

STATE OF ARIZONA, County of Yavapai 31525

TRANSAMERICA TITLE INSURANCE CO.

I do hereby certify that the within instrument was filed and recorded at the request of
on SEP 9 81-8 22 PM of book 1409 Official Records Page 513-536 (incl)
Records of Yavapai County, Arizona. WITNESS my hand and official seal the day and year first above written.

MATTY C. JENNET, County Recorder
by Dorothy J. Clippert

TRANSAMERICA TITLE INSURANCE CO.
2550 S. Fair Lane
Tempe, Arizona 85282
Builder Services/KL



**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS:

That Declarant, NIEHONI VILLAGE, A California Partnership (hereinafter called "Declarant"), is the owner of a beneficial interest in TRANSAMERICA TITLE INSURANCE COMPANY Trust #7144, being properly authorized so to act by the terms of said trust, and TRANSAMERICA TITLE INSURANCE COMPANY, a California corporation, as Trustee thereunder, hereafter called "Trustee," solely as bare legal title holder and not personally and acting under proper direction of said beneficiaries, execute this declaration of Covenants, Conditions and Restrictions on the date hereafter set forth.

That Declarant proposes to develop said certain property situated in the County of Yavapai, State of Arizona, more particularly described in Exhibit "A" attached hereto by constructing residential townhouses thereon and in connection therewith desires to establish the nature of the use and enjoyment thereof;

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Exhibit "A" shall be held, sold, and conveyed subject to the following covenants, conditions, charges, liens, restrictions, easements and reservations (hereinafter collectively sometimes called "restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property, and all of which are hereby declared to be for the benefit of and binding upon all of the property described herein and the owners thereof, their heirs, successors, grantees and assigns. These restriction shall run with the title to such property and each and every part and parcel thereof shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof and shall inure to the benefit of each owner thereof. This declaration hereby establishes a general plan for the development of such property, the individual ownership of real property estates, consisting of townhouse lots, and the ownership by a non-profit corporation of all of the remaining property, both real and personal, which is hereafter defined and referred to as the "Common Areas". Every conveyance of any lot, or other portion of the subject property shall be and is subject to these covenants, conditions, charges, liens, restrictions, easements, and reservations.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to

book 1409 page 513

NIZHONI VILLAGE ASSOCIATION, a non-profit corporation, its successors, and assigns.

Section 2. "Project" shall mean the townhouses which will be developed on Exhibit "A" property.

Section 3. "Common Areas" shall mean all property owned by the Association for the common use and enjoyment of all members of the Association, including, but not limited to all of the Exhibit "A" Property except the land specifically designated as a "Townhouse" or "Lot" and shall include all recreational facilities, community facilities, sidewalks, pavements, streets, parking areas, landscaping, sanitation and sewage facilities, pipes, wires, conduits, and other public utility lines and other structures and improvements located thereon, together with any other real or property owned by the association.

Section 4. "Lot" shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon designated as such on the then most recently recorded subdivision plat or plats of the property.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record holder of legal title to the fee interest in any Lot regardless of whether such owner actually resides therein, or the equitable owner of record under a contract of sale.

Section 7. "Declarant" shall mean NIZHONI VILLAGE, a California partnership, qualified to do business in the State of Arizona, and its successors, assigns, designated developers or builders who acquire more than one Lot from the Declarant for the purpose of development and resale to individual owners (Developer).

Section 8. "Property" or "Premises" shall mean and refer to the real property described in Exhibit "A" or any portion thereof

Section 9. "Board" shall mean and refer to the Board of Directors of NIZHONI VILLAGE ASSOCIATION.

ARTICLE II

ASSOCIATION

Section 1. Purpose. NIZHONI VILLAGE ASSOCIATION, a non-profit Arizona corporation, is a property owners association for the general welfare and benefit of the Owners. The association, through its Board of Directors and Officers shall take the appropriate action to manage, maintain, repair, replace and in

prove the Common Areas, together with all improvements located thereon, to perform related activities, and to perform all other functions and duties assigned to the Association by this Declaration or property delegated to it by its members.

