

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Devin Concholar, Deputy  
Date 10/28/2015 Time 16:12:26

Description	Amount
CASE# CV2015-012434	
CIVIL NEW COMPLAINT	319.00
TOTAL AMOUNT	319.00
Receipt# 24863059	

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IN THE SUPERIOR COURT OF ARIZONA  
COUNTY OF MARICOPA

PATRICIA BOCCHINO,

Plaintiff,

vs.

FOUNTAIN SHADOWS HOMEOWNERS  
ASSOCIATION,

Defendant.

No.

CV 2015-012434

**COMPLAINT**

Plaintiff Patricia Bocchino ("Bocchino") alleges the following for her complaint against Defendant Fountain Shadows Homeowners Association ("Defendant"):

**PARTIES AND JURISDICTION**

1. Plaintiffs is a resident of Maricopa County, Arizona.
2. Defendant is a non-profit corporation authorized to do business and doing business in Maricopa County, Arizona.
3. The events alleged in this complaint occurred in Arizona. Defendant is present in Arizona, doing business in Arizona, and/or caused events to occur in Arizona out of which Plaintiffs' causes of action arise.
4. Jurisdiction and venue are proper in this Court.

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**GENERAL ALLEGATIONS**

5. Bocchino at all relevant times owned property located at 8736 North 67<sup>th</sup> Lane, Peoria, Arizona 85345 (the "Property"). Bocchino became the owner of the Property in or about January 2014.

6. When Bocchino originally bought the Property, she intended to live there and had no intention of selling. Bocchino made numerous improvements to the Property after purchasing the Property consistent with this intention to remain in the Property.

7. The Property is located within a planned community and subject to a Declaration of Covenants, Conditions and Restrictions (the "Declaration"). A true and correct copy of the Declaration is attached as Exhibit 1.

8. Defendant is the homeowners' association for the community.

9. At all times relevant to this dispute, Bocchino paid assessments on a monthly basis to Defendant on a monthly basis through the Association's website portal. Bocchino also paid late fees and administrative fees, when applicable,

10. Starting in or about May 2015, Defendant began adding charges to Bocchino's account purportedly representing unadjudicated attorneys' fees. A true and correct copy of the ledger for Bocchino's account is attached as Exhibit 2.

11. The ledger reflects that Defendant charged the following to Bocchino's account for "Attorneys Fees":

- a. On May 12, 2015, Defendant charged the sum of \$1,832.28.
- b. On June 14, 2015, Defendant charged the sum of \$1,126.50.
- c. On July 17, 2015, Defendant charged the sum of \$120.00.
- d. On August 6, 2015, Defendant charged the sum of \$573.50.
- e. On September 5, 2015, Defendant charged the sum of \$168.00.
- f. On September 8, 2015, Defendant charged the sum of \$72.00.

1           12. The total charged to Bocchino's account in alleged "Attorney Fees" as of  
2 September 8, 2015, was \$3,892.28.

3           13. In or about September 2015, Bocchino requested an accounting of the alleged  
4 "Attorney Fees" charged to her account. A true and correct copy of the redacted historical  
5 statement provided to Bocchino by Defendant's counsel, Carpenter Hazlewood, in response to  
6 her request is attached as Exhibit 3.

7           14. According to the document provided to her, Defendant charged her account for  
8 attorneys' fees allegedly incurred in, among other things, obtaining and serving an *ex parte*  
9 Injunction against Workplace Harassment, communicating with an attorney she had retained to  
10 inquire about the presence of charges on her account, reviewing videos, responding to an inquiry  
11 from Bocchino regarding why the Association was assessing late charges on timely payments  
12 made via the Association's web portal, and sending two attorneys to cover an *ex parte* hearing.

13           15. Although Defendant's attorneys filed an *ex parte* Injunction against Workplace  
14 Harassment against Bocchino in March 2015, Defendant did not request and the Court did not  
15 enter an award of attorneys' fees against Bocchino.

16           16. Under the Declaration, the Association is entitled to attorneys' fees:

17           In the event the Association employs an attorney or attorneys to enforce the  
18 collection of any amounts due pursuant to this Declaration or in connection with  
19 any lien provided for herein, or the foreclosure thereof, or to enforce compliance  
20 with or specific performance of the terms and conditions of this Declaration, the  
Owner, Owners and parties against whom the action is brought shall pay all  
attorneys' fees, costs and expenses thereby incurred by the Association in the  
event the Association prevails in any such action.

21           17. Pursuant to the terms of the Declaration, therefore, Defendant may be entitled to  
22 recover attorneys' fees from an owner against whom an action is brought under the following  
23 three circumstances: (a) an action is brought to collect amounts due, (b) an action is brought in  
24 connection with a lien provided for in the Declaration (including the foreclosure of said lien),  
25 and (c) an action is brought to enforce compliance with or specific performance of the  
26 Declaration.

1 18. Defendant never retained Carpenter Hazlewood to collect from Bocchino  
2 “amounts due pursuant to th[e] Declaration.” Nor did Carpenter Hazlewood at any time file an  
3 action against Bocchino to collect “amounts due pursuant to th[e] Declaration.”

4 19. Defendant never retained Carpenter Hazlewood “in connection with any lien  
5 provided for [in the Declaration].” Nor did Carpenter Hazlewood at any time file an action  
6 against Bocchino “in connection with any lien provided for [in the Declaration].”

7 20. Defendant never retained Carpenter Hazlewood to commence an action against  
8 Bocchino seeking “to enforce compliance with or obtain specific performance of the terms and  
9 conditions of th[e] Declaration.” Nor did Carpenter Hazlewood at any time file an action against  
10 Bocchino seeking “to enforce compliance with or obtain specific performance of the terms and  
11 conditions of th[e] Declaration.”

12 21. Accordingly, Defendant was not entitled to charge or demand the collection of  
13 attorneys’ fees from Bocchino under any circumstances. In addition, the Injunction Against  
14 Workplace Harassment statute does not provide for an award of attorneys’ fees on an *ex parte*  
15 request for an Injunction Against Workplace Harassment. The statute provides for an award of  
16 discretionary attorneys’ fees pursuant to A.R.S. § 12-1810(O) only on certain conditions that  
17 were not met in Defendant’s *ex parte* Injunction Against Workplace Harassment against  
18 Bocchino.

19 22. Even if Defendant might be entitled to the imposition of such attorneys fees under  
20 either the Declaration or the statute, Defendant never requested an award of attorneys’ fees, the  
21 fees that Defendant unilaterally imposed against Bocchino were never adjudicated by any court  
22 to be reasonable, and no court or other tribunal ever awarded the attorneys’ fees to Bocchino.

