

Handwritten initials and numbers: "HCB 7-30/11"

DECLARATION OF COVENANTS, CONDITIONS

196764

AND RESTRICTIONS

SUMMER PLACE PHASE II

PROP INSTR (PR)

THIS DECLARATION, made on the date hereinafter set forth, by Sundance Unlimited, a joint venture of Silvergate Corporation, an Arizona corporation and Financial Scene Incorporated, a California corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in The City of Mesa, County of Maricopa, State of Arizona, which is more particularly described as follows:

Lots Ninety Three (93) through Three Hundred Nine (309), inclusive and TRACT A, SUMMER PLACE, PHASE II AMENDED, according to the plat of record in the office of the Maricopa County Recorder in Book 230 of Maps, page 47.



NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

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DEFINITIONS

Section 1. "Association" shall mean and refer to Summer Place Phase II Homeowners Association Incorporated, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "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 conveyance of the first lot is described as follows:

Tract A, SUMMER PLACE PHASE II AMENDED, according to the plat of record in the office of the Maricopa County Recorder in Book 230 of Maps, page 47.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. There are 217 lots.

Section 6. "Declarant" shall mean and refer to Sundance Unlimited, a joint venture of Silvergate Corporation, an Arizona corporation and Financial Scene Incorporated, a California corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purposes of development.

Section 7. "Front Yard" shall mean that area originally landscaped by the developer in the portion of each Lot between the house and/or walls and the public street. A master plan showing the front yard area with the original landscaping shall be on file with the Association.

Section 8. "Use and Benefit Easement" shall mean an easement shown on the amended plat for Summer Place Phase II recorded in book 220, page 34, records of Maricopa County, Arizona. Said easement is granted to the adjacent lot for the exclusive use, benefit and enjoyment of said adjacent lot. Said easement extinguishes any right of use in and to the easement area by the owner of the lot upon which the easement is located except that the lot owner shall have the right to ingress and egress for the purposes of repair, maintenance, drainage, and improvement of any of the lot owner's property which abuts or is contiguous to the easement area. All use of the easement is hereby limited to the extent that no structure and/or other improvement of any nature or kind shall be placed, maintained or permitted to remain in the easement area.

These easements are for the benefit of and shall run with the land and shall be binding upon and enforceable by the benefited lot and each owner of lots described herein and their heirs, successors, agents, employees, other representatives and subsequent owners. Any subsequent abandonment or modification of a specific easement granted herein may be done by a writing signed by the title owner or title owners of both the dominant and the servient estate.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of

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any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for

each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership,
- or
- (b) On December 31, 1984.

ARTICLE IV

FRONT YARD MAINTENANCE AND EASEMENT

The Association shall have the responsibility to maintain, care for, water, mow, trim, and replant all of the front yard area originally landscaped and planted by the Declarant. The Association is also granted the right to change said landscaping. No individual Lot owner shall be permitted to change, to add to, vary, or remove any of the original landscaping provided by the Declarant without securing prior written approval from the Board of Directors or if appointed, by the architectural control committee. The Association is hereby granted an easement to enter upon the landscaped front yard for the purposes set forth herein and each owner by accepting title to each Lot shall be deemed to grant such permission. In the event any owner fails to adhere to the provisions of this paragraph, the Association is empowered to create a claim enforceable in the same manner as other assessments provided for in this Declaration and to bring a suit in a court of law for specific performance of this Declaration. In the event the Association is required to bring suit to enforce this Declaration, the Association shall be entitled to all attorney's fees and costs expended in connection with such suit. All costs of said front yard maintenance shall be added and become part of the assessment to which such Lot is subject.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation Assessments. The Declarant, for each Lot owned within the

properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and the front yard area of the Lots.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall not exceed Fifty (\$50.00) Dollars per Lot.

35.00
 (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or front yard area including fixtures, personal property, and landscaping related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots not owned by Declarant on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against

each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law or equity against the Owner personally obligated to pay the same, or foreclose the lien against the property. In the event the Association commences a court action hereunder the Association shall be entitled to collect against the property owner all of its attorney's fees and costs. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Declarant's Lots. Until such time as Control of the Association has passed from Declarant to the Owners pursuant to Article III, Section 2, Lots owned by Declarant and

not occupied shall be subject to an assessment of \$3.00 per lot.

ARTICLE VI

ARCHITECTURAL CONTROL

No change in the front yard landscaping, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of the color, external design, and location in relation to surrounding structures and topography to the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. However, any wall which is part of the dwelling unit structure shall not be considered a party wall within the meaning of this Article.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty,

any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Use and Benefit Easement and Walls. Each owner as shown on the plat shall have a use and benefit easement as set forth in Article I, Section 8, and on the plat. All responsibility for maintenance of any wall which is part of the dwelling unit structure shall belong exclusively to the Owner of the dwelling unit.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

USE RESTRICTIONS

Permitted uses, easements and restrictions for all of the Properties covered by this Declaration shall be as follows:

Section 1. Single Family Residential Use. All of the Properties shall be used, improved, and devoted exclusively to single family residential use. Nothing herein shall be deemed

to prevent the leasing of an entire lot to a single family from time to time by the Owner thereof, subject to all of the provisions of the Declaration. No structures shall be built on the premises without prior approval of the Board of Directors or architectural control committee.

