

AMENDED and RESTATED

DECLARATION of COVENANTS, CONDITIONS and RESTRICTIONS

RECITALS

This Amended and Restated Covenants, Conditions, and Restrictions (the “Declaration”) is made as of May 12, 1998.

- A. By that certain Declaration of Covenants, Conditions and Restrictions recorded in the official records of Maricopa County, Arizona, (the “Original Declaration”), the then owner imposed certain conditions, covenants, restrictions and created other property and contract rights burdening and benefiting the real property described in the Declaration (the “Property”).
- B. The Original Declaration provided for the amendment of the Original Declaration by a majority vote of the then owners of the lots covered by the Declaration.
- C. By not less than a majority vote, the owners of the lots constituting the Property (“Owners”) have approved this Restated Declaration of Covenants, Conditions and Restrictions.
- D. The Owners desire that all of the Property subject hereto be held, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time.

NOW THEREFORE, the Prior Declaration is hereby amended and revoked in its entirety and the provisions of this restated Declaration are hereby imposed upon the Property.

**1. The Sun City Home Owners Association**

- The Sun City Home Owners Association (the “Associations”) is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration.
- In the event of any conflict or inconsistency between this Declaration and Articles, Bylaws, or Association rules, this Declaration shall control. The Association shall have the right and authority to enforce the restriction contained in this Declaration and to do such things as are expressly authorized in the Declaration for the Association to perform, as well as such things as are reasonably necessary or proper for, or incidental to, the exercise of such express powers and duties.

**2. Housing for Older Persons; Age Restriction**

- The Property is intended to constitute housing intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit under the Fair Housing Amendments Act of 1988, U.S.C. § 3600, et seq., and the Arizona Fair Housing Act, A.R.S. § 44-1491, et seq., (collectively, the “Fair Housing Acts”).

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- Except as provided below, at least one occupant of each residential unit must be 55 years of age or older, and no person under nineteen (19) years of age shall occupy or reside in a residential unit for more than ninety (90) days in any twelve (12) month period.
  - a) The Association may grant variances from the above restrictions, unless the granting of a variance would result in less than eighty percent (80%) of the residential units being occupied by one person fifty-five (55) years of age or older or would otherwise jeopardize the Property's status as housing for older persons under the Fair Housing Acts. Any request for a variance submitted to the Association pursuant to the subsection shall set forth the names and ages of all proposed residents of the residential unit the reason for the request and such other information as the Association may reasonably require.
  - b) The Board shall adopt, publish and enforce such policies and procedures and rules and regulations as are deemed necessary by the Board in order to demonstrate an intent to provide housing for occupancy by at least one person fifty-five (55) years of age or older per unit and to maintain the status of the Property as housing for older persons under the Fair Housing Acts. Such policies and procedures shall provide for verification of the age of the residents by reliable surveys and affidavits, and each resident, if requested to do so by the Association, shall furnish the Association with the names and ages of all occupants of the residential unit and such affidavits and other documents as the Association may request to verify the ages of such occupants.

**Board Resolutions (2-20-2007) Paragraph 2** – For the purpose of clarifying the term “at least one occupant of each resident unit must be 55-years of age or older:” an age qualified (55+) “permanent resident” must occupy the residence when there is an underage (19-55) person residing at the address. Any occupancy period shorter than six (6) months in any twelve (12) month period by the age-qualified individual will require the residence to be “vacant” in their absence.

**Board Resolutions (5-25-2011) Paragraph 2** – For the purpose of clarifying the term "at least one occupant of each residential unit must be 55 years of age or older:" An age-qualified (55+) "permanent resident" must occupy the residence when there is an underage (19 to 54) person residing at the address. Any occupancy period shorter than ten (10) months in any twelve (12) month period by the age qualified individual will require the residence to be "vacant" in their absence.

**Board Resolutions (5-25-2011) Paragraph 2(a)** – For the purpose of clarifying the power of the Association to "grant variances from the above [age] restrictions:" A variance will be granted from the age restrictions for a spouse under age 55 in the following situations unless the granting of such variance would result in less than eighty percent (80%) of the residential units being occupied by one person 55 years of age or older:

- (i) when an age-qualified spouse dies, the surviving spouse may continue to live in the residence even if the surviving spouse is under age 55,
- (ii) when an age-qualified spouse must be relocated for medical reasons, the remaining spouse may continue to live in the residence even if the remaining spouse is under age 55. This variance does not exempt the residence and its occupants from complying with any applicable federal, state, or local law regarding age restrictions. No other person under age 55 may reside with the surviving or remaining spouse in the residence for more than ninety (90) days in any twelve (12) month period unless an age-qualified permanent resident also occupies the residence. This clarification applies to spouses in a union recognized by the State of Arizona and applies only in the event of the death or medical relocation of one spouse and not in the case of divorce or other separation.