23 23. When questioned by a lawyer that Bocchino retained to question the entitlement to  
24 attorneys’ fees, Defendant’s counsel relied exclusively on an inapplicable statute pthat did not  
25 entitle Defendant to unilaterally determine the amount of its attorneys’ fees to be charged to  
26 Bocchino.









# **EXHIBIT 1**

WHEN RECORDED RETURN TO:

Recorded in official records of Maricopa County, Arizona

APR 21 1983-8 00

2809 PCS 28 12

TICOR TITLE INSURANCE CO  
3033 N. Central Ave.  
Phoenix, AZ 85012  
ATTN: BUILDER SERVICES

MARICOPA COUNTY RECORDER

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR

EROP RSTR 070

A-423 02

FOUNTAIN SHADOWS

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The undersigned, owner of that certain real property situated in Maricopa County, State of Arizona, to-wit:

FOUNTAIN SHADOWS UNIT 1, according to a plat thereof recorded in the Office of the Maricopa Recorder in Book 250 of Maps, at page 22:

hereby declares that all of the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

This instrument filed for record by TICOR TITLE INSURANCE COMPANY as an accommodation only. It has not been examined as to its execution or as to its effect upon the title.

ARTICLE I

Definitions

Section 1. "Association" shall mean FOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners, as shown on the Plat.

Section 3. "Declarant" shall mean NBS DEVELOPMENT CORPORATION, an Arizona corporation, its successors, and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 4. "Developer" shall mean NBS DEVELOPMENT CORPORATION, an Arizona corporation, and its successors and assigns, and to any other contractor who builds for resale a significant number of the houses on the subject property.

Section 5. "First Mortgage" shall mean a first lien deed of trust, as well as a first mortgage, on a townhouse. "First Mortgagee" means the holder of a first mortgage, as well as a beneficiary or trustee under a first deed of trust, its successors and assigns.

Section 6. "Lot" or "Townhouse" shall be synonymous and shall mean any plot of land shown upon the recorded subdivision map or plat of the Properties with the exception of the Common Area.

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Section 7. "Mortgage" includes deed of trust; "Mortgagee" includes a beneficiary under a deed of trust; and "Mortgagor" includes a Trustor under a deed of trust.

Section 8. "Occupant" means a person or persons, including an Owner, legally in possession of a townhouse.

Section 9. "Owner" shall mean and refer to the record fee simple Owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any Lot which is a part of the Properties. Owner shall not include a person or entity having an ownership interest merely as security for the performance of an obligation. In the case of Lots, the fee simple title to which is vested of record in a Trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., legal title shall be deemed to be in the Trustor.

Section 10. "Plat" means the plats of survey of the Property and of all townhouses as recorded in the office of the Maricopa County in Book 257 of Maps, at page 17, and any subsequent additions and/or amendments thereto.

Section 11. "Properties" shall mean and refer to that certain real property hereinbefore described together with any improvements thereon, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 12. "Roadway Association" shall mean the FOUNTAIN SHADOWS ROADWAY ASSOCIATION, an Arizona non-profit corporation, its successors and assigns.

The aforesaid definitions shall be applicable to this Declaration and also to any Declaration of Annexation (unless the context shall prohibit), filed pursuant to Article XII hereof.

## ARTICLE II

### Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

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(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) The right of the Association to limit the number of guests of members.

(e) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereon.

(f) The right of Developer (and its sales agents and representatives) to the reasonable use of the Common Area for display, sales, leasing and exhibit purposes, which right Declarant hereby reserves to Developer. This reservation of right shall end upon conveyance of the last Lot described herein (or as annexed in accordance with Article XII hereof).

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Waiver of Use. No member may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area, and the facilities thereon or by abandonment of his Lot.

### ARTICLE III

#### Membership and Voting Rights

Section 1. Membership in the Association, except for membership of the incorporators, the Declarant and the first Board of Directors, shall be limited to record owners of equitable title (or legal title if equitable title has merged) of Townhouses constructed or planned to be constructed on the property described herein or on any duly annexed property. An Owner of a Townhouse shall automatically, upon becoming the Owner of a Townhouse, become a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. Ownership of a Townhouse shall be the sole qualification and criteria for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

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A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such Townhouse and then only to the purchaser thereof, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association shall record the transfer upon the books of the Association and issue a new membership to a purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void.

The record owner of equitable title (or legal title if equitable title has merged) of each Townhouse shall be entitled to one membership in the Association, for himself and his family residing in the Townhouse, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, Bylaws, Management Agreement and this Declaration, as now in effect or duly adopted or amended.

Section 2. Every Owner of a Townhouse which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Townhouse which is subject to assessment.

Section 3. The Association shall have two classes of voting membership, as follows:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Townhouse owned. When more than one person holds an interest in any Townhouse, all such persons shall be members. The vote for such Townhouse shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Townhouse.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Townhouse owned or contemplated to be created and annexed to this Declaration and to the Association pursuant to Article XII. Initially, therefore, Declarant shall be entitled to cast its vote based upon (4) Townhouses. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Within 120 days after the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or

(b) January 1, 1988.

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ARTICLE IV

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Townhouse owned within the Properties, hereby covenants, and each Owner of any Townhouse by acquiring an ownership interest therein, whether or not it shall be so expressed in the conveying document, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments as authorized by the Association's Board of Directors. Such assessment to be established and collected as provided herein.

The annual and special assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and general welfare of the residents in the Properties and for the improvements and maintenance of the Common Area (to the extent required by this Declaration), and of the improvements situated thereon. The assessments shall cover the cost of water and sewer for the Common Area and the Lots and all repairs, replacement and maintenance of the Common Area (to the extent required by this Declaration) and all other authorized activities and facilities, including but not limited to, common yard maintenance, sprinkler system, swimming pool, spa, recreational facilities, exterior walls and exterior painting of Townhouses, costs of additional common facilities and improvements, and taxes and insurance, as may, from time to time, be authorized by the Association's Board of Directors. The assessments shall also cover a prorata share of all the costs and expenses of the Roadway Association.

The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by a representative of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 3. Establishment of Assessment. Declarant and each Owner of a Townhouse covenants for themselves and their heirs,

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successors and assigns, that such Townhouse shall be subject to an assessment, in an amount to be determined by the Association and as permitted by this Declaration. The amount to be paid by the members of the Association shall be established annually by the Board of Directors.

