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10 *Attorneys for Defendant*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 TURTLE ROCK III HOMEOWNERS
14 ASSOCIATION, an Arizona non-profit
15 corporation,

16 Plaintiff,

17 vs.

18 LYNNE A. FISHER,

19 Defendant.
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Case No. CV2015-095897

**DEFENDANT'S OBJECTION
TO PLAINTIFF'S
APPLICATION FOR
MONETARY PENALTIES**

23
24 Defendant, Lynne A. Fisher ("Ms. Fisher" or "Defendant"), by and
25 through the undersigned attorney, hereby objects to the Plaintiff's Application
26 for an Award of Monetary Penalties. As presented at the evidentiary hearing in
27
28

1 this matter, the Association is not entitled to such an award for two reasons: 1)
2
3 the Association did not follow its own recorded deed restrictions nor did it
4
5 follow Arizona statute in providing proper notice before imposing penalties on
6
7 the Defendant; and 2) the Association has no legal basis to assess the Defendant
8
9 daily fines or penalties as such fines are not reasonable and there is no
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11 contractual basis to impose fines on a daily basis.

12 The following is supported by the evidence presented at the evidentiary
13
14 hearing and the following memorandum of points and authorities.

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. The Association's Fines and Penalties Were Issued Contrary to Arizona 17 Law

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19 At the evidentiary hearing in this matter, the Association's presented no
20
21 evidence that it had complied with the following:

22 **After notice and an opportunity to be heard**, the board of directors may
23 impose reasonable monetary penalties on members for violations of the
24 declaration, bylaws and rules of the association... Notice pursuant to this
25 subsection shall include information pertaining to the manner in which
26 the penalty shall be enforced.

27 **Emphasis added.** See A.R.S. §33-1803(B). The Association's evidence at trial
28 showed that no such notice was provided the Defendant before the fines were

1 imposed. The Association's habit was to send a second notice to Ms. Fisher
2 prior to the expiration of the required 30 day notice (per the CC&Rs, Trial
3 Exhibit 1). Then, at the time of the second notice (day 20 of the 30 day notice
4 period), the fine would be imposed and added to her account ledger (See Trial
5 Exhibit 3). This consistent habit and practice did not comply with the law and
6 should work to invalidate any and all such penalties.
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12 II. The Association's Attempt to Levy Daily Fines Against the Defendant are
13 Neither Reasonable nor Authorized by the Association's Governing
14 Documents

15 Arizona law regarding the imposition of fines and penalties is clear: any
16 penalties issued to a homeowner (here, the Defendant) must not only be issued
17 after "notice and opportunity to be heard" but such fines must be reasonable.
18 See A.R.S. §33-1803(B). In addition to the timing of the imposition of the fines,
19 the Association is also seeking to collect daily fines for Ms. Fisher's non-
20 compliance. However, such fines are neither reasonable nor authorized by any
21 of the Association's governing documents.
22
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24

25 No evidence of the reasonable nature of the fines was presented at trial
26 and when asked, the Association's witness (board member) could not produce
27
28

1 or recall that the Association's documents provided for such daily fines.
2
3 Nothing presented at the evidentiary hearing and nothing in the Association's
4 governing documents presented in its later-filed Application detailed any right
5 to collect such daily penalties.
6

7
8 For the above reasons, the Defendant asks that the Court deny the
9 Association's application for the award of penalties and that it take nothing
10 hereby.
11

12 RESPECTFULLY SUBMITTED this 11th day of May, 2016

13
14 The Law Offices of J. Roger Wood, PLLC

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16
17 By: /s/ J. Roger Wood, Esq.
18 J. Roger Wood, Esq.
19 Erin S. Iungerich, Esq.
20 4700 South Mill Avenue, Suite 3
21 Tempe, Arizona 85282
22 *Attorneys for Defendant Fisher*

23 **Certificate of Mailing:**

24 Original of the foregoing filed
25 May 11, 2016, with:

26 Superior Court Maricopa County
27 Turbo Court
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Copies of the foregoing mailed
May 11, 2016, to:

Clint Goodman, Esq.
Scott Potter, Esq.
Goodman Law Offices
4140 East Baseline Road, Suite 101
Mesa, Arizona 85206
Attorney for the Plaintiff Association

By: /s/ JRW