Section 2. Animals. No animals, birds, fowl, poultry, or livestock other than a reasonable number of generally recognized house or yard pets shall be maintained on any portion of the property and then only if they are kept bred or raised thereon solely as domestic pets and not for commercial purposes.

Section 3. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any portion of the property unless the same shall be contained in conduits or cables installed or maintained underground or concealed in or on buildings or other structures approved by the architectural control committee or the Board of Directors. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the architectural control committee or Board of Directors.

Section 4. Temporary Occupancy. No trailer, tent, shack, garage, or barn and no temporary building or structure of any kind shall be used at any time for residence on any portion of the property either temporary or permanent.

Section 5. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any portion of the property nor shall the property be used in whole or in part for the storage of any property or thing that will cause the property or any part thereof to appear in any unclean or untidy condition or that will be unsightly, offensive, obnoxious or detrimental. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any portion of the property. The architectural control committee or the Board of Directors in the exercise of its whole discretion shall have the right to determine the existence of any nuisance whether described herein or not.

Section 6. Repair of Buildings. No building or structure upon any portion of the Properties shall be permitted to fall into disrepair, and each building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

Section 7. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Properties except in covered containers.

Section 8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any portion of the Properties, except such machinery or equipment as is usual and customary in conjunction with the construction of the dwelling units for the Properties.

Section 9. Diseases and Insects. No owner shall permit anything or condition to exist upon any property within the Property which shall induce, breed or harbor infectuous plants, diseases or noxious insects.

Section 10. Fences. No fence shall be constructed on the Property without the prior approval of the Board of Directors or the architectural control committee.

Section 11. Restriction on further Subdivision. No lot within the Properties shall be further subdivided or separated

into smaller lots or parcels by any Owner.

Section 12. Automobiles, Boats, Trailers, etc. Except as expressly hereinafter provided, no lot shall be used as a parking, storing, display or accommodation for any type of motor vehicle, boat, trailer, camper or motor driven cycle, the purpose of which parking, storage, display or accommodation area is to perform any activity thereon respecting maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind. Such activities may be performed within completely enclosed garages or other structures located on the designated lot which screens the sight and sound of the activity from the street and from adjoining property. The foregoing shall not prohibit the washing and polishing of any private automobile or motor driven cycle, together with those activities normally incident and necessary to such washing and polishing.

Section 13. Garages. No garage or other building whatsoever shall be erected on any of said residential lots until a dwelling house shall have been erected or until a contract with a reliable and responsible contractor shall have been entered into for the construction of a dwelling which shall comply with the restrictions as herein contained. Prior to the erection or after the erection of such dwelling house, no detached garage or other outbuilding shall be used for residential purposes.

Section 14. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities of which may change direction of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except those improvements for which a public authority or utility company is responsible.

Section 15. Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or on any building erected thereon, other than one si

not larger than 12" by 18" indicating that the property is for sale or for rent, with wording limited to "For Sale", or "For Rent", and the name, address and telephone number of the owner or agent and the words "Inquire Within"; provided, however, that the subdividers and their agents may erect and maintain signs advertising for sale the lots in said subdivision.

Section 16. Prefabricated Building. No prefabricated building or structure of any nature whatsoever, permanent or temporary, shall be moved upon, placed or assembled or otherwise maintained on any lots in this subdivision with the exception of temporary tract sales offices or construction offices, trailer or tool shed, saw shed, and lumber shed, which shall be removed at the completion of construction within the subdivision.

Section 17. Clothes Lines and Storage. No clothes lines shall be placed on any lot in a location visible from adjoining properties and streets. No lumber, metals, machinery, equipment or bulk materials shall be kept, stored or allowed to accumulate on any lot except building or other materials to be used in connection with the work of construction, alteration or improvement approved in accordance with the terms hereof.

Section 18. Declarants Exemption. Nothing contained in this Declaration shall be construed to prevent erection or maintenance by Declarant or its duly authorized agents for structures, improvements, or signs necessary or convenient for the development, sale, operation, or other disposition of the property or any other part thereof.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of the

covenants or restrictions by judgment or courts order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 11th day of June, 1981.

Sundance Unlimited, a joint
venture of Silvergate Corporation,
an Arizona Corporation

Financial Scene
Incorporated, a
California Corporation

By [Signature]
Its Sundance Unlimited

By [Signature]
Its Financial Scene

ACKNOWLEDGED TO before me this 14th day of June, 1981, by James C. Madson, the 1st. Vice President of Sundance Unlimited, a joint venture of Silvergate Corporation, an Arizona corporation.

MY COMMISSION EXPIRES:

January 4, 1985

Virginia C. Cross
NOTARY PUBLIC

ACKNOWLEDGED TO before me this 14th day of June 1981, by James C. Madson, the 1st of Financial Scene Incorporated, a California corporation.

MY COMMISSION EXPIRES:

January 4, 1985

Virginia C. Cross
NOTARY PUBLIC

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STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

STEWART TITLE

in Docket 15307
on page 217-232

Witness my hand and official seal the day and year aforesaid.

Bill Henry

By Col Purcell County Recorder
Deputy Recorder