

IN THE COURT OF APPEAL
STATE OF ARIZONA
DIVISION ONE

PATRICIA BOCCHINO,
Plaintiff/Appellee,
vs.
FOUNTAIN SHADOWS
HOMEOWNERS' ASSOCIATION,
Defendant/Appellant.

No. 1 CA-CV 16-0710

Maricopa County Superior Court
Case No. CV2015-012434

**APPENDIX IN SUPPORT OF APPELLEE PATRICIA BOCCHINO'S
ANSWERING BRIEF**

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Attorneys for Patricia Bocchino,

Appellee

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RESPECTFULLY SUBMITTED this 21st day of March 2017.

By: /s/ Jonathan A. Dessaules

Jonathan A. Dessaules

Arizona State Bar No. 019439

Ashley C. Hill

Arizona State Bar No. 032483

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Attorneys for Appellee Patricia Bocchino

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7 IN THE SUPERIOR COURT OF ARIZONA

8 COUNTY OF MARICOPA

9 PATRICIA BOCCHINO,

10 Plaintiff,

No. Case No. CV2015-012434

11 vs.

**STATEMENT OF FACTS IN SUPPORT
OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

12 FOUNTAIN SHADOWS HOMEOWNERS
ASSOCIATION,

13 Defendant.
14

15 Plaintiff Patricia Bocchino ("Bocchino"), by and through undersigned counsel, hereby
16 submits the following Statement of Facts in support of her Motion for Summary Judgment filed
17 contemporaneously herewith:

18 1. On March 4, 2015, Defendant Fountain Shadows Homeowners Association (the
19 "Association") filed an *ex parte* Petition for Injunction Against Workplace Harassment against
20 Bocchino. [Exhibit 1 (Verified Petition for Injunction Against Workplace Harassment)]

21 2. The Petition did not include a request for an award of attorneys' fees in connection
22 with the Injunction Against Harassment filed against Bocchino. [Exhibit 1; Exhibit 3
23 (Defendant's Response to Plaintiff's First Request for Admissions), ¶ 6]

24 3. On March 5, 2015, an Injunction Against Workplace Harassment was issued
25 against Bocchino at an *ex parte* hearing in the Manistee Justice Court. [Exhibit 2 (Injunction
26 Order)]

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1 4. The Injunction did not award the Association the recovery of its attorneys' fees
2 and costs. [Exhibit 2; Exhibit 3, ¶ 7]

3 5. A redacted version of a "Transactions Listing Report," provided by the
4 Association's counsel, shows that its attorneys' fees were incurred through the rendering of
5 legal services, which included obtaining and serving an *ex parte* Injunction Against Workplace
6 Harassment, communicating with an attorney Bocchino had retained to inquire about the
7 presence of charges on her account, reviewing videos, responding to inquiry from Bocchino
8 regarding why the Association was assessing late charges on timely payments made through the
9 Association's web portal, and sending two attorneys to cover an *ex parte* hearing. [Exhibit 5
10 (Transactions Listing Report)]

11 6. The counsel retained by the Association, in connection with the Injunction matter,
12 submitted six invoices to the Association, between January 2015 and September 2015, totaling
13 \$3,867.28. [Exhibit 4 (Carpenter, Hazelwood, Delgado & Bolen Invoices)]

14 7. Invoice No. 135871, dated January 31, 2015, amounted to \$1,101.50 in charges
15 for rendered legal services, including the review of emails from community manager and the
16 drafting of Verified Petition Against Workplace Harassment. [Exhibit 4, pgs. 1-2]

17 8. Invoice No. 138684, dated March 31, 2015, amounted to \$1,832.28 in charges for
18 a process server fee and rendered legal services, including the review of emails, strategizing,
19 preparing for the *ex parte* hearing, the attendance of two attorneys at the *ex parte* hearing.
20 [Exhibit 4, pgs. 3-4]

21 9. Invoice No. 142153, dated June 30, 2015, amounted to \$120.00 in charges for the
22 receipt and review of email from property manager. [Exhibit 4, pg. 5]

23 10. Invoice No. 143657, dated July 31, 2015, amounted to \$573.50 in charges for
24 legal services rendered, including a series of correspondences with the Association's community
25 manager, Bocchino, an attorney previously retained by Bocchino, and review of Transactions
26 Listing Report. [Exhibit 4, pgs. 6-7]

1 11. Invoice No. 144998, dated August 31, 2015, amounted to \$168.00 in charges for
2 legal services rendered, including a series of correspondences with Bocchino and the
3 community manager. [Exhibit 4, pgs. 8-9]

4 12. Invoice No. 146534, dated September 30, 2015, amounted to \$72.00 in charges for
5 legal services rendered, consisting solely of “Review current status of matter”. [Exhibit 4, pg.
6 10]

7 13. The Association maintained two separate ledgers in connection with Bocchino’s
8 HOA assessments. [Exhibit 6 (Accounting Transaction ledger); Exhibit 7 (Financial Transaction
9 ledger)]

10 14. Both ledgers reflect that, between May 2015 and September 2015, the Association
11 unilaterally assessed Bocchino its \$3,867.28 in attorneys’ fees. [Exhibit 6; Exhibit 7, pgs. 4-6]

12 15. Both ledgers reflect that on June 14, 2015, Bocchino’s HOA Account was
13 assessed \$1,126.50, which is \$25.00 more than Invoice No. 135871, submitted to the
14 Association from its counsel on or around January 31, 2015. [Exhibit 4, pg. 1; Exhibit 6, pg. 1;
15 Exhibit 7, pg. 4]

16 16. Both ledgers reflect that on May 12, 2015, Bocchino’s HOA Account was
17 assessed \$1,832.28 for attorneys’ fees, directly correlating with Invoice No. 138684, dated
18 March 31, 2015. [Exhibit 6, pg. 1; Exhibit 7, pg. 4; Exhibit 4, pgs. 3-4]

19 17. Both ledgers reflect that on July 17, 2015, Bocchino’s HOA Account was assessed
20 \$120.00 for attorneys’ fees, directly correlating with Invoice No. 142153, dated June 30, 2015.
21 [Exhibit 6, pg. 1; Exhibit 7, pg. 5; Exhibit 4, pg. 5]

22 18. Both ledgers reflect that on August 6, 2015, Bocchino’s HOA Account was
23 assessed \$573.50 for attorneys’ fees, directly correlating with Invoice No. 143657, dated July
24 31, 2015. [Exhibit 6, pg. 1, Exhibit 7, pg. 5, Exhibit 4, pgs. 6-7]

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1 19. Both ledgers reflect that on September 5, 2015, Bocchino's HOA Account was
2 assessed \$168.00 for attorneys' fees, directly correlating with Invoice No. 144998, dated August
3 31, 2015. [Exhibit 6, pg. 2; Exhibit 7, pg. 5; Exhibit 4, pgs. 8-9]

4 20. Both ledgers reflect that on September 8, 2015, Bocchino's HOA Account was
5 assessed \$72.00 for attorneys' fees, directly correlating with Invoice No. 146534, dated
6 September 30, 2015. [Exhibit 6, pg. 2; Exhibit 7, pg. 5; Exhibit 4, pg. 10]

7 21. Bocchino made three payments towards the attorneys' fee assessments, the first on
8 June 11, 2015 for \$25.00; the second on July 31, 2015 for \$25.00; and the third on August 21,
9 2015 for \$5.00, totaling \$55.00. [Exhibit 6; Exhibit 7, pgs. 4-5]

10 22. The Accounting Transactions ledger shows that Bocchino was properly credited
11 for all \$55.00 in payments made. [Exhibit 6, pg. 1]

12 23. The Financial Transactions ledger shows that Bocchino was properly credited for
13 her payments made on June 11, 2015 and August 21, 2015, but the July 31, 2015 payment for
14 \$25.00 appears to have applied as an additional charge against her HOA Account. [Exhibit 7,
15 pgs. 4-5]

16 24. After all attorneys' fees charges and Bocchino's payments were applied to
17 Bocchino's HOA Account, she "owed" the Association \$3,837.28 in remaining attorneys' fees,
18 per the Accounting Transactions ledger, and \$3,887.28, per the Financial Transactions ledger.
19 [Exhibit 6; Exhibit 7, pgs. 4-6]

20 25. Bocchino entered into a binding contract for the sale of her condominium on
21 August 25, 2015 with a close of escrow date of September 24, 2015. [Exhibit 8 (Purchase
22 Contract), pgs. 1, 9]

23 26. The title company, as part of the sale, requested a payoff balance from the
24 Association. [Exhibit 9 (Resale Disclosure Statement)]

25
26

1 27. The Association’s property manager, Planned Development Services, provided a
2 Resale Disclosure Statement on September 18, 2015 that disclosed that Bocchino owed
3 \$4,062.28. [Exhibit 9]

4 28. The Resale Disclosure Statement stated that, “[a]ll fees are due at close of
5 escrow.” [Exhibit 9]

6 29. Bocchino sold her unit on September 24, 2015. [Exhibit 8]

7 30. The sum of \$4,412.28 was transferred to the Association from the title company
8 on September 18, 2015, \$4,062.28 of which was attributable to “Owners Current Balance.”
9 [Exhibit 10 (Copy of Pioneer Title Agency, Inc. Check No. 123585)]

10 31. The “Owners Current Balance” of \$4,062.28 appears to have been derived by
11 adding Bocchino’s unpaid September 1, 2015 monthly assessment of \$175.00 together with
12 Bocchino’s remaining unpaid attorneys’ fees assessments of \$3,887.28, per the miscalculations
13 contained in the Financial Transactions ledger. [Exhibit 7, pg. 6]

14 32. \$3,917.28 is the amount charged and collected from Bocchino, but the figure
15 attributes \$75.00 more in legal fees than the Association actually incurred. [Exhibit 4; Exhibit 7,
16 pgs. 4-6]

17 33. The Association’s Declaration contains the following provision:

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

26 [Exhibit 11 (Declaration)]

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DATED this 19th day of February 2016.

DESSAULES LAW GROUP

By: /s/ Ashley C. Hill
Jonathan A. Dessaulles
Douglas C. Wigley
Ashley C. Hill
Attorneys for Plaintiff

COPY of the foregoing mailed/e-mailed
this 19th day of February 2016 to:

Chad P. Miesen
CARPENTER, HAZLEWOOD, DELGADO & BOLEN PLC
1400 E. Southern Ave., Suite 400
Tempe, Arizona 85282
Attorney for Defendant

/s/ Jenna Pitchel

EXHIBIT 1

Fountain Shadows Homeowners Association Plaintiff / Plaintiff Employer (Work Injunction ONLY)	Patricia Bocchino Defendant
Birth Date: _____	8730 North 57th Lane Address
Donald Toothman Agent's Name (Work Injunction ONLY)	Glendale, AZ 85345 City, State, ZIP Code
	Case No. CC2015036699
This is not a court order.	
PETITION for <input type="checkbox"/> Order of Protection <input type="checkbox"/> Injunction Against Harassment <input checked="" type="checkbox"/> Workplace Injunction	

DIRECTIONS: Please read the Plaintiff's Guide Sheet before filling out this form.

1. Defendant/Plaintiff Relationship: Married now or in the past Live together now or lived together in the past,
 Child in common One of us pregnant by the other Related (parent, in-law, brother, sister or grandparent) Dating-never lived together
 Other: neighbor
2. If checked, there is a pending action involving maternity, paternity, annulment, legal separation, dissolution, custody, parenting time or support in _____ county.
Case # _____
3. Have you or the Defendant been charged or arrested for domestic violence OR requested a Protective Order?
 Yes No Not sure
If yes or not sure, explain:
4. I need a Court Order because: (PRINT both the dates and a brief description of what happened):
Date(s) Tell the judge what happened and why you need this order. A copy of this petition is provided to the defendant when the order is served.
03/06/2015 Please see attached Petition and statements from authorized agents and officers of Fountain Shadows Homeowners Association attached as exhibits "A" through "D."

Case No. OC2015039699


Maricopa Justice Court/AZ007043J/0797 14294 W. Tierra Buena Lane Surprise, AZ 85374

5. The following persons should also be on this Order. As stated in number 4, the Defendant is a danger to them:
Donald Toothman
Vern Carrillo
John Gaytan
Donna Toothman
6. Defendant should be ordered to stay away from these locations, at all times, even when I am not present:
 Home;
 Work: (Address protected);
 School/Other: Fountain Shadows Homeowners Association : 5559 W. Brown , Glendale , AZ 85302;
7. If checked, because of the risk of harm, order the defendant NOT to possess firearms or ammunition.
8. If checked, order the Defendant to participate in domestic violence counseling or other counseling. This can be ordered only after a hearing of which Defendant had notice and an opportunity to participate.
9. Other: Plaintiff requests that the Court order Ms. Bocchino not to come near Plaintiff or any of its authorized officers while performin work duties which includes Association meetings. ; Plaintiff further requests that the Court order Ms. Bocchino not to come on or near: Planned Development Services, Inc at 14100 North 83rd Avenue, Suite 200, Peoria, Arizona 85381; Donald and Donna Toothman (address listed); and John Gaytan (address listed) ;

Under penalty of perjury, I swear or affirm the above statements are true to the best of my knowledge, and I request an Order / Injunction granting relief as allowed by law.


Plaintiff

Attest
Judicial Officer / Clerk / Notary


MAR 05 2015
Date

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MANISTEE JUSTICE COURT
14264 W. TIERRA BUENA LANE
SURPRISE, ARIZONA 85372
(602) 372-2000

**FOUNTAIN SHADOWS
HOMEOWNERS ASSOCIATION, an
Arizona non-profit corporation,**

Plaintiff,

v.

PATRICIA BOCCHINO

Defendant

Case No. _____

**VERIFIED PETITION FOR
INJUNCTION AGAINST
WORKPLACE HARASSMENT**

Plaintiff, Fountain Shadows Homeowners Association ("Association"), an Arizona non-profit corporation, by and through its undersigned attorneys, hereby moves the Court for an injunction against workplace harassment against Defendant Patricia Bocchino ("Bocchino").

I. INTRODUCTION AND FACTUAL BACKGROUND

1 Plaintiff is a homeowners association whose officers and agents include members of
2 the Association's board of directors, employees of the Association's managing agent,
3 Planned Development Services, Inc., and undersigned counsel at Carpenter, Hazlewood,
4 Delgado & Bolen, PLC.
5

6 Defendant Bocchino is a female, approximately five feet six inches (5' 6") in height,
7 with a weight of approximately 170 pounds, and blonde hair.
8

9 Defendant Bocchino owns a property located within the Association, at Lot 12,
10 8736 North 67th Lane, Glendale, Arizona 85345. This property is subject to the
11 Declaration of Covenants, Conditions and Restrictions for Fountain Shadows ("CC&Rs").
12

13 Plaintiff's contact information is as follows:

14 Fountain Shadows Homeowners Association
15 c/o Planned Development Services, Inc.
16 14100 N. 83rd Avenue, Suite 200
17 Peoria, Arizona 85381

18 and

19 c/o Carpenter Hazlewood Delgado & Bolen, PLC
20 1400 East Southern Avenue, Suite 400
21 Tempe, Arizona 85282

22 Defendant Bocchino's contact information is as follows:

23 Patricia Bocchino
24 8736 North 67th Lane
25 Glendale, Arizona 85345

26 II. LEGAL ARGUMENT

27 Plaintiff requests an injunction against workplace harassment pursuant to A.R.S. §
28 12-1810 because Defendant Bocchino has harassed Plaintiff's board members and
employees of Plaintiff's managing agent, Planned Development Services, Inc.

1 Harassment is defined as a single threat or act of physical harm or damage or a
2 series of acts over any period of time [towards the employer or any person who enters the
3 employer's property or who is performing official work duties] that would cause a
4 reasonable person to be seriously alarmed or annoyed. Defendant Bocchino has engaged in
5 a series of acts that have caused Plaintiff's board members and employees of Plaintiff's
6 managing agent, Planned Development Services, Inc., to be both seriously alarmed and
7 annoyed. Ms. Bocchino has used e-mail, voice mail, phone conversations, and Association
8 Board of Directors meetings to harass the officers and agents of the Association.
9
10

11 Donald Toothman serves as the Board Treasurer of the Fountain Shadows
12 Homeowners Association. Ms. Bocchino has committed numerous acts of harassment
13 towards Mr. Toothman, as the Board Treasurer, and against his wife Donna Toothman.
14 See Statement of Donna and Donald Toothman, attached hereto as Exhibit "A."
15

16 Attached to this Petition at Exhibit "B" is a statement from John Gaytan who serves
17 as the Board Vice President of the Fountain Shadows Homeowners Association. Ms.
18 Bocchino has committed acts of harassment towards Mr. Gaytan, as the Board Vice
19 President, and has also witnessed her erratic behavior at a meeting. See Statement of John
20 Gaytan, attached hereto as Exhibit "B."
21

22 Attached to this Petition at Exhibit "C" is a statement from Vern Carrillo,
23 Community manager at Planned Development Services, Inc., the Association's managing
24 agent, detailing the acts of harassment Defendant Bocchino has committed towards him.
25 See statement of Vern Carrillo, attached hereto as Exhibit "C."
26
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1 Additional to the foregoing, attached to this Petition as Exhibit "D" is the Glendale
2 Police Department Offense Report from December 10, 2014 (the "Police Report"). The
3 Police report details specific incidences of Ms. Bocchino's problematic behavior and
4 continued harassment against members of the Association's Board which occurred at the
5 Association's Annual meeting on December 10, 2014. See statement of Glendale Police
6 Department Offense Report, attached hereto as Exhibit "D."
7
8

9 III. CONCLUSION

10 Based on the foregoing reasons, Plaintiff respectfully requests that the Court order
11 Defendant Bocchino not to commit an act of harassment against Plaintiff or any of its
12 authorized agents or officers listed in this Petition and further order Defendant Bocchino
13 not to contact any of the agents or officers of Plaintiff in person, by phone, or via email.
14 Plaintiff also requests that the Court order Defendant Bocchino not to come near Plaintiff
15 while performing work duties which includes Association meetings.
16
17

18 Plaintiff further requests that the Court order Defendant Bocchino not to come on or
19 near:

20 Planned Development Services, Inc.
21 14100 North 83rd Avenue, Suite 200
22 Peoria, Arizona 85381

23 Donald and Donna Toothman
24 8626 N. Fountain Drive
25 Peoria, Arizona 85345

26 John Gaytan
27 6758 W. Ruth Avenue
28 Peoria, Arizona 85345

1 RESPECTFULLY SUBMITTED this 4 day of March, 2015.

2
3 Carpenter, Hazlewood, Delgado & Bolen, PLC

4
5 By: 

6 Allison Kline
7 Chad Miesen
8 1400 E. Southern Avenue, Suite 400
9 Tempe, Arizona 85282
10 *Attorneys for Plaintiff*

February 5th, 2015

RE: Patricia Bocchino, Fountain Shadows

To whom it may concern:

My name is Donna Toothman I live at 8626 N. Fountain Dr. Peoria Arizona, in the Fountain Shadows HOA. I have lived here for 11 years. I am married to Donald Toothman who has lived in the community almost 30 years.

Donald has been a Board member for the last 7 years. Serving as treasurer and on site volunteer.

I serve as a volunteer handling emergencies that occur on the property, as well as contractors on site, or doing errands for the board or management company. I also handle the cabana reservations and clean up. I meet with the landscapers and generally do odds and ends for people.

I do these things because the Board members have full time jobs and it's easier for me to do these things than having a board member take a day off.

Because I do these things I have come under attack by several residents in the community. The newest and worst is the owner of lot 012 (8738 N. 67th Lane,) a Ms. Patricia Bocchino.

Listed in this letter or some of the more severe and notable encounters I have had (with or without my husband) and this individual.

EXHIBIT
A

Incidents with Ms. Patricia Bocchino

Ms. Bocchino started remodeling her home in January 2014. During this time my husband was introduced to Ms. Bocchino, we were met with an extremely angry person, she did not like us or any member of the board or how anything was being run and that she was going to fix the situation.

During the February Board of Directors meeting Bocchino announced her intention to have the current board members removed and the property management replaced. And all contractors fired immediately. At the end of this meeting as I was leaving the meeting room Bocchino asked the sheriff's deputy to arrest me for assault because I looked at her. What she failed to realize is I had left my video recorder on and that the sheriff's deputy was standing right beside me. When the deputy refused to take action Bocchino phoned 911. Bocchino then told the police that I tried to assault her with my eyeglasses.

Ms. Bocchino did not attend the next 3 board meetings. What she did do was go to many of the resident's homes and lie about the board actions. Calling my husband and pervert and embezzler. Also that the board was taking kickbacks from the tow truck company and their drivers. All proven to be false and outright lies. She continues going around to tell residents that my husband has pulled out a weapon or his badge to intimidate anyone who disagrees with him. This is also false.

She has berated anyone who likes the way the community looks or shows any support to the Board of Directors or Donald and myself. She has interjected herself in gatherings at the pool that she was uninvited and had to be asked to leave. The residents of this community are tired of Bocchino and her "ranting, ravings and threats towards the residents of this community."

In July 2014 things really escalated to a boiling point. When our newsletter came out announcing that the pool, spa and cabana would be closing for maintenance and renovations to meet state requirements. Bocchino went ballistic.

The pool was closed August 4th. And Bocchino started driving by my home threatening myself and my husband. That same morning while I was talking to a resident at my front door Bocchino drove by screaming at me that we had no right to close the pool and that I would get what's coming to me. I excused myself from the other resident and closed my front door. From this she drove by the pool tearing down the pool closed sign.

Ms. Bocchino spent the remainder of the morning sitting on a park bench directly across my home. Shouting threats at my house. She also tried to arrange a hostile meeting in front of my home. This prompted Vern at PDS to arrange security for my home. Since I was home alone and terrified.

On August 30th, 2014, we encountered her at the garbage dumpsters. She once again started in on both my husband and

myself. Calling us Nazis and that our time was coming to get what we deserved. On advice from a medical professional we ignored her and went on our way home. Ms. Bocchino then followed us and tried to drive us off the road and into the retention pond. Failing this she drove her vehicle and blocked us from entering our garage. At this my husband lowered the driver's side window to ask Bocchino what her problem was. She yelled that we Nazis and need to quit harassing her.

The last few months have been the worst of all. On November 26th 2014, as I was putting up the year's holiday decorations Ms. Bocchino drove by. I was minding my own business, when she yelled out of her driver's window that I was harassing her. And because I had my phone in my hand she accused me of taking her picture. I had not said a word to her and I did not respond to her comments. Bocchino drove off in a huff.

Several weeks later as Donald and Vern were doing a property inspection of which Bocchino and Julie Chavez were supposed to join them but did not and decided to do their own inspection, which included looking into people's front door windows (of which I received three phone calls and one person to person complaint which I then passed on to Donald and Vern via my cell phone.)

I was on my balcony when Bocchino and Julie Chavez passed my garage heading towards my front door. Upon seeing me the threats and harassing verbiage began. And again the accusations of taking her picture started again. I phoned 911

for the first time against Bocchino and Julie Chavez. The police arrived and the two ladies proceeded to argue with the officer, but finally the women ceased their activities and went home. They later tried to have harassment charges filed against the police officer who responded to my call.

December 10th 2014 things came to a head before the annual Board meeting got started. Bocchino was the first resident to come into the meeting room, and started belittling the board, PDS, and Donald. This can all be seen on the December Board of Directors video.

Before the meeting started she tried to engage me by complaining about the colors chosen to paint the cabana tables, and that the work I did looked like a two year old did it. She told everyone not to eat the cookies I made because I had cats in my house. On and on Bocchino went I just ignored her. The following day we drove past each other and she started to say something to me but instead held both her hands over her face nearly running over a curb.

