


Sun Dance Townhouse
Assn.
55 Cathedral Rock Dr
#60
Sedona, AZ 86351

	INSTRUMENT # 9718758
	OFFICIAL RECORDS OF YAVAPAI COUNTY
	PATSY C. JENNEY-COLON
	REQUEST OF:
	SUN DANCE TOWNHOUSE ASSOC
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AMENDED AND RESTATED DECLARATIONS
OF COVENANTS, CONDITIONS AND RESTRICTIONS
(SUN DANCE TOWNHOUSE ASSOCIATION)

KNOW ALL PERSONS BY THESE PRESENTS:

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Amended Restrictions"), hereby amend and restate the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS dated November 29, 1979, which were filed in the Official Records of Yavapai County on December 3, 1979 at Book 1263, Pages 146 to 168 (the "Former Restrictions"). The Amended Restrictions were properly approved by a 7/8 majority of the Townhouse Unit Owners of SUN DANCE TOWNHOUSE ASSOCIATION under the procedure and authority set forth in Article XIII, Section 7 of the Former Restrictions.

Pursuant to the aforesaid action of the Sun Dance Townhouse Association the Amended Restrictions shall be as follows:

The first three paragraphs of the Former Restrictions are not amended and remain as stated in the Former Restrictions. For convenience and information, those paragraphs state:

That FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, an Arizona Corporation, as Trustee under Trust No. 6610, dated April 18, 1978, referred to as "Declarant", is the owner of certain real property situated in the County of Yavapai, State of Arizona, more particularly described in Exhibit "A" attached hereto;

That Declarant proposes to develop said property 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 restrictions shall run with the title to such property and each and every part and parcel thereof and 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 a Townhouse unit, 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 Townhouse, 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 SUN DANCE TOWNHOUSE ASSOCIATION, a non-profit corporation, its successors and assigns.

Section 2. "Project" shall mean the townhouse project developed on the Exhibit "A" property.

Section 3. "Common Areas" shall mean all property owned by the Association for the common use and enjoyment of the members of the Association, including, but not limited to, all of the Exhibit "A" property except the land specifically designated as a Townhouse "Unit" or "Lot" and shall include all recreational facilities, community facilities, sidewalks, golf cart and pedestrian paths, pavements, streets, parking areas, greenbelt areas, landscaping, septic tanks, leach fields or other 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 personal property owned by the Association.

Section 4. "Lot", "Unit" and "Townhouse" shall be synonymous and 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. "Owners" shall mean and refer to the record holder of legal title to the fee interest in any Townhouse regardless of whether such Owner actually resides therein, or the equitable owner of record under a contract of sale.

Section 7. "Declarant" shall mean the FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, f/k/a ARIZONA TITLE AND TRUST COMPANY OF COCONINO, an Arizona corporation, Trustee of Trust No. 6610, and its successors and assigns.

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 the SUN DANCE TOWNHOUSE ASSOCIATION.

ARTICLE II

ASSOCIATION

Section 1. Purpose. SUN DANCE TOWNHOUSE 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 and Officers, shall take the appropriate action to manage, maintain, repair, replace and improve 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 properly 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, shall be limited to the Owners of Townhouses constructed on the Exhibit "A" property, such membership shall be subject to all the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws. An Owner of a Townhouse shall automatically, upon becoming the Owner of the Townhouse, be 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 a Townhouse 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 any Townhouse. A membership in the Association shall not be transferred, pledged or alienated in any way except on the sale of such Townhouse 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 Townhouse should fail or refuse to transfer the membership registered in his name to the purchaser of such Townhouse, the Association shall have the right to record the transfer upon the books of the Association and issue 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 a Townhouse shall be entitled to one membership in the Association and one vote, and there shall be no more than one membership and one vote for each Townhouse. In the event any Townhouse is owned by two or more persons or entities, the single membership for that Townhouse 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 Rights. Each Member shall be entitled to one vote for each Townhouse owned.

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. All members of the Board must be Owners of Townhouses (or the spouses of Owners; or if an Owner is a corporation, partnership, limited liability company or trust, an officer, director, partner, member, 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 grants to Association, and to each and every Member thereof, a nonexclusive 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 Townhouse, for the mutual benefit and protection of all Owners of the Townhouses. 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. However, member shall remain responsible for any damage to facilities or common areas caused by his family, tenants, guests or other visitors.

Section 3. Title to Common Areas. The Association shall hold title to the Common Areas.

Section 4. Dedications and Transfers. 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, assessments, and other governmental charges which are attributable to the Common Areas shall be the responsibility of, and an expense of, the Association.

ARTICLE IV

ARCHITECTURAL CONTROL

No improvement, whether a building, fence, wall or other structure of any nature or description, whatsoever, shall be commenced, erected, placed or maintained on any Unit 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 the 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 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 rights and duties of the Owners of Townhouse s with respect to party walls and/or walls erected entirely on one Lot but closely to the next Lot line shall be governed by 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 Townhouse units, shall constitute a party wall. With respect to any 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 one 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 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 immediately notify the Association of such damage, so that the Association may take such action and make such repairs as it deems appropriate.
- (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.
- (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 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) In the event of a dispute between Owners 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, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so 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 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, then said other party shall have the right and power to choose both arbitrators.

