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

VILLAGE OF OAKCREEK  
ASSOCIATION,

Plaintiff,

vs.

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 devisees of each  
of the above-names Defendants, if  
deceased,

Defendants.

Case No.: V1300-CV2022-80081

**RESPONSE TO REQUEST FOR  
PRELIMINARY AND PERMANENT  
INJUNCTION**

Defendant Lance E. Bonham (“Bonham” or “Defendant”), hereby responds to Plaintiff Village of Oakcreek Association’s (“Association” or “Plaintiff”) Request for Preliminary and Permanent Injunction.

This case presents the legal issue as to whether the Association’s 2017 Rental Restriction Amendment (“2017 Amendment”) is a valid amendment. Although this case presents a legal issue, it is not nearly as straightforward as the Association would like the Court to believe. The Association basically asserts that an amendment restricting rentals

1 was adopted and Bonham is violating that restriction. However, there are a number of  
2 requirements the Association must meet prior to adopting an amendment and the  
3 amendment must be adopted pursuant to a valid procedure. The Association does not  
4 meet the requirements to adopt the 2017 Amendment nor did the Association follow the  
5 procedure of the general-amendment provision contained in its documents.

6 An amendment to a Declaration is valid only if the membership was on “sufficient  
7 notice” that a future amendment could be adopted and further, only reasonable  
8 amendments are allowed. Kalway v. Calabria Ranch HOA, LLC, 252 Ariz. 532, 506 P.3d  
9 18, 24 (2022). This recent Arizona Supreme Court case prohibits “new affirmative  
10 obligations where the original declaration did not provide notice to the homeowners that  
11 they might be subject to such obligations.” Id. Here, there was no notice and the 2017  
12 Amendment is invalid.

13 The Court should resolve the legal issue as to whether there has been a valid  
14 amendment prior to holding any type of evidentiary hearing. The June 7, 2022, 9:00 am  
15 Order to Show Cause hearing which is currently scheduled for three (3) hours and  
16 includes the taking evidence should be converted to a status conference to address the  
17 procedure to move this matter along in an efficient manner. The Court should first set a  
18 briefing scheduling, including an oral argument, to address the pending Motion to  
19 Dismiss. If the Motion to Dismiss is not granted, the parties can work together to adopt  
20 an accelerated discovery schedule and a hearing can be held after the completion of the  
21 same. Defendant should not be forced to prepare and attend an evidentiary hearing when  
22 there is little evidence to be introduced aside from the basic facts of this matter, which can  
23 be ascertained from the various recorded documents and minimal Association records.

24 The Association has outlined the factors necessary to obtain a preliminary  
25 injunction and all factors favor not entering the same. First, there is not a strong  
26 likelihood of success for the reasons set forth above and the reasons contained in  
27 Defendant’s Motion to Dismiss. Second, there is no irreparable harm to the Association  
28 not remediable by damages. There is no irreparable harm. The only harm alleged by the

1 Association is the violation of an invalidly adopted amendment. The Association has not  
2 alleged that Defendant's use of his property is a nuisance or otherwise causing any issues  
3 within the Association. The Association has not fined or asserted violations against  
4 Defendant for the behavior of the residents of his property, but rather has simply  
5 attempted to fine him for their mere presence. The Balance of Hardships also favors  
6 Defendant. The Association has not indicated there is any hardship associated with  
7 Defendant's use of the property. Conversely, Bonham would be deprived of revenue he  
8 uses to maintain the Subject Property. Finally, public policy supports the free use of land  
9 unless there is a valid restriction and amendment. When determining whether an  
10 amendment is valid, "any doubts [are] to be resolved against the validity of the  
11 restriction." Id.

12 Finally, if the Court is inclined to proceed with an injunction hearing as scheduled  
13 on June 7, 2022, it should only be regarding the issue as to whether a *preliminary*  
14 injunction should issue. Defendant should not be required to prepare for and attend a trial  
15 on the merits in a matter of weeks. In particular, Defendant should not be required to  
16 defend the claim for damages related to the fines which, unlike the issue of whether the  
17 2017 Amendment is valid, is a factually intense investigation.

18 Defendant respectfully requests that the Court vacate the Order to Show Cause  
19 hearing currently scheduled for June 7, 2022 at 9:00 am and hold a status conference in its  
20 place. A proposed order has been submitted herewith.

21 **RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of May, 2022.

22  
23 THE BAINBRIDGE LAW FIRM, L.L.C.

24  
25 /s/ Mark J. Bainbridge

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Filed this 24<sup>th</sup> day of May, 2022, with:  
Clerk of the Court  
Yavapai County Superior Court  
<http://www.azturbocourt.gov>

COPY of the foregoing emailed and e-served  
this 24<sup>th</sup> day of May, 2022, to:

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By: /s/ Suzan Oxley