



CANDACE OWENS
COCONINO COUNTY RECORDER
OFFICIAL RECORDS OF
COCONINO COUNTY

INST: 98-28086 FEE:\$ 17.00
AT THE REQUEST OF:
GERALD NABOURS
DATE: 08/21/1998 TIME: 01:50
DKT: 2140 PG: 166 PAGES: 013

When recorded return to:

Gerald W. Nabours
-- pick up --

**RESTATED AND AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LAKEWOOD VILLAGE II**

The Declarants herein are the owners of the lots of:

Lakewood Village II subdivision as recorded
in Case 3, Maps 214, Coconino County,
Arizona.

Pursuant to the amendment provisions of the original Covenants, Conditions and Restrictions recorded by the original developer of this subdivision (docket 884, page 733) the current lot owners have made various amendments to the Covenants, Condition and Restrictions over the years.

The owners now desire to restate the Covenants, Conditions and Restrictions in full with all current amendments. This document supersedes all prior recordings of Covenants, Conditions and Restrictions regarding this subdivision.

Declarants intend to convey the lots and common areas of this subdivision, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

Declarants hereby declare that all of the property described above 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 all of the property described herein and the owners thereof, their heirs, successors, grantees and assigns. These restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof.

I. Ownership

(a) The subject property has twenty six (26) designated lots. The lots shall correspond directly to the exterior perimeter of the improvements to be erected on each lot. Where the lots share a common boundary with an adjacent lot the improvements shall share a common wall which shall have the common lot line as its centerline. Any lot and its corresponding improvements may be owned in fee simple (subject to these and any other applicable restrictions) and may be transferred, leased, pledged or otherwise dealt with as any real property.

(b) The open space and yard areas designated on the plat of record of the subject property (Tract Y) shall be considered common area and shall be owned by the Lakewood Village II Homeowners Association, an Arizona corporation (hereafter "Association") in trust for the benefit of the lot owners pursuant to the terms of the Bylaws of the Association. Each lot owner shall be a beneficiary of an undivided 1/26th interest in said trust. Its maintenance and use shall be controlled by the Association but the Association shall not allow any structure to be erected in such open space except as necessary for maintenance activity or playground and sports activities (excluding bleachers, restrooms, snack bars or any structure not required for the activity itself).

(c) The private drive and sidewalk adjacent to and parallel to the private drive designated on the plat of record shall be owned and maintained by the Association. All owners of lots in this subdivision and their guests shall have the perpetual use of the private drive and sidewalk for ingress and egress to their respective lots and an easement for such use is hereby created. The Association shall make such rules regarding the use of the private drive and sidewalk as are deemed necessary. There shall be no parking allowed on the private drive except as necessary for loading and unloading.

(d) The individual driveways (being those portions of the private drive that are not a through route and which are perpendicular to the through route for connection to the individual lots and excluding any sidewalks) shall be owned by the Association but shall be maintained by the owner of the lot to which said driveway gives access. The use of the driveway shall be restricted to the respective lot owner and his guests. An easement for such restricted use is hereby created.

II. PERMITTED USES

(a) Each of said lots is hereby restricted to use as a single family dwelling for residential use by one family only. If any lot is owned by more than one family, it shall only be used by one family at a time.

(b) No animals, fish or fowl of any kind shall be raised, bred or kept on any of said lots, provided, however, that ordinary domestic dogs and cats will be permitted so long as (1) such cats and dogs are kept within the boundaries of the lot of their owner and do not offend or annoy other lot owners, (2) such pets are not kept, bred or maintained for any commercial purpose, and (3) no kennels, pens or similar structures or enclosures are constructed or maintained upon any of said lots except with specific prior written permission and approval of the Association or its designee.

(c) No advertising signs, billboards, or objects determined to be unsightly by the Association shall be erected, placed or permitted to stand upon any of said lots, provided, however, that a person desiring to sell a lot may place one "For Sale" sign upon said lot which shall not be over four (4) square feet nor higher than four (4) feet.

(d) No business, professional or commercial activities of any kind whatsoever shall be conducted on any portion of any lot or the properties.

(e) No outside speakers, amplifiers or other sound producing equipment shall be permitted to be installed or maintained on any lot. No open fires or burning shall be permitted on any part of the properties and no incinerators or like shall be placed, allowed or maintained upon any lot. The foregoing shall not be deemed to preclude the use in customary fashion of outdoor barbecues or grills, unless such use is prevented or restricted by fire protection rules or regulations.

