

EXHIBIT 1

WHEN RECORDED, MAIL TO:

BETTE SIMMONS
10 Radborn Court
Rockville, Maryland
20850

STATE OF ARIZONA

County of Yavapai

Recorded at the request of

Transamerica Title Insuran



INSTRUMENT # 8939534
OFFICIAL RECORDS OF
YAVAPAI COUNTY
PATSY C. JENNEY

REQUEST OF:

TRANSAMERICA TITLE INS CO
DATE: 10/24/89 TIME: 16:10
FEE: 7.00
BOOK 2194 PAGE 136 PAGES: 002

Escrow No. 51009976
88608918

WARRANTY DEED

71 P 5
405 B. 53 Map 075 Pct

For the consideration of Ten Dollars, and other valuable considerations, PAUL K. KANE, JR. AND JACQUELYN A. KANE, HUSBAND AND WIFE, AND ORLANDO A. TAFOYA AND WILMA C. TAFOYA, HUSBAND AND WIFE

hereafter called the Grantor, hereby conveys to
BETTE SIMMONS, AN UNMARRIED WOMAN

the following real property situated Yavapai County, Arizona, together with all rights and privileges appurtenant thereto:

Lot 75, CATHEDRAL VIEW, according to Book 16 of Maps, page 91, records of Yavapai County, Arizona.

Subject to current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

Dated this 22nd day of August, 1989.

Orlando A. Tafoya
ORLANDO A. TAFOYA
Wilma C. Tafoya
WILMA C. TAFOYA
STATE OF Arizona } ss.
County of Yavapai

Paul K. Kane, Jr.
PAUL K. KANE, JR.
Jacquelyn A. Kane
JACQUELYN A. KANE
This instrument was acknowledged before me this _____ day of
AUGUST, 1989, by
PAUL K. KANE, JR. and
JACQUELYN A. KANE

Notary Public

My commission will expire:
STATE OF Arizona } ss.
County of Yavapai

This instrument was acknowledged before me this _____ day of
AUGUST, 1989, by
ORLANDO A. TAFOYA and
WILMA C. TAFOYA

Notary Public

BOOK 2194 PAGE 136

FURNISHED THROUGH THE COURTESY OF TRANSAMERICA TITLE INSURANCE COMPANY

GENERAL ACKNOWLEDGMENT

NO 201

State of CALIFORNIA }
County of Los Angeles } SS.

On this the 29 day of August 1989, before me,

Kathleen Ann Bodnar

the undersigned Notary Public, personally appeared

Paul K. Kane, Jr., Jacquelyn A. Kane,
Orlando A. Tafoya and Wilma C. Tafoya
 personally known to me

proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) subscribed to the
within instrument, and acknowledged that executed it.
WITNESS my hand and official seal.



Kathleen Ann Bodnar
Notary's Signature

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document
Number of Pages
Signer(s) Other Than Named Above

Date of Document
BOOK 2194 PAGE 137

EXHIBIT 2

RECORDING REQUESTED BY:
NATIONS TITLE AGENCY OF ARIZONA

WHEN RECORDED RETURN TO

Bette Simmons
40 Rio Verde Circle
Sedona, AZ 86351

FEE
\$
\$8
\$5
\$1
\$4.00

3636097 BK 4078 PG 776
Yavapai County, Arizona
Patsy Jenner-Colon, Recorder
09/29/2003 02:56P PAGE 1 OF 2
NATIONS TITLE AGENCY OF AZ
RECORDING FEE 5.00
SURCHARGE 8.00
POSTAGE 1.00

4/4 03A 207148

QUIT CLAIM DEED

For consideration of Ten dollars, and other valuable considerations, I or we,

Bette E. Simmons, an unmarried woman

hereby quit-claim to,

Bette Simmons, as Trustee of the Bette Simmons Living Trust, Dated September 30, 1996

all right, title or interest to the real property situated in **Yavapai** County, Arizona, further described as follows:

SEE ATTACHED EXHIBIT "A"

The Names and Address of the Trust Beneficiaries are as follows:

Bette Simmons + Lance Bonham
40 Rio Verde Circle
Sedona AZ 86351

Dated: August 15, 2003

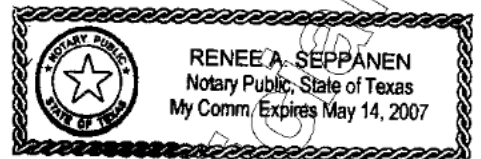
Affidavit Exempt ARS 11-1134 B8

Bette Simmons
Bette Simmons

State of Texas)
County of Dallas) ss.

The foregoing instrument was acknowledged before me this 25th day of August, 2003, by **Bette Simmons**

Renée A. Seppanen
Notary Public
My commission expires: May 14 2007



Legal Description

Exhibit "A"

Lot 75, CATHEDRAL VIEW, according to the plat of record in Book 16 of Maps, page 91, records of Yavapai County, Arizona.

File Number
03AZ05631

EXHIBIT 3

STATE OF ARIZONA }
County of Yavapai } ss. 31002

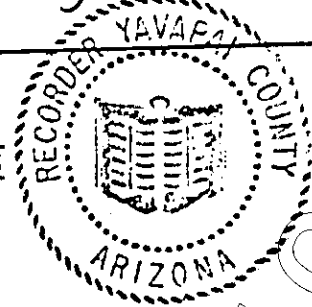
I do hereby certify that the within instrument was filed and recorded at request of
FAVOUR, DE PASQUALE, on June 17, A.D. 1981
MOORE & SCHUTLER at 4:10 o'clock P.M. Book 1389, Official Records, Page 950 -
976 Sub. Records of Yavapai County, Arizona.

