

STATE OF ARIZONA        }  
County of Yavapai        } ss. 20793

I do hereby certify that the within instrument was filed and recorded at request of Transamerica Title Company on July 16<sup>th</sup> A.D. 1979 at 8:20 o'clock A.M., Book 1229 Official Records, Page 777-807 inclusive, Records of Yavapai County, Arizona.

WITNESS my hand and official seal the day and year first above written.  
Patsy C. Jenney, County Recorder  
By \_\_\_\_\_ Deputy

**RESTATED AND AMENDED  
DECLARATION OF RESTRICTIONS**

**VILLAGE SQUARE AMENDED  
and  
WILD TURKEY TOWNHOUSES**

KNOW ALL MEN BY THESE PRESENTS:

We, the undersigned,

A. Are the owners of three-fourths (3/4) of the lots within the following described real property (hereinafter sometimes collectively referred to as "the premises") situated in the County of Yavapai, State of Arizona:

Tracts A. through H, J and L, Lots 1 through 12, Village Square Amended, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, in Book 14 of Maps, Page 51 thereof, inclusive of the portions of Tracts A and B, Village Square Amended resubdivided as Lots 1 through 40 and Tracts A and B, Wild Turkey Townhouses, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, in Book 20 of Maps, Page 37.

EXCEPT: Therefrom a portion of Tract A, Village Square Amended, more particularly described as follows:

BEGINNING at the East Quarter Corner of Section Thirteen (13), Township Sixteen (16) North, Range Five (5) East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona; Thence West 50 feet; thence South (assumed bearing) along the Westerly right-of-way line of that certain roadway known as Rimrock-Sedona Highway, a distance of 132.17 feet to the TRUE POINT OF BEGINNING; thence continuing South 138.33 feet to a point marking the beginning of a curve to the right having a central angle of 90°05'21" and a radius of 19.97 feet; thence along the arc of said curve 31.40 feet; thence North 89°54'39" West, 193.70 feet; thence North 158.00 feet; thence East 213.70 feet to the TRUE POINT OF BEGINNING.

B. Desire to amend the Declaration of Restrictions recorded April 1, 1970, in the office of the County Recorder of Yavapai County, Arizona, in Book 592, Official Records, Page 872; as amended by:

- (i) Amendment to Declaration of Restrictions, recorded May 1, 1970, in Book 597 Official Records, page 906;
- (ii) Restated and Amended Declaration of Restrictions recorded June 19, 1972, in Book 753 Official Records, Page 636;
- (iii) Amendment to Restated and Amended Declaration of Restrictions, recorded July 6, 1972, in Book 759 Official Records, Page 450; and
- (iv) Restated and Amended Declaration of Restrictions recorded October 31, 1978, in Book 1177 Official Records, Page 65.

C. Hereby amend every instrument set forth in paragraph B above to discharge and release the following described portion of the premises from each and every covenant, stipulation and restriction contained therein:

The easterly 220.00 feet of Tract H, Village Square Amended, according to the plat of record in the office of the County Recorder of Yavapai County, Arizona, in Book 114 of Maps, Page 51.

D. Hereby amend and restate the restrictions contained in the instruments set forth in paragraph B above and declare that the premises described in paragraph A above, exclusive of the premises described in paragraph C above, are and shall be subject to the following express covenants, stipulations and restrictions as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with title to the premises and with each and every part and parcel thereof.

- 1. a. No building except a store, office or other place of business shall be erected upon any part of Lots 1 through 12 of Village Square Amended.
- b. No building except a store, office, hotel, place of business, residence, townhouse, apartment, or multi-family dwelling shall be erected, maintained or permitted upon any portion of Tracts A through H, J and L of Village Square Amended.

2. No building shall be erected upon the premises except buildings constructed of brick, cement block or other substantial masonry construction, or insulated frame construction. No mobile home, travel trailer or motor home shall be placed or maintained upon the premises.

3. No prefabricated building or structure of any nature whatsoever, permanent or temporary, shall be moved onto or placed upon or assembled or otherwise erected or maintained upon the premises without prior written approval of the Architectural Review Committee of the Association hereinafter described; provided, however, that these restrictions shall not prevent any building contractor from erecting or maintaining a temporary office, storage yard, tool shed, saw shed or lumber shed upon the premises for the purpose of erecting a building thereon, so long as such temporary structures shall be removed upon completion of construction of such building, and shall not interfere with the business being conducted upon the premises or any surrounding area.

4. No swine, cows, horses or other livestock or poultry shall be kept upon the premises.

5. No variety of *Cynodon Dactylon* (commonly known as Bermuda Grass) shall be seeded, planted or permitted to grow upon the premises.

6. In order to promote and maintain efficiency and cooperation for the full enjoyment of the various owners of the premises, the premises are hereby declared to be subject to the powers of The Village of Oakcreek Association, an Arizona non-profit corporation (hereinafter referred to as "the Association"), as hereinafter set forth. ("Lot" means a tract or lot as shown on the latest subdivision plat of any part of the premises.)