### 3. Single Family Dwellings

- No building except a single family residential dwelling and a private garage, carport or servants quarters for use in connection with such dwelling shall be erected, maintained or permitted on any lot or portion thereof.
- No dwelling shall be used except as a single family dwelling.
- No residential unit, building or structure on any lot shall be permitted to fall into despair and each residential unit, building and structure shall at all times be kept in good condition and repair and adequately painted and otherwise finished.
- In the event any residential unit, building or structure is damaged or destroyed, it shall be expeditiously repaired or rebuilt or shall be demolished.

### 4. Construction Standards

- No dwelling shall be erected upon any of said lots unless such dwelling contains at least eight hundred (800) square feet of enclosed living area floor space.
- The term “living area floor space” is exclusive of floor space in porches, pergolas, garages, carports and servants quarters.
- All buildings shall be constructed of brick, cement block, or other substantial masonry construction, or insulated frame construction.
- No more than one dwelling shall be built on any one lot.

### 5. Setback Requirements

- The front line of any building erected upon any lot shall not be closer than twenty (20) feet to the front lot line, the side walls of any building shall not be closer than five (5) feet to the side lot line, and not closer than ten (10) feet to the side lot if such lot line is adjacent to a street, except that any garage or carport detached from the dwelling may be erected on either side or back lot line if such garage or carport is located entirely within the rear one-half of said lot.
- The carport and store room attached to the walls of the dwelling may be placed not closer than five (5) feet to an interior side lot line and not closer than ten (10) feet to a side lot line adjacent to a street.
- In the event an Owner acquires all or a portion of any adjoining lot or lots, the foregoing measurements shall be made from such Owner’s side property lines rather than from the side lot lines indicated on said recorded map or plat.
- No portion of the buildings erected on lots bordering a golf course shall be placed closer than twenty-five (25) feet to the boundary line of said golf course.

**Board Resolutions (5-25-2011) Paragraph 5** – For the purpose of clarifying the term "garage or

carport detached from the dwelling." A detached garage or carport must have a concrete driveway going from the structure to the street. A detached garage or carport must be a standard size; it must be large enough to park at least one (1) standard size, licensed, passenger vehicle. A passenger vehicle includes a car or light truck, but does not include a golf cart, motor home, mobile home, or RV. A garage or carport must be designed and painted or finished to match the residence and the roof line of the garage or carport may not exceed the roof line of the residence.

## 6. Vehicle Restrictions

- No vehicles, including without limitation cars, trucks, commercial vehicles, motor homes, mobile homes, trailers (including but not limited to travel trailers, tent trailers and boat trailers), camper shells, detached campers, recreational vehicles, boats, motorcycles, motorbikes, all-terrain vehicles, golf carts, and off-road vehicles, shall be parked or maintained on any portion of a lot (except in a garage), or on public streets, in excess of 72 hours.
- Notwithstanding the foregoing, cars, light trucks (having a one-ton rating or less), passenger vans and golf cars may be parked in garages, carports or driveways at any time without violating this provision.
- The Association shall have the right to have any vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of this provision towed away at the sole cost and expense of the Owner of the vehicle or equipment.

**Board Resolutions (2-20-2007) Paragraph 6** – For the purpose of clarifying the term “camper,” the definition of a “camper” is any vehicle or trailer which has a kitchen, bath, hook-ups for incoming water and/or outgoing sewage.

**Board Resolutions (2-20-2007) Paragraph 6** – For the purpose of clarifying the term “in excess of 72 hours:” The seventy-two (72) hour rule is determined to be “in any calendar month” for prohibited vehicles.

**Board Resolutions (2-20-2007) Paragraph 6** – For the purpose of clarifying the term “driveways:” In no instances is parking on the landscaped portion of the lot (yard) allowed, for any length of time. A driveway, by definition, when extended, must match the existing driveway (usually concrete), thereby disallowing rows of paving bricks or stones for just the tires of any vehicle.