On January 28th while Donald and Vern were again doing a property inspection and handling a private matter with another resident Bocchino again went out of her way to harass them both. Vern caught this on tape.

Ms. Bocchino and several other residents who have aligned themselves with Ms. Bocchino are the reasons the Board decided not to have any activities involving other residents, for

fear their anger and hostility will spill over into violence. As it stands now I am a prisoner in my own home afraid of opening my front door for fear Ms. Bocchino or one of her followers will see me. I cannot enjoy the pool spa or the cabana I worked so hard at cleaning and refurbishing myself for the fear I will have a run in with these individuals.

Bocchino has been obsessed with me my house and my marriage, she has spent days stalking my house taking pictures, filing complaints against me. She cannot stop with her harassing behavior.

I live in a constant state of terror because of Bocchino and her gang of thugs. Having my home suffer criminal damage twice has made me fearful of any knock or doorbell rings at my door.

I cannot walk my dog in the community by myself for fear of personal harm from these individuals.

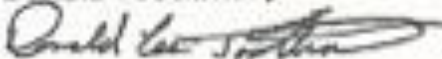
Donald and I have had many more confrontations with Bocchino that we overlooked hoping things would get better but we realize that will never happen.

Respectfully,

Donna Toothman,



Donald Toothman,



2/8/2015

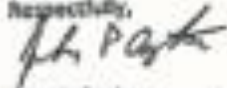
RE: Patricia Bocchino, Fountain Shadows

As the Vice president of Fountain Shadows HOA I am writing to you regarding the ongoing harassment of me, and the Board of Fountain Shadows by Ms. Bocchino.

I am the lucky one because I have only had to deal with Ms. Bocchino at our meetings, which I believe you have seen the videos. September 10, 2014 we gave her a chance to speak to the board during the executive meeting, and she finished and walked out, then came back in during the recess between meetings and got upset with me because I would not listen to her continue her complaint since I was the only board member present.

The other time I had a confrontation with her was at the annual meeting on 12/10/14. When the Sheriff officer asked me to sit next to her and not leave, because she did not want ms. Bocchino sitting next to her gun. Ms. Bocchino then went off accusing me of stealing her seat. I explained to her that the officer wanted me there and she went off on both of us. All of this is on the video.

Respectfully,



John P Gayten
Vice president Fountain Shadows HOA.

EXHIBIT
R

March 4, 2015

To whom it may concern,

I have been the community manager for the Fountain Shadows HOA for the past seven years and have been a Community Manager for over 21 years. I have never had to deal with a person like Ms Patricia Bocchino before.

Her aggressive behavior at the Board of Directors meetings has forced the Board of Directors to not only hire off duty officers for the regular Board meetings but to also video tape the meetings to protect the HOA against her numerous false allegations.

I have been the target of several of her false allegations, one where she has called 911 and attempted to file charges against myself and the members of the Board.

I am no longer able to perform my duties as the community manager. Part of my responsibilities include conducting regular community inspections of the common areas. However, I cannot even perform these inspections as anytime I arrive at the community, Ms Bocchino will proceed to harass me and any Board member present. She has driven up and accosted me for no reason that I could discern. I have a short video on my iPad from my most recent inspection with Mr. Toothman where she tells him to "shut the f- up" and proceeds to dial 911.

Vera Carrillo

Vera Carrillo, CAAM®, CMCA®, AMS®
Community Manager

EXHIBIT

C

31561

GLENDALE POLICE DEPARTMENT
REPORT INVENTORY COVER PAGE
FOR REPORT NO. 14 JEBE

12/26/2014 11:34

①



REPORT TYPE	DATE	TIME	OFFICER NO.
OR OFFENSE REPORT	12/26/2014	1802	1629
SU SUPPLEMENTARY	12/26/2014	1803	1303
SU SUPPLEMENTARY	12/26/2014	1802	1117

*** END OF INVENTORY ***

EXHIBIT
 D

7541

**GLENDALE POLICE DEPARTMENT
OFFENSE REPORT**

12/24/2014 11:04
Page 2

Report No: 14-12693 Type: 08 Date/Time: 12/20/2014 1800 Off: 8-10000 CASTIGLIONE, AUSTIN

REPORT TITLE: RUII DISTURBING/HALEASINO
 Reporting Officer: CASTIGLIONE, AUSTIN #16030
 Location: 3939 W BROWN ST Apt/Room:
 Date & Time Occurred From: 12/18/2014 1800 to: 12/18/2014 1802 Grid: C114
 Associated Report No. (s):
 Total Property Taken: \$0.00 Recovered: \$0.00 Damages: \$0.00
 Case Status: INFORMATION ONLY REPORT

WITNESSES AND/OR OTHERS INVOLVED
 Person Reporting 1:
 BOCCARDI, TRICIA

WITNESSES AND/OR OTHERS INVOLVED
 Responsible Party 1:
 DEPUTY DANIEL

WITNESSES AND/OR OTHERS INVOLVED
 Witness 1:
 TOOTHMAN, DONALD

SYNOPSIS
 ON 12/18/14 AT APPROXIMATELY 1800 HOURS FBI WAS DISRUPTIVE DURING A LOCAL HOA MEETING HELD AT 3939 W BROWN ST. AFTER REFUSING TO LEAVE FBI WAS PHYSICALLY EJECTED OUT OF THE ROOM BY EPL FBI WAS LATER THREASPED FROM ALL FUTURE HOA MEETINGS. PHOTOGRAPHS WERE TAKEN OF ALL ALLEGED INJURIES OF FBI.

NARRATIVE
 14-12693
 A. CASTIGLIONE #16030
 SUBJECT DISTURBING
 OFFENSE REPORT
 DECEMBER 18, 2014 1800 HOURS

ON 12/20/14 AT APPROXIMATELY 1800 HOURS, I RESPONDED WITH MY FIELD TRAINING OFFICER, OFFICER SCHLEIDER, TO A CALL REGARDING A SUBJECT DISTURBING AT 3939 W. BROWN ST. CALL INFORMATION STATED PR WAS PUNED AND SHOVED BY AN OFF-DUTY DEPUTY AFTER BEING TOLD TO LEAVE A LOCAL HOA MEETING. PR ALSO REQUESTED MEDICAL ATTENTION DUE TO BRUISING FROM THE INCIDENT.

UPON ARRIVAL, I SPOKE WITH FBI TRICIA BOCCARDI WHO IS A RESIDENT WITHIN THE HOA. SHE INFORMED ME SHE WAS AT THE LIBRARY FOR HER HOA MEETING. SHE STATED AT THE CONCLUSION OF THE MEETING, SHE WAS ATTEMPTING TO GET PAPERWORK FROM W/ DONALD TOOTHMAN. SHE SAID SHE WAS TOLD TO LEAVE BY EPL DEPUTY DANIEL #1021. AFTER REFUSING TO LEAVE, TRICIA SAID DEPUTY DANIEL "TWISTED" HER ARM BEHIND HER BACK AND "SHOVED" HER OUT OF THE ROOM. TRICIA STATED THAT SHE DESIRED PROSECUTION AGAINST DEPUTY DANIEL FOR ASSAULT.

P316

**GLENDALS POLICE DEPARTMENT
OFFENSE REPORT**

11062014 11:34
Page 3

Report No: 14 15282 Type: 08 Date/Time: 12/02/14 18:03 Off: 16892 CARTER/JONES/AGUTIN

I SPOKE WITH DEPUTY DANIEL AND SHE INFORMED ME THAT SHE WORKS OFF-DUTY AT THE HOA MEETINGS BECAUSE THE HOA BOARD OF DIRECTORS HAS HAD SEVERAL PRIOR INCIDENTS WITH TRICIA BEING DISRUPTIVE IN THE PAST. DEPUTY DANIEL TOLD ME TRICIA WAS DISRUPTIVE THROUGHOUT THAT EVENING'S MEETING AND REFUSED TO LEAVE AFTER MULTIPLE REASONABLE REQUESTS HAD BEEN MADE BY MEMBERS OF THE HOA BOARD OF DIRECTORS. DEPUTY DANIEL STATED SHE TOO TOLD TRICIA TO LEAVE BY THE REQUEST OF THE HOA BOARD OF DIRECTORS. AFTER CONTINUING TO REFUSE TO LEAVE, DEPUTY DANIEL THEN TOOK CONTROL OF TRICIA'S RIGHT ARM AND PHYSICALLY ESCORTED HER OUT OF THE ROOM.

I THEN SPOKE WITH W/ DONALD TOTTERMAN WHO WORKS ON THE HOA EXECUTIVE BOARD AS A SECRETARY. AFTER THE MEETING WHEN TRICIA BECAME DISRUPTIVE, DONALD ASKED TRICIA TO LEAVE SEVERAL TIMES. HE TOLD ME HE DEBATED DEPUTY DANIEL TO REMOVE TRICIA FROM THE MEETING. DONALD STATED IT APPEARED TO HIM TRICIA GOT AGGRESSIVE AND DEFIANT TOWARD DEPUTY DANIEL JUST PRIOR TO BEING PHYSICALLY ESCORTED OUT OF THE ROOM. HE ALSO TOLD ME THAT THE ENTIRE MEETING WAS VIDEO RECORDED SPECIFICALLY BECAUSE TRICIA HAS BECOME SO DISRUPTIVE. DONALD TOLD ME THAT HE WOULD ATTEMPT TO MAKE A COPY OF THE VIDEO FOR ME AT A LATER DATE.

UPON REVIEW OF THE VIDEO RECORDING, IT SHOWED DONALD AND DEPUTY DANIEL TELL TRICIA MULTIPLE TIMES THAT SHE NEEDED TO LEAVE THE MEETING. TRICIA REFUSED ALL VERBAL COMMANDS BY DEPUTY DANIEL AND WAS ARGUMENTATIVE. THE VIDEO THEN SHOWED DEPUTY DANIEL PLACE TRICIA'S RIGHT ARM IN AN ESCORT HOLD AND WALK HER OUT OF THE ROOM.

GLENDALS FIRE DEPARTMENT ENGINE 121 SIFT C RESPONDED TO THE SCENE AND MEDICALLY CLEARED TRICIA (SEE THEIR INCIDENT REPORT #14-39448 FOR FURTHER DETAILS REGARDING THEIR INVOLVEMENT). I DID NOT NOTICE ANY VISIBLE BRUISING ON TRICIA WHILE ON SCENE; HOWEVER, OFFICER COBBLEY #11171 TOOK PHOTOGRAPHS OF TRICIA'S REPORTED INJURIES. PLEASE REFER TO THOSE PICTURES FOR ANY FURTHER DETAILS REGARDING POSSIBLE INJURIES.

THE HOA COMMUNITY MANAGER, VICKI CARULLO, REQUESTED THAT TRICIA BE THREASPED FROM ALL FUTURE MEETINGS. TRICIA WAS THEN THREASPED AND LEFT THE AREA AFTER SEVERAL MINUTES OF ARGUING WITH OFFICERS ON SCENE.

THIS CONCLUDES MY INVOLVEMENT IN THE MATTER AT THIS TIME.

71501

GLENDALE POLICE DEPARTMENT
OFFENSE REPORT

10/26/2014 11:34
Page 4

Report No: 14 15161 Type: OR Date/Time: 10/26/2014 11:34 Officer: 2082 CASTIGLIONE/AUSTIN

Victim Arrested:	Prize Attempt: NO	Prize Obtained: NO	CAT. Y
Supervisor Approving Report:			

CRIMINAL OFFENSE(S)	Code: 000
Offense: NOT A UCR CRIME OR NOT IN JURISDICTION	Victim: _____ Suspect: _____

STATISTICAL INFORMATION
LOCATION TYPE:
OFFENSE: PUBLIC BUILDING
INSTRUMENT EMPLOYED:
HANDWEPT

CASE DECISION REPORT:
<input type="checkbox"/> UNKNOWN
<input checked="" type="checkbox"/> TOTAL
NO REVIEW REGARDLESS OF TOTAL FLAG

P3341

**GLENDALE POLICE DEPARTMENT
SUPPLEMENTARY**

12/26/2014 11:04
Page 5Report No: 14 152693 Type: SU Date/Time: 12/26/2014 1800 Off: 913073 BIRKENSHAW

REPORT TITLE: SUBJ DISTURBING/BARRASSING

Reporting Officer: BIRKENSHAW, JARCO #13073

Location: 3919 W BROWN ST

Apri/Officr

Date & Time Occurred from: 12/16/2014 1800 to: 12/26/2014 1800 Grin: C114

Associated Report No(s):

Total Property Taken: \$0.00

Recovery: \$1.00

Damage: \$1.00

Case Status: INVESTIGATION CONTINUED

NARRATIVE

14-152693

SUPPLEMENTAL REPORT

OFFICER BIRKENSHAW #13073

ON 12/26/2014 AT APPROXIMATELY 1800 HOURS I WAS DISPATCHED TO 3919 WEST BROWN STREET IN REGARDS TO A SUBJECT DISTURBING CALL. UPON MY ARRIVAL I CONTACTED TRISHA WHO RELATED THE FOLLOWING.

TRISHA ADVISED SHE WAS LOCATED AT THE LIBRARY BECAUSE SHE WAS ATTENDING AN HOA MEETING FOR HER COMMUNITY SHE RESIDES IN. DURING THE MEETING SHE WAS ASKED TO LEAVE BY ONE OF THE BOARD MEMBERS TO WHICH SHE DID NOT WANT TO LEAVE AND BELIEVED SHE DID NOT HAVE TO LEAVE BECAUSE SHE PAYS HER HOA DUES AND WAS DEMANDING ANSWERS FROM ONE OF THE BOARD MEMBERS.

TRISHA ADVISED THERE IS AN OFF DUTY DEPUTY THAT WAS ALSO LOCATED AT THE MEETING. TRISHA ADVISED SHE WAS ALSO PAYING FOR THE OFF DUTY DEPUTY TO BE AT THE MEETING AS WELL, BECAUSE SHE PAYS HER HOA DUES. TRISHA ALSO ADVISED SHE PAYS TAXES AND THEREFORE PAYS FOR MY JOB.

TRISHA ADVISED SHE WAS FURTHER UPSET BECAUSE THE DEPUTY ASKED HER TO LEAVE AND THE DEPUTY WOULD NOT ALLOW HER TO OBTAIN PAPERS THAT SHE WANTED TO GET BEFORE SHE LEFT. TRISHA STATED THE DEPUTY THEN GRABBED HER BY HER ARM AND PLACED IT UP AGAINST HER BACK FORCEFULLY AND PUSHED HER OUT OF THE MEETING ROOM.

TRISHA ADVISED SHE BELIEVED THIS FORCE WAS NOT NECESSARY.

IT SHOULD BE NOTED THAT DURING MY CONVERSATION WITH TRISHA SHE WAS ARGUMENTATIVE AND WANTED ANSWERS BUT WOULD NOT LET ME SPEAK ABOUT THE INCIDENT.

TRISHA CONTINUED TO COMPLAIN ABOUT HER BACK HURTING.

THIS CONCLUDED MY CONTACT WITH TRISHA ABOUT THIS INCIDENT.

72140

GLENDALE POLICE DEPARTMENT
SUPPLEMENTARY

12060014 1104
Page 6

Report No: 14 251631 Type: SU Date/Time: 12/16/2014 1800 Offic: 13277 HERRERA, JACOB

PLEASE REFER TO THE OFFENSE REPORT AND ANY OTHER SUPPLEMENTAL
REPORTS FOR FURTHER DETAILS.

INFORMATION ONLY

END NARRATIVE

Page 6

SUPPLEMENTARY

Report No: 14 251631 Type: SU Date/Time: 12/16/2014 1800 Offic: 13277 HERRERA, JACOB

REPORT TITLE: DISORDERLY CONDUCT

Reporting Officer: COBBLEY, MICHAEL #11177

Location: 509 W BROWN ST

Apt/Units:

Date & Time Occurred From: 12/16/2014 1800 To: 12/16/2014 1802 Grid: C14

Associated Report No. (s):

Total Property Taken: \$0.00

Recoveries: \$0.00

Damages: \$0.00

Case Status: INFORMATION ONLY REPORT

NARRATIVE

ON 12/16/2014 AT ABOUT 1800 HOURS I RESPONDED TO A REQUEST FOR A UNIT
WITH A CAMERA AT THE BROWN LIBRARY LOCATED AT 509 W BROWN ST IN THE
CITY OF GLENDALE, AZ AND THE COUNTY OF MARICOPA.
I CONTACTED THE OFFICER AT THE LOCATION AND WAS REQUESTED TO PHOTOGRAPH
A FEMALE WHO WAS REPORTING AN INJURY TO HER ARM.
USING MY DEPARTMENT ISSUED CAMERA FROM MY CRIME SCENE OFFICER (CSO) KIT,
I PHOTOGRAPHED THE FEMALE AS REQUESTED.
WHEN I COMPLETED THE PHOTOGRAPHS SHE TOLD ME SHE WOULD GO HOME AND
TAKE HER OWN PICTURES TO DOCUMENT THE INJURY.
I DOWNLOADED THE PHOTOGRAPHS I HAD TAKEN FOR THIS REPORT INTO DMS FOR
LATER USE IN REFERENCE TO THIS REPORT.
THIS WAS MY INVOLVEMENT, NO FURTHER INFORMATION AS OF THIS REPORT.

Victim Arrested:

Fines Alleged: NO

Fines Obtained: NO

C.R.T. Y

Supervisor Approving Report:

*** END OF REPORT ***

EXHIBIT 2

TRIAL COURTS OF ARIZONA IN MARICOPA COUNTY
 Maricopa Justice Court/AZ007043J/ET97 14264 W. Tierra Buena Lane Surprise, AZ 85374

INJUNCTION AGAINST WORKPLACE HARASSMENT

Case No. CC2015010699000
 Court ORI No. AZ007043J
 County Maricopa State AZ
 Former Case No. _____

PLAINTIFF EMPLOYER

Fountain Shadows Homeowners Association
 And on behalf of Protected Person(s):
 Donald Toothman, Vern Canillo, John Gaytan, Donta Toothman

AUTHORIZED AGENT

Donald Toothman

v.

DEFENDANT

Patricia Boochino
 First Middle Last

Defendant's Relationship: neighbor
 Defendant's Address:

8738 North 67th Lane
Glendale, AZ 85345

DEFENDANT IDENTIFIERS

SEX	RACE	DOB	HT	WT
Female	White	Unknown	5' 6"	170
EYES	HAIR	Arizona Prohibits Release of Social Security Numbers		
Blue	Black			
DRIVER'S LICENSE #	STATE	EXP DATE		
	AZ			

WARNINGS TO DEFENDANT: This Injunction shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial or tribal boundaries to violate this Injunction may result in federal imprisonment (18 U.S.C. § 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. § 922(g)(8)). Only the Court in writing, can change this Injunction. This Injunction is effective for one year from date of service. **VERIFY VALIDITY (call Holder of Record):**

County Sheriff's Office — (602) 876-1061

THE COURT HEREBY FINDS:

*That it has jurisdiction over the parties and subject matter.
 Additional warnings are set forth on the next page(s).*

THE COURT, FINDING REASONABLE CAUSE, HEREBY ORDERS:

NO CONTACT. Defendant shall have no contact with Plaintiff employer or other person while that person is on or at the employer's property or place of business or is performing official work duties except through attorneys, legal process, court hearings and as follows: Mail / Writing.

NO CONTACT. Defendant shall have no contact with Protected Person(s) except through attorneys, legal process, court hearings and as follows: Mail / Writing.

THE COURT FURTHER ORDERS:

Effective: June 3, 2013

PROTECTED LOCATIONS. Defendant shall not go to or near the Plaintiff employer's or other Protected Person's

Workplace:

- Fountain Shadows Homeowners Association : 54180 North 83rd Avenue Unit: 309; Peoria, AZ 85381

Other:

- Fountain Shadows Homeowners Association : 8828 W. Brown, Glendale, AZ 85302
- Denise Toothman: 8828 N Fountain Dr, Peoria, AZ 85345
- Dana Toothman: 8828 N Fountain Dr, Peoria, AZ 85345
- John Caytan: 8738 W Ruth Ave, Peoria, AZ 85345

OTHER ORDERS.



3/5/2015

Date

Judicial Officer

Donald Watts

Printed Name

ADDITIONAL WARNINGS TO DEFENDANT:

This is an official Court Order. If you disobey this Injunction (even if the Plaintiff contacts you), you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Injunction. If you disagree with this Injunction, you have the right to request a hearing which will be held within 15 business days after your written request has been filed in the Court that issued this Injunction. Nothing Plaintiff does can stop, change, or undo this Injunction without the Court's written approval. You must return to Court to ask a judge to modify (change) or quash (dismiss) this Injunction. All violations of this Injunction should be reported to a law enforcement agency, not the court.

Case No. CC2015039699000 Defendant: Patricia Bocchino

Date: 3/5/2015

Defendant's Guide Sheet for Protective Orders - Please Read Carefully

The following information is provided to further explain the protective order that has been served upon you and your responsibilities as the Defendant.

1. You have been served with one of the following protective orders:
 ORDER OF PROTECTION: An Order of Protection is used for a "family" relationship between you and the Plaintiff. This can include any of the following:
1) married now or in the past, 2) live together now or lived together in the past, 3) parent of a child in common, 4) one of you is pregnant by the other, 5) you are a relative (parent, in-law, brother, sister, or grandparent), or 6) current or previous romantic or sexual relationship. The Plaintiff has alleged that you have committed or may commit an act of domestic violence.
 INJUNCTION AGAINST HARASSMENT: The Plaintiff has alleged that you have committed a series of acts (more than one) of harassment against the Plaintiff within the last year.
 INJUNCTION AGAINST WORKPLACE HARASSMENT: This Injunction, alleging a single act or series of acts of harassment, has been filed against you by an employer or owner of a business or operation for the benefit of an employee or the business.
2. **OTHER PROTECTED PERSONS:** It is possible that you will be referred to Superior Court if your children are listed as protected persons in this order. Only a Superior Court Judge can decide child custody or parenting time in a separate action.
3. **SERVICE AND EFFECT:** This protective order is valid for one year from the date it was served on you and is enforceable by law enforcement in any state or tribal nation in the United States.
4. **PROTECTIVE ORDER HEARING:** If you disagree with this protective order, you have the right to request a hearing which will be held within 5 to 10 business days after your written request has been filed in the court that issued this order. If a hearing is held and the Order remains in effect or is modified, and you and the Plaintiff 1) are married now or in the past, 2) live together now or lived together in the past, or 3) are parents of a child in common, you may be prohibited from possessing a firearm. This firearms prohibition may apply even if you fail to appear for the hearing. If you have questions as to whether your request for a hearing can result in this firearms prohibition, you should contact an attorney. The Court cannot give you legal advice.
5. **MODIFYING OR QUASHING (DISMISSING) THIS PROTECTIVE ORDER:** Only a judge can modify or quash (dismiss) this protective order. If you file an action for maternity, paternity, annulment, legal separation, or dissolution against the Plaintiff, you need to advise this court at once. Nothing the Plaintiff does can stop, change, or undo this protective order without the Court's written approval.
6. **PLAINTIFF CONTACT:** Even if the Plaintiff initiates contact, you could be arrested for violating this protective order. You have the right to request a protective order against the Plaintiff if you do not want the Plaintiff to contact you. However, orders are not automatically granted upon request. Legal requirements must be met.
7. **LAW ENFORCEMENT STANDBY:** If standby has been ordered by the judge on this protective order, you may return to the residence once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.
8. **FIREARMS:** If the judge has ordered under state law that you shall not possess, receive, or purchase firearms or ammunition, you must surrender them within 24 hours after service to the law enforcement agency named on this protective order and should request them to issue proof of that surrendering. You may also be required to provide documentation to the court that firearms were transferred to the appropriate law enforcement agency.

