

AGREEMENT made as of this 31st day of December, 1983, between Fountain of the Sun Association (FOSA), an Arizona corporation, the other horizontal property regimes and homeowner associations within the Fountain of the Sun Development, and the FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION, (F.O.S.C.A.), an Arizona non-profit corporation, for themselves and for certain third party beneficiaries as hereinafter indicated do enter into this Agreement.

RECITALS:

Fountain of the Sun is a planned community developed by Universal Development Corporation, (UDC) a Maryland corporation, Fountain of the Sun Association is a non-profit corporation which currently owns and controls and has the responsibility for operating and maintaining various improvements which have been constructed at Fountain of the Sun for the benefit of the community at large, including certain streets, parks, recreational and social facilities, parking areas and equipment and furnishings utilized therein. The parties now deem it appropriate that certain of these common facilities be transferred by the Fountain of the Sun Association to the Fountain of the Sun Community Association and that the Fountain of the Sun Community Association appropriately bind itself to maintain such common facilities in accordance with the reasonable expectations of the residents and property owners of the community.

Therefore, this Agreement will memorialize the parties Agreements (i) with respect to the transfer and continued maintenance and operation of the common facilities, and (ii) the rights and obligations inter-se of the F.O.S.C.A. and of both the Fountain of the Sun Association and other councils and co-owners of horizontal property regimes and homeowners associations within the Fountain of the Sun Development, which are signatories to this Agreement or which otherwise have subscribed to the use of the F.O.S.C.A. recreational facilities of the Fountain of the Sun Development, with respect to the entitlement of owners or occupants of residential units within the Fountain of the Sun Development to avail themselves of the services and common facilities available to members of F.O.S.C.A. and the amounts to be paid for such rights of use.

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

AGREEMENT:

A. Transfer of ownership of Common Facilities.

1. The Fountain of the Sun Association will cause to be transferred to F.O.S.C.A., the following described real and personal property (hereinafter referred to as the common facilities) situated within the Fountain of the Sun Development, subject to certain easements as hereinafter described, within a period of thirty (30) days after the execution of this Agreement.

a. Existing parkway and roadside areas, being Tracts A-3, B-3, C-3, E-3, F-3, Parcel 3A Fountain of the Sun and Tract Q Parcel No. 1, Fountain of the Sun.

b. Recreational building and land included in the parcel described in Exhibit "A", plus all personal property as is presently located in the recreation building.

c. Exercise room, bathhouse, swimming pool, jacuzzi, casting pond and land included in the parcel described in Exhibit "A" attached hereto and incorporated herein by reference, plus all personal property as is presently located in or about those areas.

d. Clubhouse and land included in the parcel described in Exhibit "A" (Subject to leases for restaurant area and golf pro shop) plus all personal property as is presently located in the Clubhouse, with the exception of the coffee shop and pro shop owned by UDC.

e. Parking area around the Clubhouse and Northwesterly from the present apartment house site, subject to various easements. The land comprising the parking area is included in the parcel described in Exhibit "A", attached hereto and incorporated herein by reference.

2. The conveyances of the foregoing common facilities shall be subject to reasonable and necessary easements reserved to UDC, its transferees, lessees, successors and assigns, and all invitees thereof, to have access to the common facilities in connection with UDC's continuing operation of the golf course, the related pro shop and the restaurant in the clubhouse at Fountain of the Sun, together with parking for certain apartment units and for restaurant and golf course patrons.

3. Prior to the transfer by the Fountain of the Sun Association of the foregoing common facilities, the Fountain of the Sun Association shall secure the release of any and all

encumbrances or liens upon the common facilities, other than those described above, and cause the common facilities to be transferred to F.O.S.C.A. free of all liens and encumbrances except for the taxes or assessments currently due. Title to the real and personal property transferred hereby shall be free and clear of all liens, debts, or claims of other persons or entities.

4. UDC has developed the golf course facility as a part of the total development of Fountain of the Sun which is used principally by the residents of Fountain of the Sun, although use of the golf course, pro shop and restaurant are open to the public. The existing golf course is part of the approved site plan under existing Planned Unit Development (P.U.D.) zoning. UDC will not seek any revision to that site plan which would reduce the number of golf holes below 18 or shorten by more than 5% the overall length of the golf course.

B. Assignment of Leases

The Fountain of the Sun Association hereby agrees to assign to F.O.S.C.A. all of its rights and obligations under the lease agreements entered into the 23rd day of December, 1980, between the Fountain of the Sun Association and Universal Development Corporation for the lease of the pro shop and restaurant in the clubhouse at the Fountain of the Sun development, and agrees to execute such further documents as may be required to evidence said assignment. F.O.S.C.A. agrees to accept said lease or leases and to assume all duties and responsibilities established thereunder.