**Board Resolutions (5-25-2011) Paragraph 6** – For the purpose of clarifying the term "camper:" The definition of a "camper" is any vehicle or trailer which has a kitchen, bath, hook-ups for incoming water and/or outgoing sewage, regardless of how the camper is registered.

**Board Resolutions (5-25-2011) Paragraph 6** – For the purpose of clarifying the term "recreational vehicles:" The definition of a "recreational vehicle" is any vehicle designed to provide temporary living quarters for recreational camping or travel use with sleeping, cooking and sanitary facilities, regardless of how the recreational vehicle is registered.

**Board Resolutions (5-25-2011) Paragraph 6** – For the purpose of clarifying the term "commercial vehicles." A commercial vehicle is any vehicle that meets one of the following criteria: any type of signage, design or lettering for advertising; commercial utility racks located on the vehicle, or work equipment stored on the vehicle that is visible from outside of the vehicle, regardless of whether the vehicle is registered as a commercial vehicle.

**Board Resolutions (5-25-2011) Paragraph 6** – For the purpose of clarifying the term "in excess of 72 hours: "The seventy-two (72) hour rule is determined to be "in any calendar month" for prohibited vehicles.

**Board Resolutions (5-25-2011) Paragraph 6** – For the purpose of clarifying the term "driveways:" In no instances is parking or driving on the landscaped portion of the lot (yard) allowed, for any length of time. A driveway, by definition, when extended, must match the existing driveway (usually concrete). thereby disallowing rows of paving bricks or stones for just the tires of any vehicle.

## 7. Commercial Use Restrictions

- All residential units shall be used, improved and devoted exclusively to residential use by a single family.
- No trade or business may be conducted on any lot, in or from any residential unit, except that an Owner or other resident of a residential unit may conduct business activities within a residential unit so long as
  - (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residential unit.
  - (ii) the business activity conforms to all applicable laws and zoning ordinances or requirements
  - (iii) the business activity does not involve persons coming into the lot or door to door solicitation of Owners or other residents in the community,
  - (iv) the business activity is consistent with the residential character of the community and does not constitute a nuisance or a hazardous or offensive use that would threaten security of other residents in the community;
  - (v) the business actually conducted on a lot or from a residential unit does not involve any employees except family members living in the residential unit. The terms “business” and “trade” as used in this section shall be construed to have ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods and services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration regardless of whether
    - (a) such activity is engaged in full or part time
    - (b) such activity is intended to or does generate a profit; or
    - (c) a license is required for such activity. The sale or lease of a residential unit by the Owner shall not be considered a trade or business within the meaning of this section.

## 8. Animal Restrictions

- No swine, horses, cows or other livestock, no pigeons, chickens, ducks, turkeys or other poultry shall ever be kept upon any lot.

- Owners agree:
  - (i) to maintain pets in such a manner that the pets do not make an unreasonable amount of noise;
  - (ii) keep the animal fenced or on a proper leash at all times the pet is outside the residential unit;
  - (iii) clean up after the pet when the pet is outside of a residential unit; and
  - (iv) otherwise maintain the pet so that at no time does the pet create a health or safety hazard or unreasonably interfere with the quiet of other Owners or residents.

**Board Resolutions (2-20-2007) Paragraph 8** – For the purpose of clarifying the term “kept:” The prohibition of “keeping” certain fowl/animals shall include the feeding of birds and any other animals/wild life of any kind, which advertently or inadvertently results in the feeding and/or presence of pigeons.

**Board Resolutions (5-25-2011) Paragraph 8** – For the purpose of clarifying the term "kept:" The prohibition on "keeping" certain fowl/animals shall include the feeding of birds and any other animals/wild life of any kind, which advertently or inadvertently results in the feeding and/or presence of pigeons.

## 9. Wall and Fence Restrictions

- No solid wall, fence or hedge shall be erected or maintained nearer to the front lot line than the walls of the dwelling erected on such lot except when hedge or fence is purely decorative in nature and shall not exceed twenty-four inches in height.
- In the case of any lots on which no residence has been erected, no solid wall, fence or hedge shall be constructed or maintained closer than twenty (20) feet to the front lot line of any lot.
- No side or rear fence or hedge and no side or rear wall other than the wall of a building constructed on any lots shall be more than six (6) feet in height, provided that on lots bordering the golf courses, no fence, wall, rail or hedge shall be constructed or maintained at a greater height than six (6) feet within twenty-five (25) feet of the rear property line, with any portion thereof in excess of three (3) feet in height limited to wrought iron construction with posts of concrete block or similar material.
- Landscaping shall be planned for lots bordering the golf course so as to avoid undue obstruction of the view of the golf course from said lots.

