

FIRST SERVICE TITLE AGENCY, INC.

TRUST

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Sunrise Limited Partnership
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WARNER RANCH PHASE II

RECORDED IN OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
WARNER RANCH PHASE II

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WARNER RANCH PHASE II**

1
2
3 This Declaration of Covenants, Conditions and
4 Restrictions is made as of the 5th day of May, 1987, by FIRST
5 SERVICE TITLE AGENCY, INC., an Arizona corporation, as the
6 "Declarant," and SUNRISE LIMITED PARTNERSHIP, an Illinois
7 limited partnership doing business in the State of Arizona as S
8 Limited Partnership, as "Developer," with reference to the fol-
9 lowing:

10 A. Declarant, as trustee of its Trust No. 1080, is
11 the owner of fee title to the Property, and Developer is the
12 sole beneficiary of said trust.

13 B. Developer and Declarant intend by this
14 Declaration to impose upon the Property mutually beneficial
15 restrictions under a general plan of improvement for the bene-
16 fit of all owners of residential property within the Property.
17 Developer and Declarant desire to provide a flexible (yet com-
18 mon) and reasonable procedure for the overall development of
19 the Property, and to establish a method for the administration,
20 maintenance, preservation, use and enjoyment of the Property.

21 NOW, THEREFORE, Developer and Declarant hereby declare
22 that the Property shall be held, sold and conveyed subject to
23 the following easements, restrictions, covenants and condi-
24 tions, which are for the purpose of protecting the value and
25 desirability of and which shall run with the real property now
26 and hereafter subjected to this Declaration and which shall be
binding on all parties having any right, title or interest in
said real property or any part thereof, and their heirs, per-
sonal representatives, successors and assigns, and shall inure
to the benefit of each owner of all or any part thereof.

ARTICLE I

DEFINITIONS

21 Except as otherwise expressly provided in this
22 Declaration, the following terms shall, for purposes of this
23 Declaration, have the meanings set forth below:

24 1.1 "Annexable Property" shall mean the real property
25 described on Exhibit "B" attached hereto and incorporated
26

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1 herein by reference, provided that, as more particularly pro-
 2 vided in Article VI below, no portion of the Annexable Property
 3 may be annexed to the Property pursuant to Article VI unless,
 4 at the time of such annexation, such portion is owned by
 5 Declarant or Developer (or is annexed with the written consent
 6 of the owner thereof).

7 1.2 "Architectural Committee" shall mean the commit-
 8 tee established pursuant to Article IX of this Declaration.

9 1.3 "Articles" shall mean the articles of incorpora-
 10 tion of the Association, as the same may be amended from time
 11 to time in accordance with the provisions thereof and with the
 12 applicable provisions of this Declaration, the Bylaws and the
 13 statutes and regulations of the State of Arizona.

14 1.4 "Annual Assessments" shall mean those Assessments
 15 computed and levied as provided in Section 8.2 of this
 16 Declaration.

17 1.5 "Assessments" shall mean the Annual Assessments,
 18 the Parcel Assessments and the Special Assessments.

19 1.6 "Association" shall mean Warner Ranch Phase II
 20 Association, an Arizona non-profit corporation, and its
 21 successors and assigns (provided, however, that if such corpo-
 22 rate name is not available for use, another name may be
 23 selected by Developer in connection with the incorporation of
 24 the Association).

25 1.7 "Board" shall mean the group or body of persons
 26 elected in accordance with the provisions of the Articles, the
 Bylaws and the statutes and regulations of the State of
 Arizona, in which group or body is vested the management of the
 affairs of the Association, and shall be equivalent in meaning
 to the term "board of directors," as defined in A.R.S. Section
 10-1002(6), as in effect at the date hereof.

1.8 "Bylaws" shall mean the bylaws of the
 Association, as the same may be amended from time to time in
 accordance with the provisions thereof and with the applicable
 provisions of this Declaration, the Articles and the statutes
 and regulations of the State of Arizona.

1.9 "Common Area" shall mean all real property
 (including the improvements thereto) owned by the Association
 for the common use and enjoyment of the Owners. The Common
 Area to be owned by the Association at the time of the convey-
 ance of the first Lot to a retail purchaser shall be the prop-

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1 erty described on Exhibit "C" attached hereto and incorporated
 2 herein by reference.

