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5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**
7

8 APACHE WELLS HOMEOWNERS
ASSOCIATION, INC., an Arizona non-profit
9 corporation,

10 Plaintiff,

11 v.

12 DEPARTMENT OF FIRE, BUILDING AND
LIFE SAFETY; OFFICE OF
ADMINISTRATIVE HEARINGS, an
13 independent agency; WALTER A. STROMME,
a married man,

14 Defendants.
15

No. LC2007-000189

**OBJECTION TO FORM OF
JUDGMENT**

16 Defendant/Petitioner Walter A. Stromme hereby objects to the Association's form
17 of Judgment. The Association's requested Judgment (the "Judgment") far exceeds the
18 relief granted by the Honorable Margaret H. Downie in her November 2, 2007 Minute
19 Entry, which ruled only that the decision of the Administrative Law Judge ("ALJ") is
20 reversed. Judge Downie did not rule on the merits of the underlying claim, and
21 accordingly, the Association's requested Judgment should be rejected.

22 Judge Downie's November 2, 2007 Minute Entry discussed the limited jurisdiction
23 of the ALJ, finding that only the governing documents for Apache Wells and the Planned
24 Communities Act could provide the basis for the ALJ's decision. Judge Downie expressly
25 noted that the available remedies would differ if "Stromme's claims were being litigated in
26 a civil action." With these parameters, Judge Downie ruled that the ALJ's decision should

1 be reversed because Stromme did not meet his burden of proof at the administrative level.
2 Judge Downie did not, on the other hand, make any findings regarding the propriety of the
3 Association's actions.

4 Each of the requested rulings in the Association's Judgment exceeds the scope of
5 Judge Downie's ruling. The Association's first requested ruling, that "the transfer fee is
6 not a special assessment, cannot be found anywhere in Judge Downie's Minute Entry.
7 Instead, Judge Downie merely ruled that Mr. Stromme did not establish that the transfer
8 fee is a special assessment.

9 The Association's second and third requested rulings are more problematic. The
10 Association would like the Court to rule by Judgment that the Association did not violate
11 the governing documents or the Planned Communities Act in increasing the transfer fee,
12 however, Judge Downie did not address that issue in her ruling. Similarly, Judge Downie
13 did not rule that the transfer fee increase is "valid and authorized" under the governing
14 documents or the Planned Communities Act. Again, Judge Downie merely ruled that Mr.
15 Stromme did not meet his burden of proof in establishing a violation.

16 The Court's November 2, 2007 Minute Entry makes it clear that the central issue
17 resolving in favor of the Association in this appeal is jurisdictional. Indeed, while the
18 parties both conducted in depth analyses of applicable law, Judge Downie ruled that the
19 ALJ was limited by the governing documents and the Planned Communities Act. Judge
20 Downie makes repeated references to a potential different result if this case were pending
21 in a civil court. Accordingly, Mr. Stromme respectfully request the Court's final
22 Judgment in this case reflect the fact that Mr. Stromme's remedies may be addressed in
23 another forum.

24 Mr. Stromme has submitted contemporaneously herewith a form of Judgment for
25 the Court's consideration. Mr. Stromme's proposed Judgment accurately reflects the
26 Court's ruling in all respects. More specifically, Mr. Stromme's proposed Judgment notes

1 that the decision is without prejudice as to the validity of the Association's transfer fee
2 increase, and adheres to Judge Downie's express rulings.

3 For each of the foregoing reasons, Mr. Stromme respectfully requests the Court
4 enter Judgment as reflected in Mr. Stromme's proposed form of Judgment, or at a
5 minimum, require the Association to submit a revised form of Judgment that accurately
6 reflects the Court's ruling in this matter.

7 DATED this 27 day of November, 2007.

8 CHEIFETZ IANNITELLI MARCOLINI, P.C.

9 By

10 
Steven W. Cheifetz
Melanie C. McKeddie
Attorneys for Petitioner/Appellee

11 ORIGINAL of the foregoing filed
12 this 27 day of November, 2007 with:

13 Clerk
MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson
14 Phoenix, Arizona 85003-2243

15 COPY of the foregoing hand-delivered
16 this 27 day of November, 2007 to:

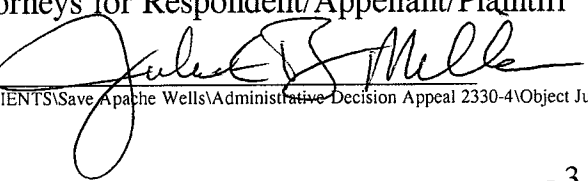
17 The Honorable Margaret H. Downie
MARICOPA COUNTY SUPERIOR COURT
201 West Jefferson, Room 4A
18 Phoenix, Arizona 85003-2243

19 COPIES of the foregoing mailed
20 this 27 day of November, 2007 to:

21 DEPARTMENT OF FIRE, BUILDING & LIFE SAFETY
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22 Phoenix, Arizona 85007

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24 Mesa, Arizona 85201
Attorneys for Respondent/Appellant/Plaintiff

25 By

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