(h) As to those walls erected entirely on one Lot, but closely to the next Lot line, the following shall apply:

1. There will be no minimum side setbacks on any Lot.
2. No window, or window opening, or similar opening may ever be installed in any such wall which does not have such window installed in the original construction.
3. The exterior maintenance and exterior painting and exterior upkeep of such solid walls so constructed originally without window or window openings may be painted exteriorly by the adjoining Lot Owner at his sole expense as part of the maintenance of his Lot.

ARTICLE V

USE RESTRICTIONS

Section 1. With exception for the area planned and designated for Common Use buildings, each separate Lot shall be known as, and limited in use to, a single family Townhouse, and construction thereon shall be limited in use to, a single family Townhouse, and construction thereon shall be limited to a Townhouse no more than one story in height. 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 Townhouses, being residence units with adjacent or common party walls, shall be built on any Lot where the Declarant, or its agents, contractors, or assigns, theretofore planned and designated such for the 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.

Section 2. (Deleted.)

Section 3. No noxious or offensive activity may be carried on or permitted on any Lot or in any Townhouse 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 activities of 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 purposes. All animal owners shall be responsible for controlling and cleaning up after their pets. Violators will be reprimanded, and may be fined at the discretion of the Association.

Section 5. (Deleted.)

Section 6. Gas, electric, power, telephone, water sewer, cable television and other utility or service lines (used for the general benefit of the Lot Owners) and other utility or service lines of every kind or character (whether now or hereafter invented 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 placement 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 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. (Deleted.)

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 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 Lot together with the improvements thereon, may be rented, other than the entire Townhouse and then only to a single family, and then only for rental periods of six (6) months or more, with shorter-term rentals being expressly prohibited. No sub-leasing of a Townhouse shall be permitted under any circumstances and any lease of a Townhouse shall so prohibit sub-leasing.

Section 11. No trucks, buses, trailers, horse trailers, boats, campers, recreational vehicles or vehicles other than passenger automobiles or pickup trucks and vans (less than ¾ ton) shall be permitted on any Lot other than in the course of making deliveries, unless kept within a completely enclosed garage with closed doors or upon obtaining prior written approval from the Association with respect to the manner of screening or concealing the same from view of neighboring property and streets. Such permission and approval from the Association may not be granted for longer than a one year period at any time but may be renewed each year.

Section 12. Fences or walls on any individual Lot shall be of uniform height and material not more than five (5) feet in height. All fences on the rear of the Lot must be built on the rear Lot line and must meet by joining any fence previously built on an adjoining Lot or lots. Any fence or wall design must be approved pursuant to Article IV prior to construction.

Section 13. No Owner shall create or discharge undue quantities of water or other waste from his Townhouse into the sewage and sanitation system or allow any conduct or activities on his premises or introduce such materials into the system that will be harmful, hazardous or destructive to such system.

Section 14. None of the lots shall be resubdivided into smaller lots or conveyed or encumbered in less than the full original dimensions as shown on the plat of Project. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of lots for public utilities or other public or quasi-public purposes.

Section 15. 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 VI

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, golf cart and pedestrian paths, parking areas,

greenbelt areas, landscaping, septic tanks, leach fields or other sanitation and sewage facilities, utility services and all other real and personal property owned by the Association.

Section 1. Association Maintenance. In addition, the Association shall provide exterior maintenance, up to exterior building lines and patio enclosures (situated on the legally described lots) as follows: paint, repair, replace and care for roofs, gutter, downspouts, garage doors, entry doors, skylights, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

Section 2. Limitations on Association Maintenance. Such exterior maintenance shall not extend to glass doors, garage door operators, exterior window fixtures and other hardware, and doors not specified in Section 1 of this Article.

Section 3. Additional Association Rights. 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 units 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. The cost for maintenance, repairs, replacement or alternative facilities required for any separate septic tank and leach field Unit shall be borne as a general expense of the Association and shall not be assessed specifically against the Owners of the Townhouse units which are directly serviced by that particular septic tank and leach field unit.

Section 4. Liability of Owners. In the event that the need for maintenance or repair is caused through the willful or negligent act of the 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 Townhouse unit.

ARTICLE VII

INTERIOR AND OTHER MAINTENANCE

Each Owner shall be responsible for the upkeep and maintenance of the interior of his Townhouse and for the upkeep of all other areas, features or parts of his Townhouse and property not otherwise maintained by the Association. All fixtures and equipment within a Townhouse Unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhouse Unit, 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 Unit and shall also be responsible for any modifications to the exterior structure of such unit. 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 Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouse Units or their Owners.