EXHIBIT 3

1 Carpenter, Hazlewood, Delgado & Bolen, PLC
Attorneys at Law
1400 E. Southern Avenue, Suite 400
2 Tempe, Arizona 85282
t 480.991.6949 | f 480.991.7040
3 minuteentries@carpenterhazlewood.com
Chad P. Miesen 024910
Charlene Cruz 026852
4 FOUNTSHAD.0025.1

5 Attorneys for Defendant Fountain Shadows
Homeowners Association

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

9 PATRICIA BOCCHINO,

Plaintiff,

10 v.

11 FOUNTAIN SHADOWS HOMEOWNERS
ASSOCIATION,

12 Defendant.

Case No. CV2015-012434

13
14 **DEFENDANT'S RESPONSE TO**
15 **PLAINTIFF'S FIRST REQUEST FOR**
16 **ADMISSIONS**

17 Defendant, Fountain Shadows Homeowners Association, ("the Association"), by and
18 through its attorneys undersigned, for its response to Plaintiff's First Request For Admissions to
19 Defendant Fountain Shadows Homeowners Association, states:

20 **Requests for Admissions**

21 1. Admit that the attorneys' fees assessed against Plaintiff's account were not
22 incurred enforcing the collection of amounts due under the Declaration.

ADMIT X DENY _____

2. Admit that the attorneys' fees assessed against Plaintiff's account were not
incurred in connection with any lien provided for in the Declaration.

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ADMIT _____ DENY X

3. Admit that the attorneys' fees assessed against Plaintiff's account were not incurred in connection with the foreclosure of any lien provided for in the Declaration.

ADMIT X DENY _____

4. Admit that the attorneys' fees assessed against Plaintiff's account were not incurred enforcing compliance with the term and conditions of the Declaration.

ADMIT _____ DENY X

5. Admit that the attorneys' fees assessed against Plaintiff's account were not incurred enforcing specific performance with the term and conditions of the Declaration.

ADMIT _____ DENY X

6. Admit that you did not request an award of attorneys' fees in connection with the Injunction Against Harassment you filed against Plaintiff.

ADMIT X DENY _____

7. Admit that you were not awarded attorneys' fees in connection with the Injunction Against Harassment you filed against Plaintiff.

ADMIT X DENY _____

DATED this 25th day of January, 2016.

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, PLC

By:  _____

Chad P. Miesen #024910
Charlene Cruz #026692
1400 E. Southern Avenue, Suite 400
Tempe, Arizona 85282
Attorneys for Fountain Shadows Homeowners Association

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CERTIFICATE OF SERVICE:

ORIGINAL of the foregoing mailed
this 25th day of January, 2016, to:

Jonathan A. Dessoules
DESSAULES LAW GROUP
25353 North 16th Street, Suite 110
Phoenix, Arizona 85016
Email: jdessoules@dessouleslaw.com

By:  _____

EXHIBIT 4

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: January 31, 2015

Invoice No. 135871

Matter Description: Bocchino, Patricia Enforcement 12

Matter ID: FOUNTSHAD.0025

Legal Services Rendered:

DATE:	PROFESSIONAL:	DESCRIPTION:	HOURS:	RATE:	AMOUNT:
1/4/2015	CPM	[REDACTED]	0.50	305.00	152.50
1/5/2015	AAK	Review email from community manager [REDACTED]	0.70	240.00	168.00
1/12/2015	AAK	Review and revise email from community manager regarding [REDACTED]	0.30	240.00	72.00
1/16/2015	AAK	[REDACTED]	0.30	240.00	72.00
1/19/2015	AAK	Continue to review [REDACTED]	0.30	240.00	72.00
1/22/2015	AAK	Begin drafting Verified Petition Against Workplace Harassment [REDACTED]	1.30	240.00	312.00
1/23/2015	AAK	Continue drafting Verified Petition Against Workplace Harassment [REDACTED]	0.20	240.00	48.00
1/29/2015	AAK	Review and revise email from community manager regarding [REDACTED]	0.60	240.00	144.00
1/29/2015	CPM	Review and revise template [REDACTED]	0.20	305.00	61.00

Total Current Legal Services Rendered:

\$ 1,101.50

Rate Summary:

Allison A. Kline 3.70 hours @ \$240.00 = \$ 888.00
Chad P. Miesen 0.70 hours @ \$305.00 = \$ 213.50

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: January 31, 2015

Invoice No. 135871

Total Fees and Costs:	\$	1,101.50
Previous Balance:	\$	0.00
Matter Total:	\$	1,101.50

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: March 31, 2015

Invoice No. 138684

Matter Description: Bocchino, Patricia Enforcement 12

Matter ID: FOUNTSHAD.0025

Legal Services Rendered:

DATE:	PROFESSIONAL:	DESCRIPTION:	HOURS:	RATE:	AMOUNT:
3/2/2015	AAK	Receipt review and respond to email [REDACTED]	0.20	240.00	48.00
3/4/2015	AAK	Draft and Finalize Expedited Petition for Injunction against Workplace Harassment	1.00	240.00	240.00
3/4/2015	CPM	Discuss and strategize regarding [REDACTED]	0.50	305.00	152.50
3/4/2015	AAK	Receipt review and respond to various emails from community manager [REDACTED]	0.20	240.00	48.00
3/5/2015	AAK	Prepare for and attend hearing for Injunction Against Workplace Harassment. (Split with CPM)	2.00	240.00	480.00
3/5/2015	CPM	Prepare for and attend injunction hearing. Meet with client regarding [REDACTED]	2.00	305.00	610.00
3/9/2015	VJG	Receive and review the conformed Injunction Against Workplace Harassment, and docket.	0.20	170.00	34.00
3/9/2015	VJG	Assemble documents and coordinate with process server to begin service of Injunction upon Defendant, Patricia Bocchino.	0.20	170.00	34.00
3/18/2015	VJG	Received and reviewed the conformed Certificate of Service regarding service on Patricia Bocchino, and docket.	0.20	170.00	34.00
3/31/2015	CPM	Receipt and review of email from community manager [REDACTED]	0.20	305.00	61.00

Total Current Legal Services Rendered:

\$ 1,741.50

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: March 31, 2015

Invoice No. 138684

Rate Summary:

Vicki J. Goslin	0.60 hours @ \$170.00 = \$ 102.00
Allison A. Kline	3.40 hours @ \$240.00 = \$ 816.00
Chad P. Miesen	2.70 hours @ \$305.00 = \$ 823.50

Disbursements & Other Costs Incurred:

DATE:	DESCRIPTION:	AMOUNT:
3/9/2015	Process Server Fee	90.78
Current Billed Disbursements & Other Services:		\$ 90.78

Total Fees and Costs:	\$ 1,832.28
Previous Balance:	\$ 0.00
Matter Total:	\$ 1,832.28

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: June 30, 2015

Invoice No. 142153

Matter Description: Bocchino, Patricia Enforcement 12

Matter ID: FOUNTSHAD.0025

Legal Services Rendered:

DATE:	PROFESSIONAL:	DESCRIPTION:	HOURS:	RATE:	AMOUNT:
6/23/2015	AAK	Receipt and review email from property manager regarding [REDACTED]	0.50	240.00	120.00

Total Current Legal Services Rendered: \$ 120.00

Rate Summary:

Allison A. Kline 0.50 hours @ \$ 240.00 = \$ 120.00

Total Fees and Costs: \$ 120.00

Previous Balance: \$ 0.00

Matter Total: \$ 120.00

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: July 31, 2015

Invoice No. 143657

Matter Description: Bocchino, Patricia Enforcement 12

Matter ID: FOUNTSHAD.0025

Legal Services Rendered:

DATE:	PROFESSIONAL:	DESCRIPTION:	HOURS:	RATE:	AMOUNT:
7/23/2015	AAK	Receipt and review letter from homeowner's attorney regarding [REDACTED]	0.80	240.00	192.00
7/24/2015	MAH	Review and advise homeowners to homeowner [REDACTED]	0.20	320.00	64.00
7/24/2015	CPM	Receipt and review of email from community manager regarding [REDACTED]	0.30	305.00	91.50
7/29/2015	AAK	Receipt and review email from homeowner [REDACTED]	0.30	240.00	72.00
7/29/2015	AAK	Phone conversation with community manager and board member re [REDACTED]	0.20	240.00	48.00
7/30/2015	AAK	Review and redact transaction listing report of attorneys' fees and costs in order to provide copy to homeowner	0.30	240.00	72.00
7/31/2015	VJG	Review and prepare the Transactions Listing Report for production.	0.20	170.00	34.00

Total Current Legal Services Rendered:

\$ 573.50

Rate Summary:

Vicki J. Goslin	0.20 hours @ \$170.00 = \$ 34.00
Mark A. Holmgren	0.20 hours @ \$320.00 = \$ 64.00
Allison A. Kline	1.60 hours @ \$240.00 = \$ 384.00
Chad P. Miesen	0.30 hours @ \$305.00 = \$ 91.50

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: July 31, 2015

Invoice No. 143657

Summary of Payments and Adjustments:

DATE:	DESCRIPTION:	AMOUNT:
7/20/2015	Check 1588 Invoice 142153	120.00
	Total Payments & Adjustments:	\$ 120.00

Total Fees and Costs:	\$ 573.50
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Previous Balance:	\$ 0.00
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Matter Total:	\$ 573.50
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Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: August 31, 2015

Invoice No. 144998

Matter Description: Bocchino, Patricia Enforcement 12

Matter ID: FOUNTSHAD.0025

Legal Services Rendered:

DATE:	PROFESSIONAL:	DESCRIPTION:	HOURS:	RATE:	AMOUNT:
8/3/2015	AAK	Email to manager regarding [REDACTED]	0.20	240.00	48.00
8/12/2015	AAK	Phone call with homeowner to discuss attorney fees on account and request for transaction report	0.20	240.00	48.00
8/26/2015	AAK	Draft email to be sent to homeowner [REDACTED]	0.30	240.00	72.00

Total Current Legal Services Rendered: \$ 168.00

Rate Summary:

Allison A. Kline 0.70 hours @ \$240.00 = \$ 168.00

Summary of Payments and Adjustments:

DATE:	DESCRIPTION:	AMOUNT:
8/12/2015	Check 001601 Invoice 143657	573.50
Total Payments & Adjustments:		\$ 573.50

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: August 31, 2015

Invoice No. 144998

Total Fees and Costs:	\$	168.00
Previous Balance:	\$	0.00
Matter Total:	\$	168.00

Carpenter, Hazlewood, Delgado & Bolen, PLC

1400 E Southern Ave. Suite 400 | Tempe, Arizona 85282-5691

t 480.427.2800 | f 480.427.2801

Fountain Shadows Homeowners Association

Invoice Date: September 30, 2015

Invoice No. 146534

Matter Description: Bocchino, Patricia Enforcement 12

Matter ID: FOUNTSHAD.0025

Legal Services Rendered:

DATE:	PROFESSIONAL:	DESCRIPTION:	HOURS:	RATE:	AMOUNT:
9/1/2015	AAK	Review current status of matter [REDACTED]	0.30	240.00	72.00

Total Current Legal Services Rendered: \$ **72.00**

Rate Summary:

Allison A. Kline 0.30 hours @ \$ 240.00 = \$ 72.00

Summary of Payments and Adjustments:

DATE:	DESCRIPTION:	AMOUNT:
9/16/2015	Check 1622 Invoice 144998	168.00

Total Payments & Adjustments: \$ **168.00**

Total Fees and Costs: \$ **72.00**

Previous Balance: \$ **0.00**

Matter Total: \$ **72.00**

EXHIBIT 5

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
Statement Number: 0						
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		1.5000		419.5000
Statement Number: 135871						
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

7/29/2015 3:29 PM

Page: 1

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.				
1/18/2015	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		1,901.5000

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
Statement Number: 138684						
3/2/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED] 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. [REDACTED]	H	0.5000	305.0000	152.5000
3/4/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED]	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
		Statement Number: 142153				
6/23/2015	AAK	FOUNTSHAD.0025 / Fountain Shadows Bocchino, Patricia Enforcement 12 [REDACTED] [REDACTED] Email homeowner providing information on her Association account and steps to alleviate posting delays in the future. Statement Number: 142153	H	0.5000	240.0000	120.0000
		GrandTotal		14.2000		3,473.2800

EXHIBIT 6

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			(\$350.00)
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
12/12/2014	PAYMENT	354192669 141212 (ASSESSMENT)		(\$175.00)	\$0.00
1/1/2015	CHARGE	APPLY CHARGES (ASSESSMENT)	\$175.00		\$175.00
1/16/2015	CHARGE	APPLY LATE FEE (Late Fees)	\$10.00		\$185.00
1/16/2015	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
1/30/2015	PAYMENT	(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	PAYMENT	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	1586701 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	388733416 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 7

FOUNTAIN SHADOWS HOA
FINANCIAL TRANSACTIONS - 09/18/15

8736 N 67TH LN
PATRICIA BOCCHINO
ATTORNEY

Unit ID: 012
STATUS: 10 -

PREPAID BAL:

0.00

TXN	PAYMENTS/TRXN		DESCR	CHARGES/PAYMENT			
DISTR							
BALANCE							
DATE	PAYMT	AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION
AMOUNT							
DUE							
011914	350.00		10020707	011914	PP-A1		Credit-Prepaid
(350.00)							
(350.00)							
012814			EXPENSE ADJ		16		POOL KEY
25.00							
(325.00)							
012814	25.00		2164892913	012814	16		POOL KEY
(25.00)							
(350.00)							
020114			APPLY CHARGES		A1		ASSESSMENT
175.00							
(175.00)							
020114			APPLY PREPAYMNT		A1		ASSESSMENT
(175.00)							
(175.00)							
021814	175.00		9900276	021814	PP		Credit-Prepaid
(175.00)							
(350.00)							
030114			APPLY CHARGES		A1		ASSESSMENT
175.00							
(175.00)							
030114			APPLY PREPAYMNT		A1		ASSESSMENT
(175.00)							
(175.00)							
040114			APPLY CHARGES		A1		ASSESSMENT
175.00							
0.00							

040114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
0.00				
040414	175.00	1208315	040414 PP	Credit-Prepaid
(175.00)				
(175.00)				

050114		APPLY CHARGES	A1	ASSESSMENT
175.00				
0.00				
050114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
0.00				
050714	175.00	1229701	050714 PP	Credit-Prepaid
(175.00)				
(175.00)				
052814	175.00	9900446	052814 PP	Credit-Prepaid
(175.00)				
(350.00)				

060114		APPLY CHARGES	A1	ASSESSMENT
175.00				
(175.00)				
060114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
(175.00)				
061014	175.00	9900314	061014 PP	Credit-Prepaid
(175.00)				
(350.00)				
062414	175.00	9900332	062414 PP	Credit-Prepaid
(175.00)				
(525.00)				

070114		APPLY CHARGES	A1	ASSESSMENT
175.00				
(350.00)				
070114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
(350.00)				
072214	175.00	990093	072214 PP	Credit-Prepaid
(175.00)				
(525.00)				

080114		APPLY CHARGES	A1	ASSESSMENT
175.00				
(350.00)				
080114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
(350.00)				

090114		APPLY CHARGES	A1	ASSESSMENT
175.00				
(175.00)				
090114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
(175.00)				

100114		APPLY CHARGES	A1	ASSESSMENT
175.00				
0.00				
100114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
0.00				
103114	175.00	346725764 103114 PP		Credit-Prepaid
(175.00)				
(175.00)				

110114		APPLY CHARGES	A1	ASSESSMENT
175.00				
0.00				
110114		APPLY PREPAYMNT	A1	ASSESSMENT
(175.00)				
0.00				

120114		APPLY CHARGES	A1	ASSESSMENT
175.00				
175.00				
121214	175.00	354192669 121214 A1		ASSESSMENT
(175.00)				
0.00				

010115		APPLY CHARGES	A1	ASSESSMENT
175.00				
175.00				
011615		APPLY LATE FEE	01	Late Fees
10.00				
185.00				
011615	Action taken: 01 - REMINDER			
011615		APPLY ADMIN FEE	03	Admin. Fees
15.00				
200.00				
012015	175.00	1426114 012015 A1		ASSESSMENT
(175.00)				
25.00				
013015	25.00	9151583 013015 01		Late Fees
(10.00)				
0.00				
013015			03	Admin. Fees
(15.00)				

020115		APPLY CHARGES	A1	ASSESSMENT
175.00				
175.00				
021715	175.00	1465632	021715 A1	ASSESSMENT
(175.00)				
0.00				

030115		APPLY CHARGES	A1	ASSESSMENT
175.00				
175.00				
031315	175.00	9200777	031315 A1	ASSESSMENT
(175.00)				
0.00				

040115		APPLY CHARGES	A1	ASSESSMENT
175.00				
175.00				
041515	175.00	375472844	041515 A1	ASSESSMENT
(175.00)				
0.00				
042715	25.00	377041914	042715 PP	Credit-Prepaid
(25.00)				
(25.00)				

050115		APPLY CHARGES	A1	ASSESSMENT
175.00				
150.00				
050115		APPLY PREPAYMNT	A1	ASSESSMENT
(25.00)				
150.00				
051215		EXPENSE ADJ	05	Attorney Fees
1832.28				
1982.28				

060115		APPLY CHARGES	A1	ASSESSMENT
175.00				
2157.28				
060215	175.00	1586701	060215 A1	ASSESSMENT
(175.00)				
1982.28				
060915	100.00	9299704	060915 A1	ASSESSMENT
(100.00)				
1882.28				
061115	75.00	1603006	061115 A1	ASSESSMENT
(50.00)				
1807.28				
061115			05	Attorney Fees
(25.00)				
061415		EXPENSE ADJ	05	Attorney Fees
1126.50				

2933.78				

070115	APPLY CHARGES	A1		ASSESSMENT
175.00				
3108.78				
070115	175.00 388733416 070115	A1		ASSESSMENT
(175.00)				
2933.78				
071715	EXPENSE ADJ	05		Attorney Fees
120.00				
3053.78				
073115	(25.00)1603006 PA-ADJ	05		Attorney Fees
25.00				
3078.78				
073115	EXPENSE ADJ	02		NSF charges
10.00				
3088.78				

080115	APPLY CHARGES	A1		ASSESSMENT
175.00				
3263.78				
080615	EXPENSE ADJ	05		Attorney Fees
573.50				
3837.28				
082015	APPLY LATE FEE	01		Late Fees
10.00				
3847.28				
082115	200.00 397642444 082115	A1		ASSESSMENT
(175.00)				
3647.28				
082115		01		Late Fees
(10.00)				
082115		02		NSF charges
(10.00)				
082115		05		Attorney Fees
(5.00)				

090115	APPLY CHARGES	A1		ASSESSMENT
175.00				
3822.28				
090515	EXPENSE ADJ	05		Attorney Fees
168.00				
3990.28				
090815	EXPENSE ADJ	05		Attorney Fees
72.00				
4062.28				

B A L A N C E S U M M A R Y

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	175.00
05	Attorney Fees	3,887.28
	TOTAL:	4,062.28

EXHIBIT 8

RESIDENTIAL RESALE REAL ESTATE PURCHASE CONTRACT

Document updated:
June 2014



The pre-printed portion of this form has been drafted by the Arizona Association of REALTORS®. Any change in the pre-printed language of this form must be made in a prominent manner. No representations are made as to the legal validity, adequacy and/or effects of any provision, including tax consequences thereof. If you desire legal, tax or other professional advice, please consult your attorney, tax advisor or professional consultant.



1. PROPERTY

1a. 1. BUYER: Daniel Payne BUYER'S NAME(S)

2. SELLER: Patricia Bocchino or as identified in section 9c.

3. Buyer agrees to buy and Seller agrees to sell the real property with all improvements, fixtures, and appurtenances thereon
4. or incidental thereto, plus the personal property described herein (collectively the "Premises").

1b. 5. Premises Address: 8736 N 67TH Lane Assessor's #: 143-20-025

6. City: Peoria County: Maricopa AZ, Zip Code: 85345

7. Legal Description: Fountain Shadows Unit One MCR250-48

1c. 8. \$ 112,000.00 Full Purchase Price, paid as outlined below

9. \$ 1,000.00 Earnest money to go towards down payment

10. \$ 111,000.00 cash on or before close of escrow

11. \$ _____

12. _____

13. _____

14. _____

1d. 15. Close of Escrow: Close of Escrow ("COE") shall occur when the deed is recorded at the appropriate county recorder's office. Buyer and Seller shall comply with all terms and conditions of this Contract, execute and deliver to Escrow Company all closing documents, and perform all other acts necessary in sufficient time to allow COE to occur on

18. September 24, 2015 ("COE Date"). If Escrow Company or recorder's office is closed on COE Date,
MONTH DAY YEAR

19. COE shall occur on the next day that both are open for business.

20. Buyer shall deliver to Escrow Company a cashier's check, wired funds or other immediately available funds to pay any down
21. payment, additional deposits or Buyer's closing costs, and instruct the lender, if applicable, to deliver immediately available funds to
22. Escrow Company, in a sufficient amount and in sufficient time to allow COE to occur on COE Date.

1e. 23. Possession: Seller shall deliver possession, occupancy, existing keys and/or means to operate all locks, mailbox, security
24. system/alarms, and all common area facilities to Buyer at COE or _____.

25. Broker(s) recommend that the parties seek appropriate counsel from insurance, legal, tax, and accounting professionals regarding
26. the risks of pre-possession or post-possession of the Premises.

1f. 27. Addenda Incorporated: AS IS Additional Clause Buyer Contingency Domestic Water Well H.O.A.