The annual assessments provided for herein shall commence as to each Lot on the first day of the month following occupancy or conveyance of the first Lot to an Owner other than the Declarant. Prior to occupancy or conveyance of the first Lot, the Declarant shall be assessed and pay for each Lot which it owns and which has been annexed an amount equal to twenty-five percent (25%) of the regular assessment. In the event funds received by the Association are inadequate to pay for current operating and maintenance expenses, Declarant shall be responsible on a current basis for any deficit, excluding delinquencies in payment of assessments by other Owners, in the budget of the Association, up to but not exceeding the amount of the regular assessment. Declarant's reduced assessment shall at least pay costs of insurance and the reserve for replacement attributable to unsold Lots as determined by cost accounting principles. The period of reduced assessments shall terminate as to each unsold Lot when it is rented, leased, occupied or conveyed, whichever first occurs. The period of reduced assessments shall terminate as to the entire Properties no later than January 1, 1988. No assessment shall be levied against Lots in phases not yet annexed.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be eight hundred and forty (\$840.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by ten percent (10%) per annum or a percentage proportionate to the increase, if any, of the Consumer Price Index published by the Department of Labor, Washington, D.C., or any successor agency or successor index, whichever is higher.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased for the next succeeding year above that permitted by Subsection (a) above by a vote of the members, provided that any such increase shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any

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change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 5. Special Assessments. In addition to the annual assessments authorized above, in any assessment year the Association may levy a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or upon property within the jurisdiction of the Roadway Association, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, or at an annual meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other reasonable basis as determined by the Board.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall, at the election of the Association, pay a "late charge" in a sum to be determined by the Association, but not to exceed \$10.00 per each monthly delinquent assessment, or ten percent (10%) of the amount of such assessment, whichever is higher. The Association may bring, without electing a remedy, any and all actions and seek any and all relief against the Owner personally obligated to pay the same, and/or to foreclose the lien against the Lot in a like manner as a mortgage of real property, and such Owner hereby expressly grants to the Association the power of sale in connection with said lien. No Owner may waive or otherwise escape liability for the assessments provided for hereby by non-use of the Common Area or abandonment of his Townhouse. In any action taken against an Owner to collect delinquent assessments, whether through lien foreclosure or otherwise, the Owner shall be obligated to pay, in addition to any and all other amounts required herein, all costs and all attorneys' fees incurred by the Association in such action.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Townhouse shall not affect the assessment lien. However, the sale or transfer of any Townhouse pursuant to mortgage foreclosure, deed of trust sale, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Townhouse from liability for any assessments thereafter becoming due or from the lien thereon.

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Section 9. Replacement Fund. The annual maintenance assessment shall include an amount for a replacement fund, which the Board of Directors determines to be adequate for the maintenance, repair and replacement of Common Area improvements and such amount shall be set aside as a pro rata portion of each installment of the regular maintenance assessments.

#### ARTICLE V

##### Architectural Control

Section 1. Except as set forth in Section 2 below, or as planned, placed, erected or maintained by the Developer, no building, fence, wall, patio cover, awning, antenna, or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee ("the Committee") appointed by the Board. In the event the Board, or the Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. One or more outside antennas may be erected, placed or maintained on a Lot without the approval of the Board or the Committee, provided that it complies with the Architectural Control Guidelines promulgated by the Board or the Committee and is harmonious as to design and location in relation to surrounding structures and topography. An addition may also be made to each Townhouse in accordance with plans and specifications developed by Developer and filed with the Board or the Committee without the approval of the Board or the Committee, provided that the addition and the construction thereof comply with the Architectural Control Guidelines promulgated by the Board or the Committee and meet the requirements of the Building Code of the City of Glendale.

#### ARTICLE VI

##### Party Walls

The rights and duties of the Owners of residence units with respect to party walls shall be governed by the following:

(a) Each wall, including patio or balcony walls, which is constructed as part of the original construction of a residence unit, any part of which is placed on the dividing line between separate units, shall constitute a party wall. With respect to any such wall, each of the adjoining owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

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(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his residence unit in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining Owner. However, said written consent shall not be required for an Owner to construct an addition to his Townhouse in accordance with the plans and specifications promulgated by Developer and filed with the Board or the Architectural Control Committee.

(g) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so chosen, or, if the arbitrator cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

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(h) These covenants shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an Owner.

#### ARTICLE VII

##### Exterior Maintenance

Section 1. The Association shall provide exterior maintenance upon the Common Area and each Lot which is subject to assessment hereunder, as follows:

(a) The Association shall paint exterior building surfaces and masonry/block fences.

(b) The Association shall furnish maintenance, repair and replacement of all the Common Area as part of common expenses subject to the provisions of this Declaration, the Articles of Incorporation and the ByLaws. In addition thereto, the Association shall be responsible for repair, maintenance and replacement of masonry/ block walls on Lots, but shall not be responsible for any equipment thereon serving a Lot. Such equipment shall be maintained at the expense of the Owner. The Association shall not be responsible for exterior or interior glass surfaces, such being the responsibility of the Lot Owner.

Section 2. The cost of the maintenance, repair or replacement for which the Association is responsible under Section 1 above shall be assessed uniformly to all Owners in accordance with Article IV of this Declaration, except as provided in Section 3 of this Article VII.

Section 3. To the extent an Owner is legally responsible under Arizona law, the cost of any maintenance, repair or replacement which results from the negligence or willfulness of an Owner, an Owner's guest or the occupant of an Owner's Lot, shall be added to such Owner's regular assessment and shall be an assessment, lien and obligation of such Owner and shall become due and payable in all respects as provided in Article IV of this Declaration.

Section 4. For the purpose solely of performing the maintenance, repair and replacement authorized by this Article, the Association, through its duly authorized agents or employees, shall have an easement for maintenance, repair and replacement and the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

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ARTICLE VIII

Interior and Other Maintenance

Each Owner shall be responsible for the upkeep and maintenance of the interior of his Townhouse and for the maintenance, repair and replacement of the roof, the individual patio or balcony, the back yard fence, the windows, the Private Yard and all landscaping within the Private Yard and Lot lines. All fixtures and equipment installed within the Private Yard boundary, Lot line or Townhouse, including utility lines, pipes, wires, conduits, air-conditioning, heating, and other systems shall be maintained and kept in repair by the Owner thereof. All termite control shall be the responsibility of the individual Owners.