C. Covenants of F.O.S.C.A.

1. Until the functions of F.O.S.C.A. are assumed by a municipality or Maricopa County or some other entity which will perform those functions, but in any event for so long as UDC shall remain active in the development and sales of lots or housing in Fountain of the Sun, F.O.S.C.A. shall:

a. Maintain all common facilities in good and clean condition and repair and free from all unsightly conditions.

b. Maintain in clean and attractive condition the right-of-way area between Broadway Road as presently paved and the fence marking the north boundary of the Fountain of the Sun community.

c. Provide security guard services for the Fountain of the Sun at levels which the Board of Directors for F.O.S.C.A. deem reasonable and necessary, but in no event will the security guard services during the period from dusk to dawn be less than the guard services presently provided during the period.

d. Pay all real property taxes and assessments

assessed against common facilities by any governmental authority.

e. Allow reasonable use by F.O.S.C.A. members and residents of the Fountain of the Sun community of all the common facilities, and any hereafter added, intended for social or recreational uses, provided that F.O.S.C.A. shall have the right to exclude any person from all or any part of such use on account of non-payment of assessments or for conduct inconsistent with the general enjoyment of any particular facility by other members of the community.

f. Bear the costs and responsibility of any stocking and maintenance of fish in the Fountain of the Sun golf course lakes and casting pond, and set rules and regulations with regard to the fishing therein and enforce such rules and regulations with regard to the fishing therein. F.O.S.C.A. members and their guests shall have reasonable access to the ponds and lakes owned by UDC and UDC's successor. UDC agrees that if the ponds or lakes are drained, that UDC or any assignee will replace any fish lost through the drainage. F.O.S.C.A. agrees to create rules and regulations as necessary to minimize the interference between fishermen and golfers. F.O.S.C.A. shall have the right to terminate fishing and terminate any duty to stock or maintain fish in any of the lakes and ponds.

g. Maintain in force at all times appropriate liability insurance having a minimum limit of \$1,000,000.00 to protect F.O.S.C.A. against claims arising from any use of the common facilities, together with extended coverage casualty insurance on common facilities improvements sufficient to repair and replace any such improvements which may be damaged or destroyed by fire or other casualty. Such liability insurance shall include UDC as an additional insured while UDC is still actually involved in the development and sale of lots and housing units in Fountain of the Sun.

D. Sharing of Golf Course Water Facilities

1. UDC and F.O.S.A. presently use an irrigation system owned by UDC to provide irrigation water for certain parkways, parks, landscaped areas included in the common facilities and public areas as well as the golf course owned and operated by UDC. For so long as UDC or any successor to or assignee of UDC continues to operate the Fountain of the Sun golf course and an irrigation system, they will continue to make available to F.O.S.A. and will make available to F.O.S.C.A. from the said irrigation system sufficient water to irrigate the parkways, parks, landscaped areas and public areas heretofore watered from such system, UDC agrees to charge F.O.S.C.A. and F.O.S.A. will pay the same fee per month as now paid by F.O.S.A., increased or decreased by the percentage of increase or decrease in the rates hereinafter charged by the Salt River Project for the electrical power used in operating said irrigation system. Each increase or decrease will be effective upon the effective date of the applicable rate change.

2. F.O.S.C.A. and F.O.S.A. hereby grants to UDC and any successor owner of the Fountain of the Sun Golf Course an easement upon or across the common facilities for the purpose of maintaining, repairing or otherwise working on or with the said golf course irrigation system, including the right to excavate any trenches and to clean, maintain or repair the casting pond which serves as a holding basis for water flowing through said system. F.O.S.A. agrees to supply to F.O.S.C.A. within sixty (60) days after this Agreement is signed, all maps in its possession of "as built" facilities located in the common facilities and parking areas. All activities of maintenance, repair, or replacement performed by UDC will be done in such a manner so as not to unduly disrupt or burden F.O.S.C.A. or the parties using the facilities and will be done in a manner so as to protect the safety of all persons or property. UDC will assume all responsibility and liability for damage or injury to parties or property as the result of the maintenance, repair or replacing work conducted by UDC upon or across the common facilities under this paragraph, and will restore the property and any improvements disturbed to the same condition prior to the construction or disturbance.

