section 4.3, The Association Rules:

6 The Board may, from time to time, and subject to the provisions of this
7 Declaration, adopt, amend and repeal rules and regulations pertaining to (I)
8 the management, operation and use of the Areas of Association
9 Responsibility including, but not limited to, any recreational facilities situated
10 upon the Areas of Association Responsibility, (II) minimum standards for the
11 Maintenance of Lots, or (III) restrictions on the use of Lots. In the event of
12 any conflict or inconsistency between the provisions of this Declaration and
13 the Association Rules, the provisions of this Declaration shall prevail. The
14 Association Rules shall be enforceable in the same manner and to the same
15 extent as the covenants, conditions and restrictions set forth in this
16 Declaration.

17 11. Pursuant to the November 2006 Preserve Summit at Legend Trail User
18 Instructions for the Sentex Infinity Gate System:

19 Each household may be issued two unique 4 digit entry codes. The first is
20 the **Family Code-this code opens the gate at any time and should be**
21 **kept confidential.** The second is a **Vendor Code**-this code opens the gate
22 Monday through Friday 6:00 am to 4:00 pm and Saturday 8:00 am to 12:00
23 pm and is for use by vendors providing services such as landscaping or pool
24 maintenance.¹

25 Emphasis in original.

26 12. The Legend Trail Parcel A Homeowners Association Gate Access Policy,
27 which took effect on August 18, 2021, subsequent to the filing of the Petition in this matter,
28 states the following in pertinent part:

29 **Code Access:** Each Lot will be issued a single four digit code for use by all
30 Residents of the Lot. Members may obtain or change the Lot's Gate Code
by visiting the Association's Community Manager at the Association's
Office.

a. Temporary Gate Codes: A Member may request a forty-eight (48)
hour temporary access gate code to supply to guests for parties,

¹ See Respondent's Exhibit 3.

open houses, or other limited events. Temporary gate codes will automatically expire at the end of the requested time period.²

CONCLUSIONS OF LAW

1. Arizona statute permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents or violations of statutes that regulate planned communities.³ That statute provides that such petitions will be heard before the Office of Administrative Hearings.

2. Petitioner bears the burden of proof to establish that Respondent committed the alleged violation by a preponderance of the evidence.⁴ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁵

3. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”⁶ A preponderance of the evidence is “[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”⁷

4. Petitioner failed to prove by a preponderance of the evidence that Respondent violated the CC&Rs as alleged in the Petition. Petitioner did not establish that Respondent is obligated to provide her with a “personal” or “individual” access code. Respondent has provided an access code for Petitioner’s lot, in addition to the vendor code, key fob, gate opener and call box. Mr. Gribble, as co-owner, has placed restrictions upon Petitioner’s use of the code for the Lot. That is an issue for Petitioner to take up with Mr. Gribble, not the Department. Petitioner failed to sustain her burden to establish a

² See Respondent’s Exhibit 4.

³ A.R.S. § 32-2199

⁴ See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ See A.A.C. R2-19-119(B)(2).

⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁷ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 violation by Respondent of Article 1 Section 26, Article 4 Section 4.6, and Article 2,
2 Section 2.4.

3 **ORDER**

4 IT IS ORDERED that Petitioner's Petition is dismissed.

5 **NOTICE**

6 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
7 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
8 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
9 **must be filed with the Commissioner of the Department of Real Estate**
10 **within 30 days of the service of this Order upon the parties.**

11
12 Done this day, December 8, 2021.

13 /s/ Sondra J. Vanella
14 Administrative Law Judge
15

16 Transmitted by either mail, e-mail, or facsimile December 8, 2021 to:

17 Louis Dettorre, Commissioner
18 Arizona Department of Real Estate
19 100 N. 15th Avenue, Suite 201
20 Phoenix, Arizona 85007

21 Attn:

22 AHansen@azre.gov

23 djones@azre.gov

24 DGardner@azre.gov

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