ARTICLE IX

Insurance

Insurance shall be carried by the Association on the Property and shall be governed by the following provisions:

Section 1. Authority to Purchase. The Board shall purchase and maintain certain insurance upon the Property, including but not limited to the insurance described in Section 2 below, which insurance is to be purchased by the Association for the benefit of the Association, the Owners, and the First Mortgagees, as their interests may appear. Provisions shall be made for the issuance of certificates of endorsement to the First Mortgagee of any First Mortgage. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of the policies or certificate of insurance, or by and through their agent advise the Owners of the coverage of said policies to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself Owner's liability insurance, theft or other insurance covering personal property damage and loss, insurance for each Owner's personal liability, and such other insurance which is not carried by the Association as the Owner desires.

Section 2. Coverage. The Association shall maintain and pay for policies of insurance as follows:

A. A multi-peril type policy covering the entire Property providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including but not limited to vandalism and malicious mischief, in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

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B. A comprehensive policy of public liability insurance covering all of the Common Area and public ways in the Property in a minimum amount of at least One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Owner because of the negligent acts of the Association and its agents or other Owners.

C. If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in the amount of the outstanding principal balances of the First Mortgage loans on the Units comprising the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

D. The Association must obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than one and one-half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

E. A workmen's compensation policy, if necessary to meet the requirements of law.

F. Such other insurance as the Board shall determine from time to time to be desirable.

Section 3. Provisions Required. The insurance policies purchased by the Association shall, to the extent possible, contain the following provisions:

A. The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Owner or First Mortgages.

B. There shall be no subrogation with respect to the Association, its employees, Owners and members of their household and their families and employees, or the Policy(ies) should name said persons as additional insureds.

C. A statement of the name of the insured shall be included in all policies, in form and substance similar to the following:

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FOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION,  
for the use and benefit of the individual  
Owners (designated by name, if required).

D. A standard Mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of First Mortgagees as their interest may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.

E. For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

F. Any "no other insurance" clause shall exclude insurance purchased by unit Owners or First Mortgagees.

Section 4. First Mortgagee Protection.

A. The Association shall provide each First Mortgagee with a letter wherein the Association agrees to give written notice to each First Mortgagee, or Servicer of a mortgage, or any entity or person designated by such First Mortgagee or Servicer, whenever:

(1) Damage to a Unit covered by a First Mortgage exceeds \$10,000.00; and/or

(2) Damage to the Common Area and related facilities exceeds \$10,000.00.

Notwithstanding any contrary provision hereof, the Association shall have no duty to give written notices provided for herein to any First Mortgagee, unless such First Mortgagee shall deliver or mail to the Association a notice stating the address of the First Mortgagee to which such written notices are to be sent.

B. Each hazard insurance policy shall be written by a hazard insurance carrier which has a financing rating by Best's Insurance Reports of Class VI or better, or if such rating be discontinued, by a successor thereto or a similar such rating service.

C. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

D. First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy.

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with respect to any insurance required to be maintained by the Association as provided in this part, and First Mortgages making expenditures therefor shall be owed immediate reimbursement by the Association.

Section 5. Non-Liability of Association/Board. Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member shall be liable to any Owner or any other party if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection the said Owner may desire.

Section 6. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy, or abandonment of a townhouse or its appurtenances, or of the Common Elements by an Owner, shall be assessed against that particular Owner.

Section 7. Insurance Claims. The Association, acting by and through its Board, is hereby irrevocably appointed agent for each Owner and for each holder of a First Mortgage or other lien upon a Lot, and for each Owner of any other interest in the Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

Section 8. FNMA/GNMA or FHLMC. Notwithstanding any provision of this Article IX, if at any time any of the Lots are owned by or are covered by Mortgages which are held by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") (or any successor to such entities which performs their present functions), the Board shall at all times carry all casualty, flood and liability insurance and a fidelity bond in such amounts and containing all provisions as are required from time to time by such entities or such successors, unless such coverage is unavailable or waived by them in writing.

#### ARTICLE X

##### Damage and Repair

If all or any part of the Property in which the Association owns an interest is damaged or destroyed by fire or other hazard, whether or not it shall be repaired or reconstructed, shall be determined in the following manner:

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Section 1. Common Elements. If the damaged property is part of the Common Elements or any property in which the Association owns an interest, it shall be repaired or reconstructed.

Section 2. Residence Units. In the event any townhouse is totally or substantially damaged or destroyed, the repair, reconstruction or replacement thereof shall be paid from the insurance loss proceeds.

Section 3. Insurance Proceeds. An undivided share of insurance proceeds on account of damage to Common Area shall be allocated to the Owners according to their membership in the Association. Proceeds, if any; on account of damage to Townhouses shall be held for the Owners of damaged Townhouses in proportion to the cost of repairing the damage suffered by each such Owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a Townhouse, the share of the Owner shall be held in trust for the First Mortgagee and the Owner as their interest may appear.

Section 4. Manner of Disbursements. The proceeds from assessments and insurance shall be disbursed in the following manner:

A. That portion of the insurance proceeds, if any, representing damage to a townhouse shall be used to pay for the reconstruction and repair of said townhouse by disbursements in payment of the costs of such repair and reconstruction to the Owner, or, if there is a mortgage endorsement, then to the Owner and the First Mortgagee jointly.

B. The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board and upon approval of an architect qualified to practice in Arizona and employed by the Association to supervise the work.

Section 5. If the insurance proceeds are insufficient to pay all costs of repair and rebuilding, the Board shall levy a special assessment to make up any deficiency, which assessments shall be levied equally against all Owners. If the insurance proceeds exceed the costs of repair and reconstruction, then following completion of such repair and rebuilding, the excess shall be paid over to all Owners and their holders of first Mortgages as their respective interests may appear. Each payment to an Owner and his Mortgagee shall be by joint payee check or draft. The assessment provided for herein shall be secured by the lien provided for in this Declaration.

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## ARTICLE XI

### Condemnation

Section 1. If a portion of the Property should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation for such taking, including, but without limitation, any amount awarded as severance damages, or the entire amount received and paid in anticipation of such taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including, but without limitation, attorney's fees, appraiser's fees and court costs (which new amount is hereinafter in this Article referred to as the "Award") shall be paid to the Association, as trustee for all Owners. The Association shall, as soon as practicable, cause the Award to be utilized for the purpose of repairing, replacing and restoring the affected area, including, if the Association deems it necessary or desirable, the replacement of any Common Area improvements so taken or conveyed.

Section 2. If any Townhouse or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the holder of any first Mortgage, with respect to any such Townhouse and the servicer of such Mortgage, will be entitled to timely written notice of such proceedings or proposed acquisition and no provision of any document establishing the project will entitle the Owner of a Townhouse or other party to priority over such mortgage with respect to the distribution of the proceeds of any award or settlement.