E. F.O.S.C.A. Access for Water System Repairs.

UDC hereby grants to F.O.S.C.A. the right to use the underground water distribution system (referred to in Paragraph (D) (1) for the purpose of irrigating the common areas. If UDC should at any time cease to supply water to F.O.S.C.A. through that system, F.O.S.C.A. may use the underground system to irrigate the common areas with city water or water from any other source. Passage of title from UDC to a third party as to any portion of said underground water distribution system shall not be deemed to revoke F.O.S.C.A.'s right to use such system.

F. Collection of Assessments.

1. The Fountain of the Sun Association and each of the condominium and homeowner associations within the Fountain of the Sun development, which are signatories to this Agreement or which otherwise have subscribed to the use of the F.O.S.C.A. common usage areas and F.O.S.C.A. recreational facilities of the Fountain of the Sun development, be obligated to pay the assessments described in Paragraph 2 of this section. Any condominium or homeowner association now existing or hereafter created within the Fountain of the Sun Development which is not a party to this Agreement, may elect to subscribe on behalf of its members for the right to use the common areas and recreational facilities of the Fountain of the Sun development. Each condominium or homeowner association so electing shall notify F.O.S.C.A. of such election, and such notice shall obligate said association to pay thereafter the assessment described in Paragraph 2 of this section.

2. The Fountain of the Sun Association and other

condominium and homeowner associations within the Fountain of the Sun development, which are parties to this Agreement, or which otherwise have subscribed to the use of the common areas and recreational facilities of the Fountain of the Sun development, shall pay to F.O.S.C.A. in respect of each calendar year an amount equal to the annual per unit share of the anticipated F.O.S.C.A. annual and supplemental budget, calculated pursuant to the provisions of Article IX of the F.O.S.C.A.'S Bylaws for the operation and maintenance of the common usage areas and recreational facilities of the Fountain of the Sun, multiplied by the number of units in the respective condominium or homeowner associations. Said payment shall be made in equal monthly installments, except as otherwise agreed by F.O.S.C.A. and the participating homeowner or condominium associations affected, with each payment due on the first day of each month. F.O.S.C.A. shall not be obligated to collect amounts due and owing from the individual owners of residential units within the Fountain of the Sun development, but instead will render statements directly to the participating homeowner or condominium associations, who shall be liable for such payment.

F.O.S.C.A. may require such reasonable record keeping and reporting by the Fountain of the Sun Association or by any other homeowner or condominium association which is a party to this Agreement, or which otherwise have subscribed to the use of the F.O.S.C.A. common usage areas and F.O.S.C.A. recreational facilities of the Fountain of the Sun development as may be necessary to accurately calculate and verify the amount due each month and year pursuant to this Agreement.

G. Treatment of Apartment Units

F.O.S.C.A. shall work with the owners of all existing apartment units within the Fountain of the Sun community concerning entitlement to use of common facilities by apartment residents. Such owners electing to subscribe for the use of the common facilities and security guard services for the benefit of the occupants of their apartment units shall so notify F.O.S.C.A. and shall thereafter remain liable for the charges hereinafter described until such subscription is terminated by written agreement of both of the parties thereto. Each subscribing owner shall owe and pay \$4.40 to F.O.S.C.A. for each apartment unit owned by said owner during each week that such apartment unit is occupied. Said subscription charge shall be payable monthly in the manner described herein. In the event that F.O.S.C.A. shall, during any calendar year, increase or decrease the assessment per unit that is assessed by F.O.S.C.A. to apartment owners, the aforementioned subscription charge shall be increased or decreased for said calendar year by the same percentage that such assessment is increased or decreased. F.O.S.C.A. may require such reasonable record keeping and reporting by an apartment owner as may be necessary to accurately calculate and verify the amount due pursuant to the subscription in question. F.O.S.C.A. may require each owner to submit, by the fifteenth day of each month, a recapitulation of the occupancy of each unit by day for the

previous month together with payment of the above described assessment (or such increased or decreased amount as may then be applicable) for each week of occupancy.

H. Property not Transferred to F.O.S.C.A.

1. All real and personal property, conditions, covenants, and other matters covered by the Agreement dated the 23rd day of December, 1980, between Fountain of the Sun Association and the Universal Development Corporation, not transferred from the Fountain of the Sun Association to F.O.S.C.A., remain the property and the responsibility of the Fountain of the Sun Association.

I. Further Responsibilities of F.O.S.C.A.

1. It is further agreed that the following shall be the responsibility of F.O.S.C.A..

a. Street lights, fronting on 80th Street, Coralbell Road, Pueblo Road, Park View Circle, Frito Drive, 78th Place, and Pueblo Avenue.

b. Maintenance and repair of 80th Street, Coralbell Road, Pueblo Road, Park View Circle, Frito Drive, 78th Place and Pueblo Avenue.

c. Repair and maintenance of the Fountain of the Sun boundary fences on the North, East, South and West boundary lines.

d. F.O.S.C.A. shall have full responsibility for the two sewage lift pumps.

J. Enforcement of this Agreement.

1. Any party to this Agreement shall have the right to enforce its terms and any right or privilege conferred thereby upon such party by suit for injunction, specific performance or otherwise by any means provided by law or in equity, either successively or concurrently. Any such action by a party shall not be deemed an election of remedies or otherwise prevent such party from pursuing any further remedy it may have at law or in equity.

2. F.O.S.A. and each of the condominiums and homeowners' associations and apartment owners which are parties to this agreement or which otherwise have subscribed to the use of the F.O.S.C.A. common usage areas and F.O.S.C.A. recreational facilities of the Fountain of the Sun development shall pay F.O.S.C.A. for all costs and expenses, including reasonable attorneys' fees, incurred by F.O.S.C.A. in connection with the recovery of any assessments due and unpaid under the terms of this Agreement, or the breach of any of the terms and conditions contained herein, whether by legal action or otherwise and

whether or not any such action shall proceed to judgment.

3. In the event of the insolvency of F.O.S.A. or any of the condominium or homeowner associations or apartment owners which are parties to this agreement or which otherwise have subscribed to the use of the F.O.S.C.A common usage areas and F.O.S.C.A. recreational facilities of the Fountain of the Sun development, or their successors, or assignees, or the filing by or against said parties or their successors or assignees of any voluntary or involuntary petition in bankruptcy, or a partial or general assignment for the benefit of creditors, or any proceedings whereby the full right of said parties or their successors or assignees to the use, control and occupancy of property owned by said parties may be impaired or transferred, in whole or in part, then this Agreement at the option of F.O.S.C.A. may be immediately terminated, as it may apply to, or be binding upon, any defaulting association.

4. To insure continued operation of the common useage areas and recreational facilities transferred to F.O.S.C.A. pursuant to the terms of this Agreement or otherwise hereinafter acquired by F.O.S.C.A., it is agreed that the Fountain of the Sun Association and each of the condominium and homeowner associations which are parties to this Agreement or which otherwise have subscribed to the use of the F.O.S.C.A. common useage areas and F.O.S.C.A. recreational facilities of the Fountain of the Sun development shall, in the event F.O.S.C.A ceases to exist or discontinues operations for any reason, jointly assume the obligations and responsibilities of F.O.S.C.A. under this Agreement.

WHEREFORE, the parties hereto have executed this Agreement on the 31st day of December, 1983.

FOUNTAIN OF THE SUN ASSOCIATION

BY [Signature]
Its President

FOUNTAIN OF THE SUN COMMUNITY ASSOCIATION

By [Signature]
Its President

FOUNTAIN OF THE SUN
CONDOMINIUMS ASSOCIATION

By McDonald Jones
Its President

FIRST PHASE PARCEL 9
CONDOMINIUMS ASSOCIATION

By Gene Romalis
Its Vice President

SECOND PHASE PARCEL 9
CONDOMINIUMS ASSOCIATION

By Sam Bloom
Its President

THIRD PHASE PARCEL 9
CONDOMINIUMS ASSOCIATION

By Maurice M. Spahr
Its President

FOURTH PHASE PARCEL 9
CONDOMINIUMS ASSOCIATION

By J. L. Callahan
Its Pres.

FIRST PHASE PARCEL 10 CONDOMINIUMS
ASSOCIATION

BY L. M. Lorenzen
ITS President

SECOND PHASE PARCEL 10 CONDOMINIUMS
ASSOCIATION

BY Bruce Romalin
ITS V. President

THIRD PHASE PARCEL 10 CONDOMINIUMS
ASSOCIATION

BY Nathan Lyubov
ITS General Mgr. U.D.C.

PARCEL 11 CONDOMINIUMS ASSOCIATION

BY Nathan Lyubov
ITS V.P.

The foregoing Agreement, insofar as it pertains to the rights and obligations of UNIVERSAL DEVELOPMENT CORPORATION, is hereby accepted and approved.

UNIVERSAL DEVELOPMENT CORPORATION

BY Thomas W. Leub
ITS Vice - President

The foregoing Agreement is accepted and approved by the undersigned insofar as it pertains to the rights and obligations of the owners of the apartment dwellings referred to therein.

REALTY DEALERS LTD
By David L. Lillian
Treasurer
UPC Advisory Services Inc.
General Partner.