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Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI COUNTY**

Village of Oakcreek Association,
Plaintiff,

v.

**Lance E. Bonham; JOHN DOES I-V,
inclusive; JANE DOES I-V, inclusive;
BLACK CORPORATIONS I-V,
inclusive; WHITE PARTNERSHIPS I-
V, inclusive; Unknown Heirs and
Devises of each of the above-named
Defendants, if deceased,**
Defendants.

No. _____

**REQUEST FOR PRELIMINARY
AND PERMANENT INJUNCTIONS**

Plaintiff Village of Oakcreek Association (“Plaintiff” or “Association”), by and through undersigned counsel, petitions this Court for both preliminary and permanent injunctions against Defendant Lance E. Bonham compelling him to comply with all aspects of the Master Declaration of Restrictive Covenants for all Property in the Village of Oakcreek Restated & Amended recorded at document number 2014-0021505 on May

1 13, 2014, as amended (“Declaration”), which governs the Association, specifically the
2 2016 amendment recorded on November 17, 2016 at document number 2016-0058316
3 and re-recorded on May 3, 2017 at document number 2017-0021951 that adds Section
4 4.23 Leasing of Lots and Units; Restrictions and Limitations to the Declaration (“Leasing
5 Restriction”). That Association requests that the Court require the Defendant to comply
6 with the Declaration by ceasing to offer or lease his Lot for lease terms of less than thirty
7 days. The Association also requests that the Court consolidate the injunction hearing with
8 the trial on the merits pursuant to ARIZ. R. CIV. P. 65(a)(2). In the event the injunction
9 hearing is consolidated with the trial on the merits, the Association’s request for a
10 preliminary injunction is rendered moot, and the Association’s request is limited to a
11 permanent injunction to be issued the date of the consolidated trial.
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15 FACTUAL BACKGROUND

16 Village of Oakcreek Association is a planned community, located in Yavapai
17 County, Arizona. Defendant became record owner of a Lot in that community, which is
18 governed by the Association’s deed restrictions as set forth in the Declaration, as amended.
19 Defendants failed and refused to abide by the restrictions requiring minimum thirty-day
20 lease terms of the Lot. Specifically, **4.23** of the Declaration provides the following in
21 relevant part:
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24 “Lease” defined. As used herein, the term “Lease” is defined to include all
25 agreements, contracts, grants, memorandums, conveyances, lets, assignments, or
26 rents that give a non-Owner of a Lot or Unit access to or right to use a Lot or a
27 Unit. A Lease may exist whether it is in writing, or not, and regardless of the
28 amount or nature of consideration exchanged to enjoy the benefit of a Lease. The
Board’s determination of what constitutes a lease and what constitutes the leasing

1 or subleasing of a Lot or a Unit shall be conclusive and binding on the Owner of
2 the Lot or Unit”.

3 Further, Section 4.23 provides:

4 “Minimum Lease Term. No Owner shall lease a Lot or a Unit for a Lease term of
5 less than thirty (30) days”.

6 To date, despite repeated attempts by the Association to gain Defendant’s
7 compliance, Defendant continues to lease his Lot for lease terms less than thirty days.
8 Defendant’s ongoing failure and refusal to abide by the restrictions is a continuing
9 violation, causing irreparable injury to the Association and its member lot owners.
10

11 ARGUMENT

12 **A. Legal Standards for Injunctions**

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14 Judges of the Superior Court may grant injunctions “when it appears that the party
15 applying for the writ is entitled to the relief demanded, and such relief or any part thereof
16 requires the restraint of some act prejudicial to the applicant.” ARIZ. REV. STAT. § 12-
17 1801. That authority includes the authority to issue a mandatory injunction, which is “an
18 injunction which compels some positive action by the party enjoined.” *State ex rel.*
19 *Corbin v. Portland Cement Ass’n.*, 142 Ariz. 421, 690 P.2d 140 (App. 1984). The
20 Association requests a mandatory injunction forcing Defendant’s compliance with the
21 Association’s Leasing Restriction of the Declaration.
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24 Arizona courts have adopted a four-part test to apply when considering requests for
25 injunctive relief. When determining whether to grant injunctive relief, courts should
26 consider “the relative hardships and injustice; the public interest; misconduct of the
27 parties, if any; delay on the part of the plaintiff; and the adequacy of other remedies.”
28