Section 3. If the cost of any repair and restoration shall exceed the amount of the Award, a special assessment shall be levied against the remaining Owners in an equal basis to the extent necessary to make up such deficiency. The special assessment provided for herein shall be secured by the lien provided for in Article IV, paragraph 1, of the Declaration.

## ARTICLE XII

### Annexation

Section 1. Notwithstanding any contrary provision of this Declaration, Declarant reserves the right to annex, in its sole discretion and without the consent of any other Owner or mortgagee, provided that the VA determines that the annexation is in accord with the general plan heretofore approved by them, at any time within five (5) years from the date of this Declaration, all or any portion of the following described real property to the Property pursuant to this Declaration:

See Exhibit A attached hereto and incorporated herein by this reference.

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Nothing contained in this Declaration shall obligate Declarant to annex any additional phase, land or improvements. Effectuation of any such annexation shall take place when Declarant records a plat describing such Phase, together with a Declaration of Annexation describing the property to be annexed, referring to this Declaration by reference, setting forth the number and description of the Lots included within such phase. Thereafter, the property described in such Declaration of Annexation shall be deemed a part of this property. Upon completion of any such annexation, all Owners of Lots in any such annexed phase shall have those rights and obligations set forth in this Declaration, and shall be treated as if the entire project had been developed at the same time. Upon each such annexation, a new budget shall be prepared and the assessments shall be adjusted and levied as required; in accordance with this Declaration.

#### ARTICLE XIII

##### Use Restrictions

Section 1. The Properties are hereby restricted to residential dwellings for residential use, except for improvements within the Common Area. All buildings or structures erected upon said premises shall be of new construction and no building or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than residence units, shall be built on any Lot where the builder theretofore programmed and constructed a Townhouse. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Properties at any time as a residence, either temporarily or permanently.

Section 2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the builder of a major portion of the development to maintain during the period of construction and sale of said Lots, upon such portion of the premises as such builder may choose, such facilities as in the sole opinion of said builder may be reasonably required, convenient or incidental to the construction and sale of said Lots, including but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. No animals of any kind shall be raised, bred, or kept in any townhouse or in or upon any Common Area, except that a combination of not more than two (2) dogs, cats or household pet may be kept in each townhouse, subject to uniform rules and regulations of the Association, and provided that no animal shall be kept, bred or maintained for any commercial purpose. All pets must be leashed or otherwise contained when outside the townhouse and shall not be allowed to run loose. Any Owner keeping an animal on the Property shall indemnify and hold harmless the Association for any loss, damage, cost or liability which the Association may sustain as a result of the presence of such animal, whether or not such animal's presence has been approved by the Association. Notwithstanding the generality of the foregoing, after (i) repeated violations

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of this subparagraph, (ii) ten (10) days' prior written notice to the Owner of such animal(s), and (iii) an opportunity for such Owner to have a hearing before the Board, such animal(s) may be taken from such Owner and given to any local organization whose function is to deal with stray or abandoned animals.

Section 4. No advertising signs (except one of not more than five (5) square feet "for rent" or "for sale" sign per Parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Townhouse or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted in any building or on any portion of the premises; provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the builder, its agents and assigns during the construction and sale period, and of the Association, its successors and assigns, in the furtherance of its powers and purposes, as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio or balcony areas.

Section 6. No vehicle of any type, boat, camper, motorcycle, bicycle, tricycle or other wheeled toy shall be parked or left unattended on any Common Area or Lot except for pick-up or delivery purposes or as permitted by the Board of Directors in uniform regulations.

The Board of Directors may from time to time permit or restrict vehicular parking on the Common Areas. Vehicles parked in restricted areas may be towed away at the vehicle Owner's expense, including the storage charges.

No vehicle of any type which is abandoned or inoperable shall be stored or kept on any Lot, parking area, street or drive within this subdivision in such a manner as to be seen from any other Lot or from any streets, drives or alleyways within this subdivision.

Section 7. Except in the individual patio area, no planting or gardening shall be done, and no hedges shall be erected or maintained upon the Lots, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved in accordance with Architectural Control provisions in Article V hereof. No fences or walls shall be erected or maintained on any of the Properties without approval of the Architectural Control Committee as provided in this Declaration.

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Section 8. The Common Area shall remain undivided, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. No Owner shall have the right to bring an action for partition, or to subdivide or partition his own Lot or the common area.

Section 9. Except as set forth in Article V hereof, no exterior television, radio, CB or other antennas of any sort shall be erected, placed, allowed or maintained upon any portion of the improvements to be located upon the Properties, nor upon any structure situated upon said real property.

Section 10. No noxious or offensive activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Townhouse, or which shall in any way increase the rate of insurance.

Section 11. The rights and duties with respect to sanitary sewer and water, cable television, electricity, gas and telephone lines and facilities shall be governed by the following:

(a) Whenever water, sanitary sewer, electricity, gas, cable television or telephone connections, lines, cables or any portion thereof, are or have been installed within the Properties, the Owner of any Lot or the Association in the case of the Common Area, served by said installation shall have the right, and are hereby granted an easement to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Properties in which said installations lie, to repair, replace and generally maintain said installations.

(b) The right granted in subparagraph (a) above shall be only to the extent necessary to entitle the Owner or Association serviced by said installation to its full and reasonable use and enjoyment, and provided further that any one exercising said right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to its Board of Directors, who shall arbitrate and decide the dispute and the decision of the Board shall be final and conclusive on the parties.

Section 12. All Owners and occupants shall abide by the Association's Articles of Incorporation and Bylaws and any rules and regulations adopted by the Association, as amended from time to time.

Section 13. No Lot shall be leased by an Owner, nor landlord-tenant relationship established unless such lease or landlord-tenant relationship is in writing and the lessee or tenant has agreed in writing that the lease is subject in all respects to the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association, and all rules and regulations duly adopted by the Association, as amended from time to time. Said writing shall provide that any failure of the lessee or tenant to comply with the terms of such documents or rules and regulations shall be a default under the lease. No lease shall be permitted for transient or hotel purposes. Transient or hotel purpose shall be defined as a lease or rental of less than thirty (30) consecutive days.

#### ARTICLE XIV

##### Duties and Powers of the Association

In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Own, maintain and otherwise manage all of the Common Area and all facilities, improvements and landscaping thereon, and all other property acquired by the Association.

(b) Pay any real and personal property taxes and other charges assessed against the Common Area.

