

WHEN RECORDED MAIL TO:
Transamerica Title Company
P. O. Drawer 13028
Phoenix, AZ 85002
Trust 99152 DR

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FOUNTAIN OF THE SUN

PROP RSTR (PR)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

A. INTENT

This declaration made this 7 day of December, 1973, by TRANSAMERICA TITLE COMPANY, an Arizona corporation as Trustee, and not personally, under Trust No. 9152.

W I T N E S S E T H:

Said Trustee holds legal title to, and Universal Development Corporation (hereinafter referred to as "Developer") is the trust beneficiary and the developer of certain lands located in Maricopa County, Arizona, more fully described in Section B and desires to establish a general plan for the improvement and development of its property and to subject the property to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth, each and all of which is to the benefit of said property and the owners thereof and shall apply and bind their successors in interest and any other owner thereof;

Now, therefore, Transamerica Title Company and Universal Development Corporation hereby declare the real property described and referred to in Section B is and shall be held, transferred, sold and conveyed subject to conditions, restrictions, easements, liens and charges hereinafter set forth, all of which shall be deemed to run with the described land.

B. DEFINITIONS

"THE PROPERTY" shall mean and refer to all such existing properties and additions thereto, and are subject to this declaration or any supplemental declaration and are more particularly described as:

Lots 1386 through 1414 inclusive and Tracts A-13, B-13 and C-13, FOUNTAIN OF THE SUN - PARCEL No. 13, according to the plat of record in Book 168 of Maps, page 34, Records of the Maricopa County, Arizona, Recorder.

"ASSOCIATION" shall mean the Fountain of the Sun Association, a non-profit association to be comprised of Developer (so long as Developer chooses to remain a member) and the owners of lots within the Property and other property, adjacent or nearby, developed pursuant to a common plan, which Association will enforce the covenants, conditions and restrictions hereby declared and maintain and administer certain common areas and facilities upon or near the Property for the benefit of its members.

"COMMON AREA" or "COMMON ELEMENTS" shall mean all areas within the Property (and nearby property developed pursuant to a common plan) owned and maintained by the Association for the common use and enjoyment of the members of the Association.

"LOT" or "UNIT" shall mean and refer to lots as shown upon the latest applicable recorded subdivision plat or plats of the property. "TRACT" shall mean and refer to tracts shown upon and designated by letter-number combinations in the latest applicable recorded subdivision plat or plats of the Property.

"LIVING UNIT" shall mean and refer to any portion of buildings or dwellings situated upon the property designated and intended for use and occupancy as a residence by a single family.

"STRUCTURE" shall mean any building, improvements, structure, fixture, fence or other enclosure not otherwise specifically described.

"DEVELOPER" shall mean Universal Development Corporation.

"OWNER" shall mean and refer to any purchaser under agreement of sale or, absent any executory agreement of sale, the owner of record, whether one or more persons or entities, of the fee simple title to any lot situated upon the Property, but notwithstanding any applicable provision of a mortgage or deed of trust, shall not mean or refer to a mortgagee or trustee or beneficiary under any trust deed until such mortgagee or trustee or beneficiary under any trust deed has acquired title through foreclosure or any proceeding in lieu of foreclosure.

"MEMBER" shall mean and refer to all those owners who are members of the Association.

C. GENERAL PURPOSES

It is the purpose of this Declaration, and the covenants, to ensure the appropriate improvement of the Property and to create a community with parks, open spaces and common facilities for the general benefit of said community, and to prevent inharmonious development of said property, thereby enhancing the values of investments made by purchasers of the lots therein.

D. COVENANTS, CONDITIONS AND RESTRICTIONS

1. Subdivision of Lots

No lot or lots shall be subdivided, or any subdivided portion of a lot sold or leased, except so as to combine the ownership of

subdivided portions of one lot with other adjoining lots. Any ownership of single holding by any person comprising parts of two adjoining lots or the whole of one lot and parts of one or more adjoining lots shall, for the purposes of this Declaration of Conditions and Restrictions (except as hereinafter specifically provided), be deemed to constitute a single lot.