WITNESS my hand and official seal the day and year first above written.

Patsy C. Jenney, County Recorder

By Nathan [Signature] Deputy

MASTER DECLARATION OF RESTRICTIVE
COVENANTS FOR ALL PROPERTY IN THE
VILLAGE OF OAKCREEK



KNOW ALL MEN BY THESE PRESENTS:

1. PURPOSE AND INTENT:

The Village of Oakcreek is a geographical area of Yavapai County, Arizona, comprised of real property which by Declarations of Restrictive Covenants running with the title to such property provide for membership of the Owners in the Village of Oakcreek Association, an Arizona non-profit corporation. The Village of Oakcreek also includes common areas owned by the Association.

By declarations of restrictive covenants presently in force, certain properties within the Village of Oakcreek are subjected to diverse covenants, restrictions and conditions. It is desirable that there be basic covenants, restrictions and conditions which apply to all Property in the Village of Oakcreek for the purpose of establishing:

BOOK 1389 PAGE 950

ORIGINAL

- (i) A uniform plan for the improvement and development of the Property.
- (ii) Uniform basic covenants relating to the use, occupancy and enjoyment of the Property without surrender by the Owners of the restrictions of specific use in an area under any special Declaration now or hereafter in existence.
- (iii) Ownership and management of the common areas by the Association.
- (iv) Powers of regulation, control and enforcement of covenants, conditions and restrictions.

The Village of Oakcreek Association has adopted the within Master Declaration of Restrictive Covenants for all lots and units within the Village of Oakcreek as a prototype Declaration with the intent that the terms hereof may be adopted or incorporated into the Declaration affecting Property in the Village of Oakcreek by reference to this instrument of record in the Office of the Yavapai County Recorder, provided no provisions of this instrument shall affect any right, title or interest in any real property until and unless the provisions hereof are expressly:

- (i) Agreed to in writing executed and acknowledged by the Owner of such Property to be affected; or
- (ii) Adopted or incorporated by Amendment of Declarations now of record in the Office of the Yavapai County Recorder pursuant to a power of amendment provided in the Declaration, whereby less than all of the Owners of Property which is subject to the Declaration may accomplish the amendment.

BOOK 1389 PAGE 951

2. DEFINITIONS:

Unless the content clearly indicates a different meaning, the following terms as used in this Declaration are defined as follows:

- (i) "Articles" means the Articles of Incorporation of Village of Oakcreek Association which are filed in the Office of the Arizona Corporation Commission, as the Articles may be amended.
- (ii) "Association" means Village of Oakcreek Association, an Arizona non-profit corporation, its successors and assigns, formed as an entity through which the Owners may act in accordance with the Declaration, Articles, and By-Laws.
- (iii) "Board" means the Board of Directors of the Association.
- (iv) "Committee" means the Architectural Control Committee of the Association, sometimes called the Architectural Review Committee.
- (v) "Common Area" means real property owned by the Association and maintained for the common use and enjoyment of Owners and shall include, but not be limited to, the golf course, clubhouse, community facilities, swimming pools, driveways, parking areas, and all other development or improvements thereon.
- (vi) "Declaration" means a Declaration of Restrictive Covenants of a Subdivision, adopting or incorporating the provisions of the Master Declaration.
- (vii) "Guest" means an agent, servant, tenant, licensee or invitee of an Owner or any person or entity who has acquired any title or interest in a lot or unit by or through an Owner, including a lessee, mortgagee or any agent, servant, tenant, invitee or licensee of such person or entity.

BOOK 1389 PAGE 952

- (viii) "Lot" means a lot or tract as platted on a recorded plat of a subdivision.
- (ix) "Master Declaration" means this instrument.
- (x) "Member" means a member of the Association.
- (xi) "Mortgage" means a mortgage, deed of trust or other security instruments which is a lien on a lot or unit.
- (xii) "Owner" means the record owner, whether one or more persons or entities of equitable title (or legal title if equitable title has merged therewith) to a lot or unit. Owner does not include a person or entity holding an interest in a lot or unit merely as security for the performance of an obligation.
- (xiii) "Property" means the common areas and all lots and units which become subject to the Master Declaration.
- (xiv) "Rules" means the rules adopted and promulgated by the Board.
- (xv) "Subdivision" means a subdivision in the Village of Oakcreek having a Declaration of Restrictions which adopts or incorporates the Master Declaration of Restrictive Covenants.
- (xvi) "Unit" means any parcel of property described other than by subdivision lot number and includes a condominium unit as recognized and described by the Arizona Horizontal Property Regime.

3. BUILDING AND IMPROVEMENT STANDARDS:

3.01 Approval of Committee

BOOK 1389 PAGE 953

No alteration of the terrain or improvement shall be erected, added, altered, placed or permitted to remain on any lot or unit, unless the plans and specifications therefor have been previously delivered to and approved in writing by the Committee.

3.02 Plans and Specifications

The plans and specifications shall be submitted in duplicate and shall show the design, elevations, structural details, materials, finishes, site location and grades and shall include a landscaping and site plan of the building site proposed to be improved. A copy of the plans and specifications as finally approved shall be retained in the records of the Committee.

3.03 Site Plans

Site plans shall show:

- (i) Location of all easements.
- (ii) Dimensions and bearings of the boundaries of the lot or unit.
- (iii) Existing grades and grade changes.
- (iv) Structure location.
- (v) Front, side and rear set-backs.
- (vi) Driveways and parking areas.

