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Attorneys for Plaintiff

By: Clint G. Goodman, Bar No. 024188
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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

TURTLE ROCK III HOMEOWNERS
ASSOCIATION, an Arizona non-profit
corporation;

Plaintiff,

vs.

LYNNE A. FISHER, record owner;

Defendant.

No. CV2015-095897

**APPLICATION FOR ATTORNEY
FEES AND COSTS**

**Assigned to the Honorable: David M.
Talamante**

Plaintiff TURTLE ROCK III HOMEOWNERS ASSOCIATION (“Plaintiff”), pursuant to this Court’s April 15, 2016 Minute Entry Ruling, hereby files its Application for Attorney Fees and Costs. An award of attorneys’ fees and costs as set forth herein are justified for the following reasons:

APPLICATION FOR ATTORNEY FEES

1. Plaintiff is a Community Association and Defendant(s)’ property is subject to a Declaration of Covenants, Conditions and Restrictions, recorded with the Pinal County Recorder’s Office at Instrument No. 2006-1162796 (“Declaration”). The Declaration provides that the Association is entitled to an award of attorneys’ fees pursuant to Article XIII, Section 2 of the

1 Declaration, which states:
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3 In the event the Board employs an attorney or attorneys...to enforce compliance
4 with or specific performance of the terms and conditions of this Declaration...whether or
5 not a lawsuit is filed, such owner agrees to pay reasonable attorneys' fees and costs
6 thereby incurred.

7 2. The Declaration is "a contract between a subdivision's property owners as a whole
8 and individual lot owners." *Ahwatukee Custom Estates Mgmt. Ass'n, Inc. v. Turner*, 196 Ariz. 631,
9 ¶5, 2 P. 3d 1276, 1279 (App. 2000). "A contractual provision for attorneys' fees will be enforced
10 according to its terms." *Chase Bank of Arizona v. Acosta*, 179 Ariz. 563, 575, 880 P. 2d 1109, 1121
11 (App. 1994). A trial court therefore lacks the discretion to refuse to award fees and costs pursuant to
12 a fee provision in the Declaration that it otherwise may exercise when fees are requested under a
13 statute such as A.R.S. §12-341.01(A). *McDowell Mountain Ranch Cmty. Ass'n v. Simons*, 216 Ariz.
14 266, ¶14, 165 P. 3d 667, 670 (App. 2007).

15 3. When a prevailing party requests fees that are "facially reasonable" pursuant to a
16 contractual provision awarding "all" costs and expenses, as here, the opposing party "has the burden
17 to show that they were clearly excessive. If such a showing is not made, then the [prevailing party]
18 is entitled to receive its full attorneys' fees." *McDowell*, 216 Ariz. at 20 (emphasis added). Even in
19 the context of "reasonable attorney fees" awarded under A.R.S. §12-341.01, "once a party
20 establishes its entitled to fees and meets the minimum requirements in its application and affidavit
21 of fees, the burden shifts to the party opposing the fee award to demonstrate the impropriety or
22 unreasonableness of the requested fees." *Nolan v. Starlight Pines Homeowners Ass'n*, 216 Ariz. 482,
23 ¶38, 167 P. 3d 1277, 1286 (App. 2007). No less can be required when the Declaration provides for
24 the recovery of "all" attorneys' fees.
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28 4. *Assuming arguendo* Plaintiff is not entitled to attorney fees pursuant to an express

1 contractual provision, Plaintiff is entitled to attorney fees pursuant to A.R.S. §12-341.01.

2 5. Undersigned counsel's China Doll affidavit hereinunder demonstrates (1) reasonable
3 billing rates, (2) hours reasonably expended on litigation, (3) agreed upon billing rates, (4) detailed
4 records of what was done and how much time was allotted, and (5) the type of legal services
5 provided. Accordingly, Plaintiff has met its burden and fees and should be entered pursuant to
6 *Schweiger v. China Doll Restaurant, Inc.*, 673 P. 2d 927 (1983).
7

8 AFFIDAVIT OF ATTORNEY FEES

9 1. Clint G. Goodman being duly sworn and upon his oath, states as follows:

10 2. I am the attorney for Plaintiff in this matter and have provided valuable and necessary
11 services on behalf of the Plaintiff.
12

13 3. I am licensed by the Arizona State Bar to practice law in Arizona and am
14 knowledgeable as to what constitutes reasonable attorney fees in legal proceeding.