**Board Resolutions (5-25-2011) Paragraph 9** – For the purpose of clarifying the term "hedge:" A bush is a single plant. A hedge is a row of multiple bushes which have grown together with intermingling branches, forming a barrier or boundary. Trees that have grown together do not constitute a hedge.

**Board Resolutions (5-25-2011) Paragraph 9** – For the purpose of clarifying the restriction, "on lots bordering the golf courses, no fence, wall, rail or hedge shall be constructed or maintained at a greater height than six (6) feet within twenty-five (25) feet of the rear property line, with any portion thereof in excess of three (3) feet in height limited to wrought iron construction." Hedges may not exceed three (3) feet in height within twenty-five (25) feet of the rear property line of lots bordering the golf courses.

## 10. Detached or Temporary Structures

- No detached or prefabricated building or structure of any nature whatsoever, permanent or temporary, shall be moved or placed upon or assembled or otherwise maintained on any lot.
- No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any lot except that which is usual and customary during construction or remodeling and shall be removed immediately upon completion.

**Board Resolutions (2-20-2007) Paragraph 10** – For the purpose of clarifying the term “No detached or prefabricated building:” No sheds or storage structures shall be allowed unless they are attached to the residence as an addition. Such structures require a Maricopa County Building Permit, and must be constructed in accordance with the standards in Paragraph 4 of the Declaration. This restriction, therefore, prohibits all plastic, fiberglass or metal storage sheds and cabinets.

**Board Resolutions (2-20-2007) Paragraph 10** – For the purpose of clarifying the restriction regarding “machinery or equipment” kept on lots during construction: Dumpsters used for repairs/renovations shall be permitted for a period not to exceed ninety (90) days in any twelve (12) month period and must not have any garbage/refuse overflowing in the container. Any extensions of this initial time frame must be approved by the Compliance Committee at SCHOA.

**Board Resolutions (5-25-2011) Paragraph 10** – For the purpose of clarifying the term "No detached or prefabricated building or structure:" No sheds Of storage structures shall be allowed unless they are attached to the residence as an addition. Such structures require a Maricopa County Building Permit, and must be constructed in accordance with the standards in Paragraph 4 of the - Declaration. This restriction, therefore, prohibits all plastic, fiberglass, or metal storage sheds and cabinets.

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## 11. Condition of Property

- All equipment, service yards, wood piles, storage piles or clotheslines shall be kept screened by adequate planting so as to conceal them from view of neighboring lots, streets or golf course property.
- No garbage or trash shall be placed or kept on any lot or other property, except in covered containers, not to exceed 30-gallon size.
- In no event shall containers be maintained so as to be visible from neighboring property, street or golf course except to make same available for collection and then only for the shortest time reasonably necessary to effect such collection.
- All rubbish, trash, or garbage shall be removed from the lots and other property and shall not be allowed to accumulate thereon.

- All lots shall be maintained in a weed free and attractive manner.
- No person shall permit any thing or condition to exist upon any lot or other property which shall induce, breed or harbor infectious diseases or noxious plants or insects.
- In the event any portion of any lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding lots or other areas of the community which are substantially affected thereby or related there to, or in the event any portion of a lot is being used in a manner which violates this Declaration; or in the event any Owner of any lot is failing to perform any of the Owner's obligations under this Declaration, the Association may make a finding to such effect, specifying the conditions or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless the corrective action is taken within thirty (30) days, the Association may cause such action to be taken at said Owner's cost.
- If at the expiration of said thirty (30) day period of time the requisite corrective action has not been taken, the Association shall be authorized and empowered to take such action on behalf of the Owner and at the Owner's cost and expense.

**Board Resolutions (5-25-2011) Paragraph 11** – For the purpose of clarifying the requirement "No person shall permit any thing or condition to exist upon any lot or other property which shall induce, breed or harbor infectious diseases or noxious plants or insects." Limbs and branches of trees must not touch the ground and must be trimmed to twelve inches (12") above the ground in order to allow for the cleaning of fruit, leaves, and other debris and so not to provide a haven for rodents. Bushes and hedges must be trimmed and maintained so as not to grow onto neighboring properties, gather clutter, or provide a haven for rodents.