Section 2. Membership. Membership in the Association, except for membership of the incorporators, the Declarant and the First Board of Directors, shall be limited to the owners of improved lots upon which townhouses have been constructed; such membership shall be subject to all the provisions of this Declaration, the Association's Articles of Incorporation and ByLaws. An owner of an improved lot shall automatically upon becoming such owner by a member of the Association, and shall remain a member of the Association until such time as his ownership for any reason ceases, at which time his membership in the Association shall automatically cease. Ownership of an improved lot shall be the sole qualification and criterion for membership. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of an improved lot. A membership in the Association shall not be transferred, pledged, or alienated in any way except on the sale of such lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record, or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any improved lot should fail or refuse to transfer the membership registered in his name to the purchaser of such lot, the Association shall have the right to record the transfer upon the books of the Association and issue of a new membership to the purchaser, and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered. The record Owner of an improved lot shall be entitled to one membership in the Association and there shall be no more than one membership for each such lot. In the event any improved lot is owned by two or more persons or entities, the single membership for that lot shall be joint and shall be issued in the names of all Owners. They shall designate to the Association in writing, at the time of issuance, the one who shall have the power to vote said membership, and in the absence of such designation, and until such designation is made, the Board shall make such designation. At the discretion of the Board, no certificates of membership need be issued, and if certificates are not issued, membership shall be evidenced solely by an official list of Members kept by the Secretary of the Association.

Section 3. Voting Right. The Association shall have two classes of voting membership:

Class A.

Class A Members shall be all Owners of improved lots (other than the Declarant, until such time as

BOOK 1409 PAGE 515

Declarant's Class B membership is converted to Class A membership). Each Class A member shall be entitled to one vote for each improved lot owned.

Class B.

The Class B Member shall be the Declarant. The Class B Member shall be entitled to one vote for each lot and improved lot owned.

Anything in this Declaration to the contrary notwithstanding, Class A Members shall not be entitled to exercise any voting rights until:

(i) Such time as all townhouses planned to be developed are constructed on the Exhibit "A" property subject to this Declaration have been sold by Declarant or its successors and assigns to individual lot purchasers,

(ii) Such time as Declarant shall elect to convert its Class B Membership to Class A membership by notice to the Association in writing, or

(iii) July 31, 1985,

whichever first occurs. At such time as the Class A members become entitled to vote, any Class B membership shall be converted to Class A membership and there then shall be only one class of voting members

Section 4. Board of Directors. The Board of Directors (the "Board") shall consist of not less than three members who shall be elected at each annual meeting of the members of the Association as more particularly set forth in the Articles of Incorporation and Bylaws. During such time as the Class B membership continues, members of the Board do not have to be lot Owners; however, all members of the Board elected after the Class B membership ceases shall be Owners of lots (or the spouses of Owners; or if an Owner is a corporation, partnership or trust, an officer, director, partner, agent, trustee or beneficiary).

Section 5. Suspension of Voting Rights. In the event any owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of the Declaration for a period of fifteen (15) days, said Owner's right to vote as a member of the association shall be suspended and shall remain suspended until all payments are brought current and all defaults cured.

ARTICLE III

PROPERTY RIGHTS

Section 1. Perpetual Easement. Declarant hereby

BOOK 1409 PAGE 516

grants to Association, and to each and every Member thereof, a non-exclusive perpetual easement of use and enjoyment in and to the Common Areas which easement is appurtenant to and shall run with the title to each and every lot for the mutual benefit and protection of all owners of the lots. Such right and easement of use and enjoyment shall be subject to reasonable rules and regulations as may be promulgated from time to time by the Board, including but not being limited to:

(a) The right of the Association to limit the number of guests of Members; and

(b) The right of the Association to charge reasonable admission or other fees for the use of any recreational or other common facilities situated upon the Common Areas.

Section 2. Delegation of Use. Any member may delegate, in accordance with the Rules of the Association, his right of enjoyment of the Common Areas and facilities to the members of his family, his tenants, guests, or contract purchasers who reside in his townhouse.

Section 3. Title to Common Areas.

(a) At Declarant's sole option, Declarant may elect to convey fee simple title to all or any part of the Common Areas to the Association at any time it may elect. Such conveyance shall be without warranty.

(b) At such time as all of the townhouses, scheduled to be developed on the Exhibit "A" property, have been sold by Declarant to individual purchasers, the Declarant shall thereupon convey to the Association fee simple title to all of the Common Areas, without warranty.

Section 4. Dedications and transfers. Upon acquiring fee title to the Common Areas, the Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as it may determine.

Section 5. Real Property Taxes. Real property taxes, assessment, and other governmental charges which are attributable to the Common Areas that have been conveyed to the Association shall be the responsibility of, and an expense of, the Association.