3.04 Landscaping

A landscaping plan for each improved lot shall be prepared in accordance with the Architectural Control Regulations and submitted to the Committee for approval prior to occupancy. Landscaping must be substantially completed in accordance with the approved plan within nine months from the date the plan is approved.

3.05 Retaining Walls

Unless suitable retaining walls are constructed to support the earth, the natural angle of repose of the ground shall not be altered by excavation within five (5) feet of any boundary line of any lot by other than a slope of twelve (12) inches horizontal to eight (8) inches vertical, provided, however, that nothing in this paragraph shall be construed to prevent any such alteration in any manner with or without retaining walls, as approved by the Committee.

3.06 Authority of Committee

The Committee shall have the authority to refuse to approve any plans or specifications or site plans, which are not compatible with the natural environment of the Village of Oakcreek or are not suitable or desirable, in its opinion, for aesthetic reasons, and in acting upon plans, specifications and grading plans, it shall have the right to take into consideration the architectural design of the proposed improvement or structure, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the proposed improvement or structure on the view or outlook from adjacent or neighboring property.

3.07 Additional Permitted Structures

No improvements other than Committee approved structures shall be erected, moved onto, or permitted to remain on any lot or unit.

3.08 Contractors and Time of Completion

Each structure shall be constructed by a contractor licensed by the State of Arizona for the work. Construction must be pursued diligently and all buildings shall be substantially completed and present a finished exterior appearance within five months after commencement of construction.

The Committee may waive the licensed contractor requirement for any Owner it deems qualified to act as his own prime contractor, provided a bond or collateral is posted to insure completion of the building. The amount of such bond shall be fixed by the Committee.

4. GENERAL LAND USE REGULATIONS:

4.01 No Unlawful Activities

No offensive or unlawful activity shall be permitted on the Property, nor shall anything be done thereon which may become an annoyance or nuisance to occupants of any portion of the Property.

4.02 Residential Use

Where restricted by the Declaration for residential use an Owner shall not occupy or use his lot or unit or permit the same or any part thereof to be occupied or used for any purpose other than for personal residential purposes by the Owner, his family or guests.

4.03 Commercial Business

No store, office or other place of business of any kind and no hospital, sanitorium or other place for the care

or treatment of the physically or mentally ill shall be erected or permitted, and no business of any kind or character whatsoever shall be conducted from or located on any lot or unit other than:

- (i) The activities of the Association in furtherance of its powers and purposes; or
- (ii) As expressly permitted in the Declaration; or
- (iii) Home occupations prescribed by the rules and regulations of the Board and conducted according to the Rules.

4.04 Home Occupation

It is recognized by this Declaration that certain home occupations can be conducted by an Owner on his lot or unit without violation to the principal purpose of the residential use and enjoyment of the Property. Subject to applicable zoning regulations, the Rules may allow such commercial activities as may be unobtrusively conducted at a residence without odor, noise, traffic or parking congestion or any other noxious condition that would interfere with the residential use and enjoyment of the Owners of adjacent or neighboring Property. Any permitted home occupation shall be conducted as a matter of grace resting in the sole discretion of the Board, and shall be allowed only as long as the Rules permit such occupation. The operation of any home occupation shall strictly conform with the Rules governing such activities which Rules may, without limitation of the scope of such Rules, restrict the number of employees and the hours of operation.

4.05 Drilling Operations

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on the Property.

4.06 Animals

No animals, livestock or poultry of any kind shall be raised, bred or kept except that dogs, cats or other household pets may be kept on the Owner's lot or unit, subject to the Rules adopted by the Board.

4.07 Fencing

There shall be no fencing except for specific purposes such as screening, child containment, animal control or architectural effect. Plans showing the length, height, design, materials, finishes and colors of fences must be submitted to and approved in writing by the Committee.

4.08 Storage of Personal Property

Tools, machinery, household effects, toys, containers, boxes, materials, or other items that degrade the appearance of the yards shall be so stored as to be concealed from public view.

4.09 Laundry Areas

Any exterior laundry drying area shall be screened so as to not be visible from adjacent or neighboring Property or any common area or roadway. Such screening may be trees, bushes, shrubbery or lattice work or fencing approved by the Committee.

4.10 Limitation on Habitation

Unless expressly permitted by the Declaration no structure of a temporary character, motor home, mobile home,

trailer, camper, tent, shack or basement or garage shall be used on any lot or unit at any time for human habitation.

4.11 Rubbish, Trash and Garbage

All rubbish, trash, garbage or other waste materials shall be kept in covered, sanitary containers or shall be promptly removed from the property. The sanitary containers shall be stored in the garage, in a screened area approved by the Committee, or other suitable location, which is not visible from the roadways, common areas or adjacent or neighboring Property.

The sanitary containers may be exposed to public view for such period as is reasonably necessary for proper disposal. All containers must be promptly removed to the storage area following proper disposal of the contents.

4.12 Noxious Activities

No noxious, offensive or unlawful activity shall be conducted on the Property, nor shall any condition be created or allowed to exist on the Property which may be or become an annoyance, nuisance or hazard to others. No sounds which are unreasonably loud or annoying, and no odor which is noxious or offensive to others, shall be emitted from any lot or unit.

No unreasonably bright light, or light which causes unreasonable reflection shall be permitted, and all exterior lighting must be properly shaded or diffused so as to not create a nuisance or annoyance to others.