28. Lead-Based Paint Disclosure Loan Assumption On-site Wastewater Treatment Facility Seller Financing Short Sale

29. Other: _____

1g. 30. Fixtures and Personal Property: Seller agrees that all existing fixtures on the Premises, and any existing personal property
31. specified herein, shall be included in this sale, including the following:

- 32. • free-standing range/oven
- 33. • ceiling fans
- 34. • attached floor coverings
- 35. • window and door screens, sun screens
- 36. • garage door openers and controls
- 37. • outdoor landscaping, fountains, and lighting
- 38. • pellet, wood-burning or gas-log stoves
- 39. • storage sheds
- light fixtures
- towel, curtain and drapery rods
- flush-mounted speakers
- storm windows and doors
- attached media antennas/satellite dishes
- attached fireplace equipment
- timers
- draperies and other window coverings
- shutters and awnings
- water-misting systems
- solar systems
- mailbox
- central vacuum, hose, and attachments
- built-in appliances

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- 40. If owned by the Seller, the following items also are included in this sale:
- 41. • pool and spa equipment (including any mechanical or other cleaning systems)
- 42. • security and/or fire systems and/or alarms
- 43. • water softeners
- 44. • water purification systems
- 45. **Additional existing personal property included in this sale** (if checked): refrigerator washer dryer as described:
- 46. _____
- 47. _____
- 48. Other: _____
- 49. _____
- 50. Additional existing personal property included shall not be considered part of the Premises and shall be transferred with no monetary value, and free and clear of all liens or encumbrances.
- 51. _____
- 52. Fixtures and leased items NOT included: _____
- 53. **IF THIS IS AN ALL CASH SALE, GO TO SECTION 3.**

2. FINANCING

- 2a. 54. **Pre-Qualification:** A completed AAR Pre-Qualification Form is is not attached hereto and incorporated herein by reference.
- 2b. 55. **Loan Contingency:** Buyer's obligation to complete this sale is contingent upon Buyer obtaining loan approval for the loan described in the AAR Loan Status Update ("LSU") form without Prior to Document ("PTD") conditions no later than three (3) days prior to the COE Date. If Buyer is unable to obtain loan approval without PTD conditions, Buyer shall deliver a notice of the inability to obtain loan approval without PTD conditions to Seller or Escrow Company no later than three (3) days prior to the COE Date.
- 2c. 59. **Unfulfilled Loan Contingency:** This Contract shall be cancelled and Buyer shall be entitled to a return of the earnest money if after diligent and good faith effort, Buyer is unable to obtain loan approval without PTD conditions no later than three (3) days prior to the COE Date. Buyer acknowledges that prepaid items paid separately from earnest money are not refundable.
- 2d. 62. **Interest Rate / Necessary Funds:** Buyer agrees that (i) the inability to obtain loan approval due to the failure to lock the interest rate and "points" by separate written agreement with the lender during the Inspection Period or (ii) the failure to have the down payment or other funds due from Buyer necessary to obtain the loan approval without conditions and close this transaction is not an unfulfilled loan contingency.
- 2e. 66. **Loan Status Update:** Buyer shall deliver to Seller the LSU with at a minimum lines 1-40 completed describing the current status of the Buyer's proposed loan within five (5) days after Contract acceptance and instruct lender to provide an updated LSU to Broker(s) and Seller upon request.
- 2f. 69. **Loan Application:** Unless previously completed, during the Inspection Period, Buyer shall (i) complete, sign and deliver to the lender a loan application and grant lender permission to access Buyer's Trimerged Residential Credit Report; and (ii) provide to lender all initial requested signed disclosures and **Initial Requested Documentation** listed in the LSU on lines 32-35.
- 2g. 72. **Loan Processing During Escrow:** Buyer agrees to diligently work to obtain the loan and will promptly provide the lender with all additional documentation required. **Buyer shall sign all loan documents no later than three (3) days prior to the COE Date.**
- 2h. 74. **Type of Financing:** Conventional FHA VA USDA Assumption Seller Carryback **cash**
75. (If financing is to be other than new financing, see attached addendum.)
- 2i. 76. **Loan Costs:** All costs of obtaining the loan shall be paid by the Buyer, unless otherwise provided for herein.
- 2j. 77. **Seller Concessions (if any):** In addition to the other costs Seller has agreed to pay herein, Seller agrees to pay up to _____ % of the Purchase Price or \$ _____ for Buyer's loan costs including pre-pays, impounds and Buyer's title / escrow closing costs.
- 2k. 79. **VA Loan Costs:** In the event of a VA loan, Seller agrees to pay the escrow fee and up to \$ _____ of loan costs not permitted to be paid by the Buyer, in addition to the other costs Seller has agreed to pay herein, including Seller's concessions.
- 2l. 81. **Changes:** Buyer shall immediately notify Seller of any changes in the loan program, financing terms, or lender described in the Pre-Qualification Form if attached hereto or LSU provided within five (5) days after Contract acceptance and shall only make any such changes without the prior written consent of Seller if such changes do not adversely affect Buyer's ability to obtain loan approval without PTD conditions, increase Seller's closing costs, or delay COE.
- 2m. 85. **Appraisal Contingency:** Buyer's obligation to complete this sale is contingent upon an appraisal of the Premises acceptable to lender for at least the purchase price. If the Premises fails to appraise for the purchase price in any appraisal required by lender, Buyer has five (5) days after notice of the appraised value to cancel this Contract and receive a refund of the Earnest Money or the appraisal contingency shall be waived.
- 2n. 89. **Appraisal Fee(s):** Appraisal Fee(s), when required by lender, shall be paid by Buyer Seller Other _____
90. Appraisal Fee(s) are are not included in Seller's Concessions, if applicable.

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3. TITLE AND ESCROW

3a. 91. Escrow: This Contract shall be used as escrow instructions. The Escrow Company employed by the parties to carry out the 92. terms of this Contract shall be:

93. **Pioneer Title Agency**
"ESCROW/TITLE COMPANY"

94. **7111 W. Bell Rd** **Glendale** **AZ** **85308**
ADDRESS CITY STATE ZIP

95. **lisa.bonner@ptaaz.com** **(623) 412-4393**
EMAIL PHONE FAX

3b. 96. Title and Vesting: Buyer will take title as determined before COE. Taking title may have significant legal, estate planning and tax 97. consequences. Buyer should obtain legal and tax advice.

3c. 98. Title Commitment and Title Insurance: Escrow Company is hereby instructed to obtain and deliver to Buyer and Seller directly, 99. addressed pursuant to 8t and 9c or as otherwise provided, a Commitment for Title Insurance together with complete and legible copies 100. of all documents that will remain as exceptions to Buyer's policy of Title Insurance ("Title Commitment"), including but not limited to 101. Conditions, Covenants and Restrictions ("CC&Rs"); deed restrictions; and easements. Buyer shall have five (5) days after receipt of the 102. Title Commitment and after receipt of notice of any subsequent exceptions to provide notice to Seller of any items disapproved. Seller 103. shall convey title by warranty deed, subject to existing taxes, assessments, covenants, conditions, restrictions, rights of way, easements 104. and all other matters of record. Buyer shall be provided at Seller's expense an American Land Title Association ("ALTA") Homeowner's 105. Title Insurance Policy, or if not available, an ALTA Residential Title Insurance Policy ("Plain Language"/"1-4 units") or, if not available, a 106. Standard Owner's Title Insurance Policy, showing title vested in Buyer. Buyer may acquire extended coverage at Buyer's own additional 107. expense. If applicable, Buyer shall pay the cost of obtaining the ALTA Lender Title Insurance Policy.

3d. 108. Additional Instructions: (i) Escrow Company shall promptly furnish notice of pending sale that contains the name and address of the 109. Buyer to any homeowner's association in which the Premises is located. (ii) If the Escrow Company is also acting as the title agency 110. but is not the title insurer issuing the title insurance policy, Escrow Company shall deliver to the Buyer and Seller, upon deposit of 111. funds, a closing protection letter from the title insurer indemnifying the Buyer and Seller for any losses due to fraudulent acts or breach 112. of escrow instructions by the Escrow Company. (iii) All documents necessary to close this transaction shall be executed promptly by 113. Seller and Buyer in the standard form used by Escrow Company. Escrow Company shall modify such documents to the extent 114. necessary to be consistent with this Contract. (iv) Escrow Company fees, unless otherwise stated herein, shall be allocated equally 115. between Seller and Buyer. (v) Escrow Company shall send to all parties and Broker(s) copies of all notices and communications 116. directed to Seller, Buyer and Broker(s). (vi) Escrow Company shall provide Broker(s) access to escrowed materials and information 117. regarding the escrow. (vii) If an Affidavit of Disclosure is provided, Escrow Company shall record the Affidavit at COE.

3e. 118. Tax Prorations: Real property taxes payable by the Seller shall be prorated to COE based upon the latest tax information available.

3f. 119. Release of Earnest Money: In the event of a dispute between Buyer and Seller regarding any Earnest Money deposited with 120. Escrow Company, Buyer and Seller authorize Escrow Company to release Earnest Money pursuant to the terms and conditions of 121. this Contract in its sole and absolute discretion. Buyer and Seller agree to hold harmless and indemnify Escrow Company against 122. any claim, action or lawsuit of any kind, and from any loss, judgment, or expense, including costs and attorney fees, arising from or 123. relating in any way to the release of Earnest Money.

3g. 124. Prorations of Assessments and Fees: All assessments and fees that are not a lien as of the COE, including homeowner's 125. association fees, rents, irrigation fees, and, if assumed, insurance premiums, interest on assessments, interest on encumbrances, 126. and service contracts, shall be prorated as of COE or Other: _____

3h. 127. Assessment Liens: The amount of any assessment, other than homeowner's association assessments, that is a lien as of the 128. COE, shall be paid in full by Seller prorated and assumed by Buyer. Any assessment that becomes a lien after COE is 129. the Buyer's responsibility.

3i. 130. IRS and FIRPTA Reporting: Seller agrees to comply with IRS reporting requirements. If applicable, Seller agrees to complete, sign, 131. and deliver to Escrow Company a certificate indicating whether Seller is a foreign person or a non-resident alien pursuant to the 132. Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller acknowledge that if the Seller is a foreign person, the 133. Buyer must withhold a tax equal to 10% of the purchase price, unless an exemption applies.

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4. DISCLOSURE

- 4a. 134. Seller Property Disclosure Statement ("SPDS"): Seller shall deliver a completed AAR Residential SPDS form to the Buyer within 135. five (5) days after Contract acceptance. Buyer shall provide notice of any SPDS items disapproved within the Inspection Period or 136. five (5) days after receipt of the SPDS, whichever is later.
4b. 137. Insurance Claims History: Seller shall deliver to Buyer a written five-year insurance claims history regarding Premises (or a claims 138. history for the length of time Seller has owned the Premises if less than five years) from Seller's insurance company or an insurance 139. support organization or consumer reporting agency, or if unavailable from these sources, from Seller, within five (5) days after Contract 140. acceptance. (Seller may obscure any reference to date of birth or social security number from the document). Buyer shall provide 141. notice of any items disapproved within the Inspection Period or five (5) days after receipt of the claims history, whichever is later.
4c. 142. Lead-Based Paint Disclosure: If the Premises were built prior to 1978, the Seller shall: (i) notify the Buyer of any known lead-based 143. paint ("LBP") or LBP hazards in the Premises; (ii) provide the Buyer with any LBP risk assessments or inspections of the Premises in 144. the Seller's possession; (iii) provide the Buyer with the Disclosure of Information on Lead-based Paint and Lead-based Paint 145. Hazards, and any report, records, pamphlets, and/or other materials referenced therein, including the pamphlet "Protect Your Family 146. from Lead in Your Home" (collectively "LBP Information"). Buyer shall return a signed copy of the Disclosure of Information on Lead- 147. Based Paint and Lead-Based Paint Hazards to Seller prior to COE.
148. [X] LBP Information was provided prior to Contract acceptance and Buyer acknowledges the opportunity to conduct LBP risk 149. assessments or inspections during Inspection Period.
150. [] Seller shall provide LBP Information within five (5) days after Contract acceptance. Buyer may within ten (10) days 151. or _____ days after receipt of the LBP Information conduct or obtain a risk assessment or inspection of the Premises for the 152. presence of LBP or LBP hazards ("Assessment Period"). Buyer may within five (5) days after receipt of the LBP Information or five 153. (5) days after expiration of the Assessment Period cancel this Contract.
154. Buyer is further advised to use certified contractors to perform renovation, repair or painting projects that disturb lead-based paint in 155. residential properties built before 1978 and to follow specific work practices to prevent lead contamination.
156. If Premises were constructed prior to 1978, (BUYER'S INITIALS REQUIRED)
157. If Premises were constructed in 1978 or later, (BUYER'S INITIALS REQUIRED)

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- 4d. 158. Affidavit of Disclosure: If the Premises is located in an unincorporated area of the county, and five or fewer parcels of property 159. other than subdivided property are being transferred, the Seller shall deliver a completed Affidavit of Disclosure in the form required 160. by law to the Buyer within five (5) days after Contract acceptance. Buyer shall provide notice of any Affidavit of Disclosure items 161. disapproved within the Inspection Period or five (5) days after receipt of the Affidavit of Disclosure, whichever is later.
4e. 162. Changes During Escrow: Seller shall immediately notify Buyer of any changes in the Premises or disclosures made herein, in 163. the SPDS, or otherwise. Such notice shall be considered an update of the SPDS. Unless Seller is already obligated by Section 5a 164. or otherwise by this Contract or any amendments hereto, to correct or repair the changed item disclosed, Buyer shall be allowed 165. five (5) days after delivery of such notice to provide notice of disapproval to Seller.

5. WARRANTIES

- 5a. 166. Seller Warranties: Seller warrants and shall maintain and repair the Premises so that at the earlier of possession or COE: (i) all 167. heating, cooling, mechanical, plumbing, and electrical systems (including swimming pool and/or spa, motors, filter systems, cleaning 168. systems, and heaters, if any), free-standing range/oven, and built-in appliances will be in working condition; (ii) all other agreed upon 169. repairs and corrections will be completed pursuant to Section 6j; (iii) the Premises, including all additional existing personal property 170. included in the sale, will be in substantially the same condition as on the date of Contract acceptance; and (iv) all personal property 171. not included in the sale and all debris will be removed from the Premises.
5b. 172. Warranties that Survive Closing: Seller warrants that Seller has disclosed to Buyer and Broker(s) all material latent defects and 173. any information concerning the Premises known to Seller, excluding opinions of value, which materially and adversely affect the 174. consideration to be paid by Buyer. Prior to the COE, Seller warrants that payment in full will have been made for all labor, 175. professional services, materials, machinery, fixtures, or tools furnished within the 150 days immediately preceding the COE in 176. connection with the construction, alteration, or repair of any structure on or improvement to the Premises. Seller warrants that the 177. information regarding connection to a sewer system or on-site wastewater treatment facility (conventional septic or alternative) is 178. correct to the best of Seller's knowledge.
5c. 179. Buyer Warranties: Buyer warrants that Buyer has disclosed to Seller any information that may materially and adversely affect the 180. Buyer's ability to close escrow or complete the obligations of this Contract. At the earlier of possession of the Premises or COE, 181. Buyer warrants to Seller that Buyer has conducted all desired independent inspections and investigations and accepts the Premises. 182. Buyer warrants that Buyer is not relying on any verbal representations concerning the Premises except disclosed as follows: 183. None
184.

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6. DUE DILIGENCE

6a. 185. Inspection Period: Buyer's Inspection Period shall be ten (10) days or business days after Contract acceptance. During the 186. Inspection Period Buyer, at Buyer's expense, shall: (i) conduct all desired physical, environmental, and other types of inspections 187. and investigations to determine the value and condition of the Premises; (ii) make inquiries and consult government agencies, 188. lenders, insurance agents, architects, and other appropriate persons and entities concerning the suitability of the Premises and the 189. surrounding area; (iii) investigate applicable building, zoning, fire, health, and safety codes to determine any potential hazards, 190. violations or defects in the Premises; and (iv) verify any material multiple listing service ("MLS") information. If the presence of sex 191. offenders in the vicinity or the occurrence of a disease, natural death, suicide, homicide or other crime on or in the vicinity is a 192. material matter to the Buyer, it must be investigated by the Buyer during the Inspection Period. Buyer shall keep the Premises free 193. and clear of liens, shall indemnify and hold Seller harmless from all liability, claims, demands, damages, and costs, and shall repair 194. all damages arising from the inspections. Buyer shall provide Seller and Broker(s) upon receipt, at no cost, copies of all inspection 195. reports concerning the Premises obtained by Buyer. Buyer is advised to consult the Arizona Department of Real Estate Buyer 196. *Advisory* provided by AAR to assist in Buyer's due diligence inspections and investigations.

6b. 197. Square Footage: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE PREMISES, BOTH THE 198. REAL PROPERTY (LAND) AND IMPROVEMENTS THEREON, IS APPROXIMATE. IF SQUARE FOOTAGE IS A MATERIAL 199. MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE INSPECTION PERIOD.

6c. 200. Wood-Destroying Organism or Insect Inspection: IF CURRENT OR PAST WOOD-DESTROYING ORGANISMS OR INSECTS 201. (SUCH AS TERMITES) ARE A MATERIAL MATTER TO THE BUYER, THESE ISSUES MUST BE INVESTIGATED DURING THE 202. INSPECTION PERIOD. The Buyer shall order and pay for all wood-destroying organism or insect inspections performed during the 203. Inspection Period. If the lender requires an updated Wood-Destroying Organism or Insect Inspection Report prior to COE, it will be 204. performed at Buyer's expense.

6d. 205. Flood Hazard: Flood hazard designations or the cost of flood hazard insurance shall be determined by Buyer during the 206. Inspection Period. If the Premises are situated in an area identified as having any special flood hazards by any governmental 207. entity, the lender may require the purchase of flood hazard insurance. Special flood hazards may also affect the ability to 208. encumber or improve the Premises.

6e. 209. Insurance: IF HOMEOWNER'S INSURANCE IS A MATERIAL MATTER TO THE BUYER, BUYER SHALL APPLY FOR AND 210. OBTAIN WRITTEN CONFIRMATION OF THE AVAILABILITY AND COST OF HOMEOWNER'S INSURANCE FOR THE 211. PREMISES FROM BUYER'S INSURANCE COMPANY DURING THE INSPECTION PERIOD. Buyer understands that any 212. homeowner's, fire, casualty, or other insurance desired by Buyer or required by lender should be in place at COE.

6f. 213. Sewer or On-site Wastewater Treatment System: The Premises are connected to a:
214. sewer system septic system alternative system
215. IF A SEWER CONNECTION IS A MATERIAL MATTER TO THE BUYER, IT MUST BE INVESTIGATED DURING THE 216. INSPECTION PERIOD. If the Premises are served by a septic or alternative system, the AAR On-site Wastewater Treatment 217. Facility Addendum is incorporated herein by reference.
218.

(BUYER'S INITIALS REQUIRED) DP BUYER

6g. 219. Swimming Pool Barrier Regulations: During the Inspection Period, Buyer agrees to investigate all applicable state, county, and 220. municipal Swimming Pool barrier regulations and agrees to comply with and pay all costs of compliance with said regulations prior to 221. occupying the Premises, unless otherwise agreed in writing. If the Premises contains a Swimming Pool, Buyer acknowledges receipt 222. of the Arizona Department of Health Services approved private pool safety notice.

223. (BUYER'S INITIALS REQUIRED) DP BUYER

6h. 224. BUYER ACKNOWLEDGMENT: BUYER RECOGNIZES, ACKNOWLEDGES, AND AGREES THAT BROKER(S) ARE NOT 225. QUALIFIED, NOR LICENSED, TO CONDUCT DUE DILIGENCE WITH RESPECT TO THE PREMISES OR THE SURROUNDING 226. AREA. BUYER IS INSTRUCTED TO CONSULT WITH QUALIFIED LICENSED PROFESSIONALS TO ASSIST IN BUYER'S DUE 227. DILIGENCE EFFORTS. BECAUSE CONDUCTING DUE DILIGENCE WITH RESPECT TO THE PREMISES AND THE 228. SURROUNDING AREA IS BEYOND THE SCOPE OF THE BROKER'S EXPERTISE AND LICENSING, BUYER EXPRESSLY 229. RELEASES AND HOLDS HARMLESS BROKER(S) FROM LIABILITY FOR ANY DEFECTS OR CONDITIONS THAT COULD 230. HAVE BEEN DISCOVERED BY INSPECTION OR INVESTIGATION.

231. (BUYER'S INITIALS REQUIRED) DP BUYER

6i. 232. Inspection Period Notice: Prior to expiration of the Inspection Period, Buyer shall deliver to Seller a signed notice of any items 233. disapproved. AAR's Buyer's Inspection Notice and Seller's Response form is available for this purpose. Buyer shall conduct all 234. desired inspections and investigations prior to delivering such notice to Seller and all Inspection Period items disapproved shall be 235. provided in a single notice.

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- 6j. 236. **Buyer Disapproval:** If Buyer, in Buyer's sole discretion, disapproves of items as allowed herein, Buyer shall deliver to Seller notice of the items disapproved and state in the notice that Buyer elects to either:
 - 238. (1) immediately cancel this Contract and all Earnest Money shall be released to Buyer, or
 - 239. (2) provide the Seller an opportunity to correct the items disapproved, in which case:
 - 240. (a) Seller shall respond in writing within five (5) days or _____ days after delivery to Seller of Buyer's notice of items disapproved. Seller's failure to respond to Buyer in writing within the specified time period shall conclusively be deemed Seller's refusal to correct any of the items disapproved.
 - 241.
 - 242.
 - 243. (b) **If Seller agrees in writing to correct items disapproved, Seller shall correct the items, complete any repairs in a workmanlike manner and deliver any paid receipts evidencing the corrections and repairs to Buyer three (3) days or _____ days prior to COE Date.**
 - 244.
 - 245.
 - 246. (c) If Seller is unwilling or unable to correct any of the items disapproved, Buyer may cancel this Contract within five (5) days after delivery of Seller's response or after expiration of the time for Seller's response, whichever occurs first, and all Earnest Money shall be released to Buyer. If Buyer does not cancel this Contract within the five (5) days as provided, Buyer shall close escrow without correction of those items that Seller has not agreed in writing to correct.
 - 247.
 - 248.
 - 249.

250. VERBAL DISCUSSIONS WILL NOT EXTEND THESE TIME PERIODS. Only a written agreement signed by both parties will extend response times or cancellation rights.

252. BUYER'S FAILURE TO GIVE NOTICE OF DISAPPROVAL OF ITEMS OR CANCELLATION OF THIS CONTRACT WITHIN THE SPECIFIED TIME PERIOD SHALL CONCLUSIVELY BE DEEMED BUYER'S ELECTION TO PROCEED WITH THE TRANSACTION WITHOUT CORRECTION OF ANY DISAPPROVED ITEMS.

- 6k. 255. **Notice of Non-Working Warranted Items:** Buyer shall provide Seller with notice of any non-working warranted item(s) of which Buyer becomes aware during the Inspection Period or the Seller warranty for that item(s) shall be waived. Delivery of such notice shall not affect Seller's obligation to maintain or repair the warranted item(s).

- 6l. 258. **Home Warranty Plan:** Buyer and Seller are advised to investigate the various home warranty plans available for purchase. The parties acknowledge that different home warranty plans have different coverage options, exclusions, limitations, service fees and most plans exclude pre-existing conditions.

261. A Home Warranty Plan will be ordered by Buyer or Seller with the following optional coverage

262. _____, to be issued by _____ at a cost not

263. to exceed \$ _____, to be paid for by Buyer Seller

264. Buyer declines the purchase of a Home Warranty Plan.

- 6m. 265. **Walkthrough(s):** Seller grants Buyer and Buyer's inspector(s) reasonable access to conduct walkthrough(s) of the Premises for the purpose of satisfying Buyer that any corrections or repairs agreed to by the Seller have been completed, warranted items are in working condition and that the Premises is in substantially the same condition as of the date of Contract acceptance. If Buyer does not conduct such walkthrough(s), Buyer releases Seller and Broker(s) from liability for any defects that could have been discovered.

- 6n. 269. **Seller's Responsibility Regarding Inspections and Walkthrough(s):** Seller shall make the Premises available for all inspections and walkthrough(s) upon reasonable notice by Buyer. Seller shall, at Seller's expense, have all utilities on, including any propane, until COE to enable Buyer to conduct these inspections and walkthrough(s).

7. REMEDIES

- 7a. 272. **Cure Period:** A party shall have an opportunity to cure a potential breach of this Contract. If a party fails to comply with any provision of this Contract, the other party shall deliver a notice to the non-complying party specifying the non-compliance. If the non-compliance is not cured within three (3) days after delivery of such notice ("Cure Period"), the failure to comply shall become a breach of Contract.

- 7b. 276. **Breach:** In the event of a breach of Contract, the non-breaching party may cancel this Contract and/or proceed against the breaching party in any claim or remedy that the non-breaching party may have in law or equity, subject to the Alternative Dispute Resolution obligations set forth herein. In the case of the Seller, because it would be difficult to fix actual damages in the event of Buyer's breach, the Earnest Money may be deemed a reasonable estimate of damages and Seller may, at Seller's option, accept the Earnest Money as Seller's sole right to damages; and in the event of Buyer's breach arising from Buyer's failure to deliver the notice required by Section 2b, or Buyer's inability to obtain loan approval due to the waiver of the appraisal contingency pursuant to Section 2m, Seller shall exercise this option and accept the Earnest Money as Seller's sole right to damages. An unfulfilled contingency is not a breach of Contract. The parties expressly agree that the failure of any party to comply with the terms and conditions of Section 1d to allow COE to occur on the COE Date, if not cured after a cure notice is delivered pursuant to Section 7a, will constitute a material breach of this Contract, rendering the Contract subject to cancellation.