2. Approval of Plans and Location of Structures

The Developer has deemed it desirable for the efficient preservation of values and amenities in said community to create an agency to which should be delegated and assigned the right and power to maintain and administer the Common Area and facilities thereon and enforce the covenants, conditions, restrictions, reservations, easements, liens and charges herein provided for. The Association has been organized as a non-profit corporation incorporated under the name FOUNTAIN OF THE SUN ASSOCIATION for the purpose of exercising such right and power. However, such rights and powers shall first be, and they are hereby vested in the Developer, who shall in turn transfer such rights and powers to the Association at such time as in the sole judgment of the Developer the said Association is ready therefor. Upon such transfer, all such rights and powers shall be fully vested in, and exercised by, the Association. (All subsequent references to "Developer" or "the Association" shall be deemed to refer to the party then vested with such rights and powers.) No dwelling nor structure shall be placed upon any lot until such dwelling or structure (and the location thereof on the lot) has been approved by Developer or the Association (as appropriate). Said Developer or Association shall have access to, and the right to inspect, the Property and/or materials at any reasonable time during the process of construction. Dwellings shall be approved in writing as to condition and appearance by the Developer or the Association. The issuance of approval shall be within the sole discretion of the Developer or the Association. The Developer or the Association may from time to time promulgate rules, regulations, and standards with respect to procedures for obtaining approval of dwellings and structures proposed to be placed on lots and criteria to be employed in granting or denying such approval.

3. Garages; Carports

No garage or accessory buildings shall be used as living quarters. All driveways on any lot shall be of concrete construction.

4. Temporary Structures

No temporary residence, dwelling or garage shall be placed or erected on any lot. No residence shall be occupied in any manner while in the course of construction or prior to its being fully completed without the written approval of the Developer or his successor.

5. New Construction

All buildings or structures erected on the property shall be of new construction and shall not have been moved from other locations onto said premises.

6. Animals

No cattle, sheep, poultry, hogs or any other livestock shall be kept or maintained on any lot. This paragraph shall not be construed as a prohibition against or in any way interfering with the keeping of ordinary domestic pet animals.

7. Name Signs

No signs, advertisements or billboards of any kind shall be erected, placed or maintained on any lot other than a name and address sign, or such reasonable signs relative to the sale or rental of lots as may be approved by Developer or the Association.

8. Antennas; Air Conditioners

No antennas shall be installed or maintained if other suitable means of amplification are available. No lightposts, pole or tower of any kind which exceed the height of eight (8) feet shall be erected or maintained at any time. No coolers, air conditioners or heating units shall be mounted on the top of any dwelling or other structure in excess of eight (8) feet in height.

9. Tanks

No elevated tanks of any kind shall be erected, placed or permitted on any lots. Any tanks, including tanks for the storage of fuel, must be buried or attractively screened to conceal them from neighboring tracts, roads or streets.

10. Vehicles

Private passenger automobiles and pickup trucks, including pickup campers, may be parked overnight on the Property in driveways only. Trucks larger than pickup class and vehicles other than described above shall not be kept on any lot or street except in areas designated therefor by the Association. No motor vehicle or part thereof which is under repair, not in operating condition or unregistered shall be placed or permitted to remain on the street or streets or any portion of any lot or lots unless it is within a closed garage or structure. No boats nor boat railways, shall be constructed, kept or maintained upon any lot.

11. Commercial Use

All lots and structures thereon shall be used for private residence purposes only, and no building or structure of any nature adapted primarily for business purposes shall be erected or maintained on any residential lot and no business of any nature shall be conducted on any lot. Nothing herein shall be deemed to prohibit the leasing of a residential structure for residential purposes.

12. Underground Facilities

No cesspool or well may be dug or run laterally without prior written approval of Developer or the Association. No lot shall be used for the purpose of boring, mining, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

13. Outdoor Burning

There shall be no outdoor burning of trash or other debris (which restriction shall not, however, be deemed to prohibit the use of normal residential barbecue or other similar outside grill).

