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January 25, 2021

## VIA EMAIL AND U.S. FIRST CLASS MAIL

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Joshua M. Bolen, Esq.  
Carpenter, Hazlewood, Delgado & Bolen  
1400 E Southern Ave, Ste 400  
Tempe, AZ 85282

Re: *Board Governance*

Dear Mr. Bolen:

This firm represents Michele Beauchamp regarding the above referenced matter. As I am sure you know, the Association is governed by the Declaration of Condominium and Declaration of Covenants, Conditions, Restrictions and Easements for The Village at Rio Paseo Condominium, which has been recorded with the Maricopa County Recorder at Document No. 2005-1325333. Additionally, the Association is required to act consistent with the Condominium Act, as well as all common law. The Association is not being appropriately governed. In particular, the Association is not abiding by the open meeting laws. *See* A.R.S. §33-1248. The Association is breaching its fiduciary obligations to its members and Ms. Beauchamp is unlawfully being excluded from participating in the Board's decision-making process. The Association must immediately refrain from discussing matters outside of open meetings and begin to act in a lawful and fiscally responsible matter. We will outline some of the pertinent issues below.

### **Election Tampering**

The Board asserted there was a tie for certain Board positions at the most recent election and then purported to expand the Board from three (3) to five (5) members. The process was objected to by Ms. Beauchamp, but nonetheless, a Board of five (5) members was established. There was no process or explanation regarding how this transpired. Please provide all voting material, including the ballots, meeting minutes regarding the election, and all emails related to the same. Consider this a request made pursuant to A.R.S. §33-1258 and provide the material within ten (10) days.

### **Improper Assignment of Committees**

Ms. Beauchamp applied to be on the architectural committee and was denied. As a Board member, she has not been included in the process of establishing the committees. She has over four (4) years of experience serving on another Association's Board, over thirty (30) years of experience as a graphic designer, and has worked for a builder/developer. The Association needs to have a transparent policy assigning committees and Ms. Beauchamp, as a Board member, is entitled to be

part of that process. Moreover, various architectural applications submitted by Ms. Beauchamp are being summarily and inappropriately denied.

### **Pool Resurfacing and Mismanagement of Funds**

Ms. Beauchamp is not included in the decisions regarding the pool and is receiving inconsistent information regarding the same. First, she was told cracks were being fixed. Then she was told that the entire pool needed to be resurfaced. Regardless, the Association has recently resurfaced its pool without utilizing a contractor licensed to do resurfacing and has grossly overpaid for the same. The pool has been closed for months as a result. Again, Ms. Beauchamp was unaware of a pool contract or decision by the Board to resurface the pool. Upon inquiry, she was told the contract price was \$26,000.00, but the December financials indicate Arizona Pool Wizard has been paid \$27,157.92. There is not funding for pool resurfacing in the Association reserve account, yet \$9,473.96 was transferred from the reserve to the operating on October 31, 2020, without reference to a budget code. On the same day, categorized under "Asphalt Seal & Repair," Arizona Pool Wizard was paid \$9,473.96. They were also paid \$9,473.00 under "Pool – Replaster & Tile." The Budget Comparison Report references a variance in the Pool Replastering Reserve fund and denotes "variance reflects pool resurface down payment approved by BOD."

Not only was Ms. Beauchamp not involved in this decision, but research indicates that the typical cost of pool resurfacing is \$4-\$7 per square foot. Although the exact square footage is unknown, it is evident that there was a gross overpayment. Additionally, Arizona Pool Wizard does not have a license that allows them to complete the replacement of plaster or pebble on pool interiors. Upon information and belief, the County has specific guidelines for semi-public pools and a permit is required to be obtained for a remodel before it can be used. It is Ms. Beauchamp's understanding that this has not been done, which is probably why the pool has not been open, and was recently informed at a Board meeting that the pool cannot be permitted. To make matters worse, there was an additional \$4,000.00 paid to Arizona Pool Wizard to replaster the spa. Ms. Beauchamp was not included in any decision to resurface the spa and only recently learned there was alleged damage to the spa surface as a result of a New Year's incident in which rocks were thrown into it.

Please provide all pool and spa contracts, work orders, invoices and payments. Consider this a request made pursuant to A.R.S. §33-1258 and provide the information within ten (10) days.

### **Landscaping**

On the Association's "Check Register w/Detail," it indicates a payment of \$2,225.20 under Code 53325 for Plant and Tree Replacement. The amount of \$2,115.20 is on the budget as an A/P Voucher post to ABC Scapes on the Association's General Ledger. There is no reference to any plant or tree replacement in the ABC Scapes Maintenance Reports and thus, Ms. Beauchamp is concerned about the accuracy of the financials. There were some Sissoo trees removed, but if that is what the charge reflects, it should be accurately documented. Furthermore, the Association is in the process of removing ten (10) additional trees, which should be the responsibility of the developer because Sissoo trees, with their aggressive roots, should not have been planted near

structures. The Board should pursue the developer and accurately reflect any charges related to tree removal in the financials.

