

(Apartment form)

02-R MISC:

8394 PAGE 792

203808

DECLARATION OF RESTRICTIONS, ESTABLISHMENT
OF
BOARD OF MANAGEMENT AND LIEN RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

That ARIZONA TITLE INSURANCE AND TRUST COMPANY, a corporation, as Trustee, being the owner of all the following described premises situated in Maricopa County, Arizona, to wit:

TRACT "E" and LOTS 108 through 127, both inclusive, of SUN CITY UNIT SEVENTEEN "D" (17-D) according to a re-plat thereof recorded in the Office of the County Recorder in Book 134 of Maps, at Page 1 thereof,

and desiring to establish the nature of the use and enjoyment thereof, for the purposes of joint management among the grantees thereof, as to the units thereon and the surrounding premises and areas and other buildings does hereby declare said property subject to the following expressed conditions and stipulations as to the use and enjoyment thereof, and as to the establishment of a perpetual lien for the enforcement thereof, as follows:

1. No buildings except multi-family residential dwellings, storage buildings and carports for use in connection with such dwellings shall be erected, maintained, or permitted on said lots or portions thereof. No dwellings shall be used except as a multi-family dwelling. A multi-family residential dwelling shall consist of two or more single-family residential units. No more than one (1) single family residential unit shall be erected, maintained, or permitted on any lot. No buildings or appurtenances thereto shall be erected, maintained, or permitted on any tract or portion thereof.
2. No building or appurtenance thereto shall be permitted to extend beyond the lot line of the lot on which such building or appurtenance is erected.
3. No house trailer or camper, and no temporary or permanent building of any nature detached from the dwellings shall be built, erected, placed, or maintained on said lots other than storage buildings and covered carports. No house trailer or camper shall be permitted to remain on any lot, or remain parked adjacent thereto, for a period in excess of forty-eight (48) hours.
4. No store, office, or other place of business of any kind, and no hospital, sanatorium, or other place for the care or treatment of the physically or mentally ill, nor any theater, saloon, or other place of entertainment shall be erected or permitted upon said tracts, and no business of any kind or character whatsoever shall be conducted in or from the buildings located on said tracts or from said tracts.

5. No swine, horses, cows or other livestock, and no pigeons, chickens, ducks, turkeys, or other poultry shall ever be kept upon said lots or tracts. All dogs and cats shall be confined to their owners' lot and shall not be permitted to run free.

6. No solid wall, fence, or hedge shall be erected or maintained nearer to the front property line than the walls, attached open porch, carport, or balcony of the dwelling erected on said tracts. No side or rear wall or fence, other than the wall of a building constructed on said tracts, shall be more than six (6) feet in height. No hedge located on any portion of any lot or tract shall be permitted to be more than three (3) feet in height. Owners of units bordering a golf course shall not erect or maintain a wall or fence of any nature with a greater height than three (3) feet within eighteen (18) feet of the rear property line. Landscaping shall be planned for any units bordering a golf course so as to avoid undue obstruction of the view of a golf course from said units.

7. No prefabricated building or structure of any nature whatsoever, permanent or temporary, shall be moved or placed upon or assembled or otherwise maintained on said tracts; provided, however, that a temporary office, tool shed, saw shed, lumber shed and sales office may be maintained upon said tracts by any building contractor for the purpose of erecting and selling dwellings on said tracts, but such temporary structures shall be removed upon completion of construction or of selling of dwellings, whichever later occurs.

8. All clothes lines, equipment, service yards, wood piles or storage piles shall be kept screened by adequate planting so as to conceal them from view of neighboring lots, streets, or golf course. All rubbish, trash or garbage shall be removed from the tracts and shall not be allowed to accumulate thereon, and shall not be burned except by use of incinerator and then only during the hours so specified by the governing authority.

9. Each residential unit shall be a separately designated and legally described freehold estate consisting of a parcel and the improvements thereon, and an undivided interest in the common elements of the tract of which said parcel shall be a part.

A. That, in order to promote and maintain efficiency and cooperation for the full enjoyment of any of the grantees of the units on the above property, a Board of Management be, and the same is hereby established and created as follows:

B. The Board of Management shall consist of not less than three (3) Managers who shall choose a chairman from among them.

C. The initial Board of Management shall consist of one (1) representative from each of the first three (3) residential units sold and transferred, who shall serve until sixty per cent of the units on the above property have been sold, at which time such Board shall thereupon cause an election to be held among the owners of such units, who shall elect a new Board from among the owners of all the units. Thereafter, annual elections shall be held for the purpose of electing a Board of Management under such rules and regulations as shall be adopted by such Board or fifty-one per cent of the owners of such units. The Managers so elected shall serve for a term of one year, without pay. The Managers shall have the right to substitute or appoint new members to the initial Board of Management from time to time in the event one or more of the Managers shall become unable or unwilling to continue to serve in such capacity, or is no longer a resident of said property.

D. For the purpose of election, each unit shall constitute one voting

unit, it being understood that the owners of each unit shall be entitled to one vote among them regardless of the number of grantees who may own such unit.

