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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

**DEFENDANT'S APPLICATION FOR
ATTORNEY'S FEES AND COSTS AND
ENTRY OF JUDGMENT**

Pursuant to the Court's September 8, 2022 Ruling, Defendant Lance E. Bonham ("Bonham" or "Defendant"), by and through undersigned counsel, hereby submits this Application for Attorney's Fees and Costs. This Application is made pursuant to Ariz. R. Civ. P. Rule 54(f) and (g), and based on the Declaration at Section 9.05, A.R.S. §12-341, and A.R.S. §12-341.01.

To date, Defendant has incurred Thirteen thousand, six hundred, ninety-seven dollars and zero/cents (\$13,697.00) in attorney's fees; and One hundred, ninety-seven dollars and fifty-six/cents (\$197.56) in costs, for a total of Thirteen thousand, eight hundred, ninety-four dollars and fifty-six/cents (\$13,894.56). This Application is

1 supported by the accompanying Memorandum of Points and Authorities, the Affidavit of
2 Mark Bainbridge (Attached as Exhibit 1), and supporting exhibits.

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4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. BACKGROUND**

6 This dispute arises from the Association’s improper attempt to restrict short-term
7 rentals. In the fall of 2019, the Association began a campaign of sending Bonham
8 violation letters asserting Mr. Bonham was restricted from renting his property on a
9 short-term basis. On June 25, 2021, Bonham, through counsel, informed the Association
10 that the rental restriction was invalid for numerous reasons. The Association unjustifiably
11 disagreed and trolled his online accounts and issued \$1,000.00 fines every time it
12 perceived there were renters at the property from the online schedule.

13 The Association continued for nearly two years fining and threatening Bonham
14 until it filed this action seeking an immediate preliminary injunction on April 5, 2022.
15 The filing was just two weeks after the Supreme Court made the “sufficient notice” test
16 abundantly clear. Kalway vv. Calabria Ranch HOA, LLC, 252 Ariz. 532, 506 P.3d 18
17 (2022). The Court ultimately decided in Bonham’s favor. Bonham is the prevailing
18 party and is entitled to his attorneys’ fees and costs.

19 **II. ATTORNEY FEES ARE RECOVERABLE.**

20 The Court’s September 8, 2022 Ruling establishes Bonham as the prevailing party
21 in this contract action. Pursuant to Section 9.05 of the Declaration,

22 Anyone owning or having an interest in the Property, including the
23 Association, may bring an appropriate action in the proper court to enjoin
24 or restrain the violation or to compel compliance with the covenants,
25 stipulations or restrictions or to collect damages or other dues on account
26 thereof. **In such action, the prevailing party will be entitled to recover
costs of the proceeding and such reasonable fees as may be awarded by
the court and not by a jury.**

27 *Emphasis added.*

1 When the contractual provision calls for an award of attorneys' fees to the
2 prevailing party, the award is mandatory. Castle v. Barrett-Jackson Auction Co., LLC,
3 229 Ariz. 471, 475, ¶ 17 (App. 2012). As such, Bonham must be awarded his fees and
4 his fees are reasonable.

5 Although the express contract mandates fees and an inquiry into other authority
6 for fees is unnecessary, A.R.S. §12-341 & A.R.S. §12-341.01 allows for the award of
7 attorney's fees and costs. A.R.S. §12-341 states, "The successful party to a civil action
8 shall recover from his adversary all costs expended or incurred therein unless otherwise
9 provided by law." Additionally, A.R.S. §12-341.01(A) states, "In any contested action
10 arising out of a contract, express or implied, the court may award the successful party
11 reasonable attorney fees."

12 Notably, the Association recognized in its pleading that the prevailing party is
13 entitled to "seek all of its attorneys' fees and costs incurred as damages for violation of
14 the contractual Declaration." (*See* Complaint at p.12, Emphasis in Original).

15 Bonham has incurred a great expense in defending this meritless claim and unlike
16 the Association which utilized the resources of all its members, Bonham was required to
17 utilize his own resources and should be reimbursed for the same.

18 **III. THE REQUESTED ATTORNEY'S FEES ARE RECOVERABLE AS
19 COUNSEL UNDERTOOK ONLY WORK THAT WAS NECESSARY**

20 In determining whether attorney's fees incurred are reasonable, the court will look
21 at several factors, including the quality of the lawyers involved, the character of the work
22 necessary and work actually performed, and the results obtained. *See* Schweiger v. China
23 Doll Restaurant, Inc., 138 Ariz. 183, 673 P.2d 927 (App. 1983).

24 Attorney Mark J. Bainbridge is an accomplished business and real estate attorney.
25 Defendant's attorney's fees are reasonable and necessary. The attorney's fees included
26 charges for reasonable and appropriate activities, such as client communications, the
27 drafting and preparation of correspondence to opposing counsel, responsive pleadings to
28 the Association's attempt to obtain a preliminary injunction and briefing related to a
motion to dismiss. No superfluous work was performed. Undersigned counsel efficiently

1 disposed of the Association's action without any discovery or unnecessarily engaging in
2 litigation.

3
4 **IV. CONCLUSION**

5 To date, Defendant has incurred Thirteen thousand, six hundred, ninety-seven
6 dollars and zero/cents (\$13,697.00) in attorney's fees; and One hundred, ninety-seven
7 dollars and fifty-six/cents (\$197.56) in costs, for a total of Thirteen thousand, eight
8 hundred, ninety-four dollars and fifty-six/cents (\$13,894.56). Pursuant to the Declaration,
9 A.R.S. §12-341 and A.R.S. §12-341.01, it is proper for the Court to award Defendant his
10 reasonable attorney's fees and costs. Defendant hereby requests judgment against the
11 Association in the amount of \$13,697.00 in reasonable attorney's fees and \$197.56 in
12 costs, consistent with the proposed form of judgment lodged concurrently with the Court.

13 **RESPECTFULLY SUBMITTED** this 28th day of September, 2022.

14 THE BAINBRIDGE LAW FIRM, L.L.C.

15 /s/ Mark J. Bainbridge
16 Mark J. Bainbridge, Esq.
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18 Phoenix, AZ 85020-5547
19 *Attorney for Defendant*

20 Efiled this 28th day of September, 2022, with:
21 Clerk of the Court
22 Yavapai County Superior Court
23 <http://www.azturbocourt.gov>

24 COPY of the foregoing emailed and e-served
25 this 28th day of September, 2022, to:
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By: /s/ Suzan Oxley