3 1.10 "Common Expenses" shall mean the actual and esti-
 4 mated expenses of operating the Association, including any rea-
 5 sonable reserves, all as may be found to be necessary and
 6 appropriate by the Board pursuant to this Declaration or pur-
 7 suant to the Articles or the Bylaws.

8 1.11 "Condominium Unit" shall mean any portion of the
 9 Property which constitutes a "unit" within a "condominium,"
 10 together with any appurtenant interest in all "common ele-
 11 ments," as those terms are defined in the Arizona Condominium
 12 Act, Chapter 9 of Title 33 of the Arizona Revised Statutes, as
 13 amended.

14 1.12 "Declarant" shall mean First Service Title
 15 Agency, Inc., an Arizona corporation, serving in its capacity
 16 as trustee of its Trust No. 1080, and its successors and
 17 assigns.

18 1.13 "Declaration" shall mean this Declaration of
 19 Covenants, Conditions and Restrictions, as the same may be
 20 amended from time to time.

21 1.14 "Developer" shall mean Sunrise Limited
 22 Partnership, an Illinois limited partnership doing business in
 23 the State of Arizona as S Limited Partnership, and any assignee
 24 of the rights and duties granted or reserved to the Developer
 25 herein, which assignment shall be evidenced by a duly executed
 26 and acknowledged Recorded instrument. The term "Developer"
 shall in no event mean or refer to a retail Lot buyer.

1.15 "Eligible Mortgage Holder" shall mean any holder
 (as evidenced by a Recorded instrument) of a First Mortgage who
 or which shall have made written request to the Association for
 notice of any proposed action that, pursuant to Section 12.2 or
 Section 12.11, requires the consent of a specified percentage
 of Eligible Mortgage Holders (which written request must con-
 tain the name and address of the Eligible Mortgage Holder and
 the Lot number or street address of the Lot against which the
 First Mortgage held by said Eligible Mortgage Holder is
 Recorded).

1.16 "First Mortgage" shall mean a Mortgage Recorded
 against a Lot which has priority over any and all other
 Mortgages Recorded against that Lot.

1.17 "Lot" shall mean and refer to: (a) a lot into
 which any part of the Property is subdivided as set forth in a
 subdivision plat now or hereafter Recorded with respect to all

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1 or any part of the Property; or (b) a Condominium Unit. For
 2 purposes of this Declaration, a Lot shall be deemed to come
 3 into existence on and as of the date the plat depicting and
 4 establishing such Lot is Recorded. In no event shall the term
 5 "Lot" mean or refer to all or any part of the Common Area (or
 6 to all or any part of any common area or common elements estab-
 7 lished by a declaration of covenants, conditions and restric-
 8 tions, declaration of condominium or other such instrument
 9 hereafter recorded pursuant to Article VI or otherwise). In no
 10 event shall the term "Lot" mean or refer to all or any part of
 11 the Common Area.

12 1.18 "Maximum Annual Assessment" shall mean the amount
 13 determined for each fiscal year of the Association in accor-
 14 dance with Subsection 8.1.5 of this Declaration.

15 1.19 "Member" shall mean any Person entitled to
 16 membership in the Association, as provided herein, provided,
 17 however, that there shall be only one Class "A" membership for
 18 each Lot, as further provided in Article III below.

19 1.20 "Mortgage" shall mean a deed of trust, as well as
 20 a mortgage, which, in either case, is Recorded against a Lot or
 21 any other part of the Property.

22 1.21 "Mortgagee" Unofficial Document shall mean a beneficiary or holder of
 23 a deed of trust, as well as a mortgagee under a mortgage,
 24 which, in either case, is Recorded against a Lot or any other
 25 part of the Property.

26 1.22 "Occupant" shall mean any Person other than an
 Owner who occupies or is in possession of a Lot, whether as a
 lessee under a lease or otherwise.