15 4. I make this Affidavit upon my personal knowledge, being duly authorized to do so,
16 on behalf of Plaintiff. I am over the age of 21 and am otherwise competent to testify to the facts
17 stated in the Affidavit.
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19 5. The total attorney fees are **\$10,839.70**. This total amount also includes time spent
20 preparing this Affidavit of Fees and Statement of Costs, Application for Monetary Penalties and
21 Proposed Form of Judgment.

22 6. An itemization of the time spent in this matter, with detailed description, hourly rates,
23 and the like are set forth in the table below.
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25 7. The preferred attorney and paralegal fee rates and amount of the requested attorneys'
26 fees are as follows: attorney Clint G. Goodman \$275 per hour; attorney Scott L. Potter \$265 per
27 hour; paralegals Laura Engelsmen, Kirsten Siebert and Mindy Zeising are \$125 per hour.
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1 8. The rates above were arrived at after the consideration of customary fees in the
 2 community for similar services, the time spent on the community association matters, the attorneys'
 3 and paralegals' experience in community association matter, the skill displayed by the attorneys and
 4 paralegals, the amount of responsibility assumed by the attorneys and paralegals in connection with
 5 the matter and the Fee Agreement signed by Plaintiff. Accordingly, the fees expended in this case
 6 are reasonable.
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8 9. The table is as follows:
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Date	User	Note	Quantity	Price	Total
9/16/15	Clint Goodman	Prepared enforcement demand letter, including demand to pay all outstanding dues, penalties and other charges;	1	275	275
9/23/15	Laura Engelsman	Phone call with Ms. Fisher regarding payment.	0.2	125	25
10/1/15	Laura Engelsman	Received and reviewed Fisher's response to violation notice; prepared correspondence to community manager; emailed to same.	0.5	125	62.5
10/1/15	Clint Goodman	Discussions with client; received and reviewed client forward of Fisher letter; reviewed file; strategized case procedure;	0.5	275	137.5
10/13/15	Clint Goodman	Reviewed file; reviewed Fisher ledger; prepared and provided update for client with legal guidance;	0.4	275	110
10/29/15	Clint Goodman	Received and reviewed updates from client; researched contact information; telephone call to client regarding status; preparing file for next steps	1	275	275

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10/30/15	Clint Goodman	Prepared Complaint; prepared Certificate of Compulsory Arbitration; prepared Summons; prepared Request for Order to Show Cause; prepared Motion for Order to Show Cause; prepared Order to Show Cause; prepared Civil Cover Sheet; discussions with client regarding same;	4.5	275	1237.5
10/30/15	Scott Potter	Met with Greg Wahl to review the verified complaint. Revised complaint.	0.4	265	106
11/2/15	Scott Potter	Revised complaint and supporting documents. Strategized with Mr. Goodman regarding FDCPA issues. E-mail to Greg Wahl regarding complaint.	0.4	265	106
11/3/15	Kirsten Siebert	Prepared Summons, Complaint, Certificate of Compulsory Arbitration, Application for Preliminary and Permanent Injunction, Request for Order to Show Cause Hearing and Purposed Order to Show Cause for Filing and Service with Runner.	0.2	125	23.6
11/3/15	Scott Potter	Received and reviewed e-mail from Greg Wahl regarding changes to complaint. Revised complaint. Replied to e-mail. Drafted letter to Ms. Fisher regarding continuing violation and outstanding balance on account.	0.6	265	159
11/9/15	Scott Potter	E-mail correspondence from Greg Wahl regarding status of complaint and recent payment. Replied to e-mail. Phone call from Greg regarding same.	0.5	265	132.5
11/17/15	Clint Goodman	Detailed discussions with attorneys and Greg regarding status, strategy and settlement offer; reviewed court entries;	0.6	275	165