ARTICLE IV

ARCHITECTURAL CONTROL

No improvement, whether a building, fence, wall or

BOOK 1409 PAGE 517

other structures of any nature or description, whatsoever, shall be commenced, erected, placed or maintained on any townhouse or lot until plans and specifications showing all construction details, including the nature, shape, height, color, materials, floor plans, location and approximate cost thereof shall have been submitted to and approved in writing by the Board. The Board shall have the right to deny approval of any plans or specifications which are not, in their opinion, suitable or desirable for aesthetic or any other reasons, and shall have the right to take into consideration the harmony and conformity of the proposed improvement with the surrounding buildings, the materials to be used and the compatibility of same with the surrounding area, and the effect of such proposed improvement as seen from adjacent or neighboring properties. All subsequent exterior additions, improvements, replacements, alterations or repainting of any building, fence, wall or other structure also shall be subject to the prior approval of the Board. All decisions of the Board shall be final, and no townhouse or lot owner or other parties shall have recourse against the Board for its refusal to approve any such plans and specifications. The Board shall not be responsible for any structural defects in such plans or specifications or in any structure erected according to such plans and specifications, or any change in drainage resulting therefrom.

The right and duties of the owners of lots or townhouses with respect to party walls are the following:

(a) Each wall, including patio walls, which is constructed as a part of the original construction of a townhouse structure, any part of which is placed on the dividing line between separate lots or townhouses shall constitute a party wall. With respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(b) In the event any such party wall is damaged or destroyed through the act of an adjoining Owner, or any of his guests, tenants, licensees, agents or members of his family (whether or not such is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner.

(c) In the event any such party wall is

BOOK 1408 PAGE 518

damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and of repairing any damage resulting from such exposure.

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his lot or townhouse in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

(g) No Owner shall cause a carport or structure to be enclosed or modified so as to deny any utility company physical as well as visual access to metering devices owned by that company and located in that carport or structure.

(h) In the event of a dispute between Owner with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost therefor, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by any judge of the Superior Court of Yavapai County, Arizona. A determination of the matter signed by any two

MX 1403 519

of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party the said other party shall have the right and power to choose both arbitrators.

ARTICLE V

EXTERIOR MAINTENANCE

The Association, or its duly delegated representative, shall maintain, manage and otherwise be responsible for the Common Areas, including, but not limited to the recreational facilities, community facilities, streets, sidewalks, parking areas, greenbelt areas, landscaping, utility services and all other real and personal property owned by the Association. In addition, the Association shall provide exterior maintenance, up to exterior building lines and/or patio enclosures as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not extend to glass surfaces and exterior door and window fixtures and other hardware. The Association shall also have the right, but not the obligation, to undertake additional maintenance within the Project as the Board may from time to time determine to be in the best interest of the Association and the Owners, and shall also maintain and otherwise manage and be responsible for the rubbish removal in all areas within the properties. The Board shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the Project will reflect a high pride of ownership. Maintenance and repair of the individual townhouse shall be the sole obligation and expense of the individual Owners, except to the extent that exterior maintenance and repair is provided by the Association pursuant to this Article.

In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for that lot.

ARTICLE VI

INTERIOR AND OTHER MAINTENANCE

Each Owner shall be responsible for the upkeep and maintenance of the exterior and interior of his townhouse and for the upkeep of all other areas, features or part of his townhouse and property not otherwise maintained by the Association. All fixtures and equipment within a townhouse, commencing at a

1400 1400

point where the utility lines, pipes, wires, conduits or systems enter the exterior wall thereof shall be maintained and kept in repair by the Owner thereof. The Owner shall also have the responsibility to maintain and repair any appliances, such as air conditioning units, located on the exterior of his townhouse and shall also be responsible for any modifications to the exterior structure of such townhouse. Termite control shall be the responsibility of the Owner. An Owner shall not permit any act or work to be performed that will impair the structural soundness or integrity of the townhouse or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other townhouses or their Owners.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Authority to Levy and Purpose for Assessments. Townhouses will be constructed on various parcels within the project's property and the ownership of individual townhouses shall be evidenced by a deed for a legally described lot together with the improvement thereon. All acts constituting a cooperative action necessary or appropriate for the proper maintenance and upkeep of the common elements, as provided for in Article V hereof, may be taken by the Board of Directors or by its duly delegated representative, as it may deem to be in the best interest of all parties in carrying out the purpose of the Declaration. The Board shall levy assessment against each townhouse to collect the funds necessary to cover the cost and expenses incurred by the Association together with adequate reserve funds determined by the Association and the Board to be appropriate. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners within the project, enhancing the quality of life within the project and enhancing and protecting the value, desirability and attractiveness of the project, including, without limitation, the improvement, repair, replacement and maintenance of the Common Areas, services and facilities, insurance, taxes on the Association's property, expenses of operation and management, and the discharge of the Association's duties under this declaration and other agreements to which the Association is a party.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a lot within the project by acceptance of deed or other conveyance, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agree to pay to the Association (a) regular assessments and (b) charges and special assessments; such assessments shall be fixed, established and collected from time to time as hereinafter provided. The assessments together with interest thereon and costs of collection therefor, as hereinafter provided, shall be a charge on the land and shall be a continuing lien (hereinafter "Assessment Lien") upon the townhouses and property against which each such assessment

1409 PAGE 521

is made. Each such assessment, together with such interest, costs and reasonable attorneys' fees incurred in the collection thereof, shall also be the personal obligation of the Owner of such lot or property at the time when the assessment fell due. The personal obligation and liability of the Owner shall not be deemed to limit or discharge the charge against the land and the continuing lien upon the property against which such assessment is made. No Owner of a lot may exempt himself from liability for the assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his lot.