4.13 Limitation of Vehicles

Where restricted by the Declaration for residential use, no repair or maintenance work shall be performed on

any motor vehicle or other piece of equipment, except wholly inside a garage. Disabled vehicles and equipment shall be stored in a garage or removed from the Property. Adequate paved off-street parking space to accommodate the intended use of the Owner's lot shall be provided, and no Owner shall park or permit others to park on unpaved portions of the Property. In-street parking shall be permitted for deliveries, pick-ups or short time visitors only. Unless expressly permitted by the Declaration, no commercial vehicle, industrial equipment, recreational vehicle, boat, boat trailer, utility trailer, mounted or unmounted camper, motor home, travel trailer or mobile home shall remain on the Property unless located inside a closed garage or area screened from public view in a manner approved by the Committee.

4.14 Lot Split

Unless otherwise prohibited by the Declaration, a lot may be divided for sale or encumbrance but no part of a lot shall be improved unless:

- (i) The part to be improved is included in the building site designated on a site plan approved by the Committee, and
- (ii) The improvement or structure approved for construction will not increase the density of the subdivision, or
- (iii) In the case of the resubdivision of a tract in a subdivision the resubdivision is approved by the Board.

4.15 Antennas, Towers, Etc.

There shall be no exterior televisions, radio or other electronic antenna, mast or tower on the Property without prior written approval of the Committee.

BOOK 1389 PAGE 360

4.16 Easements

Easements for utilities, drainage or other purposes shall not be obstructed in a manner which interferes with the purpose of the easement. The area of each lot or unit encumbered by any easement shall be maintained by the Owner of the lot or unit.

4.17 Easements on the Common Areas

Every Owner shall have the non-exclusive right and easement of use and enjoyment in the common areas subject to the following provisions:

- (i) The right of the Board to charge reasonable admission and other fees for the use of any Association facilities situated upon the common areas;
- (ii) The right and power of the Board to sell or encumber common areas pursuant to the provisions of this Declaration, the Articles and By-Laws.
- (iii) The right of the Board to prohibit, restrict and control the use of the common areas;
- (iv) The right of the Board, after a hearing, to suspend the voting rights and right to use Association facilities by an Owner for any period during which any assessment against the Owner's lot or unit or any fee due from the Owner or his guest remains unpaid for a period of sixty (60) days, or for any infraction of the Rules; and
- (v) The right and power of the Board to grant easements or licenses on common areas to:
 - (a) Any CATV, public utility or municipal corporation, or sanitary or improvement district.

- (b) Any lot Owner for drainage or access purposes.

4.18 Licenses to Guests

Guests shall have such revokable licenses for the use of the common areas as are specifically provided by the Rules and Regulations of the Board.

5. THE ARCHITECTURAL CONTROL COMMITTEE:

5.01 Committee Composition

The membership of the Committee shall be fixed by the Board at three or five regular members and two alternate members. No member or alternate shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be, but may be, a member of the Board or an officer of the Association.

5.02 Alternate Members

In the event of the absence or anticipated absence from a Committee meeting of any regular member of this Committee for any reason, the regular members in attendance even though less than a quorum, shall designate an alternate member to act in the place of each absent regular member.

5.03 Appointment and Removal

The right to appoint or remove any one or all regular or alternate members of the Committee at any time, shall be and is hereby vested solely in the Board.

5.04 Resignations

A regular or alternate member of the Committee may at any time resign from the Committee by giving written notice thereof to the Board.

BOOK 1389 PAGE 962

5.05 Duties

It shall be the duty of the Committee to consider and act upon all proposals or plans submitted to it; to perform other duties delegated to it by the Board; and to carry out all other duties imposed by this Declaration, the By-Laws and Rules.

5.06 Meetings

The Committee shall meet as necessary to perform its duties hereunder. The vote or written consent of a majority of the Committee, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration, the By-Laws or the Rules. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise.

5.07 Architectural Committee Regulations

The Committee may, in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Control Regulations." Such Regulations shall interpret and implement this Declaration by setting forth the standards and procedures for the Committee to review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Property.

5.08 Waiver

The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

5.09 Liability

Neither the Committee nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (i) The approval or disapproval of any plans, drawings, or specifications, whether or not defective;
- (ii) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (iii) The development of any of the Property; or
- (iv) The execution and filing of any estoppel certificate, whether or not the facts therein are correct;

provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this section, the Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Committee.

5.10 Request for Approval

Request for the Committee's approval of such plans and specifications, together with such plans and specifications and any other information which the Committee may reasonably request, shall be submitted in writing to the Committee at least thirty (30) days prior to the date on which construction is to commence. Within thirty (30) days from receipt of such written request, the Committee shall notify

the Owner in writing of its decision either approving or rejecting the plans and specifications. In the event the Committee rejects the plans and specifications, then and in that event the Committee shall set forth in its notification the reason for rejection thereof. The decision of the Committee shall be final if such Owner fails to request a hearing in accordance with the procedures outlined in Section 5.12.

5.11 Failure to Act

In the event the Committee shall fail to approve, disapprove or otherwise act on plans or specifications within thirty (30) days after receipt of the written request, plans, specifications, or other information requested by the Committee, approval thereof shall be deemed to have been given; provided, however, any dwelling, building or structure embraced by such plans and specifications shall be of masonry or frame construction and the location and size of the dwelling, building or structure shall not be violative of any of the restrictions contained in this Declaration or any applicable law, rule or regulation of any governmental body or agency having jurisdiction thereof.