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11/17/15	Scott Potter	E-mail to Greg Wahl regarding settlement offer.	0.2	265	53
11/20/15	Clint Goodman	Telephonic meeting with client about settling lawsuit; strategized additional arguments; interoffice attorney meeting regarding moving forward;	1	275	275
11/25/15	Scott Potter	Phone call to Lynn Fisher to discuss settlement proposal. Prepared settlement proposal letter.	0.6	265	159
11/25/15	Clint Goodman	Received and reviewed emails from Greg; discussions with client and manager regarding status and case strategy;	0.4	275	110
11/25/15	Kirsten Siebert	Emailed and called Process Serve to follow up on Signed Order and service status	0.2	125	23.6
11/25/15	Scott Potter	Phone call to Lynn Fisher regarding status of lawsuit and settlement possibility.	0.2	265	53
12/7/15	Scott Potter	Reviewed pleadings and service. E-mail to Verl Curtiss regarding status of lawsuit and settlement offer.	0.3	265	79.5
12/7/15	Clint Goodman	Discussions with Verl regarding status of file; reviewed same; reviewed documents in file and court deadlines; discussions with Scott regarding case status and summary;	0.7	275	192.5
12/9/15	Scott Potter	Phone call to Lynne Fisher regarding status of settlement offer. Reviewed complaint in anticipation of OSC hearing.	0.3	265	79.5
12/21/15	Kirsten Siebert	Reviewed matter with Attorneys, Emailed Opposing advising them an Answer was never filed.	0.2	125	25
12/29/15	Kirsten Siebert	Ran TLO, Military and Pacer checks, Drafted Affidavit and Application for Default, Emailed attorney for review.	0.5	125	62.5

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12/30/15	Kirsten Siebert	Discussed matter with attorney, Finalized Affidavit and Application for default, Efiled Affidavit and mailed a copy to opposing. Reviewed Bankruptcy details	0.3	125	37.5
12/30/15	Clint Goodman	Reviewed case status; confirmed no answer filed; discussions with staff; reviewed opposing counsel correspondences and prepared responses to same; received and reviewed draft entry of default; directed same be filed after editing same; reviewed exhibits; reviewed notes; began discovery stages assuming default is not entered;	1.5	275	412.5
1/4/16	Scott Potter	E-mail from Court regarding dates for return hearing. Replied to e-mail.	0.2	265	53
1/7/16	Clint Goodman	Telephonic with opposing counsel regarding resolution of case;	0.5	275	137.5
1/7/16	Clint Goodman	Received new photographs; reviewed court docket to confirm whether answer is filed;	0.2	275	55
1/11/16	Clint Goodman	Received and reviewed demand for jury trial; telephoned law office to determine if resolution can be reached; prepared objection to request for jury trial;	0.8	275	220
1/12/16	Clint Goodman	Received and reviewed draft objection to demand for jury trial; finalized Fisher objection to demand for jury trial;	0.3	275	82.5
1/12/16	Kirsten Siebert	Drafted Objection to Demand for Jury Trial, Emailed Attorney for review; Revised and Finalized Objection to Demand for Jury Trial, E-filed Objection and Mailed a copy to Opposing Counsel	0.6	125	75

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1/20/16	Clint Goodman	Prepared for, travel to and attended return hearing; reviewed photographs and pleadings in preparation for discovery/disclosure; prepared and sent letter to opposing counsel regarding 408 settlement offers;	1.5	275	412.5
1/21/16	Clint Goodman	Reviewed file; prepared 408 letter;	0.8	275	220
1/25/16	Clint Goodman	Discussions with opposing counsel; prepared and sent final settlement demand;	0.3	275	82.5
1/25/16	Kirsten Siebert	Received and Reviewed Minute Entry from court, Calendared all deadline for attorney	0.3	125	37.5
2/26/16	Clint Goodman	Prepared for and attended status conference with the court; confirmed evidentiary hearing for April 15;	0.5	275	137.5
3/1/16	Mindy Zeising	Edit Initial Rule 26.1 Disclosure Statement and send to client	0.6	125	75
3/1/16	Mindy Zeising	File Request for Clarification with the court and mail to defendant	0.4	125	50
3/1/16	Mindy Zeising	Gather and organize exhibits for Initial Disclosure Statement	1.8	125	225
3/1/16	Clint Goodman	Prepared and efiled Request for Clarification as to evidentiary hearing and scope;	0.7	275	192.5
3/1/16	Clint Goodman	Prepared 26.1 Disclosure Statement; gathered documents; prepared and provided supplemental correspondence to client regarding additional information and exhibits; received and reviewed court minute entry orders with dispositive deadlines;	2.7	275	742.5
3/2/16	Kirsten Siebert	Reviewed matter, docketed upcoming deadlines and status	0.4	125	50
3/3/16	Mindy Zeising	Finalize and mail Initial Rule 26.1 Disclosure Statement	0.4	125	50
3/17/16	Clint Goodman	Prepared supplemental 26.1 disclosure statement;	0.7	275	192.5