Section 3. Regular Assessments. The amount and time of payment of Regular Assessments shall be determined by the Board pursuant to the Articles of Incorporation and Bylaws after giving due consideration to the current maintenance costs and future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board shall estimate the total common expenses to be incurred for the forthcoming fiscal year and set the amount of the Regular Assessment for each lot. The regular Assessment for each improved lot shall be that fractional amount of the total common expenses determined by the Board, defined as one divided by the total number of townhouses the construction of which from time to time has been fully completed, and has been sold by Declarant. The development and landscaping of the Common Areas shall be fully completed prior to Declarant's conveying the same to the Association and the Association shall not be liable or responsible for any of the initial development costs thereof.

Written notice of the regular assessments shall be sent to every Owner. Each Owner shall thereafter pay to the Association his regular assessment in such manner and such times or installments as is established by the Board. In the event the Board determines that the estimate of total charges for the current year is or will become, inadequate to meet all common expenses for any reason, it shall immediately determine the approximate amount of such inadequacy, issue supplemental estimate of the total common expenses and the revised regular assessments, and give written notice thereof to every Owner. If the Board determines that the amount collected or to be collected through regular assessment is in excess of the Association's needs for the current year and reserves appropriate for future needs, the Board in its discretion may refund to the Members who paid such assessments all or a portion of such excess, reduce the amount of the regular assessment or abate collection of regular assessment as it deems appropriate. In no event shall a reduction in the amount of or abatement in the collection of regular assessments pursuant to this Section result in a quality of service diminished from those upon which the common expense budget was based.

Section 4. Special Assessments. Special assessments shall be levied by the Board for special or particular costs that have been incurred by the Association.

BOOK 1409 PAGE 522

In the event the Association undertakes to provide materials or service which benefits individual townhouses and which can be accepted or not by such individual Owners, the Owner's acceptance of such shall thereby be deemed to constitute the equivalent of written consent to the Special Assessment therefor. In addition to any other assessment authorized by this Declaration, the Board shall also have the right and power to provide for the construction of additional recreational and other common facilities, or the alteration, demolition or removal of existing recreational and other common facilities and to provide for the payment therefor by special assessment. Any such alteration, demolition, removal, construction or improvements shall first be authorized by an affirmative vote of three-fourths (3/4) of the Board and ratified and approved by the affirmative vote of sixty-six percent (66%) of the Members.

Section 5. Certificate of Payment. The Association shall, upon demand, furnish to any Member a certificate in writing signed by an officer or authorized agent of the association, stating whether the assessments on a specified lot or townhouse have been paid, or the amount of delinquency, if any, and whether any other violations pursuant to this Declaration exist and the nature of such violations. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence for payment of the assessment therein stated to have been paid.

Section 6. Date of Commencement of Regular Assessments. Each improved lot shall become subject to the assessment provision of this Article VII as of the first day of the calendar month following the conveyance of such lot by Declarant to an individual purchaser.

Section 7. No Offsets. Assessment shall be payable in the amount specified by the assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties or responsibilities under this declaration.

Section 8. Delinquency. Any assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such assessment is not paid within thirty (30) days after the delinquency date, a late charge of Ten Dollars (\$10.00) per month, or such other amount as the Board shall from time to time determine, shall be levied and the assessment bear interest from the date of delinquency at a rate as determined by the Board, up to the maximum rate allowed by the Usury Law of the State of Arizona. The Association may, at its option, bring an action at law against the Member personally obligated to pay the same and/or foreclose the Assessment Lien against the townhouse in accordance with the then prevailing law of the State of Arizona relating to the foreclosure of liens upon real property. There shall be added to the amount of such Assessment the late charge, interest, recording fees, expenses

1408 523

and costs incurred in filing an Assessment Lien and in collecting the amount due and the reasonable attorneys' fees incurred in connection with such collection efforts, regardless of whether or not a legal suit is commenced. Each member vests in the association or its agents, the right and power to bring all actions at law or lien foreclosures against such Member for the collection of delinquent assessments. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. At any foreclosure sale of a lot, the Association shall have the power to bid on such lot at such foreclosure sale, using Association funds or funds borrowed for that purpose and to acquire and hold, lease, mortgage and convey the same.