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- 7c. 286. **Alternative Dispute Resolution ("ADR"):** Buyer and Seller agree to mediate any dispute or claim arising out of or relating to this 287. Contract in accordance with the REALTORS® Dispute Resolution System, or as otherwise agreed. All mediation costs shall be paid 288. equally by the parties. In the event that mediation does not resolve all disputes or claims, the unresolved disputes or claims shall be 289. submitted for binding arbitration. In such event, the parties shall agree upon an arbitrator and cooperate in the scheduling of an 290. arbitration hearing. If the parties are unable to agree on an arbitrator, the dispute shall be submitted to the American Arbitration 291. Association ("AAA") in accordance with the AAA Arbitration Rules for the Real Estate Industry. The decision of the arbitrator shall be 292. final and nonappealable. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. 293. Notwithstanding the foregoing, either party may opt out of binding arbitration within thirty (30) days after the conclusion of the 294. mediation conference by notice to the other and in such event either party shall have the right to resort to court action.
- 7d. 295. **Exclusions from ADR:** The following matters are excluded from the requirement for ADR hereunder: (i) any action brought in the 296. Small Claims Division of an Arizona Justice Court (up to \$3,500) so long as the matter is not thereafter transferred or removed from 297. the small claims division; (ii) judicial or nonjudicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or 298. agreement for sale; (iii) an unlawful entry or detainer action; (iv) the filing or enforcement of a mechanic's lien; or (v) any matter that is 299. within the jurisdiction of a probate court. Further, the filing of a judicial action to enable the recording of a notice of pending action ("lis 300. pendens"), or order of attachment, receivership, injunction, or other provisional remedies shall not constitute a waiver of the 301. obligation to submit the claim to ADR, nor shall such action constitute a breach of the duty to mediate or arbitrate.
- 7e. 302. **Attorney Fees and Costs:** The prevailing party in any dispute or claim between Buyer and Seller arising out of or relating to this 303. Contract shall be awarded their reasonable attorney fees and costs. Costs shall include, without limitation, attorney fees, expert 304. witness fees, fees paid to investigators, and arbitration costs.

8. ADDITIONAL TERMS AND CONDITIONS

- 8a. 305. Earnest Money to be wired to Title Agency within two business days of accepted 306. purchase contract.
- 307. _____
- 308. _____
- 309. _____
- 310. _____
- 311. _____
- 312. _____
- 313. _____
- 314. _____
- 315. _____
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- 318. _____
- 319. _____
- 320. _____
- 321. _____
- 322. _____
- 323. _____
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- 326. _____
- 327. _____
- 328. _____
- 329. _____
- 330. _____
- 331. _____
- 332. _____
- 333. _____
- 334. _____

>>

DS
 PB
 SELLER SELLER

<Initials

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Initials>

DP
 BUYER BUYER



Residential Resale Real Estate Purchase Contract >>

- 8b. 335. **Risk of Loss:** If there is any loss or damage to the Premises between the date of Contract acceptance and COE or possession, 336. whichever is earlier, by reason of fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Seller, provided, 337. however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the purchase price, either Seller or 338. Buyer may elect to cancel the Contract.
- 8c. 339. **Permission:** Buyer and Seller grant Broker(s) permission to advise the public of this Contract.
- 8d. 340. **Arizona Law:** This Contract shall be governed by Arizona law and jurisdiction is exclusively conferred on the State of Arizona.
- 8e. 341. **Time is of the Essence:** The parties acknowledge that time is of the essence in the performance of the obligations described herein.
- 8f. 342. **Compensation:** Seller and Buyer acknowledge that Broker(s) shall be compensated for services rendered as previously agreed by 343. separate written agreement(s), which shall be delivered by Broker(s) to Escrow Company for payment at COE, if not previously paid. 344. If Seller is obligated to pay Broker(s), this Contract shall constitute an irrevocable assignment of Seller's proceeds at COE. If Buyer is 345. obligated to pay Broker(s), payment shall be collected from Buyer as a condition of COE. COMMISSIONS PAYABLE FOR THE 346. SALE, LEASING, OR MANAGEMENT OF PROPERTY ARE NOT SET BY ANY BOARD OR ASSOCIATION OF REALTORS®, OR 347. MULTIPLE LISTING SERVICE, OR IN ANY MANNER OTHER THAN BETWEEN THE BROKER AND CLIENT.
- 8g. 348. **Copies and Counterparts:** A fully executed facsimile or electronic copy of the Contract shall be treated as an original Contract. This 349. Contract and any other documents required by this Contract may be executed by facsimile or other electronic means and in any 350. number of counterparts, which shall become effective upon delivery as provided for herein, except that the Lead-Based Paint 351. Disclosure Statement may not be signed in counterpart. All counterparts shall be deemed to constitute one instrument, and each 352. counterpart shall be deemed an original.
- 8h. 353. **Days:** All references to days in this Contract shall be construed as calendar days and a day shall begin at 12:00 a.m. and 354. end at 11:59 p.m.
- 8i. 355. **Calculating Time Periods:** In computing any time period prescribed or allowed by this Contract, the day of the act or event from 356. which the time period begins to run is not included and the last day of the time period is included. Contract acceptance occurs on the 357. date that the signed Contract (and any incorporated counter offer) is delivered to and received by the appropriate Broker. Acts that 358. must be performed three days prior to the COE Date must be performed three full days prior (i.e., if COE Date is Friday the act 359. must be performed by 11:59 p.m. on Monday).
- 8j. 360. **Entire Agreement:** This Contract, and any addenda and attachments, shall constitute the entire agreement between Seller and 361. Buyer, shall supersede any other written or oral agreements between Seller and Buyer and can be modified only by a writing signed 362. by Seller and Buyer. The failure to initial any page of this Contract shall not affect the validity or terms of this Contract.
- 8k. 363. **Subsequent Offers:** Buyer acknowledges that Seller has the right to accept subsequent offers until COE. Seller understands that 364. any subsequent offer accepted by the Seller must be a backup offer contingent on the cancellation of this Contract.
- 8l. 365. **Cancellation:** A party who wishes to exercise the right of cancellation as allowed herein may cancel this Contract by delivering 366. notice stating the reason for cancellation to the other party or to the Escrow Company. Cancellation shall become effective 367. immediately upon delivery of the cancellation notice.
- 8m. 368. **Notice:** Unless otherwise provided, delivery of all notices and documentation required or permitted hereunder shall be in writing and 369. deemed delivered and received when: (i) hand-delivered; (ii) sent via facsimile transmission; (iii) sent via electronic mail, if email 370. addresses are provided herein; or (iv) sent by recognized overnight courier service, and addressed to Buyer as indicated in Section 371. 8r, to Seller as indicated in Section 9a and to the Escrow Company indicated in Section 3a.
- 8n. 372. **Earnest Money:** Earnest Money is in the form of: Personal Check Other: wire upon acceptance 373. If applicable, Earnest Money has been received by Broker named in Section 8r and upon acceptance of this offer will be deposited 374. with: Escrow Company Broker's Trust Account. Buyer acknowledges that failure to pay the required closing funds by the 375. scheduled Close of Escrow, if not cured after a cure notice is delivered pursuant to Section 7a, shall be construed as a material 376. breach of this contract and all earnest money shall be subject to forfeiture.
- 8o. 377. **Release of Broker(s):** Seller and Buyer hereby expressly release, hold harmless and indemnify Broker(s) in this transaction 378. from any and all liability and responsibility regarding financing, the condition, square footage, lot lines, boundaries, value, 379. rent rolls, environmental problems, sanitation systems, roof, wood infestation, building codes, governmental regulations, 380. insurance, price and terms of sale, return on investment or any other matter relating to the value or condition of the 381. Premises. The parties understand and agree that the Broker(s) do not provide advice on property as an investment and are 382. not qualified to provide financial, legal, or tax advice regarding this real estate transaction.

383. (SELLER'S INITIALS REQUIRED) PB SELLER (BUYER'S INITIALS REQUIRED) DP BUYER

- 8p. 384. **Terms of Acceptance:** This offer will become a binding Contract when acceptance is signed by Seller and a signed copy delivered 385. in person, by mail, facsimile or electronically, and received by Broker named in Section 8r 386. by August 25, 2015 at 6:00 a.m. p.m., Mountain Standard Time. 387. Buyer may withdraw this offer at any time prior to receipt of Seller's signed acceptance. If no signed acceptance is received by this 388. date and time, this offer shall be deemed withdrawn and the Buyer's Earnest Money shall be returned.

Residential Resale Real Estate Purchase Contract • Updated: June 2014
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<div style="border: 1px solid black; padding: 5px; width: 100px; height: 40px; margin: 0 auto;"> <div style="position: absolute; top: -15px; left: 5px;">PB</div> <div style="position: absolute; top: 5px; left: 5px;">SELLER</div> <div style="position: absolute; top: 5px; right: 5px;">SELLER</div> </div>	<Initials		Initials>	<div style="border: 1px solid black; padding: 5px; width: 100px; height: 40px; margin: 0 auto;"> <div style="position: absolute; top: 5px; left: 5px;">BUYER</div> <div style="position: absolute; top: 5px; right: 5px;">BUYER</div> </div>
---	-----------	--	-----------	--



Residential Resale Real Estate Purchase Contract >>

8q. 389. THIS CONTRACT CONTAINS NINE PAGES EXCLUSIVE OF ANY ADDENDA AND ATTACHMENTS. PLEASE ENSURE THAT
390. YOU HAVE RECEIVED AND READ ALL NINE PAGES OF THIS OFFER AS WELL AS ANY ADDENDA AND ATTACHMENTS.

8r. 391. Broker on behalf of Buyer:

392. Sheila Hanna SA700 Coldwell Banker Residential Brokerage CBRB10
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE
393. 3045 W. Agua Fria Ste 102&104 Phoenix AZ 85027
FIRM ADDRESS STATE ZIP CODE
394. (602) 538-3232 (623) 344-4111 Call for email instructions
PREFERRED TELEPHONE FAX EMAIL

8s. 395. **Agency Confirmation:** The Broker named in Section 8r above is the agent of (check one):
396. the Buyer; the Seller; or both the Buyer and Seller

8t. 397. **The undersigned agree to purchase the Premises on the terms and conditions herein stated and acknowledge receipt of**
398. **a copy hereof including the Buyer Attachment.**

399. Daniel Payne 08/24/2015
^ BUYER'S SIGNATURE MO/DA/YR ^ BUYER'S SIGNATURE MO/DA/YR
Daniel Payne
400. 3355 Pinecone Dr
ADDRESS ADDRESS
401. Overgaard, AZ 85933
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

9. SELLER ACCEPTANCE

9a. 402. Broker on behalf of Seller:

403. Michele Somers, pc mb082 West USA Realty wusa02
PRINT SALESPERSON'S NAME AGENT CODE PRINT FIRM NAME FIRM CODE
404. 7077 E. Marilyn Rd., Suite 130, Building 4 Scottsdale AZ 85254
FIRM ADDRESS STATE ZIP CODE
405. (480) 948-5554 (800) 878-4229 azlegacyhomes@cox.net
PREFERRED TELEPHONE FAX EMAIL

9b. 406. **Agency Confirmation:** The Broker named in Section 9a above is the agent of (check one):
407. the Seller; or both the Buyer and Seller

9c. 408. **The undersigned agree to sell the Premises on the terms and conditions herein stated, acknowledge receipt of a**
409. **copy hereof and grant permission to Broker named on Section 9a to deliver a copy to Buyer.**

410. Counter Offer is attached, and is incorporated herein by reference. Seller should sign both this offer and the Counter Offer.
411. If there is a conflict between this offer and the Counter Offer, the provisions of the Counter Offer shall be controlling.
412. Patricia Bocchino 8/25/2015
^ SELLER'S SIGNATURE MO/DA/YR ^ SELLER'S SIGNATURE MO/DA/YR
413. Patricia Bocchino
SELLER'S NAME PRINTED SELLER'S NAME PRINTED
414. 8736 N 67TH Lane
ADDRESS ADDRESS
415. Peoria, AZ 85345
CITY, STATE, ZIP CODE CITY, STATE, ZIP CODE

416. **OFFER REJECTED BY SELLER:** _____ MONTH _____ DAY _____ YEAR _____ (SELLER'S INITIALS)

For Broker Use Only:
Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____ MO/DA/YR



Coldwell Banker Residential Brokerage Phoenix Metro

BUYER ATTACHMENTDocument updated:
June 2014

This attachment should be given to the Buyer prior to the submission of any offer and is not part of the Residential Resale Real Estate Purchase Contract's terms.



ATTENTION BUYER!

You are entering into a legally binding agreement.

- 1. **Read the entire contract *before* you sign it.**
- 2. **Review the Residential Seller's Property Disclosure Statement (See Section 4a).**
 - This information comes directly from the Seller.
 - Investigate any blank spaces, unclear answers or any other information that is important to you.
- 3. **Review the Inspection Paragraph (see Section 6a).**

If important to you, hire a qualified:

 - Mold inspector
 - Roof inspector
 - Pest inspector
 - Pool inspector
 - Heating/cooling inspector

Verify square footage (see Section 6b)
Verify the property is on sewer or septic (see Section 6f)
- 4. **Confirm your ability to obtain insurance and insurability of the property during the inspection period with your insurance agent (see Sections 6a and 6e).**
- 5. **Apply for your home loan now, if you have not done so already, and provide your lender with all requested information (see Section 2f).**

It is your responsibility to make sure that you and your lender deliver the necessary funds to escrow in sufficient time to allow escrow to close on the agreed upon date. Otherwise, the Seller may cancel the contract.
- 6. **Read the title commitment within five days of receipt (see Section 3c).**
- 7. **Read the CC&R's and all other governing documents within five days of receipt (see Section 3c), especially if the home is in a homeowner's association.**
- 8. **Conduct a thorough final walkthrough (see Section 6m). If the property is unacceptable, speak up. After the closing may be too late.**

You can obtain information through the Buyer's Advisory at <http://www.aaronline.com>.

Remember, you are urged to consult with an attorney, inspectors, and experts of your choice in any area of interest or concern in the transaction. Be cautious about verbal representations, advertising claims, and information contained in a listing. *Verify anything important to you.*

Daniel Payne

08/24/2015

 Buyer's Check List

Buyer Attachment • Updated: June 2014

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Coldwell Banker Residential Brokerage Phoenix Metro, 3045 W. Aqua Fria #102 & #104 Phoenix, AZ 85027
Phone: 623-344-4000 Fax: 623-344-4111 Sheila Hanna

Produced with zipForm® by zipLogix, 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Dan Payne



Electronically Signed using eSignOnline™ [Session ID : 3d82f87d-b63c-4bfb-a548-e183cbbf1424]

APP-0076

EXHIBIT 9



Planned Development Services
 HOA Management Company
 ...It's our service
 14100 N 83rd Ave, Ste 200
 Peoria, AZ 85381
www.pdsaz.com

Resale Disclosure Statement
 Phone: (623) 877-1396
 Fax: (602) 557-0395
 Email: documents@pdsaz.com

Fountain Shadows HOA

Order Information

Submitted: 9/15/2015	Order Number: 6691
Completed: 9/18/2015	Order Type: Update
Seller: Patricia Bocchino	Property Address: 8736 N 67th Ln
Lot #: 012	Title Company: Pioneer Title
Escrow #: 72400174	Request By: Cathy Mauro
Buyer: Daniel Payne	Contact Email: cathy.mauro@ptaaz.com
Buyer Email: lisa.bonner@ptaaz.com	

Assessment Information

Is this Account in Collections: Yes	Owner's Current Balance: \$ 4,062.28
HOA Assessment: \$ 175.00	Frequency: Monthly
Assessments Paid Through: 8/31/2015	Next Assessment Due: 10/1/2015
Additional Assessments: No	If Yes: Amount: \$ - Description:
Current or Pending Litigation: Yes	If Yes: Description: SEE COMMENTS
Property Violations: No	Reserve Balance as of: 5/31/2015 Amount: \$ 36,727.27
Description of Violations:	

Insurance Information: Labarre/Oksnee - 800-698-0711

Assessments are due on the 1st and delinquent after the 15th
 Delinquent assessments are charged a late fee and administrative fee in the amount of: \$25.00

Remit the Following Checks at Close

Item Description	Amount	Checks Payable To	Total Due
Disclosure Fee:	\$ 225.00	Planned Development Services 14100 N 83rd Ave Ste 200 Peoria, AZ 85381-5641	\$ 400.00
Management Transfer Fee:	\$ 175.00		
Rush Fee:	\$ -		
Update Fee:	\$ -		
Cancelled Escrow:	\$ -		
Item Description		Checks Payable To	Total Due
Transfer Fee:	\$ -	Fountain Shadows HOA	\$ 4,412.28
Working Capital Fee:	\$ -	14100 N 83rd Ave Ste 200	
Reserve Contribution Fee:	\$ -	Peoria, AZ 85381-5641	
Coupon Book:	\$ -		
Upfront Assessments:	\$ 350.00		
Seller's Balance:	\$ 4,062.28	Checks Payable To - 3rd Party	Total Due
Other:	\$ -		\$ -

****Reference your order number and the property address on all checks you issue.**
****All fees are due at close of escrow. A cancellation fee will be charged for any cancelled escrow and will be collected in the next escrow closing.**

Ordered Documents

- * Bylaws
 - * Covenants, Codes and Regulations
 - * Rules and Regulations
 - * Design Guidelines
 - * Current Year Budget
 - * Year End Financial Document
 - * Reserve Study-Summary
 - * Homeowners Information Form
 - * Automatic Withdrawal Form
- * All association documents ordered have been delivered to the email provided for the buyer per ARS 33-1806A. If the buyer has not received the documents please go to www.pdsadocs.com to retrieve your associations documents.

Additional Comments

- * Please include a copy of the deed at close of escrow.
 - * Please request an update at documents@pdsaz.com prior to close of escrow. A \$50.00 update fee will be charged if requested 30 days after original disclosure.
 - * If this account pays assessments through ACH (automatic payment through PDS), that service has been cancelled effective immediately.
 - * Please include a copy of the settlement/HUD-1 statement at close of escrow.
 - * If a mailbox key is not provided by the seller you will need to replace the key yourself. The Association is not responsible for the mailbox keys & can't replace them.
- ** Requested upfront assessments are for October and November 2015.**
Litigation - A pending lawsuit between Joe Harrelson vs. Fountain Shadows Community Association, case #CC2015-128251SC, claiming \$665.00

Please read the statement below and return this document to the association:

" I hereby acknowledge that the declaration, bylaws and rules of the association constitute a contract between the association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my association assessments, the association may foreclose on my property."

X _____ X _____ Date: _____
 Purchaser Purchaser

EXHIBIT 10

Pioneer Title Agency, Inc.

WELLS FARGO BANK, N.A.
95-5271221

NO. 123585

7111 W. Bell Rd.
Suite 103
Glendale, AZ 85308
(623) 412-4393

DATE	ESCROW NO.	AMOUNT
09/18/2015	72400174 - 024 LIB	\$4,412.28

PAY FOUR THOUSAND FOUR HUNDRED TWELVE DOLLARS and 28/100

TO THE FOUNTAIN SHADOWS HOA
ORDER 14100 N. 83RD AVE, SUITE 200
OF PEORIA, AZ 85381

DUPLICATE CHECK

NON-NEGOTIABLE

ESROW FILE COPY: DETACH AND FILE

Escrow No. 72400174 - 024 LIB Check Date: 09/18/2015 Check No. 123585

DESCRIPTION	CODE	AMOUNT
Owners Current Balance		\$4,062.28
2 Months Advance Assessment		\$350.00
Check Total		\$4,412.28

Seller/Buyer: Bocchino/Payne
Property Address: 8736 N. 67th Lane Glendale, AZ 85345
Tax Parcel Id: 143-20-025

Pioneer Title Agency, Inc.

WELLS FARGO BANK, N.A.
95-5271221

NO. 123585

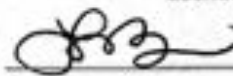
7111 W. Bell Rd.
Suite 103
Glendale, AZ 85308
(623) 412-4393

DATE	ESCROW NO.	AMOUNT
09/18/2015	72400174 - 024 LIB	\$4,412.28

PAY FOUR THOUSAND FOUR HUNDRED TWELVE DOLLARS and 28/100

TO THE FOUNTAIN SHADOWS HOA
ORDER 14100 N. 83RD AVE, SUITE 200
OF PEORIA, AZ 85381

ESCROW ACCOUNT



⑈ 123585 ⑆ ⑆ 22105278 ⑆ 5423016574 ⑆

Pioneer Title Agency, Inc.

WELLS FARGO BANK, N.A.
91-82711221

NO. 123588

7111 W. Bell Rd.
Suite 103
Glendale, AZ 85308
(623) 412-4393

DATE	ESCROW NO.	AMOUNT
09/18/2015	72400174 - 024 LIB	\$400.00

PAY FOUR HUNDRED DOLLARS and no/100

TO THE PLANNED DEVELOPMENT SERVICES
ORDER 14100 N. 83RD AVE, SUITE 200
OF PEORIA, AZ 85381

DUPLICATE CHECK

NON-NEGOTIABLE

ESCROW FILE COPY- DETACH AND FILE

Escrow No. 72400174 - 024 LIB Check Date: 09/18/2015 Check No. 123588

DESCRIPTION	CODE	AMOUNT
HOA Disclosure Fee		\$225.00
HOA Transfer Fee		\$175.00
Check Total		\$400.00

Seller/Buyer: Bocchino/Payne
Property Address: 8736 N. 67th Lane Glendale, AZ 85345
Tax Parcel Id: 143-20-025

Pioneer Title Agency, Inc.

WELLS FARGO BANK, N.A.
91-82711221

NO. 123588

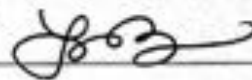
7111 W. Bell Rd.
Suite 103
Glendale, AZ 85308
(623) 412-4393

DATE	ESCROW NO.	AMOUNT
09/18/2015	72400174 - 024 LIB	\$400.00

PAY FOUR HUNDRED DOLLARS and no/100

TO THE PLANNED DEVELOPMENT SERVICES
ORDER 14100 N. 83RD AVE, SUITE 200
OF PEORIA, AZ 85381

ESCROW ACCOUNT



⑈ 123588 ⑈ ⑆ 122105278 ⑆ 5423016574 ⑈

Details on back
Security Features Included

EXHIBIT 11

Unofficial Document

NOT RECORDED RETURN TO:

Recorded in official records of Maricopa County,

TICOR TITLE INSURANCE CO.
3033 N. Central Ave.
Phoenix, AZ 85017
ATTN: BUILDER SERVICES

DATE **APR 21 1983-802**

BILL HENLY, COUNTY REC.

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR

ENOP RSTR 099

A-4-83-52

FOUNTAIN SHADOWS

83 146154

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 350 of Maps, at page 42;

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.

ARTICLE I

Definitions

This instrument shall be read by TICOR TITLE INSURANCE COMPANY as an advertisement only. It has not been examined as to its execution or as to its effect upon the title.

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.

5798A-6

83 146154

Section 7. "Mortgage" includes deed of trust; "Mortgagor" 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 as 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 13-801, et seq., legal title shall be deemed to be in the Trustor.

Section 10. "Flat" means the plats of survey of the Property and of all townhouses as recorded in the office of the Maricopa County in Book 340 of Maps, at page 42, and any subsequent additions and/or amendments thereto.

Section 11. "Property" shall mean and refer to that certain real property heretofore 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.

83 146154

(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 41 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 tested, 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, swing, 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:

- (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 Mortgagees 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 Areas 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 ~~any~~ 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 animal 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 (1) 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 areas, 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.

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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 IV

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 re-located 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 Property.

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 ~~on~~ 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 herunto set its hand and seal this 15 day of April, 1983.