### **Insurance**

Ms. Beauchamp was informed that the Association was considering changes to its insurance policy in December of 2020 without any knowledge or discussion among the Board. Furthermore, the Board sought and obtained legal advice regarding insurance without any discussion among the Board. From October to December, there was major shifting of funds within the line item "Insurance." The contemplation of a different insurance policy was accompanied by a change in policy requiring homeowners to update all of the plumbing fixtures, which is not feasible for many owners and should not be members' burdens. Insurance can be obtained by individual homeowners at a fraction of the price. Although it has been requested, the insurance policies have not been produced. Please provide all insurance policies and declarations pages, as well as any and all communication regarding discussions about changing the policy. Consider this a request made pursuant to A.R.S. §33-1258 and provide the documents within ten (10) days.

### **Parking Enforcement**

The Association has embarked on a parking enforcement campaign, including the towing of vehicles without proper notice to the membership. In the event the Association seeks to start towing vehicles, it needs to give members specific notice of the date such vehicles will be towed and an accurate notice of the parking policy in the CC&Rs it is enforcing. Recently, the Association sent a Community Parking Reminder that was a very generic and inaccurate recitation of the parking policy. Additionally, the Board made this decision without including Ms. Beauchamp. If the Association starts aggressively enforcing the parking policy and towing vehicles without proper notice to the members, the members will be outraged and the Association will find itself in various legal disputes.

### **Handicap Parking**

Historically, the Association has had eight (8) handicap parking spaces which were unmarked. The Board has recently reduced this to one (1) space. Although the Board claims the City has approved the change, Ms. Beauchamp has never seen any documentation regarding the same. Ms. Beauchamp believes that, pursuant to the Americans with Disabilities Act ("ADA"), one space for each lot is needed and there needs to be a clear three (3) foot wide path, and a level surface to enter all buildings. The Association has again disregarded Ms. Beauchamp. Please provide all documentation from the City regarding the required handicap parking. Consider this a request made pursuant to A.R.S. §33-1258 and provide the documentation within ten (10) days.

### **Violation of Open Meeting Laws**

As you should know, the Association is required to conduct business in open, properly noticed meetings pursuant to A.R.S. §33-1248. The Association is not doing so, as is clearly evident by the fact that decisions are being made and implemented without Ms. Beauchamp's knowledge. All

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Board meetings must be open and Ms. Beauchamp must be given an opportunity to speak. Recently, she has been improperly muted and not allowed to speak at Board meetings. Furthermore, the Association has inappropriately and unjustifiably threatened her with a violation of the code of conduct. Such behavior will not be tolerated and Ms. Beauchamp demands all meetings be properly held and the opportunity to weigh in on the decision-making process.

### **Lack of Enforcement of Guidelines**

The Association has failed to develop architectural guidelines and, as a result, there is no standard in the community. Patio furniture, umbrellas, doorbells, hoses, lights, pots and other items are strewn about the Association making the Association look tacky. If this is not addressed, property values are going to decline and the Association may transition from primarily owner-occupied to rentals, further decreasing property values.

### **Inaccurately Communicating with the Membership**

The Association is inaccurately communicating with the membership. The Board recently took a survey of the membership and informed the membership that the results of the survey were positive. However, it turns out many members are equally as upset about the lack of enforcement and standards within the community. The Board should not be spreading misinformation.

### **Vendor Contracts**

The vendors are not qualified, licensed or properly vetted. The Association should be obtaining three (3) estimates for major repairs to get a fair market price. The pool is a great example of this problem. The Association overpaid for work that now can't even be permitted, which will undoubtedly cost the Association more money.

Recently, the Association needed to replace backflow preventers and, instead of utilizing a contractor that is approved by the utility company, the work was given to the landscaper, ABC Scapes. Ms. Beauchamp contacted BPDI, which is the contractor listed on the sticker located on the backflow cages and they indicated they did a backflow test on December 31, 2020. Upon further inquiry, BPDI does work for ABC Scapes. The concerning aspect of this is that ABC Scapes did not provide a cost of repair prior to repairing and the cost is unknown and subject to change at their discretion. The Association should always be working from firm bids such that it is not subject to additional costs and adjustments by any vendor.

### **Conclusion**

As you can see, there are serious concerns regarding the Association's finances and actions. Particularly concerning is that the aforementioned conduct and other conduct is occurring without notice to Ms. Beauchamp. To make matters worse, when she speaks at a Board meeting, she is immediately accused of violating the code of conduct. Her actions are not a violation of the code of conduct. In fact, her actions are a necessary attempt to inform the membership of issues and fulfill her fiduciary obligations.

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The Board must immediately include Ms. Beauchamp in all of the Association's decisions at properly noticed, open Board meetings at which she is allowed to speak and discuss the relevant action items. The Association's failure to abide by the law and begin being fiscally responsible will result in legal action.

**Additional Request for Records**

Pursuant to A.R.S. §33-1258, please also provide all Board meeting minutes for the period of January through October of 2020.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Bainbridge". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Mark J. Bainbridge

cc: Client(s)