Section 9. Recorded Assessment Liens and Priority of Lien. An Assessment Lien upon a lot shall be subordinate to the lien of any prior mortgage or deed of trust. All other liens or encumbrances recorded subsequent to the recordation of the Notice of Assessment Lien shall be junior and subordinate to the Assessment Lien as to the amount stated in such Notice of Assessment Lien. With respect to any delinquent assessment, the Association is legally authorized and the Owners hereby are deemed to have granted the right and irrevocably given consent for the Association to record a Notice of Assessment Lien in the Office of the Yavapai County Recorder, appropriately describing the lot and the amount of the delinquent assessments and other charges, to impose a lien of record against such property for the amounts specified therein. Upon payment of all amounts due thereon, the Association shall record an appropriate satisfaction and release of the Assessment Lien.

Section 10. Cumulative Remedies. The Assessment Lien and the rights to foreclosure thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments.

Section 11. Exempt Property. The Common Areas and all properties dedicated for public thoroughfares and utility services shall be exempt from the assessments created herein.

Section 12. Common Expenses. As used in this Article, common expenses shall mean and refer to the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Areas, costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers and other employees, accountants, attorneys and other agents; the costs of utilities, trash pick-up and disposal, gardening, security services, and other services benefiting the Project; and costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas or other Association property; other insurance costs authorized herein; reasonable reserves as deemed appropriate by the Board, the costs of bonding of the Board

bers of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof; and the costs of any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever which in the good faith judgment of the Board are in connection with the Common Areas, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

ARTICLE VIII

DAMAGE OR DESTRUCTION OF PROPERTY

In the event any part of the Common Area, other Association property, a townhouse or other facility is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner shall, at his sole expense, within thirty (30) days from the date of the occurrence of the damage or destruction, or such extended time as the Board may allow, repair the damage or repair or replace the structure or property in a good workmanlike manner in conformance with the original plans and specification of the Association. In the event such owner refuses or fails to so repair and rebuild any and all such damage within the applicable time period, the Association is hereby irrevocably authorized by such Owner to repair or rebuild such townhouse or other property or facility, or to make such other repairs or replacements as in the judgment of the Association are appropriate, in a good workmanlike manner in conformance with the original plans and specifications therefor. The Owner shall then repay the Association the amount actually expended for such repairs.

Each Owner further agrees that the charges for repairs or replacement if not paid within ten (10) days after completion of the work, shall be delinquent and shall become an Assessment Lien against said Owner's lot, subject to the provisions of Article VII hereof, and shall continue to be a lien until fully paid. Said charges shall bear interest at a rate as determined by the Board, up to the maximum rate allowed by the Usury Laws of the State of Arizona.

Nothing contained in this Article VIII shall be construed in any way so as to relieve any insurance company from payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

In the event of a dispute between an Owner and the Association, with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of either party addressed to the other party, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then

BOOK 1409 PAGE 525

the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the Owner, and those two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then the third arbitrator shall be chosen by any Judge of the Superior Court of Yavapai County, Arizona. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

ARTICLE IX

INSURANCE

The Association shall obtain insurance for all the buildings and facilities, including all townhouses or lots within the Project, unless the Owners thereof have supplied proof of adequate coverage, to the Association's complete satisfaction, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard. The Association shall also obtain a broad form public liability policy covering all Common Areas and facilities and all damage or injury caused by the negligence of the Association or any of its officers, directors, or agents. Said insurance may include coverage against vandalism. Premiums for all such insurance, except on the individual townhouse or lot, shall be common expenses. All such insurance, including insurance on individual townhouses or lots obtained by the Association, shall be written in the name of the Association as trustee for each of the townhouse or lot Owners. Premiums for insurance obtained by the Board of Directors on individual townhouses or lots shall not be part of the common expense, but shall be a Special Assessment on the townhouse or lot so covered, to be paid by the Owner thereof in accordance with the provisions of Article VII. In addition to the aforesaid insurance required to be carried by the Owners and/or the Association, any Owner may if he wishes, at his own expense, insure his own townhouse or lot for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Association shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency. The Board of Directors shall contract with

BOOK 1402 PAGE 526

any licensed contractor, who may be required to provide a full performance and payment bond, for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Association shall levy a Special Assessment against all townhouse Owners within the damaged building or buildings to make up any deficiency, or if damage is to Common Areas or facilities not a physical part of a townhouse or lot, the Special Assessment shall be levied against all townhouse or lot Owners. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgages and owners as their interests may then appear.