1 *Ahwatukee Custom Estates Mgmt Ass'n, Inc. v. Turner*, 196 Ariz. 631, 635, 2 P.3d 1276,
2 1280 (App. 2000). The Court's equitable discretion should not be used to protect an
3 intentional wrongdoer. *Id.*, citing *Decker v. Hendricks*, 97 Ariz. 36, 41-42, 396 P.2d 609,
4 612 (1964).

6 In order to obtain the preliminary injunction, a different four-part test is applied.
7 The Association must establish "(1) a strong likelihood of success on the merits; (2) the
8 possibility of irreparable injury not remediable by damages; (3) a balance of hardships in
9 that party's favor; and (4) public policy favoring the requested relief." *Cerkoney v. TCR-*
10 *Montana Ranch Joint Venture*, 175 Ariz. 275, 280, 860 P.2d 1328, 1333 (App. 1993).

12 **B. The Court May Impose Injunctive Relief to Enforce the Declaration**

14 Arizona law reflects a long history of enforcing restrictive covenants through
15 injunctive relief, including the issuance of mandatory injunctions.

17 *It is also well settled that, where a tract of land is divided into building lots, and as
18 a part of a general scheme of improvement restrictions are inserted in all of the
19 deeds governing the purposes for which the land may be used, they may be enforced
in equity by any of the grantees against the others.*

20 *Continental Oil Co. v. Fennemore*, 38 Ariz. 277, 281, 299 P. 132, 133 (1931) (citations
21 omitted). The *Continental* court further stated, "in cases of this character it is not
22 necessary to prove special damages in order to secure injunctive relief." *Id.* This approach
23 was reaffirmed in *Heritage Heights Home Owners Ass'n v. Esser*, 115 Ariz. 330, 565 P.2d
24 207 (App. 1977). The *Heritage* court held that where a grantee purchases a property
25 encumbered by restrictive covenants, that person is bound to perform them. *Id.* at 333,
26 565 P.2d at 210. "The enforcement of such restrictions is by means of an injunction, in
27
28

1 which the trial court has the power to structure the remedy so as to equity between the
2 parties.” *Id.*

3
4 **C. The Association Is Entitled to Preliminary and Permanent Injunctive Relief**

5 As described in the Complaint, Defendant has continuously failed to comply with
6 the Declaration by leasing his Lot for lease terms of less than thirty days. Applying the
7 four-part test from *Ahwatukee Custom Estates, supra*, reflects that the Association is
8 entitled to injunctive relief.
9

10 The first prong of the test, the balance of hardships, necessarily favors the
11 Association by default. Arizona law precludes the Defendant in this case from receiving
12 the benefit of the balance of hardships test. Defendant had record notice of the
13 Association’s Declaration including the Leasing Restriction at the time he became record
14 owner of the Lot. ARIZ. REV. STAT. § 33-416. At the time he became record owner in
15 2017, rentals of less than thirty-day lease terms were prohibited within the Association,
16 including his Lot. The Leasing Restriction was adopted in accordance with the
17 Declaration in 2016; prior to the 2016 adoption, the County prohibited lease terms of less
18 than thirty days until SB1350 enacted ARS 11-269.27 banned counties from prohibiting
19 short-term rentals. Because Defendant had notice of the short-term leasing restrictions on
20 his Lot and breached it anyway, they may not benefit from the balance of hardships test.
21 *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 156 P.3d 1149 (App. 2007). *See*
22 *also, Burke v. Voicestream Wireless Corp. II*, 207 Ariz. 393, 87 P.3d 81 (App. 2004).
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27 The public interest favors enforcement of restrictive covenants. In fact, even where
28 such documents include permissive language as to their enforcement, homeowners

1 associations are *required* to enforce them. *Johnson v. Pointe Cmty Ass'n*, 205 Ariz. 485,
2 73 P.3d. 616 (App. 2003).