NBS DEVELOPMENT CORPORATION, an Arizona corporation

BY Mark Dahn
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, a _____ 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:



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"EXHIBIT A"

That part of the Southeast quarter of the Northeast quarter of Section 36, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Southeast quarter
 thence South, along the East line of said Southeast quarter, a distance of 674.75 feet;
 thence South 88°46'24" West, a distance of 45.01 feet to a line 45.00 feet West and parallel with the East line of said Section 36, also being the TRUE POINT OF BEGINNING;
 thence South, along said parallel line, a distance of 312.50 feet;
 thence South 88°46'24" West, parallel with the North line of the South half of the North half of the Southeast quarter of the Northeast quarter of said Section 36, a distance of 614.23 feet;
 thence North, parallel with the East line of said Section 36, a distance of 668.00 feet to the North line of the South half of the North half, of the Southeast quarter of the Northeast quarter of said Section 36;
 thence North 88°46'24" East, along said North line, a distance of 302.16 feet;
 thence South, parallel with the East line of said Section 36, a distance of 249.70 feet;
 thence West, a distance of 64.00 feet;
 thence South, a distance of 108.17 feet;
 thence North 88°46'24" East, a distance of 376.09 feet to the TRUE POINT OF BEGINNING.

Said parcel contains 289,998.73 square feet or 6.6573 acres more or less.

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6 *Attorneys for Defendant*

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF MARICOPA

9 PATRICIA BOCCHINO,

10 Plaintiff,

11 v.

12 FOUNTAIN SHADOWS
HOMEOWNERS ASSOCIATION,

13 Defendant.

Case No.: CV2015-012434

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

AND

**CROSS-MOTION FOR SUMMARY
JUDGMENT**

*(Assigned to the Honorable
Douglas Gerlach)*

14
15
16
17 Defendant, Fountain Shadows Homeowners Association (the “**Association**”), by and
18 through undersigned counsel, hereby submits its Response to Plaintiff’s Motion for
19 Summary Judgment (the “**Motion**”) and also moves this Court for entry of summary
20 judgment in its favor. Because there are no genuine issues of material fact and the law
21 supports the actions taken by the Association, Plaintiff’s Motion should be denied and
22 summary judgment should be entered in favor of the Association.

1 This Response and Cross-Motion is supported by the following Memorandum of
2 Points and Authorities, the Association’s separate Response to Plaintiff’s Separate
3 Statement of Facts, the Association’s separate Controverting Statement of Facts (“CSOF”)
4 and separate Declaration of Vern Carrillo, and all of the pleadings and matters of record
5 filed with the Court, all of which are incorporated herein by this reference.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. Introduction and Factual Background**

8 The Association is a planned community association and nonprofit corporation
9 located in Glendale, Arizona, whose members are owners of lots within the planned
10 community. See CSOF at ¶ 1. The Association and its members are governed by the
11 *Declaration of Covenants, Conditions and Restrictions for Fountain Shadows* (the
12 “**Declaration**”), recorded in the Office of the Maricopa County Recorder at No. 1983-
13 146154. See CSOF at ¶ 2. The Association and its members are also subject to the Articles
14 of Incorporation, Bylaws, and other Rules and Regulations adopted by the Association
15 (referenced collectively herein as the “**Governing Documents**”). See CSOF at ¶ 3.

16 Plaintiff, Patricia Bocchino (the “**Plaintiff**”), was an owner of a lot located within
17 the Fountain Shadows community until the sale of her lot on or about September 24, 2015.
18 See CSOF at ¶ 4. Incident to her ownership of property within Fountain Shadows, she was,
19 until the sale of her lot, a member of the Association. See CSOF at ¶ 5

20 Plaintiff violated the Declaration and other Governing Documents by acting in a
21 harassing manner constituting offensive behavior. See CSOF at ¶ 6. The Declaration
22 prohibits members or residents in the community from carrying on any offensive activity:

1 No noxious or offensive activity shall be carried on upon any Lot or any part
2 of the Properties, nor shall anything be done thereupon which may be, or may
3 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.

4 Declaration at 19 [Art. XIII, Sec. 10]; *see* CSOF at ¶ 7. As a result, the Association sought
5 and obtained an *Injunction against Workplace Harassment* on March 5, 2015 from the
6 Manistee Justice Court. *See* CSOF at ¶ 8.

7 In or around September of 2015, Defendant was contacted by a title/escrow
8 company to provide a payoff of amounts due to the Association. *See* CSOF at ¶ 9.
9 Pursuant to the Declaration, including Article IV, Section 1 and Article XVII, Section 1,
10 the Association included in its payoff disclosure all attorneys' fees and costs incurred as a
11 result of Plaintiff's violations of the Governing Documents. *See* CSOF at ¶ 10.

12 In connection with the sale of her lot, the Plaintiff paid what the Association had
13 disclosed as due in its payoff disclosure to the title/escrow company. *See* CSOF at ¶ 11.
14 Plaintiff did not contest or challenge the payoff disclosure prior to payment. *See* CSOF at ¶
15 12.

16 **II. Legal Argument**

17 **A. The Contract entitles Association legal fees incurred to enforce** 18 **Compliance with the Declaration.**

19 “[I]t is well-settled in Arizona that ‘[c]ontracts for payment of attorneys' fees are
20 enforced in accordance with the terms of the contract.’” *McDowell Mountain Ranch Cmty.*
21 *Ass'n v. Simons*, 216 Ariz. 266, ¶ 14, 165 P.3d 667, 670 (App.2007), *quoting Heritage*
22 *Heights Home Owners Ass'n v. Esser*, 115 Ariz. 330, 333, 565 P.2d 207, 210 (App.1977).

1 In this case, provision in the Declaration provides:

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

9 *See* CSOF at ¶ 10.

10 The Declaration prohibits members or residents in the community from carrying on
11 any offensive activity. Specifically, Article XIII, Section 10 of the Declaration provides:

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

17 *See* CSOF at ¶ 7.

18 Plaintiff breached the Declaration by harassing the Association's board members
19 and employees of the Association's managing agent, Planned Development Services, Inc.
20 by engaging in a series of acts that have caused the board members to be both seriously
21 harmed and annoyed. *See* CSOF at ¶ 8. Plaintiff removed "closed" signs at the
22 Association pool that were required by Maricopa County Health Services. *Id.* Plaintiff
used e-mail, voice mail, phone conversations and her presence at Association Board of
Directors meetings to continuously harass the members of the Association. *Id.* Her actions
required members of Glendale Police Department, including SWAT team members, to
attend the Association's Board of Directors meetings. *Id.*

1 As a result of her actions, the Association incurred attorneys' fees, costs and
2 expenses to enforce Plaintiff's compliance with the terms and conditions of the contractual
3 Declaration, including but limited to filing and obtaining an Injunction Against Workplace
4 Harassment. *See* CSOF at ¶ 9.

5 In Plaintiff's Motion for Summary Judgment, she claims that the Association is not
6 entitled to attorneys' fees and costs because they were not awarded in the judgment in favor
7 of the Association for Injunction Against Workplace Harassment; that the Declaration does
8 not provide for a basis for recovering attorneys' fees and costs in an injunction action; and
9 the Injunction Against Workplace Harassment statute does not provide for an award of
10 attorney's fees and costs in an uncontested injunction. The plain language of the
11 Declaration's provision for attorneys' fees, costs and expenses, however, do not require that
12 such fees and costs be litigated in a lawsuit and ultimately awarded in a judgment. The
13 plain language of this provision specifies that if the Association prevails in an action
14 seeking enforcement of the terms and conditions of the Declaration, then the Association is
15 entitled to all attorneys' fees, costs, and expenses. *See* CSOF at ¶ 11.

16 Plaintiff also asserts that the legal fees incurred by the Association to enforce her
17 compliance with the Declaration are not authorized by the Arizona Condominium Act. The
18 Association does not claim it is entitled to legal fees under the Arizona Condominium Act.
19 The Association relies on the contractual Declaration. The Association employed an
20 attorney to enforce Plaintiff's compliance with the terms of the Declaration and prevailed
21 in obtaining an Injunction Against Workplace Harassment in its favor.
22

1 **B. Plaintiff Fails to Meet The Burden of Proving the Legal Fees are Clearly**
2 **Excessive**

3 To establish a claim that the Association is not entitled to all of its legal fees pursuant
4 to a provision in the Declaration awarding the Association all of its attorneys’ fees, a
5 homeowner has the burden of showing that the attorneys’ fees were clearly excessive, and if
6 such showing was not made, then association would be entitled to receive the full amount of
7 requested attorney fees. *McDowell Mountain Ranch Community v. Simons*, 216 Ariz. 266,
8 270, ¶ 16, 165 P.3d 667, 671 (App.2007). An agreement by the parties as to the amount of
9 attorneys’ fees is not contrary to public policy and is analogous to a contract for indemnity
10 and a contractual fee provision stipulating to a certain amount or percentage of attorneys’
11 fees “is binding only to the extent that it is reasonable; however, where the services have
12 been rendered, and the amount stipulated is not obviously excessive, the stipulation as to the
13 amount should govern.” *Elson Dev. Co. v. Ariz. Sav. & Loan Ass’n*, 99 Ariz. 217, 407 P.2d
14 930 (1965).

15 Plaintiff has failed to provide any evidence to support that the legal fees incurred by
16 the Association for her harassing and offensive behavior is clearly excessive. In fact,
17 Plaintiff paid in full all of the legal fees incurred by the Association and did not contest the
18 amounts prior to payment.

19 **III. Conclusion**

20 The Association respectfully requests that the Court deny Plaintiff’s Motion for
21 Summary Judgment and grant summary judgment in favor of the Association.
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RESPECTFULLY SUBMITTED this 28th day of March, 2016.

Carpenter, Hazlewood, Delgado & Bolen, PLC



Chad P. Miesen
Charlene Cruz
1400 East Southern Avenue, Suite 400
Tempe, Arizona 85282
Attorneys for the Association

ORIGINAL of the foregoing filed
this 28th day of March, 2016 with:

Clerk of the Court
Maricopa County Superior Court
www.AZTurboCourt.gov

Copy of the foregoing emailed and mailed
this 28th day of March, 2016, to:

Jonathan A. Dessaulles
Dessaules Law Group
5353 North 16th Street, Suite 110
Phoenix, Arizona 85016



Vicki J. Goslin

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Monday, March 28, 2016 4:24 PM
To: Vicki J. Goslin
Subject: E-Filing Status: Form Set # 1750644 Delivered

PLEASE DO NOT REPLY TO THIS EMAIL.

AZTurboCourt Form Set # 1750644 has been DELIVERED to Maricopa County.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

PATRICIA BOCCHINO,)
)
Plaintiff,)
) CASE NO. CV2015-012434
v.)
)
FOUNTAIN SHADOWS HOMEOWNERS,)
ASSOCIATION,)
)
Defendant.)
_____)

Phoenix, Arizona
June 7, 2016
10:25 a.m.

BEFORE THE HONORABLE DOUGLAS GERLACH
SUPERIOR COURT JUDGE

TRANSCRIPT: ORAL ARGUMENT

Transcript prepared by:
VERBATIM REPORTING & TRANSCRIPTION, LLC

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A P P E A R A N C E S

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P R O C E E D I N G S

1
2 THE COURT: Good morning. Please be seated. We're
3 on the record in -- in matter number CV2015-012434. Please
4 state your appearances.

5 MR. DESSAULES: Good morning, Your Honor, Jonathan
6 Dessaulles and Ashley Hill, on behalf of the Plaintiff,
7 Patricia Bocchino, who is present.

8 MR. MIESEN: Good morning, Your Honor, Chad Miesen
9 and Charlene Cruz, on behalf of Fountain Shadows Homeowners
10 Association.

11 THE COURT: Okay. Thank you. This is the time set
12 for argument on Plaintiff's motion for summary judgment, and
13 the Defendant's cross motion for summary judgment. And what I
14 have focused on, or what concerns me, and you got my email,
15 because I know you responded it to -- responded to it, but it
16 says in the CC&Rs that the homeowners association is entitled
17 to collect attorney's fees, quote, in the event that the
18 association prevails, referring to litigation that was
19 commenced. And my first question is, what does prevail mean?
20 And, specifically, as I indicated in my email, can one prevail
21 on an action that is uncontested?

22 Now, I know you both provided me with authorities.
23 I appreciate the thought, I appreciate the effort very much,
24 don't take this the wrong way, but none of those authorities
25 helped me, and I'll tell you why. A rule -- Rule 39 doesn't

1 apply. That -- that was the authority cited by the Plaintiff
2 -- because 12-1810 section (O) says that the remedies there
3 are in addition to other civil remedies. Well, another civil
4 remedy would be the association's attempt to enforce a
5 contract, which is how I view their position here.

6 The cases cited by the association don't assist me
7 because the prevailing party in each case was a prevailing
8 party in a case where that party experienced opposition. They
9 had to overcome some sort of obstacle. That is not what
10 happened, according to the record in this case. That is not
11 what happened when the association obtained its injunction.

12 What we're dealing with here is an issue of contract
13 interpretation. Nobody disputes that the CC&Rs are contracts.
14 What does prevail mean? We go back to the rules of -- of
15 contract construction. We give the words their meaning as
16 they were understood at the time. What were the -- what --
17 what is the commonly understood meaning of prevail? And what
18 courts often do in such circumstances is look at dictionaries.
19 Both the American Heritage and Webster's New Collegiate
20 dictionaries, in the first definition, they're -- prevail is a
21 word that has multiple definitions.

22 But in the first, the primary definition, they at
23 least imply that prevail means triumphing over an opponent, or
24 overcoming opposition. In fact, the American Heritage dic --
25 Dictionary says, prevailed against the enemy, to illustrate

1 what the meaning is. Well, if we don't have -- if we don't
2 have opposition here that was incurred in the effort to get
3 the injunction, then it doesn't seem that we have -- that the
4 association can claim that it prevailed. But I'll certainly
5 with -- lit -- listen to that. However, we may not have to
6 get there.

7 The purpose of filing the petition, at the risk of
8 stating the obvious, was to enjoin the Plaintiff from engaging
9 in certain conduct. If the injunction was not enforceable as
10 written, if the injunction did not comply with due process
11 requirements, then the effort to obtain that injunction did
12 not succeed. And one can hardly be a prevailing party in an
13 effort that -- that failed. So let's begin with a discussion
14 about whether the injunction was enforceable as written. And
15 for that, I would like to turn to the association. Tell me
16 why you think the injunction as written was enforceable.

17 MR. MIESEN: Well, Your Honor, the -- the due
18 process as required for obtaining the injunction offers the
19 other party an opportunity to be heard.

20 THE COURT: No, that's not the due process I'm
21 talking about. I'm talking about the due process notion that
22 must be met before an injunction becomes enforceable.

23 MR. MIESEN: Yes. That it's --

24 THE COURT: The words of the injunction.

25 MR. MIESEN: It -- forgive me. The -- my -- what

1 I'm getting at is that the -- and -- and if I'm not answering
2 your question, I apologize, and you can help me, but is that
3 the injunction's enforceable once it's entered by the court
4 and served upon the party.

5 THE COURT: No. It's not enforceable if it's
6 written in a way that violates due process of it, and -- and
7 permit me, I'll tell you what I'm getting at.

8 MR. MIESEN: Sure.

9 THE COURT: Among other cases, Munari v. Hotham, in
10 order to support a judgment of contempt, the underlying decree
11 -- which would here be the injunction -- must set forth the
12 terms of compliance in clear, specific and unambiguous terms
13 so that the person charged with obeying the decree will re --
14 readily know exactly what duties and obligations are imposed
15 upon him, or in this case, her. Looking at the injunction,
16 what specifically, what exactly does near mean?

17 MR. MIESEN: If you give me just a moment, I'll pull
18 up the injunction.

19 THE COURT: It says the Defendant shall not go to or
20 near the Plaintiff's employers or other protected person's
21 workplace. What does near mean?

22 MR. MIESEN: Yeah. That language is part of the
23 form that the courts have adopted for all injunctions against
24 workplace harassment. So I would posit to the Court that if
25 in fact near is not sufficient, then all injunctions that are

1 currently written on these forms would be unenforceable.

2 THE COURT: Well, that may be the case, but I'm only
3 dealing with this one.

4 MR. MIESEN: Understood.

5 THE COURT: How does -- how does -- in this case,
6 how does the Plaintiff know whether or not she is violating
7 the injunction when -- when the order says don't go near, and
8 there are -- are what, five different addresses there.

9 MR. MIESEN: Uh-huh.

10 THE COURT: What -- what's near?

11 MR. MIESEN: Well, I think the common sense approach
12 to that, Your Honor, is that near is enough to come in contact
13 with, and it -- to the high probability of interaction with --

14 THE COURT: Well, that's -- that's your --

15 MR. MIESEN: -- the protected persons.

16 THE COURT: -- interpretation. But she is not -- no
17 plaintiff is supposed -- is required to call up the other
18 side's lawyer and say, now, here's where I'm going to go, is
19 that near?

20 MR. MIESEN: I think we come back to what you had
21 indicated at the beginning of this, which is we have to use
22 common definitions for terms, as the -- as they're used in the
23 world. And dictionaries provide certainly one -- one
24 authority to help assist --

25 THE COURT: Sure.

1 MR. MIESEN: -- in these types of words.

2 THE COURT: But they won't help on -- they won't
3 help on near. Does near mean 10 feet, 50 feet, 100 yards, 200
4 yards?

5 MR. MIESEN: I -- I -- I --

6 THE COURT: And is that -- is -- is that a subject
7 that could be -- could result in some disagreement?

8 MR. MIESEN: Yeah. I don't think that that renders
9 the injunction unenforceable, however, because --

10 THE COURT: It does if it -- if the Plaintiff
11 cannot, by looking at the injunction, know in the terms of the
12 cases exactly what she is prohibited from doing.

13 MR. MIESEN: Well, I think that she -- I think, Your
14 Honor, that certainly she cannot go to those addresses.

15 THE COURT: What is going to those addresses mean?

16 MR. MIESEN: Well, I mean, I don't know how to be
17 more specific with to. I mean, it -- to is you're -- you're
18 there. You're -- you're physically --

19 THE COURT: Like right in front? Right in front of
20 the -- right in front of the residence?

21 MR. MIESEN: Yes.

22 THE COURT: Okay. I looked up on goggle maps this
23 development. If the Plaintiff wanted to go over to the --
24 Grand Avenue, because she wanted to go to Wickenburg, the
25 shortest, most convenient route for her to take would require

1 her to drive past either the Toothman's residence or the
2 Gaytan residence. Which of those two routes does not violate
3 the injunction?

4 MR. MIESEN: Well, again, Your Honor, I think what's
5 required here is to understand the intent of the injunction,
6 and the language that is included here is intended to avoid
7 conflict, it's intended to avoid interaction with and
8 harassment by the Defendant in the injunction.

9 THE COURT: If -- if she drives past either of those
10 two residences, would you agree she is near those two
11 residence?

12 MR. MIESEN: I -- I -- I don't know if -- if driving
13 past meets the standards, the intentions of the language.

14 THE COURT: You don't know?

15 MR. MIESEN: I don't believe that it does.

16 THE COURT: Well, but how would the Plaintiff know?
17 How does the Plaintiff know when she's given a pay -- a piece
18 of paper that says don't go near?

19 MR. MIESEN: Take the most conservative approach and
20 don't go near.

21 THE COURT: Okay. So --

22 MR. MIESEN: If there's a question of whether --

23 THE COURT: So she has to --

24 MR. MIESEN: -- it's near --

25 THE COURT: So if she wants to go to Wickenburg --

1 MR. MIESEN: Yeah.

2 THE COURT: -- because of this injunction, she is
3 going to have to go out of her way, take a -- a round about
4 way to get there?

5 MR. MIESEN: Well, Your Honor, forgive me, I'm not
6 as familiar with that area. I haven't looked at the maps to
7 know if that --

8 THE COURT: Why didn't you look at it before you got
9 the injunction?

10 MR. MIESEN: At the maps?

11 THE COURT: Yeah.

12 MR. MIESEN: Why --

13 THE COURT: So you knew exactly what you were asking
14 for.

15 MR. MIESEN: Well, we knew what we were asking for,
16 and we were relying on the forms, because we believed that the
17 -- the common sense interpretation of the -- of the language
18 that's on those forms --

19 THE COURT: It's not.

20 MR. MIESEN: -- would have been --

21 THE COURT: It's not. And if you read the cases on
22 injunctions and the specific -- specificity that's required,
23 and I don't mean to be talking down to you, it's --
24 injunctions are not written to be interpreted. Injunctions
25 are to be written specifically so nobody has any doubt about

1 what is or is not permitted, so that you don't go into court
2 and say to a judge, okay, now interpret this injunction one
3 way or the other, so you don't have to go to a police officer
4 and explain what it means. It is there in black and white.

5 And I'll tell you, this comes up in Family Court all
6 the time, and -- and, again, forgive me if -- if you've been
7 in Family Court, where you have to put restrictions on how --
8 on people contacting other people. And you know what happens
9 all the time? We don't use words like near or far or
10 reasonable distance. It's 50 feet. It's 100 yards.

11 I can remember one time in an extreme case involving
12 violence that I prohibited the one ex-spouse from coming
13 within a one-mile radius of the other spouse. That's how you
14 get precision to these things. But to say near, I -- I -- I
15 think is just too inherently ambiguous to be enforceable.

16 But let me give you another example. If the
17 Plaintiff wished -- and I realize the injunction is no longer
18 in effect, or at least that's -- it -- or is it? It -- it's
19 been more than a year.

20 MR. MIESEN: I think it was in effect for a year,
21 Your Honor.

22 THE COURT: Yeah. It -- the -- the one year I --
23 and I assume that one year has passed, because it was issued
24 in March of 2015.

25 MR. MIESEN: That's my understanding.

1 THE COURT: But let's assume that it's still in
2 effect, Okay? If the Plaintiff wished to visit the main
3 branch of the Glendale Public Library, does she violate the
4 injunction?

5 MR. MIESEN: Yes, I believe she would.

6 THE COURT: So she can't go to the Glendale Public
7 Library to check out a book --

8 MR. MIESEN: That is what --

9 THE COURT: -- under the terms of this injunction?

10 MR. MIESEN: Yes, sir.

11 THE COURT: Doesn't that fit within the definition
12 of over broad?

13 MR. MIESEN: Well, when the association conducts
14 business at that branch, it's to protect those that are at
15 those meetings.

16 THE COURT: She's not going -- she's going to get a
17 book, and she is prohibited -- and -- and the other thing, the
18 other thing is there is no time restriction in this
19 injunction. Agreed?

20 MR. MIESEN: Agreed.

21 THE COURT: So the association may not be doing --
22 is -- the association, I assume, or maybe I'm wrong, they
23 don't do business there every day of the week, do they?

24 MR. MIESEN: No.

25 THE COURT: The way this injunction is written, if

1 she goes to the library to check out a book on some day when
2 the association has nothing going on there, she violates the
3 injunction?

4 MR. MIESEN: Well, and these matters were addressed
5 before a Justice of the Peace who believed, apparently, by
6 signing this order, that that wasn't overly broad.

7 THE COURT: Well, was he told that the address that
8 -- that she was prohibited from -- from visiting was the --
9 was a public library, and that she would be -- be prohibited
10 from entering that library at any time, on --

11 MR. MIESEN: I --

12 THE COURT: -- any day of the week?

13 MR. MIESEN: -- I certainly can't recall today what
14 was discussed at that hearing, Your Honor.

15 THE COURT: My guess is that if he'd been told that
16 he would have said, wait a minute. Because it seems on its
17 face rather -- rather unreasonable. Let me ask you another
18 question. Let's assume -- because on this injunction, what we
19 have here is we have the residences of -- well, one couple,
20 and -- and an individual. We have two residences within this
21 -- within this development. And as I read the statute, the
22 only way those residents are entitled to protection by the
23 injunction is if there's association business going on there,
24 because this is an injunction against workplace harassment.