In the event of damage or destruction by fire or other casualty to any townhouse or lot covered by insurance written in the name of an individual Owner, said Owner shall, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the exterior of the townhouse or lot in a good workmanlike manner in conformance with the original plans and specifications of said townhouse. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhouse within thirty (30) days or such longer time as may be permitted by the Association, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild such townhouse or lot in a good workmanlike manner in conformance with the original plans and specifications of the townhouses. The Owner shall then, within ten (10) days, repay the Association the amount actually expended for such repairs. If such amounts are not repaid as provided for herein, said amount shall constitute an Assessment Lien upon said Owner's townhouse or lot, subject to the provisions of Article VII hereof, and shall continue to be a Lien until fully paid.

ARTICLE X

USE RESTRICTIONS

Section 1. Each townhouse shall be limited in use to a single family residence. All buildings or structures erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises. No subsequent buildings or structures other than residence townhouses with adjacent or common party walls, shall be built where the Declarant, or its agents, contractors, or assigns, theretofore planned and designated such for construction of townhouses. No structures of a temporary character, trailer, basement, tent, shack, barn, or other outbuilding shall be constructed, erected, placed or used on any portion of the Property at any time for any purpose whatsoever, either temporarily or permanently.

092x 1409 PAGE 527

Section 2. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of construction and sale of said townhouses, upon such portion of the Property as the Declarant or its duly authorized agents, successors, or assigns may authorize, a temporary office and quarters, convenient or incidental to the construction, security and sale of said townhouses.

Section 3. No noxious or offensive activity may be carried on or permitted in any lot nor shall anything be done thereon, which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the premises be used for business, professional, commercial, religious or institutional purposes. Provided, however, the foregoing restrictions shall not apply to the business activities or the construction and maintenance of buildings by the Declarant, its agents, successors, and assigns during the construction and sale period, and/or the Association in furtherance of its powers and purposes as herein set forth.

Section 4. No animals, fish, or birds of any kind shall be raised, bred, or kept on the premises; except that commonly accepted household pets may be kept, provided that such pets are not kept, bred, or maintained for any commercial purpose, and such pet shall not be allowed to be a nuisance and must, at all times be confined or on a leash.

Section 5. All clotheslines, equipment, service yards, woodpiles (other than neatly stacked firewood), or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring townhouses and streets. Each townhouse shall have a sufficient number of (but not less than two) lidded twenty (20) gallon garbage containers, which shall be stored in designated enclosures provided for that specific use. To the extent feasible, all rubbish, trash or garbage shall be kept in such containers and enclosures and not allowed to accumulate on the premises; any rubbish, garbage or trash not capable of being kept in said containers shall be kept in other appropriate containers and screened from view of neighboring townhouses and streets until the date of pickup by a trash collection service. No rubbish, trash or garbage shall be burned on the premises. Incinerators of every kind are prohibited.

Section 6. Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines (used for general benefit of the lot Owners) and other utility or service lines of every kind or character (whether now or hereafter inverted or used) shall be placed and kept underground up to the walls of the buildings on the Property (except to the extent, if any, such underground placements may be prohibited by law or, by the nature of the service to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every lot and the Common Areas, as well as to the

BOOK 1408 PAGE 528

distribution lines located in the streets or elsewhere within the Project. However, the foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers, where required.

Section 7. Except in the individual patio areas or areas specifically designated by the Association, no planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon said premises other than as are approved in accordance with the provisions of Article IV.

Section 8. Placement and location of all radio, television and other antennas of every kind or nature upon the premises shall be approved by the Association.

Section 9. No sign (other than a name and address sign, not exceeding 9' x 30" in size) of any nature whatsoever shall be permitted on any lot; provided, however, that one sign of not more than two square feet may be temporarily erected or placed on a lot for the purpose of advertising the property for sale or for rent; and provided, further, that during the construction and sale of buildings, the builder may erect such signs as it deems appropriate; and, provided further, that this restriction shall not apply to the activities of the Association in furtherance of its powers and purposes as herein set forth.

Section 10. No portion of a townhouse may be rented, other than the entire townhouse and then only to a single family.

Section 11. No trucks, buses, trailers, horse trailers, boats, campers, recreational vehicles or vehicles other than golf carts, passenger automobiles or pickup trucks and vans (three-quarter ton or less) shall be permitted on any Lot other than in the course of making deliveries. All vehicles prohibited by this section may be stored in an enclosure on the property specifically designed for that purpose. Use of said area, if available, shall be subject to special assessment as defined by Article VII.

Section 12. The Common Areas shall remain undivided, and shall at all times be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Common Areas.