1.23 "Owner" shall mean the Person or Persons who
 individually or collectively: (a) own fee title to a Lot (as
 evidenced by a Recorded instrument); or (b) hold the seller's
 or vendor's interest under a contract for conveyance, contract
 for deed, agreement for sale or similar contract through which
 a seller has conveyed to a purchaser equitable title in prop-
 erty and under which the seller is obligated to convey to the
 purchaser the remainder of the seller's title in the property,
 whether legal or equitable, on payment in full of all sums due
 under the contract. The term "Owner" shall not include: (i)
 any Person who holds an interest in a Lot merely as security
 for the performance of an obligation; or (ii) a lessee, tenant
 or other Occupant of a Lot. Developer shall be the "Owner" of
 each Lot with respect to which Developer holds the interest
 required by this Section 1.23 and, in addition, shall be deemed
 to be the "Owner" of each Lot to which title is held by a trus-
 tee (other than the trustee of a deed of trust) for the benefit

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1 of Developer. Notwithstanding Subsection 1.23(a), in the case
2 of a Lot, the fee title to which is vested in a trustee under a
3 deed of trust pursuant to Chapter 6.1 of Title 33 of the
Arizona Revised Statutes, the "Owner" of that Lot shall be
deemed to be the owner of the trustor's interest under the deed
of trust.

4 1.24 "Parcel Assessments" shall mean those Assessments
5 levied in accordance with Section 4.4 and the last sentence of
Subsection 8.1.1 of this Declaration.

6 1.25 "Person" (whether or not such term is capitalized
7 herein) means a natural person, corporation, partnership, trust-
tee or other legal entity.

8 1.26 "Phase" shall mean (a) any one of the portions of
9 the Property described and identified by a phase number or
letter (or number and letter) on Exhibit "D" attached hereto
10 and incorporated herein by reference; or (b) in the case of any
part of the Annexable Property hereafter annexed to the
11 Property pursuant to Article VI of this Declaration, any one of
the portions thereof designated as a "Phase" in the Recorded
12 instrument effecting such annexation in accordance with Article
VI. In the event that the Recorded instrument effecting any
13 such annexation does not divide the particular property being
annexed into Phases, then such property shall be deemed to con-
14 stitute a single Phase for purposes of this Declaration. The
numbers or letters (or numbers and letters) assigned to Phases
15 hereby are and shall be for reference only and shall not con-
trol the order of development or sale of Lots within any Phase
16 or from Phase to Phase. Developer shall retain full discretion
as to the order and timing of the development and sales of Lots
17 within any Phase or from Phase to Phase.

18 1.27 "Property" shall mean the real property described
in Exhibit "A" attached hereto and shall further refer to such
19 additional property, if any, as may hereafter be annexed
thereto pursuant to Article VI hereof or as is now or may here-
20 after be owned in fee simple by the Association.

21 1.28 "Record", "Recording", "Recorded" and
"Recordation" shall mean placing or having placed an instrument
22 of public record in the official records of Maricopa County,
Arizona, or of such other governmental authority, office or
23 official with which or whom the applicable laws of the State of
Arizona prescribe that documents affecting title to real prop-
24 erty in the area including the Property are to be placed of
public record.

25 1.29 "Residential Association" shall mean any home-
26 owners or similar association created with respect to property

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1 now or hereafter subjected to this Declaration containing (or
2 to contain) units, homes, apartments or other structures for
residential purposes, but shall not include the Association.

3 1.30 "Residential Unit" shall mean any structure
4 constructed on (or constituting) a Lot which is intended for
use and occupancy as a residence by a single household.

5 1.31 "Special Assessments" shall mean those
6 Assessments levied in accordance with Section 8.3 hereof.