3
4 The Association has demanded Defendant's compliance, given ample opportunity
5 for Defendant to cure the defects, and delayed filing this litigation only long enough to
6 work in good faith to secure Defendant's voluntary compliance short of litigation. The
7 Association filed this action only after such efforts failed.

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9 To satisfy the fourth prong of the test, the Association has demonstrated it lacks
10 adequate legal remedies. In considering this issue, it is key to understand that the
11 irreparable harm the Association suffers is not only the negative effects of short-term
12 rentals within the community, which is not in accordance or harmony with other lots in
13 the community, but rather the *violation* of the Declaration itself. No legal remedy will
14 cure this harm; the Association could fine Defendant indefinitely, but no amount of fines
15 or other legal penalties will result in the Defendants complying with the Leasing
16 Restriction of the Declaration. Therefore, for the foregoing reasons, the Association has
17 satisfied the test for issuance of injunctive relief.

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20 If the Court declines the Association's request to consolidate the hearing on the
21 injunction with the trial on the merits, the Association also satisfies the test for a
22 preliminary injunction. The balance of hardships and public policy tests are the same for
23 all injunctions, and are addressed above. The final two parts of the test for a preliminary
24 injunction are that there exists a strong likelihood of success on the merits and that the
25 Association suffers irreparable harm.
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1 Because it seeks injunctive relief to enforce restrictive covenants, the Association
2 need not prove actual damages or irreparable harm. In determining the appropriate
3 standard to apply, we begin with the proposition that Arizona courts look to the
4 Restatement for guidance in the absence of controlling authority. *Tierra Ranchos*
5 *Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).
6

7 The Restatement (Third) of Property: Servitudes § 8.3 (2000) (Restatement)
8 specifically addresses enforcement of restrictive covenants through injunctive relief:
9

10 ***Injunctive relief is normally available to redress violations of easements and***
11 ***restrictive covenants without proof of irreparable injury or a showing that a***
12 ***judgment for damages would be inadequate.*** The value of a restrictive covenant
13 or easement is often difficult to quantify and may be impossible to replace. When
14 it is enjoyed as an appurtenance to ownership of land, its value to the land owner
15 may not be adequately reflected by market values. ***An award of damages instead***
16 ***of injunctive relief that would allow the other party to buy out of the servitude***
17 ***obligation will seldom be appropriate*** so long as the servitude continues to serve
18 the purpose contemplated at its creation. (Emphasis added.)

19 Previous Arizona case law supports this position. When enforcing a deed
20 restriction, “it is not necessary to prove special damages in order to secure injunctive
21 relief.” *Continental Oil Co. v. Fennemore*, 38 Ariz. 277, 281, 299 P. 132, 133 (1931).
22

23 The Association will prevail on the merits in this matter. The Association’s
24 Declaration is a recorded public document and speaks for itself. The Declaration includes
25 the requirement that Defendants comply with the Leasing Restrictions as further set forth
26 in the Association’s Verified Complaint. The Verified Complaint also includes evidence
27 (i.e. AirBnB reviews and booking) of the Defendant’s violations.

28 As discussed above, the Association has suffered irreparable harm. Defendant’s
refusal to comply with the Association’s Declaration damages the Association, and the

1 Association lacks adequate legal remedy to cure that harm. Injunctive relief is the only
2 adequate remedy.

3
4 **CONCLUSION**

5 For all these reasons, the Association respectfully requests both a preliminary and
6 a permanent injunction. In the event, the Court consolidates the injunction hearing with
7 the trial on the merits pursuant to ARIZ. R. CIV. P. 65(a)(2), the Association limits its
8 request to a permanent injunction.
9

10 RESPECTFULLY SUBMITTED this 5th day of April, 2022.

11 **CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP**

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