(f) No tanks of any kind, elevated above the surface of the ground or visible in any manner, shall be erected, placed or permitted on any of said lots. No exterior clothes line equipment of any kind shall be permitted on any part of the properties. No unsightly objects shall be permitted on any of the decks on any lot. Any antenna or receiving dish must be approved by the Association and shall be limited to ordinary size and style and placed as unobtrusively as possible. No antenna "towers" shall be allowed.

(g) All rubbish, trash or garbage shall be kept in closed containers and not allowed to accumulate on any of said lots, and all of said containers shall be kept inside the garage except within 12 hours before or after collection. Woodpiles must be kept within the garage.

(h) No housetrailer, mobile home, motorized motor home, camper, truck, tent, trailer, boat or bus or similar facility or vehicle shall be at any time lived in on any said lots, drive or driveway. Nor shall any vehicle, equipment, furniture or other objects be repaired, modified or otherwise worked on at any time

upon any of the driveways. Any boat, unattached camper, trailer, snowmobile or similar equipment must be kept within the owner's garage and not on the drive or driveway. No objects shall be stored on the driveways. All garage doors shall be closed except for actual ingress and egress.

(i) No noxious or offensive activity may be carried on or permitted on any part of the properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, including without limitation annoying or offensive sounds or odors. No hazardous activities shall be conducted upon any part of the properties, nor shall any improvements or conditions which are unsafe or hazardous to any person or property be permitted.

(j) No boarders or renters of a portion of any of said lots shall be permitted. No fraternity nor sorority nor other group or association shall use any lot as its residential headquarters.

(k) No lot owner shall maintain any flammable materials or otherwise use his lot in a manner which would create a fire danger.

(l) Electric, telephone, water, sewer, cable television and other utility service lines (used for the general benefit of the lots owners) and other utility or service liens of every kind or character (whether or not hereafter invented or used) shall be placed and kept underground up to the walls of the buildings on the premises (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).

(m) Any remodeling, painting, guttering or other changes in the exterior appearance of any unit shall only be done after the approval of the Association.

III. Landscaping

Each owner agrees to allow the Association the use of any exterior water hydrant or exterior electrical outlet as required by the Association to maintain the landscaping in the immediate area of that lot, without charge for such use.

IV. Common Walls

(a) Each wall which lies on common lot boundary line of any two lots shall be considered a "common wall."

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

(d) No lot owner shall allow any machinery or appliance nor any sound producing equipment to be placed against or near any common wall so as to disturb the adjoining owner's peaceful enjoyment of his property.

V. Maintenance and Repairs

(a) The Association shall provide exterior maintenance for the improvements upon each lot so far as the painting and repair of exterior building surfaces. Such exterior maintenance shall not include roofs, decks or lattice sidings, glass surfaces nor window screens, nor any fixtures or additions made by the individual owner. The maintenance and repair of any extension of addition to a unit that encroaches into common area or into an easement (e.g., utility area) is the responsibility of the homeowner. All excluded repair, replacement or maintenance of individual townhomes shall be the sole responsibility and expense of the owner of the property. All work must meet the requirements of existing and applicable building codes. Replacement materials must be equal to, or of better quality than the materials replaced, and comply with the architectural integrity and uniformity of Lakewood Village II Homeowners Association. Exterior maintenance upon the lots shall comply in all respects with Rules and Regulations for this purpose promulgated by the Association. 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 tenants, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

(b) The Association shall have the responsibility for the maintenance, cleanliness and safety of the common areas of the subdivision, except the driveways. This responsibility shall include street and sidewalk maintenance, repairs, snow removal,

maintenance and repair of water and sewer lines not under city control and related matters.

(c) Should the Association fail to provide for adequate snow removal, maintenance or other matters and the City of Flagstaff determines that a hazard to the residents of the area exists because of such failures, then the City of Flagstaff shall notify the Association and give the Association five (5) days to remedy the problem. If the Association fails to remedy the hazard, then the City may take such steps as necessary and assess the property owners for the costs incurred in accordance with their proportionate share of ownership. If the hazard is of such a nature so as to create an immediate danger to the safety of the residents, then the City may take the necessary measures to remedy the danger, without notice, and assess the owners as provided above. If the owners fail to pay the City's assessment within thirty (30) days, then the City shall have the right to enforce such payment in the same manner as a City tax lien.

(d) The Association shall acquire liability insurance for itself. Each lot owner shall acquire his own personal liability fire and casualty insurance regarding the improvements on his lot, personal property and building contents and accidents occurring on the lot owner's property or driveway. As to any occurrence upon a driveway (as defined above) or in regard to any loss of the improvements on a lot, the lot owner's insurance shall be deemed primary and the association's secondary. Every lot owner shall be deemed to be an insured under the insurance acquired by the Association and therefore there will be no subrogation by the insurer against a lot owner.