ARTICLE XI

EASEMENTS

There is hereby created a blanket easement upon, across, over, and under the Property for ingress, egress, installation, replacing, repairing, and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephone, electricity, television cable or communi

cation lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and (subject to the requirements of Article X, Section 6) to affix and maintain wires and conduits in and under the roofs and exterior walls of said townhouses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as approved by the Declarant or the Board. This easement shall in no way affect other recorded easements on the Property.

Each lot and the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant and for maintenance of the same, so long as such continues to exist.

ARTICLE XII

RIGHTS AND DUTIES OF FIRST MORTGAGEE

Notwithstanding any other provisions of this Declaration, the Association's Articles of Incorporation or Bylaws, or any rules, regulations of management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a lot (called the first mortgagee):

(a) The first mortgagee shall not in any case or manner be responsible or liable for the payment of assessment or charge, or for the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation or Bylaws, or Management Agreement, except as hereinafter provided.

(b) During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or any receiver appointed in such action) may but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged lot, including, but not limited to the right to vote as a member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

(c) At such time as the first mortgagee shall become record owner of a lot and all redemption periods have expired, said first mortgagee shall become subject to all of the terms and conditions of these Covenants, Conditions, and Restrictions, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.

(d) The first mortgagee, or any other party acquiring title to a mortgaged lot through foreclosure suit or through a deed in lieu of foreclosure or other equivalent proceeding instituted by the first mortgagee shall acquire title to the lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except to the extent that such unpaid assessment may thereafter be treated as an expense common to all of the lots and collected as provided for in Article VII. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of such lot to the Association, and the Board shall use reasonable efforts to collect the same from such Owner even after he is no longer a member of the Association. Any party acquiring a secondary security interest shall be subject to the laws of the State of Arizona as to lien priority.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Binding Effect and Enforcement. The covenants, conditions, charges, liens, reservations, easements and restrictions contained herein shall run with the title to the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in any lot on said property, their heirs, personal representatives, administrators, successors, grantees, and assigns. After the date on which this instrument has been recorded, these restrictions may be enforced by any one or more of the following: (a) The Association, which shall have the right and duty to enforce the same and expend Association monies in pursuance thereof; (b) The Declarant (so long as such entity has an interest in any part of the Property); (c) The Owner or Owners of any Lot. The terms and conditions of this instrument shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain, enjoin, or abate the violation or to recover damages. In the event the Declarant or the Association employs an attorney or attorneys to enforce any lien or to collect any monies due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration or otherwise seeks to enforce these restrictions, the Declarant or Association, as the case may be, shall be reimbursed by the Owner or Owners whose actions have necessitated the enforcement proceedings for all costs, including attorneys' fees, expended in such enforcement efforts, regardless of whether or not a civil action

is actually commenced. The amount of such costs shall constitute an Assessment Lien upon said Owner's lot subject to the provisions of Article VII hereof. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a restriction herein. Notwithstanding the foregoing, the violation of these restrictions shall not affect the lien of any mortgage or deed of trust now or hereafter placed of record.

Section 2. Waiver or Abandonment. The waiver of, or failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of such restrictions, or a waiver of the right to enforce any subsequent breach or violation of such restrictions. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

Section 3. Equal Treatment of Owners. These restrictions shall be applied to all Owners without discrimination.

Section 4. Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that one or more of the phrases, sentences, clauses, paragraphs, or sections contained herein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted.

Section 5. Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 6. Topic Headings. The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit, or construe the contents of the paragraphs of this Declaration.

Section 7. Amendment. Except to the extent that these restrictions are amended or revoked by Declarant as to all or any specifically designated portion of the Exhibit "A" property prior to the sale of such property, these restrictions shall remain in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, they shall be automatically extended and renewed for successive terms of ten (10) years each unless revoked or amended by a written instrument signed and acknowledged by the then Owners of not less than two-

BOOK 1403 PAGE 532

thirds (2/3) of the Lots on the premises, which instrument shall be recorded in the office of the Recorder of Yavapai County, Arizona, at any time after the expiration of the initial twenty (20) year period. Amendment of these restrictions during the first twenty (20) year period shall require the written consent of the Declarant if Declarant then holds any interest in any portion of the Exhibit "A" property and the written consent of the then Owners of not less than seven-eighths (7/8) of the Lots on the premises.

Section 8. Declarant's Right to Amend. The provisions in Section 7 of this Article notwithstanding, Declarant hereby reserves the right to amend this Declaration as may be necessary or appropriate in its sole discretion at any time prior to the termination of Declarant's Class B membership.