7 ARTICLE II

8 PROPERTY RIGHTS

9 Every Owner shall have a non-exclusive right and ease-
10 ment of enjoyment in, to and over the Common Area, subject to
11 any restrictions or limitations contained herein or in any
12 instrument conveying to the Association or subjecting to this
13 Declaration such property, and subject further to the reason-
14 able rules and regulations of the Association. Any Owner may
15 assign his, her or its right of enjoyment to (and share the
16 same with) the members of his or her household and assign the
17 same to and share the same with his, her or its tenants and
18 invitees subject to the provisions of this Declaration and to
19 reasonable regulation by the Board and otherwise in accordance
20 with such procedures as the Board may adopt. Notwithstanding
21 the foregoing or any other provision of this Declaration,
22 Developer contemplates that a swimming pool and related recrea-
23 tional amenities may be constructed by Developer on a portion
24 of the Common Area, with the intention that said pool and
25 related amenities be available for use only by the Owners of
26 Lots within one or more single family residential areas of the
Property not governed by any Residential Association and,
therefore, to whom similar common facilities are not otherwise
available, and in the event such a swimming pool and related
recreational amenities are constructed by Developer, the same
shall be available only to the Owners of Lots (and their house-
hold members, tenants and invitees) within such areas of the
Property as Developer shall specify in one or more Recorded
instruments, provided that Developer shall not discriminate in
making such specification(s) among Lots (or the Owners thereof
or their household members, tenants or invitees) shown on any
single Recorded plat of a portion of the Property, and provided
further that the costs of maintaining, repairing, replacing and
otherwise caring for such pool and related recreational amen-
ities shall be borne equally only by the Owners of Lots within
the areas to which such facilities are made available by
Developer in accordance with this sentence (which costs shall
be a part of the Annual Assessments to which such Owners and
their Lots are subject hereunder, so that, subject to the cap

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1 of the Maximum Annual Assessment determined in accordance with
 2 Subsection 8.1.5 of this Declaration, Annual Assessments for
 3 Lots within the areas to which such facilities are made avail-
 able pursuant to this sentence would likely be higher than
 those for Lots in other areas of the Property).

4 ARTICLE III

5 MEMBERSHIP AND VOTING RIGHTS

6 3.1 Membership. The Association shall have two (2)
 classes of membership, Class "A" and Class "B," as follows:

7 3.1.1 Class "A". There shall be one Class "A"
 8 membership in the Association for each Lot. Each such
 9 membership shall be held by the Owner (from time to time) of
 10 such Lot and shall be appurtenant to and may not be separated
 11 from ownership of such Lot. The foregoing is not intended to
 12 include Persons who hold an interest merely as security for the
 13 performance of an obligation, and the giving of a security
 14 interest shall not terminate an Owner's membership. No Owner,
 15 whether one or more Persons, shall have more than one
 16 membership per Lot owned. In the event any Lot is owned by two
 17 or more Persons, whether by joint tenancy, tenancy in common,
 18 community property or otherwise, the membership as to such Lot
 19 shall be joint, provided, however, that such Persons shall
 jointly designate to the Association in writing one of their
 number who shall have the ^{Official Document} to vote said membership, and,
 in the absence of such designation and until such designation
 is made, the Board shall make such designation and such design-
 ation shall be binding for all purposes. In no event shall
 more than one (1) Class "A" membership exist for each Lot.
 Notwithstanding the foregoing, so long as the Class "B"
 membership is in existence, no Class "B" Member shall at the
 same time be a Class "A" Member nor shall a Class "B" Member
 have any Class "A" votes, and the membership and number of
 votes of the Class "B" Member(s) shall be determined in accor-
 dance with Subsections 3.1.2 and 3.2.2.

20 3.1.2 Class "B". Class "B" Members shall be
 21 Developer and any assignee of all or any part of Developer's
 Class "B" membership rights.

22 3.2 Voting The voting rights of the Class "A" and
 23 Class "B" Members are as follows:

24 3.2.1 Class "A". Each Class "A" Member shall be
 25 entitled on all issues to one (1) vote for each Lot with
 26 respect to which such Member holds the interest required for
 membership by Subsection 3.1.1 above. When more than one
 Person holds such interest in any Lot, there shall be only one

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1 (1) vote with respect to such Lot, which vote shall be exer-
2 cised by the Person designated to exercise the power to cast
3 such vote, as provided in Subsection 3.1.1. Any attempt to
4 cast a vote appurtenant to a Lot in a manner inconsistent with
5 that designation shall result in the suspension of the power to
6 cast such vote until such time as such vote is cast in accor-
7 dance with that designation. Any Owner of a Lot which is
8 leased or which is subject to a valid, outstanding and Recorded
9 executory agreement of sale may, in the lease, agreement of
10 sale or other written instrument, assign the voting right
11 appurtenant to the Lot to the lessee of the Lot or to the pur-
12 chaser of the Lot under such agreement of sale, as applicable,
13 provided that a copy of such instrument is furnished to the
14 Secretary of the Association prior to any meeting.