VI. Membership in Homeowner's Association

(a) Every owner of a lot in this subdivision shall be a member of the Lakewood Village II Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. Any conveyance (except a lease) of any lot shall be an implied conveyance of the seller's interest in the Association and an implied conveyance of seller's equitable and beneficial interest in the property which the Association owns as trustee for the lot owners.

(b) Each owner shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members in the Association. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

VII. Architectural Control

Except for the original improvements constructed by the Developer, no building, fence, wall or other structure shall be erected upon any lot or other portion of the subject property, nor shall any exterior alteration (including without limitation paint colors, trim, shape and character of any of the buildings or improvements upon the property) be made unless approved in writing by the Association. No tree may be removed at any time without approval of the Association and any other entity (i.e., City of Flagstaff) which may have restrictions applicable to this property.

VIII. Assessments by the Homeowner's Association

(a) The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements hereinafter provided, and (3) enforcement assessments. The assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of a lot at the time when the assessment became due.

(b) The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of assessments, fees or otherwise) and may carry forward as surplus any balances remaining (rather than apply such surplus to reduction of the annual assessment in future years) in such amounts as the Association, in its discretion, may determine to be desirable for the financial security of the Association.

(c) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the subdivision and for the improvement and maintenance of the common areas and drives and the insurance and maintenance of the homes in the subdivision and for the payment of any taxes, assessments or premiums owed by the Association and for payment of any professional fees or management expense.

(d) An annual assessment amount shall be established by the Association each year at the annual meeting. The date, time and place of the annual meeting will be determined by the Board of Directors. Each lot owner shall be obligated to pay to the Association his annual assessment on an annual, bi-annual,

quarterly or monthly basis as determined by the Association. Notice of any changes in the annual assessment and a report of the income and expenses for the prior year will be mailed to each lot owner as his address appears on the records of the Coconino County Assessor or at such address as he shall designate.

(e) A lot owner shall become obligated to begin paying the assessments at such time as he acquires legal or equitable title.

(f) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purposes set forth above.

(g) Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the lot pursuant to Arizona law pertaining to foreclosure of realty mortgages. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his lot. The proceeds of a judicial sale following the foreclosure of such assessment lien shall first be paid to discharge court costs, other litigation costs including but not limited to reasonable attorney's fees, all interest accruing thereon, and all other expenses of such sale. Any balance of proceeds after satisfaction of such amounts and all other amounts due shall be paid to the lot owner, and the lot owner may redeem such lot after the foreclosure sale as provided by law.

(h) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot owner from liability for any assessments thereafter becoming due or from the lien thereof.

IX. Easement to Association

(a) All lot owners hereby grant an easement to the Association to come upon their respective lots for the purpose of painting, repair and general maintenance of the building exterior and common area. This easement shall be limited to the exterior of any building on any lot.

(b) In the event of any act or condition pertaining to fire danger which poses immediate danger or hazard to any other owners of lots, the Association or any owner shall have the right to go upon such lot without notice and take such action as may be necessary to alleviate such dangerous or hazardous condition, and any expenses thereby incurred by the other lot owner or the Association shall become a lien upon such lot which may be foreclosed in the manner provided above.

X. Enforcement

The Association or any lot owner, or any combination thereof, in addition to any other remedy available at equity or law, may prosecute an action or other proceeding against any defaulting owner for injunctive relief, specific performance, damages, a judgment for payment of money and collection thereof, or the appointment of a receiver to take possession of the improvements upon such lot. By the acceptance of a deed to any lot, or by signing a contract or agreement for the purchase of the same, the Association and each lot owner does hereby agree that in addition to the relief prayed for in such action, the defaulting owner shall be liable for all court costs and reasonable attorney's fees incurred in the prosecution of such action. Failure by anyone to enforce any condition, restriction, covenant or charges herein contained shall not constitute a waiver of the right to do so thereafter.

XI. Membership in Continental Country Club and Estates Association

All owners of lots in this subdivision shall be members of the Continental Country Club and Estate Association, Inc., an Arizona corporation. All owners shall be obligated to comply with the requirements of such association. The dues and assessments levied by the association shall be a lien against the owner's property, accruing from the owner's purchase of a lot in this subdivision. Each owner who is in good standing with said association shall be entitled to all the benefits and privileges of such membership.

XII. Directors

The Association shall be operated by a Board of Directors consisting of at least six members. The Board members shall be elected by the lot owners at the annual meeting. The terms shall be from their election until the next annual meeting election. Any vacancies on the Board occurring from resignation, death or otherwise shall be filled by a vote of the remaining members. The Board shall elect a president, treasurer and secretary from the Board members. The number of directors can be increased by

an affirmative vote at any annual meeting and the increased positions filled at the same meeting.