- a. The following described record owners of Lots within the premises shall be members of the Association:
  - (i) The beneficial owner (second beneficiary of any trust having more than one beneficiary) as to each lot to which record title is held by any Title Insurance Company, as trustee, which is not subject to a recorded agreement of sale;
  - (ii) Every vendee under a recorded agreement of sale as to such lot, so long as the interest of such vendee thereunder has not been forfeited or foreclosed; and
  - (iii) In all other cases, the record holder of legal title thereto.

Each such owner shall automatically be a member of the Association upon becoming an owner and shall remain a member until such time as his ownership ceases, for any reason, at which time his membership shall automatically terminate.

There shall be one membership for each lot and fractional membership for a fraction of such lot,

regardless of the number of persons who may own an interest in such lot or fraction thereof. With regard to any lot held by husband and wife in joint tenancy, as tenants in common, or as community property, both husband and wife are members but shall be entitled to one vote. With regard to any lot held by more than one person (other than husband and wife) as joint tenants or tenants in common, each co-owner shall be a member to the extent of his fractional interest, provided all of the co-owners of a lot may designate one among them as the member by written notice to the Association.

- b. The Association shall have the right and power to levy monthly assessments payable in advance against each lot or portion thereof. Such assessments shall not exceed two (2%) percent per annum of the land value of the lot, which is established for assessment purposes as follows:

In respect to each lot as platted in Village Square Amended (Book 15 of Maps, Page 51), the original selling price of the lot; provided if a lot is re-subdivided to create any additional membership in the Association:

- (i) For each townhouse lot platted in the re-subdivision of any part of Village Square Amended (including the townhouse lots in Wild Turkey Townhouses) and each condominium unit, the sum of \$4,000.00 per lot or unit and the common areas of a townhouse subdivision or condominium project shall have no land value for assessment purposes.
  - (ii) For each lot other than described in (i), the land value for Association assessment purposes shall be re-established at the time of the first sale of the resubdivided lot at the price of such sale.
- c. Assessments collected by the Association may be used and expended for any activity or matter in respect of which the Association is empowered to act, including, without limitation, the maintenance, care and preservation of the common elements, buildings, grounds and improvements other than privately owned buildings.

- d. For the purpose of enforcing these presents, the Association is hereby granted a lien against the interest of any lot owner and subsequent grantee of any lot, his heirs, executors, administrators or assigns, to secure the faithful performance of each and every term and condition set forth herein, 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 mortgagee, whether such mortgage by 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. No building, fence, wall or other permanent structure shall be constructed, maintained or altered upon any portion of the property unless and until plans and specifications of the structure showing the nature, kind, shape, dimensions, color, materials and specific location with reference to the boundaries shall have been submitted to and approved in writing as to conformity and harmony of exterior design and location with existing structures on the premises by the Architectural Review Committee of the Association.
- f. In addition to the foregoing, the Association shall have all of the powers set forth in its Articles of Incorporation and By-Laws as they may be amended from time to time.

7. Invalidation of any one or more of these covenants, conditions, restrictions and stipulations shall in no way affect any of the other provisions which shall remain in full force and effect.

8. The foregoing restrictions and covenants run with the land and shall be binding on all parties and all persons claiming under them until thirty (30) years from the date hereof, at which time the covenants and restrictions shall automatically be extended for successive periods of ten (10) years each; provided, however, that at any time the covenants and restrictions may be changed in whole or in part or revoked entirely by a vote of the owners of three-fourths (3/4<sup>th</sup>s) of the lots within the premises with the consent of the Association as to any action that relates to membership in the Association or the rights, powers and duties of the Association in respect to the premises.

9. If there shall be a violation or a threatened or attempted violation of any of the covenants, conditions, stipulations or restrictions set forth in this Restated and Amended Declaration of Restrictions, it shall be lawful for the Association or any person or persons owning real property situated within any portion of the premises to prosecute any proceeding at law or in equity against all persons violating or attempting to violate or threatening to violate any such restrictions, covenants, conditions or stipulations, and either to prevent him or them from so doing, or to recover damages or other dues from such violations.

This instrument may be executed in one or more counterparts and, if executed in more than one counterpart, all the executed counterparts shall be construed as one instrument. This Restated and Amended Declaration of Restrictions shall not become effective until such time as this instrument or a sufficient number of counterparts thereof containing the signatures of three-fourths (3/4) of the lots or units in the premises and the consent of the Association has been or have been recorded in the office of the County Recorder of Yavapai County, Arizona.

### **ACCEPTANCE**

The Village of Oakcreek Association joins in this Restated and Amended Declaration of Restrictions in accepting the covenants and restrictions that relate to membership in the Association and the rights, powers and duties of the Association in respect to the premises.

THE VILLAGE OF OAKCREEK ASSOCIATION

By *Sigmund Kirby*

Its *President*

ATTEST:

*B. R. Carlson, Secretary*