5.12 Right of Hearing

Should the Committee reject or disapprove the plans and specifications as submitted, the Owner, within fifteen (15) days from the date of written notice of rejection or disapproval, may request in writing a hearing before the Committee. The committee, upon receipt of such written request, shall fix a date, time and place for a hearing and shall notify the Owner in writing

of the date, time and place of the hearing at least seven days prior to the hearing date. The date of the hearing shall be fixed no later than thirty days after receipt of the written request for hearing. At the hearing, the Owner shall be afforded the opportunity to be heard and to present evidence, both oral and documentary, concerning the rejection of the plans and specifications. Upon conclusion of the hearing the Committee shall then determine, by majority vote, whether its prior decision concerning the plans and specifications shall be affirmed or reversed. Notice in writing of the Committee's decision shall be mailed to the Owner within seven (7) days from the date of the hearing. The decision of the Committee shall be final if the Owner fails to exercise the right of appeal in accordance with the procedures set forth in Section 5.13.

5.13 Right of Appeal

In the event the Owner is dissatisfied with the decision of the Committee rendered in accordance with Section 5.12, the Owner may appeal the decision to the Board. The right of appeal shall be exercised by the Owner within fifteen (15) days from the date the Committee mails notice of its decision to the Owner. The notice of appeal shall be in writing addressed to both the Committee and the Board. The Board, upon receipt of a notice of appeal, shall fix a date, time and place for the hearing on appeal and shall notify in writing the Committee and the Owner of the date, time and place of hearing at least seven days prior to the hearing date. The date of the hearing shall be fixed no later than thirty (30) days after

receipt of the notice of appeal. At the hearing on appeal both the Committee and the Owner shall be afforded an opportunity to be heard and to present evidence, both oral and documentary, concerning the decision of the Committee. Upon conclusion of the hearing on appeal the Board shall then determine, by majority vote of all Directors, whether the decision of the Committee shall be affirmed or reversed. Written notice of the Board's decision shall be mailed to the Committee and the Owner within seven (7) days from the date of the hearing on appeal. The decision of the Board shall be final.

6. VILLAGE OF OAKCREEK ASSOCIATION

6.01 The Association

The Association is a non-profit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Declaration, the Master Declaration, the Articles, By-Laws and Rules of the Association as the same may be amended from time to time.

6.02 Membership and Voting Rights

All Owners shall be members of the Association and each shall automatically become a member upon becoming an Owner. There shall be one membership for each lot or unit and a fractional membership for a fraction of a lot or unit. Membership shall be appurtenant to and may not be separated from ownership of any lot or unit.

6.03 Board of Directors and Officers

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect.

or appoint, in accordance with the Articles and the By-Laws, as the same may be amended.

6.04 Personal Liability

No member of the Board or any Committee of the Association, nor any officer, agent or employee of the Association shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, its Board or Committee or any officer agent or employee of the Association, or any member of the Board or Committee, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

7. THE BOARD:

7.01 General Powers

The Board shall manage the business and affairs of the Association and may exercise all such authority and powers of the Association and do all such lawful acts and things as are not by law, the Declaration, Articles and By-Laws directed or required to be exercised or done by the members. The powers of the Board shall encompass, but not be limited to, all of the rights and duties of the Board as set forth elsewhere in this Declaration, Articles and By-Laws.

7.02 Association Rules

The Board shall have the power to adopt, amend, repeal and enforce such rules (Rules) as are consistent with its

general powers. Without limitation of the foregoing, the Rules may restrict and govern the use of the private roadways, common areas, and Association facilities, and establish charges for the use of the common areas and Association facilities. The Board may delegate the duties of enforcement of the Rules as appear in the best interests of the Association and to the extent permitted by law. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner.

7.03 Variances

Subject to applicable zoning regulations, the Board may upon a joint application of an Owner and the Committee authorize in specific case such variance from the Building and Improvement Standards (Section 3) and the General Land Use (Section 4) provisions of this Declaration as will not be contrary to the general interests of the Property, where owing to specific conditions, a literal enforcement of the provisions will in the Board's opinion result in unnecessary hardship.

8. ASSESSMENTS

8.01 Duty of Membership

For the purpose of construction, maintenance and improvement of common areas and Association facilities, and of any and all common community services of every kind and nature necessary or desirable in areas owned, acquired by or under the jurisdiction of the Association for the general benefit and use of members, each Owner, in accepting a deed or contract of purchase

for any lot or unit, whether or not it shall be expressed in the deed or contract, agrees to and shall be a member of and be subject to the obligations, duly enacted By-Laws, and Rules, and to pay any assessment levied against the Owner's lot or unit by the Association pursuant to this Declaration.

8.02 Levy of Assessments

The Association shall have the right and power to levy periodic assessments against each lot or unit. Such assessment shall not exceed two percent (2%) per annum of the land value of the lot at time of first sale or such land value or such assessment limit as is now fixed by the Declaration or such limit as shall be hereafter fixed with consent of the Association, if existing Declarations be amended. In addition to the periodic assessment, the Association shall have the right and power to levy an initial membership assessment equal to the assessment for six (6) months computed on the rate of the periodic assessment.

8.03 Collection of Assessments

Each Owner of a lot or unit agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, such Owner in default agrees to pay reasonable attorney fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy

obtained against the Owner in default. In the event of a default in payment of any assessment when due, and in addition to any other remedies herein or by law provided, the Association may enforce each obligation in any manner provided by law, or in equity, or, without any limitation of the foregoing, by any of the procedures provided herein.