Section 9. Addition to Existing Property. Additional lands may be subjected to this Declaration by filing of record a Supplementary Declaration with respect to the additional land, which shall extend the restrictions and all other provisions of this Declaration to such land. Such Supplementary Declaration shall recite which parcels shall constitute Lots and which parcels or parcels shall constitute Common Areas.

Section 10. Membership in The Village of Oakcreek Association. In order to establish this property as qualifying the Owners for membership in The Village of Oakcreek Association, an Arizona non-profit corporation (hereinafter referred to as "VOCA"), the property is hereby declared to be subject to the powers of VOCA as hereinafter set forth and as set forth in the Articles of Incorporation of the Association.

(a) Membership. Each Owner of a lot shall automatically be a member of VOCA.

(b) Assessment. VOCA shall have the right and power to levy periodic assessments payable in advance against each lot at such time as the townhouse is constructed and ready for occupancy. Such assessment shall not exceed two percent (2%) per annum of the land value of the lot as hereinafter defined. In addition to the periodic assessment VOCA shall have the right and power to levy an initial membership assessment equal to the assessment for six months computed on the rate of the periodic assessment. For the purposes of determining the maximum permissible assessment in this subparagraph, land value of a lot means \$6,000.00 for each lot.

(c) Use of Assessment. Assessments collected by VOCA may be used and expended for any activity or matter in respect of which VOCA is empowered to act, including, without limitation, the maintenance,

ware, and preservation of the common elements, buildings, grounds, and improvements other than privately owned buildings.

(d) Enforcement of Assessment. For the purpose of enforcing these presents, VOCA is hereby granted a lien against the interest of each Owner of a lot, his heirs, executors, administrators, or assigns, to secure the payment of the VOCA assessment, and in the event of non-performance or default, such lien may be foreclosed in the same manner as the lien of a realty mortgage and any redemption thereafter shall nevertheless be subject to the lien herein created. Notwithstanding the foregoing, the lien created hereby shall at all times be subordinate and inferior to the lien of any bona fide mortgage to a lending institution as mortgages, whether such mortgage be now in existence or be hereafter made and placed against all or any portion of the premises and regardless of the time such mortgage lien is placed of record.

(e) Architectural Control. No building, fence, wall, or other permanent structure shall be constructed or installed upon any portion of the Property unless and until plans and specifications of the structure showing the nature, kind, shape, dimensions, materials, and specific location with reference to boundaries shall have been approved by the Architectural Review Committee of VOCA.

After the date hereof, each party who acquires any interest in all or any part of the property described herein, further agrees that upon such acquisition of any interest in all or part of the real property, said acquiring party shall look only to the other subsequent property owner or owners acquiring an interest in said property for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions and restrictions contained herein.

BOOK 1409 PAGE 534

IN WITNESS WHEREOF, NIBBONI VILLAGE, A California Partnership, has caused its name to be signed by the undersigned officer thereunto duly authorized this 3rd day of Sept., 1981.

NIBBONI VILLAGE,
A California Partnership

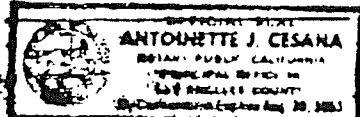
STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

By: Joseph L. Ventress
Joseph L. Ventress,
General Manager

Before me this 3rd day of September, 1981, personally appeared JOSEPH L. VENTRESS, who acknowledged himself to be an Officer of NIBBONI VILLAGE, A California Partnership, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the partnership as officer, by himself as such officer.

Antoinette J. Cesana
Notary Public

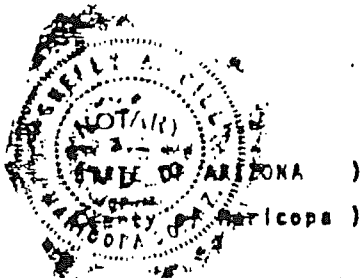
My Commission Expires:



The foregoing Declaration of Covenants, Conditions and Restrictions is hereby ratified and approved.

TRANSAMERICA TITLE INSURANCE
COMPANY,
A California corporation as
Trustee, solely as bare legal
title holder and
not personally

By: Kevin Lutes
Assistant Secretary



BOOK 1408 PAGE 535

Before me this 8th day of September, 1981, personally appeared Kevin Lutes, who acknowledged himself to be Assistant Secretary of TRANSAMERICA TITLE INSURANCE COMPANY and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as trustee by himself as such officer.

Shelly A. Hill
Notary Public

My commission expires: 5/10/85

EXHIBIT "A"

**Lots 1 thru 40 inclusive of NIKKONI VILLAGE,
together with all of the common area as shown
on plat of record in the office of the Yavapai
County Recorder in Book 21 of Maps, page 100.**

BOOK 1408 PAGE 538