14. Sanitation

Garbage and refuse facilities and any other artificial projections from the ground shall be walled in and camouflaged in such a manner as to conceal them from the view of the neighborhood lots and streets. All rubbish, trash and garbage shall be in approved containers regularly removed from the premises and shall not be allowed to accumulate thereon.

15. Obstructions and Interferences

No fences shall be constructed over four (4) feet in height nor shall any fences be constructed of chain link. All fences shall be approved in writing as to condition and appearance by the Developer or the Association. No structure, shrubbery or other vegetation shall be permitted to exist on any lot the height or location of which shall be deemed by the Developer or the Association to constitute either a traffic hazard, to be unattractive in appearance or unreasonably detrimental to the adjoining property. As an aid to freer movement of vehicles at the near street, intersections and in order to protect the safety of children, pedestrians and the operators of vehicles and/or property, the Developer or the Association may impose further limitation on the height of fences, walls, gateways, ornamental structures, hedge, shrubbery and other fixtures, construction and planting on corner lots in all districts where front yards are required. Such barriers to clear unobstructed vision at corners or intersections and streets shall be limited to a height of not over two (2) feet above the established elevation of the nearest street line for a distance of at least 15 feet along both front and side lines measured from the point of intersection of said intersecting lot lines.

16. Nuisance

No noxious or offensive activity may be carried on upon any lot nor shall anything be done therein which may be or may become an annoyance or detriment to other property owners.

17. Drainage Alteration; Easements

No plant or structure (except suitable ground cover), walls and fences of any type may be constructed, placed or permitted to remain on areas subject to easements as shown on recorded plats. No such plants, structures, walls and fences shall be permitted on any lot which shall be deemed by the Developer or the Association a detriment to a drainage area or to utilities located under or near such plants, structures, walls or fences.

18. Ingress and Egress

Rights of ingress and egress to, and the right of entry upon, any part of the Property are reserved to the Developer and the Association or their agents for the purposes of installing improvements for the benefit of the Property or of investigating possible or actual violations of these covenants and correcting such violations or to sell unsold lots.

19. Single Family Dwellings.

Single family dwellings constructed on any lot shall be of permanent construction and shall have a minimum area of one thousand square feet exclusive of carports, breezeways, garages, open patios and porches. The maximum height of any single family dwelling shall be two stories above grade.

20. Setbacks

All setbacks and side yards shall conform to the setbacks shown on the plat or plats of record of the Property.

21. Mobile Homes Prohibited

No trailer, mobile home or vehicle designed to serve any residential function including, without limitation of the foregoing, self-propelled motor lodges, vans or trucks not elsewhere herein specifically allowed, shall be kept at or upon any lot either temporarily or permanently.

22. Enforcement of Covenants

Should it become necessary at any time that the Developer or the Association incur any expense or employ counsel to enforce any of the provisions, conditions, restrictions or covenants herein contained, all costs incurred for the enforcement of such provisions, conditions, restrictions or covenants herein contained (including a reasonable fee for enforcement), shall be borne by the offending party, provided notice in writing of such violation has been reasonably given. The Developer, the Association and any Member shall be a proper party plaintiff in any action to enforce any provision of this Declaration, and any violation of any provision hereof may be enjoined or specifically enforced. Developer or the Association shall also be entitled to remove any structure, dwelling, or property, or trim or remove any vegetation, maintained or kept on any lot in violation of the provisions of this Declaration and to charge the owner of such lot for the cost of such removal or trimming. Such charge shall be secured by a lien of the type and enforceable in the manner provided in Section 25 of this Declaration.

23. Duration of Covenants

These easements, covenants, conditions and restrictions run with the land and shall be binding on all parties and all persons claiming under them until the year 2000 at which time said covenants, easements, conditions and restrictions shall automatically be extended for successive periods of twenty-five (25) years each, except as the same may be amended or revoked by the affirmative vote of 75% of the members of the Association.