(c) Have the authority to obtain, for the benefit of all of the Lots and the Common Area, all water, gas, sewer and electric service and refuse collection and to pay for such services to the extent that said services are not individually metered or otherwise directly billed to the individual Lots.

(d) Grant easements where necessary for utilities and sewer facilities over the Common Area to serve said area and the Lots.

(e) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. The Association, through its Board of Directors, shall have the express authorization, right and power to enter into one or more management agreements with third parties in order to facilitate efficient operation of all buildings, improvements

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and Common Area. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of said real property, all improvements thereon designated as common elements, and the exterior walls of the Townhouses; and to assess, collect and apply the management and common expenses, and to enforce the Declaration of Covenants, Conditions and Restrictions. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association, and shall be subject to the Articles of Incorporation, the Bylaws and this Declaration of Covenants, Conditions and Restrictions affecting said property. Notwithstanding the above, any and all such management agreements shall be written for a term not to exceed one year, subject to renewal by agreement of the parties for successive one year periods, and shall further provide that said management agreement may be cancelled and terminated by the Board of Directors for any reason whatsoever upon giving thirty (30) days written notice of such cancellation and termination to the managing entity. The Board of Directors shall make all necessary arrangements for continuity of management and maintenance prior to the expiration of the term of any prior management agreements or the termination of the same. Any and all management agreements shall be entered into with a responsible party or parties having considerable experience with the management of a project of this type.

Each Owner shall be bound by the terms and conditions of all management agreements entered into by the Owner's Association. A copy of all management agreements shall be available to each Owner upon request.

(f) Contract for and pay fire, casualty, liability and other insurance insuring the Association, its property and its Board of Directors and Owners.

(g) Contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, and to employ personnel necessary for the operation of the project, including legal and accounting services provided, however, that any such service contract shall be limited to a duration of one (1) year unless a longer term is approved by a majority of the members of the Association.

(h) Delegate its powers to its committees, officers and employees.

(i) Provide for maintenance, repair and replacement of all items as provided for in Article VII hereof.

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(j) At the request of the public body authorized to accept such and with the approval of two-thirds (2/3) of each class of members, dedicate those portions of the Common Area which are used for vehicular ingress and egress as public streets.

(k) Be a member of the Roadway Association and pay a prorata share of all costs and expenses of the Roadway Association.

#### ARTICLE XV

##### Easements

Section 1. Blanket Easement for Utilities. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones and electricity, irrigation facilities and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing electrical, utility, cable and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain cable, electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of Townhouses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Properties, except as initially programmed and approved by the Developer of said Properties or as approved by the Association's Board of Directors. These easements shall in no way affect any other recorded easements on the Properties.

Section 2. Easement for Encroachment Due to Construction. Each Townhouse and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs and balconies, as designed or constructed and for the maintenance of same, so long as it stands, shall and does exist. In the event a Townhouse is partially or totally destroyed and then rebuilt, the Owners of all Lots agree that minor encroachments on parts of the adjacent Townhouse or Common Area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3. Reciprocal Easements. There shall be reciprocal beneficial easement over the Common Areas for the benefits of all Owners of Lots on the property, including additions and annexations thereto pursuant to Article XII.

#### ARTICLE XVI

##### Private Yards

Section 1. The Lots include Private Yards, which are defined as the enclosed portions of the Lot excluding the building thereon.

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Section 2. The rights of the respective parties with respect to the use of Private Yards, which may abut a wall of the dwelling unit on the adjoining Lot ("abutting dwelling unit" herein), shall be as follows:

(a) Nothing shall be erected, planted or maintained within such Private Yard area which might impede or interfere with any necessary and reasonable maintenance, repair or restoration of any structural wall located on or adjacent to the abutting dwelling unit.

(b) The Owner of the Private Yard shall not drive any nails, screws, bolts or other objects of any kind whatsoever into, nor attach any object to the wall of the abutting dwelling unit.

(c) The Owner of the abutting dwelling unit shall have the responsibility for painting and repairing any structural wall owned by him and facing onto the Private Yard (to the extent such repair and painting is not the obligation of the Association), provided, however, that in the case of damage to such a wall caused by the Owner of the Private Yard, his family, guests, servants, agents, or invitees, such repairs shall be made at the expense of the Owner of the Private Yard. If an action at law be required to enforce payment for such repairs, the prevailing party shall be entitled to recover the costs of suit, including reasonable attorneys' fees. No repairs, additions, alterations and/or restoration of any such structural wall shall be commenced, erected or maintained or the paint colors therefor selected until the plans and specifications, showing the nature, kind, shape, height, materials, location, color and approximate cost thereof shall have been approved by the Architectural Control Committee.

After completion of such repairs, additions, alterations or restoration, the Owner of the abutting dwelling unit shall restore the Private Yard to the condition in which it existed immediately prior to the commencement of such work.

(d) The Owner of the abutting Lot shall have the right and an easement of drainage over, across and upon the Private Yard for water resulting from the normal usage of the adjoining Lot and the Owner of the Private Yard shall maintain the easement area in such manner as will not interfere with such drainage.

Section 3. The Owner and occupants of a Townhouse may use the Private Yard in any reasonable manner not prohibited by this Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board of Directors of the Association, all as amended from time to time, or by law.

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Section 4. All boundaries of Private Yards, save those which are structural walls of dwelling units, will be fenced by Developer. No fence shall be moved or removed at any time, and any changes in size or color, shall be subject to review by the Architectural Control Committee pursuant to Article V hereof.

Section 5. Each Owner shall keep his Private Yard and all improvements therein or thereon, in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, and the pruning and cutting of all trees and shrubbery, all in a manner and with such frequency as is consistent with good property management. In the event an Owner shall fail to maintain his Private Yard and the improvements located thereon, as provided herein, the Association, after notice to the Owner and approval by vote of the Board of Directors, shall have the right to enter upon said Private Yard to correct drainage and to repair, maintain and restore the Private Yard, fences and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a lien upon such Owner's Lot, and such lien may be enforced in the same manner as an assessment levied in accordance with Article IV hereof.

Section 6. The Association shall have the right at all reasonable times to enter into any Private yard for the purpose of carrying out its obligations of maintenance, repair and replacement.

#### ARTICLE XVII

##### General Provisions

Section 1. Attorneys' Fees. In the event the Association employs an attorney or attorneys to enforce the collection of any amounts due pursuant to this Declaration or in connection with any lien provided for herein, or the foreclosure thereof, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorneys' fees, costs and expenses thereby incurred by the Association in the event the Association prevails in any such action.