XIII. Roof Replacement

Any roof shingle replacement after August 1, 1998, must be done using the type and color of shingle designated by the Association. Also, by August 1, 2003, all owners must remove any wood shingles on their lot and replace the shingles with the shingles designated by the Association.

XIV. General Terms

(a) All covenants herein are intended to and shall constitute covenants running with the land or equitable servitude upon the land, as the case may be, and are intended to and shall be binding upon any present and future owner of any interest in and to said property.

(b) The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

(c) These provisions shall be for the benefit of and be binding upon the heirs, executors, administrators, guardians, conservators, successors, purchasers, lessees, donees, grantees, mortgagees, lienors and assigns of and from the parties hereto.

(d) Each property owner specifically waives any right to a partitioning of the common property by division of the property or liquidation.

XV. Amendments

(a) These covenants, conditions and restrictions shall remain in effect until January 1, 2000. They shall then be automatically renewed for ten year successive periods in their form at the end of each period unless no more than 60 days before the end of each period a notice of termination is recorded in Coconino County signed by the authorized representative of 75% of the lots in the subdivision.

(b) These covenants, conditions and restrictions may be amended at any time by the lot owners at any meeting where all lot owners are given written notice of said meeting at least 20 days in advance; where the proposed amendment is set forth in the amendment and is in substantially the same form as later adopted and where the amendment is approved by a two-thirds vote of the lots represented at said meeting.

However, the condition regarding the City of Flagstaff's right to remove snow from the private drive and charge such expense to the lot owners shall not be modified or deleted without the consent of the City of Flagstaff.

(c) These covenants, conditions and restrictions may not be amended so as to apply to less than all lots or so as to apply differently to different lots.


XVI. Violation Assessments

(a) Any violation of these covenants and restrictions by an owner or his/her family members, guests, licensees or tenants, shall result in a violation assessment to defray the cost of enforcement as follows:

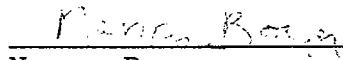
First Notice: Registered letter notifying violation of the rule
Ten (10) days to remedy -- no assessment
Second Notice: \$50.00 assessment
Third Notice: \$100.00 additional assessment

(b) Any assessment of any kind not paid by its due date, as set by the Board, shall bear a late charge of Ten Dollars (\$10.00) per month in addition to any interest or other charges specified in these Covenants, Conditions and Restrictions.

Dated: August 12, 1998



Frank Bostick
President of the Association



Nancy Boyer
Secretary of the Association

Return to:

Gerald W. Nabours
-- pick up --

**CERTIFICATE OF
ADOPTION OF RESTATED AND AMENDED
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
OF
LAKEWOOD VILLAGE II**

The undersigned President and Secretary of the Lakewood Village II Homeowners Association certify and attest to the following:

(1) A meeting of the owners of the lots of Lakewood Village II was held July 26, 1998, at 3:00 p.m. at the residence of Frank Bostick, 1752 N. Fairway Drive, Flagstaff, Arizona.

(2) Notice of the meeting of the owners of the lots of Lakewood Village II was given to all lot owners more than 20 days before such meeting. Such notice contained a proposed restated and amended declaration of covenants, conditions and restrictions for Lakewood Village II.

(3) At the meeting of homeowners, 22 of the 26 lots were represented by owners present in person or by proxy.

(4) Of the 22 lots represented at the homeowners meeting, the owners of 20 lots voted in favor of the adoption of the Restated and Amended Declaration of Covenants, Conditions and Restrictions of Lakewood Village II attached to this certificate.

(5) The Restated and Amended Declaration of Covenants, Conditions and Restrictions of Lakewood Village II attached to this certificate is substantially the same as that proposed to the owners in the notice of the meeting referenced above.

Frank Bostick
Frank Bostick
President of the Lakewood
Village II Homeowners
Association

Nancy Boyer
Nancy Boyer
Secretary of the Lakewood
Village II Homeowners
Association

STATE OF ARIZONA)
) ss.
County of Coconino)

SUBSCRIBED AND SWORN to before me by Frank Bostick, President of the Lakewood Village II Homeowners Association, this 17 day of August, 1998.



Amy M. Daggett
Notary Public

My commission expires: Nov. 1, 1999

STATE OF ARIZONA)
) ss.
County of Coconino)

SUBSCRIBED AND SWORN to before me by Nancy Boyer, Secretary of the Lakewood Village II Homeowners Association, this 18 day of August, 1998.

Tena Rosenfeldt
Notary Public

My commission expires:

