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March 24, 2026

VIA EMAIL AND U.S. FIRST CLASS MAIL

Lone Mountain Community Association
c/o FirstService Residential Arizona
ATTN: Emily Ottens, Community Manager
9000 N Pima Center Pkwy, #300
Scottsdale, AZ 85258
lonemountain.az@fsresidential.com

Marcia Hahn, Board President: lmhoamarciiah@gmail.com
Betsy Walker, Treasurer: lmhoabetsyw@gmail.com
Thomas Yacono, Vice President: lmhoaty@gmail.com
Armando Luna, Secretary: lmhoaluna@gmail.com
Keith Sutcliffe, Director at Large: lmhoakeiths@gmail.com

Re: *Robert Scott Henderson & Wendy Henderson*
32476 N 61st Way, Cave Creek, AZ 85331 ("Subject Property")

Dear Board:

This firm represents Robert Scott Henderson and Wendy Henderson regarding the above referenced matter. As I am sure you are aware, the Lone Mountain Community Association ("Association") purported to amend Section 5.8.1 of the Design Guidelines to require the front yard side and/or return block walls be painted Behr Pepper Spice or its equivalent. Despite the Hendersons' pleas to the Association, the Association refuses to reconsider its position. The Association's position is contrary to Arizona law and the Hendersons must be allowed to keep and maintain the current color of their block walls.

The Amendment Exceeds the Scope of the Association's Authority.

As you know, the Association is governed by the Declaration of Covenants, Conditions and Restrictions for Lone Mountain. ("Declaration"). The Declaration establishes an Architectural Review Committee and allows the Association's board to establish Design Guidelines to be utilized by the Architectural Review Committee when a homeowner seeks approval for a "change." (*See Declaration at Section 3.1.3*). "Change" has been defined as "The proposed construction or installation of any new Improvement, or any proposed addition, alteration, repair, change or other work that will be (or will be with the passage of time) Visible From Neighboring Property is hereinafter referred to as change." *Id.* The Hendersons are not seeking a change. Rather, they want to keep the color of their block walls which match their home.

The Board's alleged amendment to the Design Guidelines is outside of the scope of its authority. The Declaration does not give the Association the ability to require changes or force members to change their property in a particular manner. The Declaration only gives the Association discretion to apply Design Guidelines when change is sought. Even the Guidelines themselves recognize this principle as they state that the Design Guidelines are adopted "to provide for (i) architectural rules and guidelines

for all Improvement and additions and changes to existing Improvements..." The Hendersons are not seeking to install an improvement, addition or to change their property. As such, the Design Guidelines do not apply.

The Association does not have the authority to impose any change. The Association's authority is limited to reasonably applying standards when changes are sought. The Association cannot make a homeowner install a paver driveway or change their roof from tile to shingle. Likewise, the Association does not have the authority to mandate that walls be painted a contrasting color. The Hendersons' home was painted by one of the original builders, Lennar. Lennar constructed 42% of the homes in the community and painted the wall adjacent to the homes it built the same color as the home. The Hendersons simply desire to keep the original color on their walls.

The Association's Actions are Arbitrary, Capricious and Contrary to Arizona Law.

Moreover, the Association may not act arbitrarily, capriciously or unreasonably. See Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner, 196 Ariz. 631, 2 P.3d 1276 (Ct. App. Ariz. 2000); Makeever v. Lyle, 125 Ariz. 384, 609 P.2d 1084 (1980); Ironwood Owners Ass'n IX v. Solomon, 178 Cal.App.3d 766, 224 Cal.Rpts. 18 (Cal.App., 4th Dist. 1986). Additionally, the Association owes duties to its members. Tierra Ranchos Homeowners Ass'n v. Kitchukov, 216 Ariz. 195, 202, ¶ 28 (App. 2007); Coll. Book Ctrs., Inc. v. Carefree Foothills Homeowners' Ass'n, 225 Ariz. 533, 541, ¶ 26 (App. 2010). The Arizona Court of Appeals consistently references the Restatement (Third) of Property: Servitudes ("Restatement") at Section 6.13, which indicates the Association has a duty to treat members fairly and act reasonably in the exercise of discretionary powers.

The Association's Purported Amendment is Contrary to Kalway v. Calabria Ranch.

The Arizona Supreme Court recently invalidated amendments to a declaration because the changes were not "reasonably foreseeable." Kalway v. Calabria Ranch HOA, LLC, 252 Ariz. 532, (2022). Although in this case, it is the Design Guidelines that are at issue, the authority to adopt design guidelines stems from the Declaration. The Declaration fails to give a homeowner notice that the Association can require a homeowner to paint the block walls surrounding a home an entirely different and contrasting color from the color installed by the original builder and a color that was approved. This is a fundamental property right and the lack of any reference to a principle contrary to the right to maintain your home in the manner in which you purchased it prohibits the Association from amending any document which eliminates that fundamental property right.

The Hendersons expect the Association to confirm within ten (10) days that the purported amendment will not be enforced. Additionally, the Association must commit to taking action to remove the illegal amendment from the Bylaws. Should the Association fail to meet these demands, the Hendersons are prepared to bring an action in Maricopa County Superior Court to establish their rights and to recover damages, including actual and punitive damages, plus all attorney's fees.

Finally, upon information and belief and after the 2020 Design Guideline requiring Pepper Spice, the Association has approved homeowners' requests to paint their walls to match the color of their home and, in some cases, have actually required homeowners to paint their wall the same color of their home. The Hendersons demand all applications for architectural changes submitted to the Association and the Association's response to the applications since 2020. Additionally, the Hendersons request any and all communication the Association has had with any member regarding paint color since 2020. Consider

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this a request for records pursuant to A.R.S. §33-1805 and provide the records within ten (10) days. The Hendersons will pay any copying charges allowed by law.

Sincerely,

Mark J. Bainbridge

cc: Client(s)