25 These individuals could have gone to court on their

1 own and obtained injunctions against harassment. That,
2 however, would not have entitled the association to attorney's
3 fees if they had simply done it on their own. But we have,
4 you know, we have the facts as they are. And I'm assuming
5 that the reason that these two individual residences are on
6 the injunction is because association business goes on at
7 these residences. Otherwise, they don't even belong on the
8 injunction under the statute.

9 MR. MIESEN: Well, these individuals are officers of
10 the association.

11 THE COURT: Right.

12 MR. MIESEN: And as such, they were listed as
13 protected persons.

14 THE COURT: Right. So I'm --

15 MR. MIESEN: Because --

16 THE COURT: -- so I'm -- I'm going to give you the
17 benefit of the doubt, even though I think an argument can be
18 made that unless there is business going on there, at least
19 throughout the day, every day of the week, that these
20 residences would have more properly the subject of an
21 individual injunction rather than -- than -- than an
22 injunction against workplace harassment. But let's assu --
23 let's concede that for the point -- for the moment, that the
24 injunct -- that there is association business going on at
25 these two residences, and they are entitled to be protected as

1 part of the association's workplace.

2 If the Plaintiff went in front of either residence,
3 carrying a sign that said, whoever it -- Mr. Toothman, Mr.
4 Gaytan, whatever, should be -- or both, should be removed from
5 the board of directors, and walked back and forth in front of
6 those residences, not disrupting traffic, not disrupting any
7 passersby in any way, simply walked back and forth in front of
8 either of the -- or both of those residences carrying the
9 sign, would that violate the injunction?

10 MR. MIESEN: I think it would.

11 THE COURT: Okay. So what you are saying then,
12 because surely you do not disagree that urging the removal of
13 a member of the board of directors is constitutionally
14 protected speech, correct?

15 MR. MIESEN: I believe that -- well, whether the
16 association is restricted by the constitution as to its rules
17 and regulations for its association --

18 THE COURT: That's not the question.

19 MR. MIESEN: -- is a whole other issue.

20 THE COURT: The question, urging the removal of a
21 member of the board of tech -- protectors is -- board of
22 directors is constitutionally protected speech; do you
23 disagree with that?

24 MR. MIESEN: No. I agree with that.

25 THE COURT: So if she's violating the injunction,

1 then she is -- what you are doing is -- urging is that the
2 injunction should be interpreted in a way that limits
3 constitutionally protected speech?

4 MR. MIESEN: Only its location.

5 THE COURT: She -- she would have -- if -- if there
6 were no injunction in place -- some other homeowner could do
7 the same thing --

8 MR. MIESEN: Uh-huh.

9 THE COURT: -- right?

10 MR. MIESEN: Uh-huh.

11 THE COURT: So what you're doing is saying, the one
12 homeowner, you're free to -- to do this activity. But you,
13 Plaintiff, are not. You are limiting her ability to engage in
14 constitutionally protected speech.

15 MR. MIESEN: In front of their home, yes.

16 THE COURT: Right.

17 MR. MIESEN: Uh-huh.

18 THE COURT: Even though the statute says that the
19 injunction is not permitted to do that. ARS 12-1810
20 subsection (L)(2) says that the injunction cannot prohibit
21 constitutionally protected activity.

22 MR. MIESEN: I don't --

23 THE COURT: Picketing is a constitutionally
24 protected activity.

25 MR. MIESEN: Well, prohibit and limit I think are

1 two different things. You -- they're not prohibiting --

2 THE COURT: Well --

3 MR. MIESEN: -- her from --

4 THE COURT: -- it's the same thing here. If she's
5 not permitted to picket -- you know what, let's -- let's --
6 let's change it. Let's say that there's a homeowner's
7 association meeting going on, and she wants to picket in front
8 of the association meeting, you would say she's violating the
9 injunction?

10 MR. MIESEN: I think based on the language of the
11 injunction --

12 THE COURT: Uh-huh.

13 MR. MIESEN: -- there's a high probability that
14 she's in -- that she is.

15 THE COURT: Right. Even though that act -- that
16 activity, leaving aside who's doing it, that activity is
17 constitutionally protected.

18 MR. MIESEN: I think that it can be limited based on
19 location.

20 THE COURT: So you can limit somebody's ability to
21 engage in constitutionally protected speech by prohibiting
22 them from engaging in that speech in certain locations?

23 MR. MIESEN: Yes.

24 THE COURT: And the location that you have
25 identified is not a location where others are prohibited from

1 engaging in that activity?

2 MR. MIESEN: Correct.

3 THE COURT: Okay. I think if you read the cases,
4 that that doesn't work, but in any event. Okay. Anything
5 else you want to say? I've asked all my questions.

6 MR. MIESEN: Well, I believe that ob -- it's very
7 clear that the Court's read the papers, I'm not going to
8 restate everything. We believe that -- that -- to sum it up,
9 that Ms. Bocchino violated the governing documents, the CC&Rs.
10 The association had a right to enforce that. It chose this
11 particular avenue to do so, and was provided an injunction
12 order that was served. I -- I believe that that means the --
13 that the association was the prevailing party. I understand
14 the Court's concerns about enforceability, but --

15 THE COURT: What about -- what -- do -- do you have
16 anything more to add? I read all of your cases on -- on the
17 -- on the issue of prevailing party. And the distinction I
18 draw, as a I said, is those are cases in which there was
19 opposition that was overcome. This is not that case. So --

20 MR. MIESEN: I think the Court, though, and you --
21 you even read something from the dictionaries. I mean, the
22 dictionaries provide overcome opposition. There's a standard
23 of proof that's required. The Justice of the Peace doesn't
24 just say, well, thank you for coming in, I'll sign your order,
25 there -- there are standards that are required. There's

1 evidence that must be shown that there is harassing behavior,
2 THE COURT: Right.
3 MR. MIESEN: I think that's the opposition that --
4 that --
5 THE COURT: Who -- who --
6 MR. MIESEN: -- exists.
7 THE COURT: -- who -- how -- how was your request
8 for an injunction opposed? The law created the opposition by
9 imposing standards --
10 MR. MIESEN: Sure.
11 THE COURT: -- that you had to meet? That's
12 opposition?
13 MR. MIESEN: I believe that would be opposition,
14 Your Honor --
15 THE COURT: Okay.
16 MR. MIESEN: -- absolutely.
17 THE COURT: All right.
18 MR. MIESEN: But aside from that, I think that that
19 was one dictionary's definition. Black's Law Dictionary was
20 cited by one of the cases that I provided to the Court, or a
21 few of the cases that I provided to the Court, and that
22 actually stated prevailing party is the party in whose favor a
23 judgment is rendered --
24 THE COURT: Uh-huh.
25 MR. MIESEN: -- regarding damage -- the amount of

1 damages --

2 THE COURT: Uh-huh.

3 MR. MIESEN: -- awarded.

4 THE COURT: Uh-huh.

5 MR. MIESEN: So --

6 THE COURT: And a --

7 MR. MIESEN: -- in this --

8 THE COURT: And what we find is a judgment in whose
9 favor the -- the party in whose favor the judgment was
10 rendered over opposition from somebody else who was trying to
11 prevent that judgment. That's not an uncon -- that's not a
12 definition that suppor -- finds that a judgment in an
13 uncontested case --

14 MR. MIESEN: Well, the way I'm reading the Black's
15 Law Dictionary definition is that there's a judgment rendered.
16 There is certainly -- there are standards in -- even in
17 default cases that must be satisfied in order to have a
18 judgment rendered. But the point is that we requested certain
19 relief, we received certain relief --

20 THE COURT: Right.

21 MR. MIESEN: -- that was requested.

22 THE COURT: Right.

23 MR. MIESEN: Judgment was entered.

24 THE COURT: But -- but you know -- you -- you know
25 that if this were a case in which we were dealing with a

1 contract that did not have an attorney's fee provision in it,
2 you would not be able to get attorney's fees.

3 MR. MIESEN: In a -- in a default situation,
4 correct.

5 THE COURT: Right. Or in any situation. Because
6 the stat -- but -- it's a statute that says that it must be a
7 contested matter.

8 MR. MIESEN: Correct.

9 THE COURT: What we're dealing here is with
10 enforcing a contract that chose to use the word prevail.

11 MR. MIESEN: Uh-huh.

12 THE COURT: And as I read the principals of contract
13 construction, prevail means what is commonly understood.

14 MR. MIESEN: Yes.

15 THE COURT: And I haven't found anything that says
16 prevail -- one prevails in a situation where one experiences
17 no opposition. I mean --

18 MR. MIESEN: Well --

19 THE COURT: -- to me, it strikes me as, you know,
20 Arizona State, like every major college, if not every college,
21 football program in the country conducts spring practice 21 --
22 at least it used to be 21 days, at the con -- the conclusion
23 of which, there is a spring game. And they invite the
24 boosters out. I mean, you know, Alabama had over 70,000 at
25 theirs. I think Ohio State had -- had a -- maybe even 100,000

1 at their spring game. And there is a spring game, and there
2 is a winner and a loser. But the winner and the loser are not
3 Ohio State or Arizona State or anybody. The -- the team did
4 not prevail, because they were competing against one another,
5 not against an opponent. The offense may have prevailed over
6 the defense, the defense may have prevailed over the offense.
7 But you don't have a winner. You don't have these schools
8 claiming, we enter the next season with a record of one and 0
9 because we prevailed in this game.

10 MR. MIESEN: Well, Your Honor --

11 THE COURT: It seems to me to be the same thing.

12 MR. MIESEN: -- to tab another analogy here, you
13 know, I was in sports, individual sports, as well as team
14 sports growing up, and even with the individual sports, if
15 someone didn't show up, you know, at wrestling, someone
16 doesn't show up --

17 THE COURT: Right.

18 MR. MIESEN: -- you know, they -- they're
19 disqualified and that person is deemed the -- the winner --

20 THE COURT: Right.

21 MR. MIESEN: -- in that match.

22 THE COURT: Right.

23 MR. MIESEN: They prevailed. They receive a --
24 maybe even a medal, or some kind of trophy, or they have their
25 record --

1 THE COURT: Right.

2 MR. MIESEN: -- as one and zero. If someone doesn't
3 show up --

4 THE COURT: The --

5 MR. MIESEN: -- there's still a prevailing party.

6 THE COURT: Okay. Well, you're making the argument
7 you need to make. I'm not --

8 MR. MIESEN: I --

9 THE COURT: I -- and I will tell you, I -- I will
10 tell you, before I sent the email out, I went on Westlaw and
11 probably spent at least an hour trying to find a case anywhere
12 that dealt with the notions of prevail in whatever form, and
13 uncontested, unopposed, whatever, and I found nothing.

14 MR. MIESEN: Well, the cases that I provided the
15 Court, while perhaps there -- there was an opposing party,
16 because it was on appeal that these cases were coming out,
17 however. So I'm not surprised that the Court doesn't find
18 cases that -- and I certainly didn't find cases, either, where
19 it was an uncontested action, because who's --

20 THE COURT: Right.

21 MR. MIESEN: -- who's appealing that? But --

22 THE COURT: Well, but there could be district court
23 opinions.

24 MR. MIESEN: Yes. However, the standards that were
25 provided, and even the U.S. Supreme Court's definition of what

1 prevailing party is does not have the requirement that it be
2 opposed. And so I think it's --

3 THE COURT: Well, it -- I would suggest to you the
4 reason you don't find that in any of the cases is because it
5 was not an issue.

6 MR. MIESEN: Perhaps so.

7 THE COURT: So the -- so the --

8 MR. MIESEN: We don't have those --

9 THE COURT: They didn't decide one way or the other.

10 MR. MIESEN: Right.

11 THE COURT: So I think what we do is then we fall
12 back on -- on what is the commonly understood definition of
13 prevail.

14 MR. MIESEN: And I'll give you -- and I'll leave you
15 with the analogy that even in sports, you have --

16 THE COURT: Okay.

17 MR. MIESEN: -- prevailers --

18 THE COURT: Okay.

19 MR. MIESEN: -- when people don't show up.

20 THE COURT: Do you -- if -- if, in fact, the
21 injunction as written could not have been enforced, and we
22 don't need to -- to go through that discussion again, can the
23 association nevertheless be deemed the prevailing party? You
24 know, and let me -- and let me state it another way. If -- if
25 -- and I don't say this to be critical or talk down or

1 anything like that, if -- if the -- if, as I said at the
2 beginning, the goal was to obtain an injunction that could be
3 forced against the Plaintiff, and the injunction as written by
4 the judge down there, as written, could not be enforced, is it
5 not fair to say then that the effort did not succeed?

6 MR. MIESEN: I suppose if it caused a change in --
7 in action, it did succeed. Regardless of whether we had to
8 call the police out there to enforce the injunction, it caused
9 a change in action.

10 THE COURT: Yeah. But you don't get -- you don't
11 get attorney's fees under that -- under the provision on which
12 the association is relying unless the association prevailed in
13 the litigation. And if the result was a meaningless
14 injunction, how does the association still prevail?

15 MR. MIESEN: Well, I -- I believe that while the --
16 there's been no determination by the courts that it was --
17 that the form provided by the justice courts is unenforceable.
18 I -- I understand your position, Judge, on that issue. But I
19 believe that even in the entry of the order, a judgment, that
20 the party who received the judgment that's in line with the
21 relief sought in their complaint has prevailed --

22 THE COURT: Are --

23 MR. MIESEN: -- because it obtained the relief it
24 sought.

25 THE COURT: Are you -- are you suggesting or even

1 just coming right out and saying that in -- in trying to
2 resolve the issues that are presented to me, I am not
3 permitted to decide whether or not that injunction was
4 enforceable?

5 MR. MIESEN: No.

6 THE COURT: Okay. I mean, I wouldn't be offended if
7 you did. I'd just like to know -- I would just like to know
8 the reason --

9 MR. MIESEN: Sure.

10 THE COURT: -- so.

11 MR. MIESEN: No, but I -- I believe that even if the
12 injunction is un -- is ultimately unenforceable --

13 THE COURT: Uh-huh.

14 MR. MIESEN: -- I mean, let's even take the
15 situation now. It's been over a year. It's not currently
16 enforceable. Does that mean that the association was not the
17 prevailing party because the injunction expired?

18 THE COURT: No. I think it would mean that if the
19 injunction was unenforceable, it was unenforceable the day
20 that it was -- it was issued. It -- meaning it never had any
21 effect. So that --

22 MR. MIESEN: It caused a change in action.

23 THE COURT: Well, but where in the CC&Rs do you get
24 attorney's fees if you cause a change in action?

25 MR. MIESEN: Well, again, we're getting back to the

1 definition of prevail.

2 THE COURT: Yeah. Okay. All right. Fair enough.

3 MR. MIESEN: They got what they wanted.

4 THE COURT: Okay. All right.

5 MR. MIESEN: I have nothing further.

6 THE COURT: Okay. Anything else? Okay.

7 MR. MIESEN: Thank you.

8 THE COURT: Mr. Dessaulles?

9 MR. DESSAULES: Thank you, Your Honor. I -- I think
10 what -- what we're struggling with here is the con -- is the
11 change -- the difference between prevail and succeed. I think
12 that if the CC&Rs -- by the way, I disagree that the CC&Rs are
13 applicable, and I'll go through that analysis for you shortly.
14 But if the CC&Rs said that the association succeeds, then
15 there might be a different analysis here.

16 I myself spent far more than an hour in response to
17 your email looking for a case. I found nothing. The closest
18 thing I found was the rule. I understand Your Honor says it's
19 not applicable, and I'll tell you why it is in -- in a second,
20 as well. But let me just -- let -- let me focus more on the
21 -- the injunction here. If the Plaintiff walks in a common
22 area, she's violating the injunction.

23 THE COURT: Well, it depends on where the common
24 area is.

25 MR. DESSAULES: Well, actually --

1 THE COURT: Is it -- is it near or far?
2 MR. DESSAULES: Well, if she goes over to her --
3 THE COURT: Or somewhere --
4 MR. DESSAULES: -- friend Nancy's --
5 THE COURT: Or somewhere in between?
6 MR. DESSAULES: If she goes over to her friend Nancy
7 Fisher's house, which is across the street from Donald
8 Toothman's off -- from Donald Toothman's house, does she
9 violate that injunction?
10 THE COURT: I -- that was my --
11 MR. DESSAULES: And --
12 THE COURT: -- that was my question. I'll -- I'll
13 give you another example, and then maybe we can move on.
14 MR. DESSAULES: Yeah.
15 THE COURT: There appears to be a swimming pool and
16 what is I suppose a -- a community clubhouse of some sort --
17 MR. DESSAULES: Yes.
18 THE COURT: -- that is almost directly across the
19 street from the Toothman residence.
20 MR. DESSAULES: That is correct.
21 THE COURT: If the Plaintiff goes and uses the pool
22 or goes in it, does she -- is she near the Toothman residence
23 and does she violate the injunction?
24 MR. DESSAULES: Now --
25 THE COURT: And -- and -- and, you know, we can --

1 I'll -- will certainly allow rebuttal, but my concern there
2 again is the target of an injunction is supposed to be able to
3 look at it and know precisely what is and is not permitted,
4 without having to guess, and without having to ask anyone. I
5 don't know whether using the swimming pool would violate the
6 injunction.

7 MR. DESSAULES: Taking that a step further, Your
8 Honor, in addition to that, they're also -- and the case law
9 on this is very clear, courts can't impose prior restraints on
10 speech. The association, by getting the injunction that
11 prohibits the -- the -- the Plaintiff from carrying the picket
12 sign, as -- as Your Honor suggested, that's a prior -- that's
13 a prior restraint that has a chilling effect on speech. And
14 under the case law that -- that the Defendant cited, one of
15 the requirements of being a prevailing party is that the
16 judicial sanction must be an enforceable entitlement to
17 relief. And that's the Klamath Siskiyou Wildlands Center
18 case. I'm not making any representations in terms of
19 pronouncement, 589 F.3d 1027.

20 Now -- but let me -- let -- let me just take a step
21 back here for examp -- for -- for a second. Because we're
22 operating under the assumption that the -- that the CC&Rs
23 apply, that the Article 17, Section 1, attorney's fee language
24 provides. And I don't think you can divorce the question of
25 what relief are they seeking and in what context from -- from

1 that. There's three bases arguably for the association to get
2 their fees. The first would be ARS 12-341.01. Doesn't apply,
3 it wasn't a contested action.

4 The second would be the attorney's fees provision
5 arising out of the pr -- arising out of the injunction against
6 harassment. And that actually, Your Honor, of all of the --
7 that's the one that's most closely applicable. If you look at
8 Rule 39, it talks about that this is a provision for getting
9 attorney's fees under 12-1810(O).

10 THE COURT: Right. But that's -- but the same
11 statute, Mr. Dessaulles, says it's not to the exclusion of
12 other remedies.

13 MR. DESSAULES: I understand that, Your Honor. But
14 -- now, then you -- you look at the -- the attorney's fees
15 provision. And let me take a step back even further. If you
16 look at -- we cited one case. There's two other cases, one of
17 which is Berry v. 352 E. Virginia, the other of which is
18 Robert Mann Construction v. Liebert Corporation, in order to
19 be the prevailing party in -- in a -- in a lawsuit, you have
20 to ask for an award of fees in the complaint. Both of those
21 case -- Berry says, a fee request based on a contractual
22 provision requires pleading and proof. And -- and in Berry,
23 the Court disregarded the -- because there wasn't a -- a
24 request for fees made based on the contract, Berry said we
25 can't award fees based on the contract.

1 Same thing in Robert Mann. Robert Mann case says
2 you can't get attorney's fees by only generally referring to
3 attorney's fees in -- in a complaint.

4 THE COURT: The --

5 MR. DESSAULES: They didn't even do that.

6 THE COURT: This is your argument that if they
7 wanted to preserve a claim for attorney's fees, it must have
8 been submitted with their petition?

9 MR. DESSAULES: That -- that is -- yes.

10 THE COURT: Okay. I understand the argument. Okay.

11 MR. DESSAULES: Okay. Now, so then we turn to the
12 provision. And, I mean, that leaves us with the contract
13 provision.

14 THE COURT: Uh-huh.

15 MR. DESSAULES: Well, what does the contract
16 provision says (sic)? There's three ways you get fees under
17 the CC&Rs. The first way, to enforce collection of amounts
18 due. Not applicable. Secondly, in connection with any lien.
19 Not applicable. Third way, to enforce compliance with, or
20 specific performance of the terms and conditions of this
21 declaration. The only provision they've cited that implicates
22 the CC&Rs at all is the nuisance provision. And if you look
23 at the nuisance provision it talks about activities taking
24 place upon any lot. It doesn't -- I mean, I -- under the
25 plain language of -- of the nuisance provision, this isn't a

1 nuisance. You can't violate a nuisance statute by sending
2 letters, by sending emails. And I -- I know Your Honor's
3 familiar with -- with the case law regarding that issue. This
4 is -- you don't get --

5 THE COURT: Wasn't though -- and -- and I will tell
6 you that, although my memory is a -- a -- a bit clouded, I
7 read through the supporting -- the materials that were
8 submitted in support of the petition, and it struck me that
9 some of the incidents on which the petition was predicated
10 should not have supported the requested injunction. You know,
11 getting an injunction because somebody makes me feel bad
12 because they called me bad names doesn't work.

13 However, I think there was some activity in that --
14 in there that would have supported the injunction, and I
15 thought that -- and I'm not saying whether this -- it's
16 truthful or not, I'm not going to make that judgment about
17 anybody, because I don't have to, for starters -- but I
18 thought that there was at least some allegation that one of
19 the three protected people, at least one of the three, was
20 threatened by the Plaintiff, physically threatened.

21 MR. DESSAULES: That's not an injunction against
22 workplace harassment. That would be an injunction against
23 harassment. What we have here --

24 THE COURT: Right.

25 MR. DESSAULES: -- is an association stepping in in

1 loco parentis to -- to vindicate --

2 THE COURT: Well, but this person -- the -- the --
3 this was Mrs. Toothman. And she said that she does work for
4 the association in her -- in -- in her papers, that she -- she
5 was in a -- I -- I don't think any of these people are paid
6 employees, but they are people who work for the -- who do work
7 for the association. So here we have somebody who does work
8 for the association, and I believe she said she was being
9 threatened, and the threats pertained to activities that the
10 association had taken.

11 MR. DESSAULES: Well, Your Honor, I'm not sure -- it
12 -- well, that may be a basis for an injunction against
13 harassment. It may also be a basis for an injunction against
14 workplace harassment.

15 THE COURT: Right.

16 MR. DESSAULES: I don't believe it's a basis to
17 implicate the nuisance provision which, by the way, was never
18 alleged in that complaint anyway. What we're doing here is --
19 is after the fact, we're piecing together bits and pieces of
20 the declaration that we think, well, maybe she was violating
21 this, or -- or she could have violated this provision.

22 THE COURT: What --

23 MR. DESSAULES: They proceeded under a statutory
24 provision --

25 THE COURT: -- what --

1 MR. DESSAULES: -- and the law is clear that when
2 you proceed under a statutory provision, you don't get -- that
3 -- that the statutory provision defines the -- the -- the
4 entitlement to relief.

5 THE COURT: What --

6 MR. DESSAULES: And --

7 THE COURT: I think I understand your argument.
8 What I have, I guess it's your exhibit, what page of the CC&Rs
9 are you referring to when you talk about nuisance?

10 MR. DESSAULES: 19.

11 THE COURT: Page 19.

12 MR. DESSAULES: And it talks about a noxious or
13 offensive activity carried on upon any lot, or any part of any
14 -- of the -- of the properties.