8.04 Personal Obligations of Member

The amount of each assessment shall be a separate, distinct and personal debt and obligation of the Owner of the lot or unit against which the assessment has been made at the time such assessment is made and shall bear interest at the rate fixed by the Board. The Board shall have the right to impose a reasonable late charge for the delinquent payment of any assessment or installment thereof. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may exempt himself or avoid or diminish any personal obligation or liability for payment of any assessment by waiver of the use or enjoyment of any of the private streets, common areas and Association facilities or by abandonment of the Property. The purchaser of a lot shall be jointly and severally liable, except as otherwise provided herein, with a selling Owner for all unpaid assessments due from such member up to the time of sale, without prejudice, however, to the right of such purchaser to recover from such seller any and all amounts paid by him to secure or defray the amount of unpaid assessments.

8.05 Lien for Assessments

The amount of any assessment, together with late charges thereon, interest and costs, including reasonable attorney fees, shall become a lien upon the lot assessed.

To evidence any such lien, the Association may record in the Office of the County Recorder of Yavapai County, Arizona, a written notice of lien setting forth the amount of the assessment, the due date thereof, or for the installment thereof not paid, the amount thereof remaining unpaid, the name of the Owner and a description of the lot. No notice of lien shall be recorded until a delinquency occurs in payment of the assessment or appropriate installments due. Such lien shall be superior to all other liens and encumbrances, recorded or unrecorded, except for valid tax and special assessment liens on the lot in favor of any governmental or other validly constituted taxing authority, and the lien of any bona fide first mortgage or deed of trust thereon which is recorded in the official records of the County Recorder of Yavapai County, Arizona.

8.06 Foreclosure of Lien

The Association may foreclose the assessment lien in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages and may recover a deficiency judgment against persons obligated for the assessment if the judicial sale of the Property does not satisfy the judgment. In any foreclosure, the Owner shall be required to pay the cost and expenses of the proceedings,

any assessment or installments thereof becoming due during the pendency thereof, and costs, including reasonable attorney fees. The Association acting on its own behalf shall have the power to bid in and purchase the Property at foreclosure sale and to hold, lease, mortgage, convey and thereafter deal with the Property as the Owner thereof, subject to the right of redemption as provided by law.

8.07 Estoppel Certificate

Upon payment of a reasonable fee and upon written request of any Owner, mortgagee, title company or any person intending to acquire any right, title or interest in a lot or unit, the Association shall furnish a written statement setting forth the amount of the unpaid assessments, if any, with respect to the Property, the amount of the current assessment, the date the assessment becomes or became due, which installments have been paid thereon, and credit for advance payments. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9. GENERAL PROVISIONS:

9.01 Right of Partition

The right of partition shall not be available to any person, partnership, association or corporation owning any interest of any kind in and to any portion of the above-described Property.

9.02 Declaration Binding

All instruments of conveyance or assignment of any interest in all or any part of the Property shall refer to this Declaration and shall be subject to the covenants, restrictions, conditions and servitudes herein contained as fully as though this

BOOK 1389 PAGE 973

instrument were therein set forth in full; provided, however, the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

9.03 Amendment of Declarations

No amendment of restrictive covenants of a Declaration relating to membership in the Association or the rights, powers and duties of the Association in respect to the Property subject to such covenants shall be effective without the consent of the Association.

9.04 Amendment of Master Declarations

These Master Declarations may be amended by a majority vote of the members of the Association voting at any meeting of the membership noticed pursuant to the By-Laws of the Association, provided the proposed amendment is included in the notice of the meeting.

9.05 Enforcement

Failure to enforce any of the covenants, stipulations and restrictions now or hereafter imposed by the provisions of this Declaration shall in no event be construed or held to be a waiver thereof or consent to any further or succeeding breach or threatened breach of the covenants, stipulations or restrictions, or any of them. Anyone owning or having an interest in the Property, including the Association, may bring an appropriate action in the proper court to enjoin or restrain the violation or to compel compliance with the covenants, stipulations or restrictions or to collect damages or

other dues on account thereof. In such action, the prevailing party will be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court and not by a jury. A violation of the covenants, stipulations or restrictions shall not affect the lien of any mortgage now of record or hereafter placed of record on any lot or part thereof.

9.06 Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, this Master Declaration has been executed by the Association this 10 day of June, 1981.

THE VILLAGE OF OAKCREEK ASSOCIATION,
an Arizona non-profit corporation

ATTEST:

Helen Hayden
Helen Hayden, Secretary

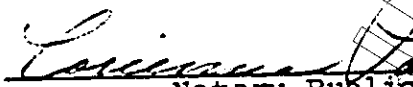
By

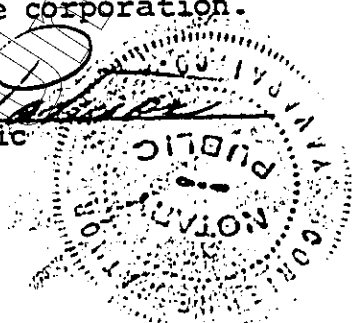
Frank Transier
Frank Transier, President

BOOK 1389 PAGE 975

STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

The foregoing document was acknowledged before me this 10th day of June, 1981, by Frank Transier, President, and Helen Hayden, Secretary, of THE VILLAGE OF OAKCREEK ASSOCIATION, an Arizona non-profit corporation, on behalf of the corporation.


Notary Public



My Commission Expires:
My Commission Expires November 10, 1983

BOOK 1389 PAGE 976

EXHIBIT 4



DOCS



EVENTS



GALLERY



NEWS



ABOUT



CONTACT



Welcome to Your Community Online

The Village of Oakcreek Association (VOCA) is located in Yavapai County in the unincorporated Village of Oak Creek, 7 miles south of Sedona, Arizona, and 110 miles north of Phoenix, Arizona. Surrounded by spectacular red rock formations, pinon pine and juniper forests, the community offers a beautiful 18-hole Championship Golf Course designed by Robert Trent Jones Sr. and Jr., a bistro-style restaurant, recreational facilities including courts for Tennis and Pickleball, a children's playground, lending library, and banquet facilities. Close by are multiple hiking trails providing easy access to wilderness areas within Coconino National Forest.