**Board Resolutions (5-25-2011) Paragraph 11** – For the purpose of clarifying the phrase "any lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding lot or other areas of the community which are substantially affected thereby." Inoperable or unsightly vehicles are not permitted to park on streets, driveways, and carports. For purposes of this clarification, an inoperable vehicle is a vehicle that is not running, has a flat tire for ten (10) or more days, is up on blocks, or is not properly licensed or registered and an unsightly vehicle is a vehicle that has large dents or excessive rust, as determined by the Board.

## 12. Continuing Lien on Lot

- Each Owner, by becoming the Owner of a lot, is deemed to covenant and agree to pay all costs incurred by the Association in connection with enforcing or curing any violations of this Declaration, and all such costs and expenses, including but not limited to reasonable attorney's fees, incurred by the Association in enforcing this Declaration, whether or not suit is filed, shall be a charge on the Owner's lot and shall be continuing lien upon the lot against which each such enforcement action is taken.
- Such costs and expenses, including but not limited to reasonable attorneys' fees incurred by the Association in enforcing this Declaration, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the lot at the time when the costs and expenses were incurred by the Association.
- The personal obligation for such costs and expenses shall pass to the successors in title of the owner, except such successors in title who acquire title pursuant to a trustee's sale, judicial foreclosure, deed-in-lieu of foreclosure, or similar action of a first position mortgage or deed of trust.



### **13. Leases**

- No Owner shall allow that Owner's lot to be occupied by persons other than the Owner and the Owners' immediate family, without first notifying the proposed Lessee or occupant in writing that the use of the premises is subject to this Declaration.
- The Owner shall secure from the Lessee a written agreement to abide by all of the covenants, conditions and restrictions contained in this Declaration and the Owner shall furnish the Association an executed copy of such written agreement upon written request.
- Costs to enforce to be paid by Owner.

### **14. Existing Conditions; Limited Grandfathering**

- Any constructed improvement in existence on any lot on January 1, 1998, shall not be in violation of this Declaration until such time as the title to the lot is transferred, except for such conditions for which the Owner of a lot has received prior written notice of violation from the Association.
- Any replacement of the items shall be required to conform with this Declaration. This paragraph does not affect the requirement that all Owners comply with all city, county, state or federal laws or codes.
- All improvements, structures and fences not in compliance with this Declaration at the time of transfer of Deed shall be brought into compliance prior to transfer of title to lot.

### **15. Variances**

- Provided that it does not conflict with County ordinances, the Association may, at its option, grant variances from restrictions set forth in the Declaration if the Association determines in its discretion:
  - (a) That either
    - (i) a restriction would create an unreasonable hardship or burden on the Owner, lessee or resident, or
    - (ii) a change of circumstances since the recordation of this Declaration has rendered such restrictions obsolete; and
  - (b) That the activity permitted under the variance will not have any substantial adverse effect on the Owners, lessees and residents of the community and is consistent with the high quality of life intended for the residents of the community.

### **16. Recreation Centers Facilities Agreement**

- Each Owner of a lot shall execute a Recreation Facilities Agreement in favor of Recreation Centers of Sun City, Inc., in the form adopted from time to time by Recreation Centers of Sun City, Inc., and such Recreation Facilities Agreement, including the obligation to pay the annual homeowner fee and special assessments imposed from time to time, shall be binding upon and inure to each Owner's assigns and successors, shall be a lien on such lot, subordinate only to a first mortgage or first deed of trust on such

lot, and may be foreclosed in the same manner as a mortgage under Arizona law.

- Each Owner and all persons residing on said lot shall abide by the Articles of Incorporation and Bylaws of Recreation Centers of Sun City, and any amendments thereto.

## **17. Covenants Run With Land**

- The foregoing restrictions and covenants run with the land, and shall be binding on all persons owning any of said lots or any part or parcel thereof 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.

## **18. Amendments**

- These restrictions and covenants may be amended, in whole or in part, at any time by a majority vote of the then Owners of the lots covered hereby.
- 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 part thereof, each and all of such restrictive covenants shall be valid and binding upon the respective grantees.

## **19. Remedies**

- In addition to the continuing lien against a lot, violations of any one or more of this Declaration 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 lot or any part thereof.

## **20. Severability**

- Should any of these restrictive covenants be invalidated by law, regulation or court decree, such invalidity of any such restrictive covenant shall in no way affect the validity of the remainder of the restrictive covenants.