ARTICLE VIII

COVENANT FOR ASSESSMENTS

Section 1. Authority to Levy and Purpose for Assessments. Residential dwelling units (Townhouses) will be constructed on various parcels within the Townhouse project's property and that the ownership of individual units shall be evidenced by a deed for a legally described Lot together with the improvements thereon constituting a "Townhouse". Cooperative action necessary or appropriate for the proper maintenance and upkeep of the common elements, as provided for in Article VI hereof, may be taken by the Board or by its duly delegated representative, as it may deem to be in the best interest of all parties in carrying out the purposes of this Declaration. The Board shall levy assessments against each Townhouse to collect the funds necessary to cover the costs 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 of Assessments. Each Owner of a Townhouse within the Project by acceptance of a 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 to be fixed, established and collected from time to time as hereinafter provided. The assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien (hereinafter "Assessment Lien") upon the units and property against which each such assessment 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 Townhouse 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 Townhouse 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 Townhouse.

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 Townhouse. The Regular Assessment for each Townhouse shall be that fractional amount of the total common expenses determined by the Board, defined as one divided by the total number of Townhouse Units.

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 a 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 assessments 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 assessments or abate collection of regular assessments 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 services 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. In the event the Association undertakes to provide materials or services which benefit individual Townhouses and which can be accepted or not by such individual Owners, the Owner's acceptance of such shall thereby be deemed to have agreed in writing to the Special Assessment therefor. In addition to any other assessments 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 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 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 of payment of the assessment therein stated to have been paid.

Section 6. (Deleted.)

Section 7. No Offsets. Assessments 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 Twenty Five Dollars (\$25.00) per month, or such other amount as the Board shall from time to time determine, shall be levied and the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. 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 and costs incurred in filing an Assessment Lien and in collecting the amounts 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 foreclosure against such Member for the collection of such 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 Townhouse Owners. At any foreclosure sale of a Townhouse, the Association shall have the power to bid on such Townhouse 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 Townhouse shall be subordinate to the lien of any prior mortgage or deed of trust. 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 Townhouse and the amount of the delinquent assessments and other charges, to impose a lien of record against such property for the amounts specified therein, whether or not any such filing is required under then-controlling Arizona law in order to perfect the Assessment Lien. Upon payment of all amounts due thereon, the Association shall record an appropriate satisfaction and release of any such filed notice of 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 benefitting 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 the members 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 IX

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 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 specifications used in the construction thereof to the reasonable satisfaction 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 thereof. 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 Townhouse, subject to the provisions of Article VIII hereof, and shall continue to be a lien until fully paid. Said charges shall bear interest at the rate of ten percent (10%) per annum.

Nothing contained in this Article IX 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 has 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 any from time to time be adopted by the Association or its Board. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board, 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 X

INSURANCE

Section 1. Association Insurance. The Association shall obtain insurance for all the buildings and facilities, including all Townhouses within the Project, 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 shall be common expenses. All such insurance shall be written in the name of the Association as trustee for each of the Townhouse Owners.

Section 2. Owner's Personal Property Insurance. 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.

Section 3. Use Of Insurance Proceeds. 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 shall contract with 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 Unit, the Special Assessment shall be levied against all Townhouse Owners. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and Owners as their interests may then appear.

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 communication 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 XI, 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 services lines may be installed or relocated on said premises except as approved by the Board. This easement shall in no way affect other recorded easements on the Property.

Each Townhouse and the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the 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 By-Laws, or any rules, regulations of management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a Townhouse Unit (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 By-Laws, 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 Townhouse, 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 Townhouse 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 Townhouse Unit through foreclosure suit or through a deed in lieu of foreclosure or other equivalent proceeding shall acquire title to the Townhouse Unit 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 Townhouse units and collected as provided for in Article VIII. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of such Townhouse Unit 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.

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 Townhouse 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 moneys in pursuance thereof; (b) (deleted); (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 Association employs an attorney or attorneys to enforce any lien or to collect any moneys 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 proceeding 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 Townhouse, subject to the provisions of Article VIII 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. These Amended Restrictions shall remain in full force and effect for a period of ten (10) 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-thirds (2/3) of the Lots on the premises, which instrument shall be recorded in the office of the Recorder of Yavapai County, Arizona.

Section 8. (Deleted.)

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 parcel or parcels shall constitute Common Area.

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. All members of the Association shall automatically be members of VOCA.
- b. VOCA shall have the right and power to levy monthly assessments payable in advance against each Townhouse at such time as the Townhouse is constructed and ready for occupancy. Such assessment shall not exceed two percent per annum of the land value of the Townhouse as hereinafter defined. For the purposes of determining the maximum permissible assessment in this subparagraph, "land value of a Townhouse" means \$6,000 for each Townhouse.

- c. 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, care and preservation of its common elements, buildings, grounds and improvements other than privately owned buildings.

IN WITNESS WHEREOF THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS was adopted by the written consent of seven-eighths (7/8) of the Owners on this 9 day of April, 1997.

SUN DANCE TOWNHOUSE ASSOCIATION,
an Arizona non-profit corporation

by *Dwight M. Van Euse*
its President

ATTEST:

Martha R. Brennan
Secretary of Sun Dance Townhouse Association

SEAL