E. A majority vote of the Managers shall entitle said Board to carry out action on behalf of the owners of the units.

10. The "common elements" shall be defined as including, but not limited to, land not otherwise specifically conveyed with individual units, community and commercial facilities, if any, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines. No building shall be constructed on any part of the common elements.

11. No exterior additions, or alterations to any building, nor changes in fences, hedges, walls and other structures including, but not limited to color thereof, shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same, shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by an architectural committee composed of the Board of Management, or by a representative designated by the Board of Management. The members of such committee shall not be entitled to compensation for services performed pursuant to this paragraph. No such additions or alterations shall be permitted by any owner until the initial Board of Management has been established.

12. The Board of Management shall have the following rights and powers:

A. To levy monthly assessments Unofficial Document payable in advance, against each residential unit.

B. To use and expend the assessments collected to maintain, care for and preserve the common elements, buildings, grounds and improvements (other than interior of the buildings).

C. To pay taxes and assessments levied and assessed against real property, and such equipment and tools, supplies, and other personal property as are owned by the Board of Management for the common benefit of all unit owners.

D. To pay for water, insurance, sewerage and other utilities and expenses as shall be designated by the Board.

E. To enter into and upon the units when necessary, and at as little inconvenience to the owners of the units concerned as possible, in connection with the duties of the Board outlined herein.

F. To repair and replace facilities, machinery and equipment as is necessary and convenient, in the discretion of the Board.

G. To provide for the construction of additional recreational and other common facilities, from time to time, as in their discretion appears to be in the best interest of the owners and the project. Any such construction, improvements or additions shall be authorized by a majority vote of the Board of Management at a duly called meeting at which a quorum is present.

H. To insure, and keep insured, all buildings and improvements on the property, and the owners thereof, against loss from fire or other casualty, and to purchase same and such other insurance as the Board may deem advisable. Such insurance may, at the discretion of the Board, be taken in the name of the Board for

the benefit of all the unit owners, or in such other manner as the Board may deem advisable. In the event any of such insurance proceeds are insufficient to repair or replace loss or damage, to levy an additional assessment in proportionate amounts as to each unit to cover such deficiency.

I. To collect delinquent assessments by suit or otherwise, and to enjoin or seek damages from the owners of the units for violations of the covenants herein contained on the part of the owners to be performed, or for violation of the rules hereinafter referred to.

J. To protect and defend the property from loss and damage by suit or otherwise.

K. To employ and dismiss workmen, maids, janitors, gardeners, lawyers, accountants and any others necessary to carry out the rights and powers herein granted and to purchase supplies and equipment, to enter into contracts and generally to have the powers of an apartment house manager in connection with the matters hereinbefore set forth, except that the Board, nor any officer elected thereby, may not encumber or dispose of the interest of any owner except in order to satisfy a judgment against such owner for violation of the owner's covenants imposed by these restrictions.

L. To make reasonable rules and to amend the same from time to time, and such rules and amendments shall be binding upon the owners when the owners of a majority of the units have approved them in writing. A copy of such rules and all amendments shall be delivered to each unit.

M. To create an assessment fund into which the Board shall place all sums collected by assessments or otherwise, the assessment fund to be used and expended for the purposes herein set forth.

N. To render to the owners semi-annual statements of receipts and expenditures.

O. To appoint officers and agents to carry out the business of the Board.

P. To enter into or renew agreements with persons or firms to manage the units and carry out the rights and powers herein granted to the Board.

13. In the event any common area or common element (exclusive of any party wall), carport or storage facility is damaged or destroyed through the negligent or culpable act of an owner or any guests, agents, or members of his family, such owner does hereby irrevocably authorize the Board of Management to repair said damaged area or element, resident's unit, carport, or storage facility, and the Board shall so repair such said damaged area or element, unit, carport or storage facility. The owner shall then repay the Board of Management in the amount actually expended for said repairs.

A. Each unit owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall become a lien upon said owner's residence unit and percentage ownership of the common elements and shall continue to be such lien until fully paid. The amount owed by said owner to the Board shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

B. Each such owner, by his acceptance of a deed to a residence unit, which such deed shall recite that it is subject to the covenants, conditions and restrictions

herein set forth in this instrument, hereby expressly vests in the Board or its agents the right and power to bring all actions against such owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such owner hereby expressly grants to the Board a power of sale in connection with said lien.

C. In the event of a dispute between an owner and the Board of Management with respect to the cause of damage or to the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the owner addressed to the Board, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Board. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board and one chosen by the owner. These two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the owner and the Board, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

14. There is hereby created a blanket easement upon, across, over and under the above-described premises for ingress, egress, replacing, repairing and maintaining all utilities, including but not limited to water and electricity. By virtue of this easement, it shall be expressly permitted for the providing electricity company to erect and maintain the necessary telephone poles and other necessary equipment on said property and to affix and maintain ^{Unofficial Document} electrical wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the residential units.

15. The responsibility for maintenance of electricity, plumbing and other utilities shall remain with the owners of the units in the same manner as is normal and customary with owners of single family residences.