15 THE COURT: What section? Oh, 10.

16 MR. DESSAULES: Section 10.

17 (Pause)

18 THE COURT: Okay.

19 MR. DESSAULES: Homeowners associations, the lawyers
20 who represent homeowners associations, Carpenter Hazlewood,
21 are very adept at going to court and getting an injunction to
22 stop someone from committing a nuisance. You don't do it by
23 the statutory provision, which is very narrow, very confined,
24 very restrictive. And you don't certainly get to go after the
25 fact and say, well, this is really what -- our -- our -- our

1 fact pattern kind of fits into section 10 here, so just give
2 it to us. That -- that's in -- in my opinion, that's --
3 that's improper. They don't get fees for that.

4 It -- also, when you talk -- talking about
5 prevailing parties, the -- I -- as I said, I found no case
6 saying that whether -- whether in an uncontested action you
7 can be the prevailing party. I -- I agree that based on the
8 definitions, there has to be some opposition. That being
9 said, you also can't divorce the definition of prevailing
10 party from the context in which it arises. Courts make a
11 determination who the prevailing party is. People don't get
12 to self determine whether they're the prevailing party or not.

13 In -- even in the scenario that -- that Mr. Miesen
14 gave, in the -- the sports scenario where the other team
15 doesn't show up, I would submit to you that when you don't
16 show up, you're deemed to be there, you forfeit. But there's
17 still a -- there's an independent third party that says,
18 you're the winner, you're the loser. And that didn't happen
19 here. If they wanted a request for fees, they should have
20 asked for fees. They shouldn't -- not just simply add
21 something to someone's ledger.

22 And we can talk about the actual entries, as well,
23 in terms of whether they're reasonable, in terms of whether it
24 all relates to this. It -- they don't, and they're not
25 reasonable. I'm happy to go into that analysis, if you'd

1 like. But I -- of -- of -- but I have nothing else to add
2 otherwise.

3 THE COURT: Okay. Don't read anything into this,
4 I'm just -- a question has just occurred to me, but if I were
5 to conclude -- let me put it this way, it -- to get to the
6 point quickly, if I were to accept all of the association's
7 arguments except that the fees to some extent are clearly
8 excessive, what is the ruling on these motions? Do they both
9 get denied, and I send you off to the arbitrator to decide --

10 MR. DESSAULES: No.

11 THE COURT: -- or --

12 MR. DESSAULES: No, Your Honor.

13 THE COURT: Why?

14 MR. DESSAULES: This -- because --

15 THE COURT: Do I go through the --

16 MR. DESSAULES: No --

17 THE COURT: -- the billing statements and cut --

18 MR. DESSAULES: No. The Plaintiff still prevails
19 because in this case, what -- because the process that's
20 followed, it's the original judge that makes a determination.

21 THE COURT: The -- the -- I -- I'm -- I guess I
22 didn't ask my question clearly enough.

23 MR. DESSAULES: Okay.

24 THE COURT: Let's assume, despite your objection, I
25 reach a conclusion that they in fact were the prevailing

1 party, that they can do what they did here. My only concern
2 is with the fee amount itself, that in some instances, it's
3 clearly excessive. Given that, and again, don't read anything
4 into that, I'm not saying I'm going in that direction, but if
5 I were, what is the ruling on these motions?

6 MR. DESSAULES: I have no idea. We're sort of
7 entering on uncharted ter -- uncharted --

8 THE COURT: I mean, do I --

9 MR. DESSAULES: -- territory here.

10 THE COURT: Do -- do I -- do I -- hang on -- do I
11 make a -- do I go through the -- as I said, do I go through
12 the billing statements and say, this is excessive, this
13 wasn't?

14 MR. DESSAULES: That -- that isn't --

15 THE COURT: Or -- or do I send you off to see the
16 arbitrator and ask him to make a call in the first instance?

17 MR. DESSAULES: Well, arbit -- well, I would say
18 that it's -- ordinarily the Court makes the determination to
19 determine reasonableness of fees or -- although, I don't need
20 to --

21 THE COURT: Well --

22 MR. DESSAULES: -- keep hitting this point --

23 THE COURT: -- except that this -- except that this
24 is a compulsory arbitration case, and I -- the only reason
25 I've got it -- I can't tell you how many colleagues I -- that

1 have asked me, why do you have this case? It a \$4,000 case,
2 why do you have it? Because the rule says I have to rule on
3 motions for summary judgment. But on anything less than that,
4 I don't. The arbitrator rules. And I -- I -- quite frankly,
5 I'm -- the reason I'm asking the question is I don't know. I
6 hadn't thought about it until just now.

7 MR. DESSAULES: I -- I hadn't thought about it until
8 just now --

9 THE COURT: Okay.

10 MR. DESSAULES: -- either, Your Honor, I -- I --

11 THE COURT: Okay.

12 MR. DESSAULES: -- believe that if -- if you find in
13 favor of the -- that they -- that they are the prevailing
14 party, that they're entitled to an award of some kind of fees,
15 but that the fees are in some way excessive, I think that --
16 that to then punt that to the arbitrator, I think is probably
17 in -- within Your Honor's scope of deciding the motion for
18 summary judgment to say the amount of those fees that are
19 unreasonable or excessive, and I would ask for additional
20 briefing. If that --

21 THE COURT: Yeah.

22 MR. DESSAULES: -- if that's the path we go down,
23 I'd like to explain why those fees are excessive --

24 THE COURT: Okay.

25 MR. DESSAULES: -- and -- and not applicable.

1 THE COURT: Okay. All right.

2 MR. DESSAULES: But I don't believe we should go
3 down that path for the reasons I have already said.

4 THE COURT: Right. Okay. Very good. Thank you.
5 Rebuttal?

6 MR. MIESEN: Very short, Your Honor.

7 THE COURT: Why don't -- did -- it -- I -- I'm sure
8 you're going to get to it, but I -- I would really like to
9 know your response to the contention that section 10 -- you
10 seem to be relying on section 10, and it doesn't get you where
11 you got.

12 MR. MIESEN: Well, section 10 uses language like
13 offensive activity --

14 THE COURT: Right.

15 MR. MIESEN: -- annoyance. I mean, even in a --
16 even in the definition of harassment, the standard for the
17 injunction is that they are harassed and annoyed. So I think
18 that right there we've got a connection. And it's certainly
19 by proving up the -- the injunction to the judge in that case,
20 the standard we proved was harassed and annoyed. I think
21 anybody who's got an -- if the Court determines that an
22 injunction should be entered, then they have made the
23 determination that there's been some offensive behavior,
24 because harassment is by definition -- it's axiomatic, it is
25 offensive.

1 THE COURT: Yeah, but let -- and I'm sorry I
2 overlooked it, but let's talk about it now, section 10 refers
3 to an annoyance or nuisance to the neighborhood.

4 MR. MIESEN: Uh-huh.

5 THE COURT: Interference with the quiet enjoyment of
6 each owner's respective townhouse, or which in any way
7 increases the rate of insurance. I haven't seen anything
8 about rates -- insurance rates increasing, so let's focus on
9 the first two, nuisance to the neighborhood and interference
10 with each owner's enjoyment. What we've got here, do we not,
11 is a case where -- where a couple of owners have been annoyed,
12 but we don't have anything about the entire neighborhood being
13 frustrated or annoyed or subject to noxious activity. Doesn't
14 section 10 pertain to activity that would affect everyone and
15 not just a couple of people? And if it -- and if the activity
16 affects a couple of people, isn't Mr. Dessaulles correct that
17 the remedy then is for those people to get their own
18 injunctions, rather than the association?

19 MR. MIESEN: Well, I think there was a two part
20 question.

21 THE COURT: Okay.

22 MR. MIESEN: So --

23 THE COURT: The -- there may be more than that, but
24 go ahead.

25 MR. MIESEN: Yeah. I'll try to piece this out.

1 Offend -- no offensive activity shall be carried up -- on --
2 upon any lot or any part of the properties. That's one.
3 Harassing is offensive. That's what I suggest to this Court.
4 In addition, nuisance to the neighborhood, Mr. Dessaulles is
5 relying on this nuisance idea, but there's also this, which
6 shall in any way interfere with the quiet enjoyment of each of
7 the owners of his respective townhouse. I don't -- I -- the
8 way I read that is not that all of the owners are losing their
9 -- their right to quiet enjoyment, but any one of the owners
10 could be losing his right to quiet enjoyment. But in either
11 case, you still have this offensive activity. And I go back
12 to if harassment is not offensive, what is -- what is it? I
13 mean --

14 THE COURT: Okay.

15 MR. MIESEN: -- it is by definition.

16 THE COURT: Okay.

17 MR. MIESEN: Your other point, let's see if I can
18 remember it, now that I went through that, was -- well, since
19 I went all through that, I lost the second part of the
20 question. But the other thing I wanted to say was, to your
21 question regarding whether or not you would rule, assuming in
22 the -- in the hypothetical that you said, you know what, the
23 -- the association's entitled to fees as the prevailing party,
24 but how much is that going to be? I think you're correct. I
25 think to show clearly excessive, it's an evidentiary showing.

1 THE COURT: Okay.

2 MR. MIESEN: And -- and so I think the arbitrator
3 would be the appropriate --

4 THE COURT: Could I -- could I do it? Could I do it
5 in the context, as -- as -- as Mr. Dessaulles at least sort of
6 suggested, if not expressly suggested, in the context of
7 deciding these motions could I ask for evidence to be
8 presented on that -- on that point, and save you the trouble
9 of going back to the arbitrator?

10 MR. MIESEN: Certainly, if you would like to go
11 through that. I -- we -- I think you're right. I --

12 THE COURT: I -- I'm just wondering if there's --

13 MR. MIESEN: -- but I -- my point is --

14 THE COURT: -- any jurisdictional problem. That's
15 --

16 MR. MIESEN: Oh.

17 THE COURT: -- that's my concern is that -- that we
18 do that --

19 MR. MIESEN: I see.

20 THE COURT: -- and then the loser says, wait a
21 minute, you didn't have jurisdiction to decide that issue,
22 and --

23 MR. MIESEN: Because of the compulsory arbitration
24 --

25 THE COURT: Yeah.

1 MR. MIESEN: -- rule?

2 THE COURT: Yeah. And -- and -- and I -- I'm asking
3 you folks to think of the -- off the top of your head and
4 that's --

5 MR. MIESEN: Yeah. I don't --

6 THE COURT: -- not fair, to -- understand that it --
7 it's -- you know, it just may be an interesting discussion,
8 and it won't get any further than that.

9 MR. MIESEN: I don't know about the jurisdictional
10 issue, Your Honor --

11 THE COURT: Yeah.

12 MR. MIESEN: -- without having to dig into it a
13 little bit more.

14 THE COURT: Yeah. Yeah. Okay.

15 MR. MIESEN: But I think that -- I think that it
16 does require a showing. And so there would need to be some
17 evidence to -- by the Plaintiff in this case to show that the
18 fees were clearly excessive. And I think that could be done
19 by the arbitrator, in a -- in a compulsory arbitration case,
20 but I don't know if this Court were to do it, if that creates
21 jurisdiction --

22 THE COURT: Yeah.

23 MR. MIESEN: -- issues to answer that.

24 THE COURT: Okay. Okay. All right. Anything else?

25 MR. MIESEN: That's all I have, Your Honor.

1 THE COURT: Okay. Thank you. Thank you for your
2 briefing and your presentation. I appreciate it.

3 And now I'm going to do something that I don't do --
4 well, I used to do it all the time in Family Court, but I
5 seldom have the opportunity to do it here. And I -- please
6 don't take anything I say to be critical, or to be insulting,
7 it is a heartfelt suggestion. This case needs to settle.
8 There isn't -- it -- it in one sense it's a lot of money, in
9 another sense it isn't. But here's -- here's what I'm
10 thinking.

11 I think the association has a serious risk that it
12 -- it's going to wind up being the losing party in this case,
13 and that in addition to refunding the \$3800 or whatever it is,
14 they're going to be liable to some attorney's fees. The
15 Plaintiff runs the risk of losing this case by winning,
16 because the Plaintiff's claim for attorney's fees in this case
17 arises under 12-341.01(a), not under the terms of the CC&Rs.
18 But even if it did, even if it did arise under the CC&Rs, the
19 standard for deciding what is a reasonable amount of
20 attorney's fees is the same.

21 And I don't know what the Plaintiff's attorney's
22 fees are now, but if this goes on, there is a chance that the
23 Plaintiff will wind up having to eat more in attorney's fees
24 than the Plaintiff gets back from the association. I --
25 again, I don't know what the fees are, they might be quite

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C E R T I F I C A T E

I, KIMBERLY C. McCRIGHT, CET, certified electronic transcriber, do hereby certify that the foregoing pages 1 through 45 constitute a full, true, and accurate transcript from electronic recording of the proceedings had in the foregoing matter.

DATED this 28th day of November, 2016.

/s/ Kimberly C. McCright
Kimberly C. McCright, CET
Certified Electronic Transcriber

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-012434

07/27/2016

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT
D Arrieta
Deputy

PATRICIA BOCCHINO

JONATHAN A DESSAULES

v.

FOUNTAIN SHADOWS HOMEOWNERS
ASSOCIATION

CHAD PHILIP MIESEN

DEBORA L VERDIER

MINUTE ENTRY

Motions for summary judgment were filed on behalf of plaintiff Patricia Bocchino and defendant Fountain Shadows Homeowners Association. The success of both motions turns on whether an injunction against Bocchino that the Association obtained is viable. For reasons explained below, that injunction is unconstitutionally vague and overbroad, and therefore, it is unenforceable. Because of that, the Bocchino motion must be granted, and the Association's motion must be denied.

Relevant Facts.

At an ex parte proceeding without notice, the Association persuaded the Manistee Justice Court (Surprise, Arizona) to issue an Injunction Against Workplace Harassment against Bocchino, who at the time owned and resided in a condominium unit located in a community that was governed by the Association and subject to a set of recorded covenants, conditions, and restrictions. [Def's. Fact State. (3/28/16) at 3-4, paras. 1-5, 8 and Ex. B] In support of the injunction, the Association maintained that Bocchino had violated those CC&Rs by engaging in "harassing" and "offensive behavior." [*Id.* at 4, para. 6] The injunction, among other things, prohibits Bocchino from "go[ing] . . . near" three named persons and four separate addresses, one of which is the address for the Association that is on file with the Arizona Corporation

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Commission, and another of which is the address for the main branch of the City of Glendale library (at which, the court was told at a hearing, the Association conducts meetings from time to time). [*Id.*, Ex. B]

The Association assessed Bocchino \$3,887.28 unilaterally for the attorney's fees it claims to have expended to obtain the ex parte injunction and then imposed a lien on her property in that amount. [Pltf's. Fact State, (2/9/16) at 5, para. 31; Def's. Fact State. (3/28/16) at 3/31] In doing so, the Association relied on a provision of the CC&Rs that permits the recovery of attorney's fees when the Association "prevails" in any legal proceeding that requires the Association to "employ[] an attorney or attorneys" in an effort "to enforce compliance with or specific performance of the terms and conditions of [the CC&Rs]." [Def's. Fact State. at 5, para. 33]¹

Bocchino later sold her condominium unit. Because of the lien recorded by the Association, at the closing of the sale, the assessed attorney's fees were deducted from the proceeds that she otherwise would have received. [Pltf's. Fact State. (2/9/16) at 5, paras. 29, 31; Def's. Fact State. (3/28/16) at 3, paras. 29, 31] Bocchino then filed the complaint in this action, seeking to recover the attorney's fees that the Association had assessed.²

Applicable Law.

To survive constitutional scrutiny, an injunction must be specific enough so that "uncertainty and confusion on the part of those faced with injunctive orders" is prevented, so that "the possible founding of a contempt citation on a decree too vague to be understood" is avoided, and so that a reviewing court can "know precisely what it is reviewing." *Schmidt v. Lessard*, 414 U.S. 473, 475-76 (1974); *see also Granny Goose Foods, Inc. v. Brotherhood of Teamsters, Local No. 70*, 415 U.S. 423, 444 (1974) ("[T]hose against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits"). "The judicial contempt power" that is available when injunctions are violated "is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one." *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). After all,

¹ Each week day that courts are open throughout Arizona, many citizens obtain injunctions against harassment and similar orders without the assistance of an attorney. The three individuals named as protected persons in the injunction faced no impediment to proceeding in the same way. The record fails to establish why, therefore, it was reasonable to retain attorneys given the nature of the conduct alleged, including why it was reasonable to send two attorneys to an uncontested, ex parte hearing and then assess Bocchino for both attorneys' time charges. Whether the attorneys' fees assessed against Bocchino were reasonable in the circumstances presented is not, however, an issue that the court must decide before reaching the result here.

² Although the amount of Bocchino's claimed damages subjects this action to compulsory arbitration, because the Bocchino motion seeks "dispos[ition] of the entire case," the motion is for the assigned judge and not the court-appointed arbitrator. Ariz. Rs. Civ. P. 72, 74(c)(1)(E).

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violation of an injunction can lead to arrest and incarceration. *E.g.*, A.R.S. §12-1810(N); *Alderwoods Group, Inc. v. Garcia*, 682 F.2d 958, 966 (11th Cir. 2012) (referring to incarceration as a “traditional sanction[] for coercing compliance with an injunction”). Thus, before a court may find one in contempt, “the underlying decree [must] set forth the terms of compliance in clear, specific and unambiguous terms so that the person charged with obeying the decree will readily know exactly what duties and obligations are imposed upon him.” *Munari v. Hotham*, 217 Ariz. 599, 604, ¶22, 177 P.3d 860, 865 (App. 2008) (*quoting with approval Ex parte Chambers*, 898 S.W.2d 257, 260 (Tex. 1995) (alteration in original)); *see also BMO Harris Bank Nat’l Ass’n v. Bluff*, 229 Ariz. 511, 514, ¶7, 277 P.3d 216, 219 (App. 2012) (contempt requires a finding that a party “violated a specific and definite order of the court”).

Independent of that, an injunction also fails to pass constitutional muster when it proscribes activities in which people have a right to engage. *See* A.R.S. §12-1810(L)(2) (injunction against workplace enforcement may not enjoin “activities that are constitutionally protected or otherwise protected by law”); *see also Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 765 (1994); *United States v. Jones*, 677 F.Supp. 238, 240 n.2 (S.D.N.Y. 1988); *LaFaro v. Cahill*, 203 Ariz. 482, 487, ¶17, 56 P.3d 56, 61 (App. 2002).

Prohibiting Bocchino from going “near” a location fails to provide her (or anyone else, including a reviewing court) with fair, precise, definite notice about where she is and is not permitted to travel. Indeed, public records establish that the condominium unit in which she resided might reasonably be considered “near” at least one, and perhaps two, of the addresses identified in the injunction, meaning that she would have violated the terms of the injunction whenever she ate a meal, talked on the telephone, or went to sleep in her unit.

Apart from that, even if one were to assume that Bocchino engaged in conduct that violated the CC&Rs sufficient to permit the Association to seek injunctive relief, the injunction issued by the justice court goes far beyond enjoining harassing and offensive behavior. For example, the injunction prohibits Bocchino from visiting a public library, even at times when the individuals named as protected persons in the injunction are not present (as if that should matter). The injunction also prohibits Bocchino from walking back and forth in front of the Association’s office while, without impeding anyone’s ability to enter or leave, handing out leaflets that are critical of actions taken by the Association’s directors or asking passersby to join efforts to remove one of the directors. In that way, the injunction, as it is written, operates as an impermissible restriction on First Amendment rights. *See e.g., Madsen*, 512 U.S. at 765-66.

The assessment of attorney’s fees assumes that the Association was the “prevailing party” in the justice court action. [Def’s. Fact State. at 5, para. 33] In normal English usage, “prevail” contemplates some sort of resistance or opposition, which the Association did not experience when obtaining the injunction. *See e.g., Webster’s New International Dictionary of the English*

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Language (Unabridged) 1797 (3d ed. 2002) (defining “prevail” to mean “to gain victory . . . triumph – use with *over* or *against*” (italics in original)); *The American Heritage Dictionary of the English Language* 1391 (4th ed. 2000) (defining “prevail” to mean “triumph” as in “prevail[ing] against the enemy”).³ Under no relevant authority provided by the Association, nor any that the court’s own research uncovered, does success in an uncontested, ex parte proceeding for which the would-be opponent is, as here, not given notice make one a prevailing party. Second, and in any event, as a matter of mere common sense, one “prevails” only when one achieves success.⁴ The Association, however, obtained an injunction that is unenforceable. That surely was not the result that the Association was intent on achieving when it initiated the action against Bocchino, but in any event, by no recognized standard does the Association’s failure to obtain an injunction that complies with constitutional requirements transform the Association into a successful, and thus, prevailing party in that action.

In short, no sound reason permits recognizing the Association as the prevailing party for purposes of the injunction. And, if the Association is not a prevailing party, then by the express terms of the CC&Rs on which the Association relies, it has no basis for recovering any attorney’s fees incurred in connection with the injunction.

IT IS ORDERED:

1. The motion for summary judgment filed on behalf of plaintiff Patricia Bocchino is granted, and the motion for summary judgment filed on behalf of defendant Fountain Shadows Homeowners Association is denied.

2. Bocchino is entitled to judgment in her favor and against the Association in the amount of \$3,887.28.

³ The CC&Rs constitute a contract. *E.g., Ahwatukee Custom Estates Mgt. Ass’n v. Turner*, 196 Ariz. 631, 634, ¶5, 2 P.3d 1276, 1279 (App. 2000). The interpretation of a contract is a question of law. *E.g., Chandler Medical Bldg. Partners v. Chandler Dental Group*, 175 Ariz. 273, 277, 855 P.2d 787, 791 (App. 1993). Words of a contract are given “their normal, ordinary meaning.” *Bekins Van Lines Co. v. Hartford Ins. Group*, 27 Ariz. App. 655, 659, 557 P.2d 1087, 1091 (App. 1976). When determining the ordinary meaning of contract terms, courts may rely on reputable dictionaries. *See e.g., Horton v. Mitchell*, 200 Ariz. 523, 527, ¶18, 29 P.3d 870, 875 (App. 2001) (using dictionary to assist in determination of ordinary meaning of contract terms). *Webster’s (Unabridged) New International*, cited above, is the dictionary cited most often in opinions of the United States Supreme Court. Jeffrey L. Kirchmeier and Samuel A. Thumma, *Scaling the Lexicon Fortress: The United States Supreme Court’s Use of Dictionaries in the Twenty-First Century*, 94 Marq. L. Rev. 77, 94 (2010).

⁴ “Common sense is as much a part of contract interpretation as is the dictionary or the arsenal of canons.” *UIP Ltd., L.L.C. v. Lincoln Nat’l Life Ins. Co.*, No. CV 09-0006-PHX-NVW, 2009 WL 4497233, at *9 (D. Ariz. Nov. 30, 2009) (citation, internal quotation marks, and alteration omitted).

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3. This is an action arising out of a contract. Therefore, Bocchino may, within 30 days of the entry of this order, submit an application for an award of attorney's fees and a statement of costs. If either an application or statement is submitted that the Association wishes to oppose, its response must be filed not later than 25 calendar days after service of Bocchino's papers. Bocchino may not file a reply unless requested to do so by the court.

Before submitting an application or statement, Bocchino must undertake good faith efforts to negotiate a stipulation with the Association regarding the amounts to be awarded. Such a stipulation will NOT preclude the Association from raising any issue or asserting any argument on appeal other than the reasonableness of the amounts awarded.

4. Not later than 30 days after the entry of this order, Bocchino must submit a proposed form of judgment, leaving blank spaces for attorney's fees and taxable costs. That form of judgment may incorporate by reference what is said here, but otherwise it should be confined to the amounts being awarded along with Rule 54(c) language