LOGIN



purchased the almost-forgotten golf course and other amenities and property from the original developer. In 1975 when VOCA was formed, 150-200 families lived within the original development and about 1300 lots had been sold (among a total of about 1900 lots). Today there are 25 subdivisions with 2340 lots within VOCA.

To learn more about VOCA and what it can offer you, please stop by 690 Bell Rock Blvd., or contact us at (928) 284-1820, email info@vocaonline.com. We look forward to meeting you!

Your Community Manager is Deb Brewer dbrewer@vocaonline.com

Latest News:

Play Pickleball!

Assisted Living Research...

VOCA Official Communit...

EXHIBIT 5



CARPENTER HAZLEWOOD
Carpenter, Hazlewood, Delgado & Bolen
ATTORNEYS AT LAW

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Licensed in Arizona
jim@carpenterhazlewood.com
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July 20, 2021

VIA E-MAIL ONLY (mark@bainbridgelawfirm.com)

Mr. Mark J. Bainbridge
The Bainbridge Law Firm, L.L.C.
2122 East Highland Avenue, Suite 260
Phoenix, AZ 85016

Re: Village of Oakcreek Association
Bonham – 40 Rio Verde Circle, Sedona, Arizona

Dear Mr. Bainbridge:

The Board of Directors of the Village of Oakcreek Association (the “Association”) has directed us to respond to your letter of June 25, 2021, written on behalf of your client Lance Edward Bonham.

In your letter you challenge the validity of the Amendment to the Restated and Amended Master Declaration of Restrictive Covenants for All Property in the Village of Oakcreek which was recorded November 17, 2016 as document number 2016-0058316 in the Office of the Yavapai County Arizona Recorder and re-recorded May 3, 2017 as document number 2017-0021951 in the Office of the Yavapai County Arizona Recorder (the “Leasing Amendment”). For the following reasons, your client’s challenges are without merit and the Leasing Amendment is valid and enforceable by the Association.

The Invalidity of the Unanimous Consent Challenge. The Leasing Amendment was approved in accordance with Section 9.04 of the Restated and Amended Master Declaration of Restrictive Covenants for All Property in the Village of Oakcreek (the “Master Declaration”). Such section requires that any amendment to the Master Declaration must be approved by the majority vote of the members of the Association voting at any meeting of the membership noticed and held pursuant to the By-laws of the Association. At a duly noticed and held meeting held November 10, 2016, a total of 1067 votes were received by the Association. Those votes meet the quorum requirement for such meeting as set forth in the Association By-Laws. Of those votes, 564 votes were cast in favor of the approval of the

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Leasing Amendment and 452 votes were cast against the approval of the Leasing Amendment. Thus, the majority vote requirement of Section 9.04 was met and the Leasing Amendment was approved. Such votes were counted by a Tally Committee comprised of three non-Board-member resident owners in VOCA. The members of the Tally Committee signed a certification of such vote results.

The Association rejects Mr. Bonham's contention that the Leasing Amendment can only be adopted if unanimously approved by the owners. This contention is wholly inconsistent with Arizona law. The Association is a planned community governed by the Planned Community Statutes set forth in A.R.S. § 33-1801 *et seq.* The Legislature adopted A.R.S. § 33-1806.01 in 2014. Subsection (A) of this statute provides that "[a] member may use the member's property as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions." A.R.S. § 33-1802(3), provides that the definition of "Declaration" includes "any amendment." In addition, the Arizona Legislature amended A.R.S. § 33-1817 in 2016. Subsection (A)(1) of this statute now states as follows:

The declaration may be amended ... by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

Consequently, the Legislature explicitly authorized planned community associations to adopt amendments imposing rental time period restrictions and validated such amendments so long as they are approved by the "affirmative vote or written consent of the number of owners or eligible voters specified in the [D]eclaration." Thus, the Association's Leasing Amendment is valid and enforceable as it was approved by the requisite percentage of owners as set forth in the Declaration.

Furthermore, the Arizona Court of Appeals has expressly rejected the argument that rental amendments require the unanimous consent of owners. In *Vales v. Kings Hill Condo. Ass'n*, the Court held that an amendment prohibiting all rentals was valid because it was "approv[ed] by a simple majority of the unit owners" in accordance with that association's declaration. 211 Ariz. 561, 565-66 (App. 2005). The *Vales* case dealt with an unusual situation in which the condominium association in question was not subject to the Arizona Condominium Act at the time the rental amendment was approved because the association predated the adoption of the Condominium Act in 1985. A.R.S. § 33-1227(D) states in relevant part that amendments to condominium declarations "shall not ... change ... the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners." Because all condominiums are now subject to the Arizona Condominium Act (and A.R.S. § 33-1227(D)) regardless of when they were created, the *Vales* case could be decided

differently if litigated today. In other words, the Vales Court may have held that A.R.S. § 33-1227(D) imposed a unanimous consent requirement on condominiums for the no-rental amendment in question.