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3/25/16	Clint Goodman	Prepared draft Statement of Exhibits; prepared comprehensive Pretrial Conference Memorandum for filing with the court per the court orders; sent the same to opposing counsel for review;	1.5	275	412.5
4/4/16	Kirsten Siebert	Drafted Notice of exhibits and Prepared Exhibits for upcoming hearing, gave to Attorney for review	0.8	125	100
4/5/16	Clint Goodman	Discussions with opposing counsel; received and reviewed emails from client; discussions with manager; continued preparation of exhibits;	0.6	275	165
4/7/16	Scott Potter	Worked on fisher exhibits.	0.3	265	79.5
4/8/16	Clint Goodman	Discussions with opposing counsel; received and reviewed letter; prepared and replied to letter from attorney regarding possible settlement agreement;	0.4	275	110
4/8/16	Kirsten Siebert	Discussed matter with attorney, Prepared Clerks Copy to go with runner service to court. E-filed Notice and Exhibits. Received and Reviewed 150 Day Order and docketed upcoming dates.	0.8	125	100
4/12/16	Clint Goodman	Discussions with opposing counsel; finalized and filed pretrial statement;	0.6	275	165
4/14/16	Kirsten Siebert	Made additional copies, drafted cover page and Exhibit Index and Prepared all 4 binders for upcoming hearing	0.8	125	100
4/15/16	Clint Goodman	Witness prep and meeting with client; prepared for, travel to and attended trial;	4.5	275	1237.5
4/19/16	Kirsten Siebert	Received and Reviewed Order, docketed upcoming events within matter and uploaded document	0.4	125	50

4/19/16	Clint Goodman	Received and reviewed order from court regarding violations, fines and attorney fees; prepared and sent client order and request for more information;	0.4	275	110
4/21/16	Clint Goodman	Prepared notice of lodging proposed order and judgment; prepared proposed order and judgment; prepared application and affidavit for attorney fees; prepared statement of costs; prepared application for monetary penalties;	2.7	275	742.5
TOTAL					10839.7

10. Pursuant to ARCP 80(i), I declare under penalty of perjury that the foregoing is true and correct.

STATEMENT OF COSTS

1. The undersigned is an attorney for Plaintiff and has personal knowledge that the following costs have been incurred and expended by the Plaintiff.

2. Costs are awardable pursuant to the express provisions of the Declaration (see above provisions and legal support, incorporated herein by this reference) and A.R.S. §12-341.

3. Costs being sought total **\$489.36** and are as follows:

Date	Price	Note
9/17/15	50	Process server - posting
9/17/15	6.74	Certified Mail postage
11/3/15	319	Filing Fee- Summons and Complaint
11/30/15	55	Personal Service- Nationwide
12/30/15	6	Efiling Affidavit and Application for entry of Default
12/30/15	0.49	Postage for Mailing Aff. and App. to opposing
1/12/16	6	E-filed Objection to Defendants Demand for Jury Trial
1/12/16	0.49	Postage mailing copy of Objection to opposing Counsel
3/1/16	6	eFiling Fee - Request for Clarification
3/1/16	0.49	Postage - Request for Clarification
3/3/16	7.15	Postage - Initial Disclosure Statement
4/8/16	6	AZ Turbo Court Electronic Filing Fee
4/8/16	20	Rush Courier Fee

4/13/16	6	AZ Turbo Court Electronic Filing Fee - Joint Pretrial Statement
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4. Per the Declaration, all costs, both taxable and non-taxable, are awardable.

5. Pursuant to ARCP 80(i), I declare under penalty of perjury that the foregoing is true and correct.

DATED this 21st day of April, 2016

GOODMAN LAW OFFICES, P.C.

/s/ Clint G. Goodman

Clint G. Goodman, Esq.
Scott L. Potter, Esq.

ORIGINAL of the foregoing e-filed this same day with:

The Clerk of the Court

COPY mailed this same day to:

Mr. Roger Wood
Law Offices of J. Roger Wood
4700 S. Mill Avenue, Suite 3
Tempe, Arizona 85282
Attorneys for Defendant

/s/ Clint G. Goodman

By: _____