16. Each lot and the common elements adjacent thereto shall be subject to an easement for encroachments, created by construction, settling and overhangs as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same, so long as it shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the owners of the units agree that minor encroachments of parts of the adjacent residential units or common elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

17. An initial exterior maintenance assessment is hereby levied against each residential unit covered by these restrictions in a sum equal to six (6) times the monthly assessment rate established by the Board of Management for each such residential unit immediately preceding the time of the initial sale thereof. The said initial assessment shall be paid by the initial purchaser of each residential unit on the above described property to the Board of Management through escrow at the closing thereof; provided, however, neither this initial assessment, nor any other assessment thereafter made, nor any lien established to assure collection thereof shall apply to the undersigned, but shall apply only to purchasers of said residential units and their successors.

18. That for the purpose of enforcing these presents, the Board of Management and its successors are hereby granted, a lien against the interest of any grantee of any unit, 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 by any such grantee, the lien against the interest of such grantee in said unit may be foreclosed by the Board of Management in the same manner as a realty mortgage and that any redemption thereafter shall, nevertheless, be subject to the lien herein created as to other or future events or non-performance or default; provided, however, it is specifically understood and agreed that any lien herein created or which at any time accrues by virtue of the provisions hereof, and the terms hereof, shall at all times be subordinate and inferior to the lien and the terms and conditions of any bona fide mortgage in which a lending institution is the mortgagee, whether such mortgage be now in existence or be hereafter made and placed against all or any portion of the above described premises and the improvements thereon. It is the intention that the lien herein created shall be secondary and subordinate to any such bona fide institutional mortgage lien regardless of the time such mortgage lien is placed of record.

19. That none of the said units shall be sold or leased, or underlet, and such sale, lease or underletting shall be void unless the purchaser, tenant or subtenant shall be first approved by the Board of Management. Said Board of Management shall be given notice in writing of any proposed sale, lease or sublease, and shall at once deliver written notice thereof to the owner of each unit located on any portion of the above-described premises. Said Board of Management shall have fifteen (15) days after receiving such notice to approve or disapprove the same, and within said fifteen (15) day period shall have the option to purchase, lease, or sublease the same, as the case may be, for and on behalf of the consenting owners of the other units on the same terms under which the owner proposes to sell, lease or sublease, as the case may be. In the event the said Board of Management shall neither approve nor disapprove the proposed sale, ^{Unofficial Document} sublease within the said fifteen (15) day period, the same shall be deemed to be approved.

The provisions of this paragraph numbered 19 shall not apply to or be enforceable by the Board of Management or any person, partnership, association or corporation (a) with respect to a sale, transfer or conveyance of any parcel of the above described premises to any person, partnership, association or corporation pursuant to a judgment or foreclosure of a mortgage of record thereon by an institutional lender, or (b) where a proposed sale, transfer, conveyance or lease to any person, partnership, association or corporation by an institutional lender which has acquired title to any parcel of the above described premises by virtue of foreclosure by it of a mortgage of record upon such parcel has been disapproved by said Board of Management and said Board of Management has failed during said fifteen (15) day period to purchase or lease the same, as the case may be, on the same terms and conditions under which said institutional lender proposes to sell, transfer, convey or lease the same.

20. A. That all dividing walls now or hereafter constructed between any two (2) units on the above property shall be considered party walls, and shall be deemed to belong to the respective common owners as tenants in common, and shall be used for the common purpose of the units separated thereby. The preservation and structural repair of any one of said party walls, except for interior decoration, shall be the joint duty and obligation of the persons using the particular party wall. No structural changes in any of one said party walls shall be undertaken without the prior written consent and approval of the Board of Management and each of the users of the particular party wall.

B. In the event any such party wall is damaged or destroyed through the act of one adjoining owner, or any of his guests or 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 party wall, then the first of such owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining owner.

C. In the event any such party wall is damaged or destroyed by some cause, other than the act of one of the adjoining owners, his agents, 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. In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Board of Management, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Board of Management. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by each of the owners and the third by the two so chosen, or if they cannot agree within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two arbiters shall be binding upon all parties involved in the subject dispute. The cost of arbitration shall be shared equally by the two owners involved in the dispute.

E. These covenants shall be binding upon the heirs and assigns of any owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an owner.

Unofficial Document

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

22. That any and all prior restrictions on said property be, and the same are hereby ratified, approved and confirmed.

23. The Sun City Home Owners Association shall enforce these restrictions upon receipt of a written request from the owner or owners of one or more of the units covered hereby. The Association shall have the right to enforce these restrictions in its own name on behalf of the owner or owners who submitted the request to the Association.

The foregoing restrictions and covenants run with the land and shall be binding on all persons owning real property therein for a period of thirty (30) years following the date these restrictions are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. These restrictions and covenants may be amended, in whole or in part, at any time by a majority vote of the then owners of lots within the property herein concerned. Deeds of conveyance of said property or any part thereof may contain the above restrictive covenants by reference to this document but whether or not such reference is made in such deeds or any thereof, each and all of such restrictive covenants shall be valid and binding upon the respective grantees. Violation of any one or more of such covenants may be restrained by any court of competent jurisdiction and damages awarded against such violator, provided, however, that a violation of these restrictive covenants or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said tracts or any part thereof.