15 3.2.2 Class "B". The Class "B" Member or Members
16 shall be entitled to three (3) votes for each Lot owned by such
17 Class "B" Member or Members provided, however, that if at the
18 time any portion of the Annexable Property is annexed to the
19 Property, such portion has not been subdivided into Lots, the
20 Class "B" Member or Members owning such portion shall, upon
21 such annexation and until such portion is subdivided into Lots,
22 be deemed to have, with respect to such annexed portion, the
23 number of votes equal to three (3) times the number of residen-
24 tial units permitted under the then-current zoning with respect
25 to such annexed portion. Developer shall have the right, at
26 any time and from time to time, to assign all or any part of
its voting rights appurtenant to its Class "B" membership
rights (as well as all or any other rights appurtenant thereto)
to one or more persons or entities acquiring, for purposes of
development and sale, any part of the Property. Further,
Developer shall have the right, at any time and from time to
time, to designate an individual or individuals to exercise
Developer's voting rights (whether appurtenant to Class "A" or
Class "B" membership), provided, however, that such designation
shall not act as an assignment by Developer of its membership
or voting rights hereunder. Upon the earlier to occur of: (i)
January 1, 1994; or (ii) the time at which the total number of
Class "A" votes outstanding (as determined pursuant to
Subsection 3.2.1) equals (or exceeds) the total number of Class
"B" votes outstanding (as determined pursuant to the preceding
provisions of this Subsection 3.2.2), the Class "B" membership
shall terminate and be deemed converted to a Class "A"
membership, whereupon the membership and voting rights of
Developer (and any assignee of Developer's Class "B" membership
rights) shall be determined in accordance with Subsections
3.1.1 and 3.2.1.

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ARTICLE IVMAINTENANCE

1
2
3 4.1 Association's General Responsibilities. The
4 Association shall maintain and keep in good repair the Common
5 Area (and certain other areas, as more expressly provided in
6 this Section 4.1), the costs of such maintenance to be Common
7 Expenses of the Association (subject to any insurance then in
8 effect). This maintenance shall include, but not be limited to:

6 4.1.1 maintenance, repair and replacement of all
7 landscaping and other flora, structures and improvements
8 situated upon the Common Area, including any perimeter or
9 boundary walls;

9 4.1.2 maintenance, repair and replacement of
10 landscaping and flora in or upon public rights-of-way within or
11 immediately adjacent to the Property and in or upon the so-
12 called "Gila Drain" area within or immediately adjacent to the
13 Property pursuant to an ^{Unofficial Document} agreement between the Association and
14 Salt River Valley Water Users Association;

12 4.1.3 maintenance, repair and replacement of
13 landscaping and signs within areas designated on one or more
14 subdivision plats with respect to the Property as "landscape
15 easements," "landscape and wall easements" or "landscape and
16 sign easements" (or similar designations) to be maintained by
17 the Association;

16 4.1.4 maintenance, repair and replacement of the
17 side facing a street or portion of the Common Area of any
18 boundary or perimeter wall situated within areas designated on
19 one or more subdivision plats with respect to the Property as
20 "wall easements" (or similar designations) to be maintained by
21 the Association; and

19 4.1.5 maintenance and repair of any drainage
20 easements upon or across the Common Area.

21 Notwithstanding the foregoing, except where otherwise provided
22 in a Recorded Declaration of covenants, conditions and restric-
23 tions or other Recorded instrument affecting any part of the
24 Property, maintenance of the side facing any public right-of-
25 way of any boundary or perimeter walls situated upon the
26 Property along public rights-of-way shall be the responsibility
of the Association, while the maintenance of the side of such
boundary or perimeter walls (and of boundary or perimeter walls
between Common Area and Owner's Lot) facing an Owner's Lot
shall be the responsibility of such Owner.