Section 2. Enforcement. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing, occupying, owning or otherwise having an interest in any Lot on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof, and also may be enforced by the Owner of any Lot. Any lien, liability or obligation arising as the result of a breach of said covenants, restrictions, reservations and conditions shall be binding upon and effective

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against any Owner of said premises, other than one whose title thereto is acquired by foreclosure of a mortgage or deed of trust, and sheriff's sale or equivalent proceedings, who shall take title to said premises free and clear of the lien hereof for all said charges pursuant to the provisions of this Declaration that have accrued up to the time of said foreclosure, and subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage or deed of trust. All instruments of conveyance of any interest of all or any part of said Lots shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument were therein set forth in full. The terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether or not express reference is made to this instrument in any such instrument of conveyance. Enforcements shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Section 3. Saving Clause. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of FOUNTAIN SHADOWS HOMEOWNERS ASSOCIATION or twenty-one (21) years after the death of the last survivor of all of said incorporators' children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

Section 4. Parking. Each Townhouse will contain a two-car garage and the Owner or occupants of the Townhouse shall park their vehicles in said garage and not in the driveway or on the Common Area, except as otherwise permitted by this Declaration or by Uniform rules and regulations promulgated from time to time by the Board of Directors of the Association.

Section 5. Gender. Wherever the context of this document requires, words used in the masculine gender include the feminine and neuter, the singular number the plural and the plural the singular.

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Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Townhouses. Any amendment must be recorded in the Maricopa County Recorder's Office.

As to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as may be required to fully amortize any mortgage owned by FNMA, GNMA and FHLMC on any of the Lots; and as to the Federal Housing Administration (FHA), Veterans Administration (VA) or the Federal Home Loan Mortgage Corporation (FHLMC), so long as there is a Class B membership outstanding, no amendment shall be made which would be deemed to be in conflict with, or contrary to, the terms of any promissory note, mortgage, regulatory agreements or document executed by the Association or any of the Owners of residence units for the purpose of obtaining insurance or financing involving FNMA, FHA, VA, GNMA or FHLMC without obtaining written approval and consent of FNMA, FHA, VA, GNMA or FHLMC.

Section 7. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 8. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

#### ARTICLE XVIII

##### Fountain Shadows Roadway Association

Section 1. Membership in the Roadway Association shall be limited to the Association and the Fountain Place Homeowners' Association.

Section 2. Membership in the Roadway Association cannot be abandoned or terminated for any reason whatsoever.

Section 3. The Roadway Association shall insure, maintain, repair and replace Diana Avenue, a private street, which runs east-west between 67th Avenue and 69th Avenue, in the City of Glendale, State of Arizona, and 68th Avenue, a private street, which runs north-south between Diana Avenue and Butler Drive, in the City of Glendale, State of Arizona. The costs and expenses incurred and to be incurred by the Roadway Association shall be billed to the members in prorata shares and shall be paid promptly.

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Section 4. The costs and expenses of the Roadway Association billed to the Association and the Fountain Place Homeowners' Association shall be considered common expenses of said associations and be a part of the regular assessments levied against their respective members.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 15 day of April, 1983.

NBS DEVELOPMENT CORPORATION, an Arizona corporation

BY Mark Rubin  
Its President

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 1983, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of NBS DEVELOPMENT CORPORATION, an Arizona corporation, and that he, as such officer, being so authorized, executed the foregoing instrument for the purposes therein contained, by signing the name of the said corporation by himself as such officer.

WITNESS my hand and seal.

Sharon Sue Bell  
Notary Public

My Commission Expires:

\_\_\_\_\_

# **EXHIBIT 2**

Fountain Shadows HOA - Accounting Transactions for PATRICIA BOCCHINO (Account: 012)

8736 N 67TH LN, PEORIA, AZ 85345

Date	Type	Description	Charges	Credits	Balance
8/31/2014	Balance B/F	Balance brought forward			(\$3,50.00)
9/1/2014	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		(\$175.00)
10/1/2014	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$0.00
10/31/2014	PAYMENT	346725764 141031 (Credit-Prepaid)		(\$175.00)	(\$175.00)
11/1/2014	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$0.00
12/1/2014	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$175.00
12/1/2014	PAYMENT	354192669 141212 (ASSESSMENT)		(\$175.00)	\$0.00
1/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$175.00
1/1/2015	CHARGE	APPLY LATE FEE (Late Fees)	\$10.00		\$185.00
1/1/2015	CHARGE	APPLY ADMIN FEE (Admin. Fees)	\$15.00		\$200.00
1/20/2015	PAYMENT	1426114 150120 (ASSESSMENT)		(\$175.00)	\$25.00
1/30/2015	PAYMENT	9151583 150130 (Late Fees)		(\$10.00)	\$15.00
2/1/2015	CHARGE	(Admin. Fees)		(\$15.00)	\$0.00
2/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$175.00
2/17/2015	PAYMENT	1465632 150217 (ASSESSMENT)		(\$175.00)	\$0.00
3/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$175.00
3/13/2015	PAYMENT	9200777 150313 (ASSESSMENT)		(\$175.00)	\$0.00
4/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$175.00
4/15/2015	PAYMENT	375472844 150415 (ASSESSMENT)		(\$175.00)	\$0.00
4/27/2015	CHARGE	377041914 150427 (Credit-Prepaid)		(\$25.00)	(\$25.00)
5/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$150.00
5/12/2015	DR ADJUSTMENT	EXPENSE ADJ (Attorney Fees)	\$1,832.28		\$1,982.28
6/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$2,157.28
6/2/2015	PAYMENT	1386701 150602 (ASSESSMENT)		(\$175.00)	\$1,982.28
6/9/2015	PAYMENT	9299704 150609 (ASSESSMENT)		(\$100.00)	\$1,882.28
6/11/2015	PAYMENT	1603006 150611 (ASSESSMENT)		(\$50.00)	\$1,832.28
6/11/2015	PAYMENT	(Attorney Fees)		(\$25.00)	\$1,807.28
6/14/2015	DR ADJUSTMENT	EXPENSE ADJ (Attorney Fees)	\$1,126.50		\$2,933.78
7/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$3,108.78
7/1/2015	PAYMENT	38873416 150701 (ASSESSMENT)		(\$175.00)	\$2,933.78
7/17/2015	DR ADJUSTMENT	EXPENSE ADJ (Attorney Fees)	\$120.00		\$3,053.78
7/31/2015	DR ADJUSTMENT	1603006 PA-ADJ (Attorney Fees)	(\$25.00)		\$3,028.78
7/31/2015	DR ADJUSTMENT	EXPENSE ADJ (NSF charges)	\$10.00		\$3,038.78
8/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$3,213.78
8/6/2015	DR ADJUSTMENT	EXPENSE ADJ (Attorney Fees)	\$573.50		\$3,787.28
8/20/2015	CHARGE	APPLY LATE FEE (Late Fees)	\$10.00		\$3,797.28
8/21/2015	PAYMENT	397642444 150821 (ASSESSMENT)		(\$175.00)	\$3,622.28
8/21/2015	PAYMENT	(Late Fees)		(\$10.00)	\$3,612.28
8/21/2015	PAYMENT	(NSF charges)		(\$10.00)	\$3,602.28