24. Association Membership

Membership in the Association shall be comprised of owners of lots, there being one membership for each lot as platted of record, and a fractional membership for a fraction of such lot. Such lot owner shall be entitled to the rights and privileges of membership of the Association, and shall comply with its duly promulgated rules and regulations.

25. Association Assessments

Each lot shall be assessable by the Association as provided in the bylaws thereof, and any such assessment shall constitute, from the date of such assessment, a lien on each such lot to secure the payment of the assessment. For purposes of this section, any portion of any lot which shall have been combined into common ownership with an adjacent lot shall bear that proportion of the assessment imposed upon each lot as such portion of lot shall bear to the original platted lot from which it is derived. In the event that any assessment imposed by the Association shall not be paid on or before the due date thereof, the Association shall have the right to foreclose such lien by judicial foreclosure in the manner prescribed by Arizona law for the foreclosure of liens on real property other than mortgage liens. In the event of any action to foreclose such lien, the lien shall be deemed to secure, in addition to all Association assessments then due and unpaid, all costs and expenses (including reasonable attorneys' fees) incurred in preparation for or in connection with such foreclosure, together with interest on the unpaid assessment or assessments from the due date thereof until paid.

26. Delegation of Developer or Association

Developer or the Association shall have the right to appoint agents or committees or both to act on behalf of Developer or the Association for the purpose of exercising any right, power or duty given to or imposed upon it by this declaration.

27. Purposes of Assessments

Assessments made under the authority of this Declaration shall be made for the sole purpose of raising funds required for the maintenance, repair and improvements of common areas, streets, alleys and recreation facilities available to all members of the Association as well as costs of administration of the Association and such other costs as the Association may from time to time incur for the benefit of its membership.

28. Consent by Purchase or Lease

The execution of any agreement to purchase or lease any lots or the acceptance of a deed or lease to any lot shall, without further affirmative act or assent by such purchaser or recipient, cause such recipient or purchaser and his rights in the subject lot to be subject to the bylaws and the duly promulgated rules and regulations of the Association and to the provisions of this Declaration, and shall constitute such purchaser's or recipient's agreement to be bound by, and perform in accordance with the provisions of this Declaration.

29. Enforcement; Mortgage Savings

Violation of any one or more of the covenants, conditions and restrictions contained herein may be enjoined by any court of competent jurisdiction and/or damages awarded against any violator; provided, however, that a violation of these covenants, conditions and restrictions, or any one or more of them, shall not affect the lien of any mortgage now of record or which shall be hereafter placed of record upon said lots or any part thereof.

E. PRIVATE ROADS AND OTHER TRACT USES

There is hereby established and dedicated for the following persons and uses easements upon, over and across those areas shown on the plat or plats of record of the Property as lettered and numbered tracts:

1. For ingress and egress to and from all lots adjacent to such Tracts by the owners of such adjacent lots, all invitees of such owners, Developer and Developer's agents, employees and delegates, the Association and its agents, employees and delegates;

2. For delivery of mail and all goods and services requested by such adjacent lot owners;

3. For the installation and maintenance of any and all public utilities facilities in a manner reasonably consistent with the other uses of said Tracts recited herein;

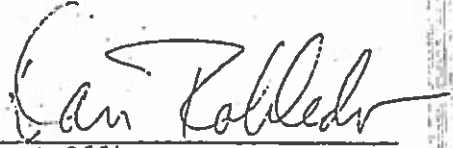
4. For landscaping and recreation purposes to the extent consistent with the preservation of streetways for ingress and egress not less than twelve (12) feet in width;

5. For the construction, repair and maintenance of any improvement or facility upon such Tracts in furtherance of the foregoing purposes and uses.

Nothing herein set forth shall be deemed or construed to constitute said Tracts, or any part thereof, as public streets or public roads.

IN WITNESS WHEREOF, the TRANSAMERICA TITLE COMPANY, an Arizona corporation, as Trustee, and not personally, has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 7th day of December, 1973.

TRANSAMERICA TITLE COMPANY, as
Trustee

By 
Trust Officer