Nevertheless, this possibility underscores an important difference between the Planned Community Statutes (to which the Association is subject) and the Arizona Condominium Act (to which the condominium association in *Vales* is now subject). To that end, there is no statute equivalent to A.R.S. § 33-1227(D) contained within the Planned Community Statutes. At the same time, the Legislature explicitly authorized planned community associations to adopt amendments imposing rental time period restrictions and validated such amendments so long as they are approved by the “affirmative vote or written consent of the number of owners or eligible voters specified in the [D]eclaration.” See A.R.S. §§ 33-1806.01(A) and 33-1817(A)(l). The Legislature adopted the current version of A.R.S. § 33-1227 in 1985. As noted above, the Legislature adopted the current versions of A.R.S. §§ 33-1806.01 and A.R.S. 33-1817 in 2014 and 2016, respectively. If the Legislature desired to subject amendments imposing rental time period restrictions adopted by planned community associations to a unanimous consent requirement, it could have easily done so at the time the statutes were amended in 2014 and 2016. The framework to do so has been in place since 1985.

We also disagree with Mr. Bonham’s reliance upon the Restatement in support of his argument that the Association’s proposed amendment requires unanimous consent. Even assuming for the sake of argument that the Restatement provision (published in 2000) would generally prohibit the Association’s proposed amendment unless approved unanimously, the Legislature’s subsequent actions to adopt/amend A.R.S. §§ 33-1806.01 and 33-1817 in 2014 and 2016, respectively, constitutes an express rejection of Mr. Bonham’s arguments. See *Daou v. Harris*, 139 Ariz. 353, 357 (1984) (“[W]e presume that the legislature, when it passes a statute, knows the existing laws.”); see also *State v. Garza Rodriguez*, 164 Ariz. 107, 111 (1990) (“We presume that the legislature knows the existing laws when it enacts or modifies a statute. Additionally, we presume that by amending a statute, the legislature intends to change the existing law.”); *Cramer v. Starr*, 240 Ariz. 4, 10 (2016) (Arizona generally follows the Restatement “if there is no statute or case law on a particular subject.”) (emphasis added).

The Invalidity of the Amendment Process Challenges. A review of the attached documents will confirm the Association did comply with the required process for holding the November 10, 2016 Special Meeting of the Members and obtained the votes of the members in accordance with the Association’s governing documents and applicable statutes. Looking at your challenges:

1. Pursuant to the attached Notice of Special Meeting of Members, the Board sent to each member an Absentee Ballot to be used by the members to cast their votes at the Special Meeting. You will note from the Notice that the members are informed they may use the Absentee Ballot or may vote at the Special Meeting. The attached Absentee Ballot signed by your client indicates the Absentee Ballot may be used to vote on the Leasing Amendment and members will be allowed to vote at the meeting. Members at the meeting were given the opportunity to do so. Thus, there was in-person and absentee balloting allowed at the Special Meeting as required by A.R.S. § 33-1812.

2. The Absentee Ballot includes the Leasing Amendment as an exhibit thereto. It gives the members the right to vote for or against the Leasing Amendment document as a whole. The action to be voted upon is the approval or disapproval of that document. A.R.S. § 33-1812 does not require that the members be entitled to vote on each provision of the Leasing Amendment which was intended to be and which was approved as a whole. Voting on each section of the Leasing Amendment would have made enforcement of the restrictions ineffective.

3. The Absentee Ballot indicates it is valid only for the Special Meeting.

4. The Absentee Ballot indicates it must be received no later than the time the Special Meeting is convened on November 10, 2016.

5. The Absentee Ballot indicates it may not be used to authorize another person to cast the member's vote.

6. The Absentee Ballot includes places for the member's name, address and signature.

As stated above, the Board appointed a Tally Committee that reviewed the Absentee Ballots and counted and verified the members' votes. The results were not merely verified by the Board president.

As required by Section 9.04 of the Master Declaration, the Notice of the Special Meeting included the Absentee Ballot which in turn included the text of the Leasing Amendment. The language of the Leasing Amendment included in the Notice is exactly as set forth in the re-recorded copy of the Leasing Amendment. Such re-recorded document removed the additional language in the Leasing Amendment document that was inadvertently included in the copy recorded in November of 2016. The language of the Leasing Amendment as noticed to and approved by the members is exactly the same as the language in the re-recorded Leasing Amendment. Finally, the minutes of the duly called and held Board meeting held September 28, 2016 (see attached copy) confirm that at such meeting the Board

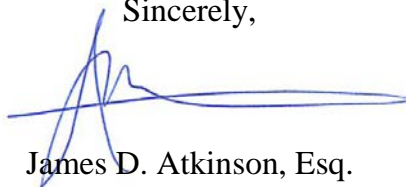
approved the amendments effectuated by the Leasing Amendment and the provisions of the Absentee Ballot which included such amendments.

Communications. The Leasing Amendment was validly approved and recorded. Mr. Bonham is therefore obligated to comply with the provisions of the Leasing Amendment. The Association is entitled to notify persons using the Bonham property of such restrictions and to take actions to determine whether Mr. Bonham is violating such restrictions. If Mr. Bonham complies with such restrictions, there will be no need for The Association to communicate with any third party regarding the rentals of his property in the future.

In closing, the Association is prepared to vigorously defend its interests and the validity of the Leasing Amendment should Mr. Bonham resort to litigation. In this letter, we have stated the many reasons why we believe the Leasing Amendment is valid and enforceable as it was approved by the requisite percentage of owners as set forth in the Declaration. We and the Association are confident in this position.

Please contact the undersigned regarding any further issues relating to the above matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "James D. Atkinson, Esq.", with a long horizontal flourish extending to the right.

James D. Atkinson, Esq.
for

CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

cc: Village of Oakcreek Association Board of Directors
D. Brewer, HOAMCO