Fountain Shadows HOA - Accounting Transactions for PATRICIA BOCCHINO (Account: 012)

Date	Type	Description	Charges	Credits	Balance
8/21/2015	PAYMENT	(Attorney Fees)		(\$5.00)	\$3,597.28
9/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$3,772.28
9/5/2015	DR ADJUSTMENT	EXPENSE ADJ (Attorney Fees)	\$168.00		\$3,940.28
9/8/2015	DR ADJUSTMENT	EXPENSE ADJ (Attorney Fees)	\$72.00		\$4,012.28
Current Balance:					\$4,012.28

# **EXHIBIT 3**

**Carpenter Hazlewood Delgado & Bolen, PLC**  
**Transactions Listing Report**

Search Description:

Search for: FOUNTSHAD.0025 Search by: Matter ID Stage: (all) Type: (all)

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
<b>Statement Number: 0</b>						
7/23/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Receipt and review letter from homeowner's attorney regarding association account and the Association's authority to charge attorneys' fees to the homeowner. Review and analyze governing documents and Arizona law regarding charging homeowner's for attorneys' fees because of misconduct. Draft letter to opposing counsel regarding the same.	H	0.8000	240.0000	192.0000
7/24/2015	MAH	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Review and revise correspondence to homeowner regarding fees for injunction against harassment.	H	0.2000	320.0000	64.0000
7/24/2015	CPM	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED]	H	0.3000	305.0000	91.5000
7/29/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Receipt and review email from homeowner requesting a copy our firms transaction report that details all attorneys' fees and costs assessed to her account. Strategize how best to proceed [REDACTED]	H	0.3000	240.0000	72.0000
		Statement Number: 0		1.6000		419.5000
<b>Statement Number: 135871</b>						
1/5/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED] Research Injunctions Against Workplace Harassment statute and evidentiary standards in preparation for drafting complaint/ petition.	H	0.7000	240.0000	168.0000
1/12/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED]	H	0.3000	240.0000	72.0000

**Carpenter Hazlewood Delgado & Bolen, PLC**  
**Transactions Listing Report**

Search Description:


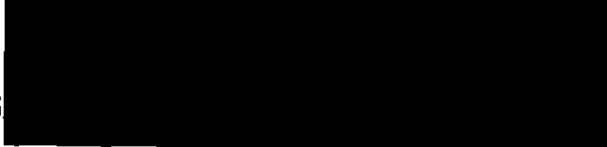

Search for: FOUNTSHAD.0025 Search by: Matter ID Stage: (all) Type: (all)

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
		[REDACTED] Review current status of matter and strategize how best to proceed.				
1/16/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Review video evidence [REDACTED]	H	0.3000	240.0000	72.0000
1/19/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Continue to review video evidence [REDACTED]	H	0.3000	240.0000	72.0000
1/22/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Begin drafting Verified Petition Against Workplace Harassment.	H	1.3000	240.0000	312.0000
1/23/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Continue drafting Verified Petition Against Workplace Harassment.	H	0.2000	240.0000	48.0000
1/29/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED]	H	0.6000	240.0000	144.0000
1/4/2015	CPM	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Discuss and strategize re owner conduct and possible injunction	H	0.5000	305.0000	152.5000
1/29/2015	CPM	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED]	H	0.2000	305.0000	61.0000
				Statement Number: 135871	4.4000	1,101.5000

**Carpenter Hazlewood Delgado & Bolen, PLC**  
Transactions Listing Report

Search Description:

Search for: FOUNTSHAD.0025 Search by: Matter ID Stage: (all) Type: (all)

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
<i>Statement Number: 138684</i>						
3/2/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12  Petition Against Harassment.	H	0.2000	240.0000	48.0000
3/4/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Draft and Finalize Expedited Petition for Injunction against Workplace Harassment.	H	1.0000	240.0000	240.0000
3/4/2015	CPM	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Discuss and strategize regarding next steps 	H	0.5000	305.0000	152.5000
3/4/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 	H	0.2000	240.0000	48.0000
3/5/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Prepare for and attend hearing for Injunction Against Workplace Harassment. (Split with CPM)	H	2.0000	240.0000	480.0000
3/5/2015	CPM	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Prepare for and attend injunction hearing. Meet with client regarding next steps. (Split with AAK)	H	2.0000	305.0000	610.0000
3/9/2015	VJG	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Receive and review the conformed Injunction Against Workplace Harassment, and docket.	H	0.2000	170.0000	34.0000
3/9/2015	VJG	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Assemble documents and coordinate with process	H	0.2000	170.0000	34.0000

**Carpenter Hazlewood Delgado & Bolen, PLC**  
**Transactions Listing Report**

Search Description:

Search for: FOUNTSHAD.0025 Search by: Matter ID Stage: (all) Type: (all)

Date	Prof	MatterID/Client Sort Matter Description Narrative	Component Task Code	Units	Price	Value
3/18/2015	VJG	server to begin service of Injunction upon Defendant, Patricia Bocchino. FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12	H	0.2000	170.0000	34.0000
3/9/2015		Received and reviewed the conformed Certificate of Service regarding service on Patricia Bocchino, and docket. FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Process Server Fee	PSF	1.0000	90.7800	90.7800
3/31/2015	CPM	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED]	H	0.2000	305.0000	61.0000
		Review and analyze injunction order. Email to community manager with advice and counsel. Statement Number: 138684		7.7000		1,832.2800
		<b>Statement Number: 142153</b>				
6/23/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 Receipt and review email [REDACTED] [REDACTED] Email homeowner providing information on her Association account and steps to alleviate posting delays in the future.	H	0.5000	240.0000	120.0000
		Statement Number: 142153		0.5000		120.0000
		GrandTotal		14.2000		3,473.2800