

SUN AIR ESTATES, UNIT 1

DECLARATION  
OF  
HORIZONTAL  
REGIME

MINNESOTA TITLE COMPANY  
3003 N. CENTRAL AVE.  
PHOENIX, ARIZONA 85012

REC 9570 PAGE 461 180004  
02-R MISC.

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

Minnesota Title Company  
JUL 19 1972  
In Docket 9570  
on page 461-474  
Witness my hand and official  
seal the day and year aforesaid.  
PAUL H. MARSTON

DECLARATION OF HORIZONTAL PROPERTY REGIME  
OF  
SUN-AIR ESTATES, UNIT I

DECLARATION OF HORIZONTAL PROPERTY REGIME made as  
of the 18th day of July, 1972, by MINNESOTA  
TITLE COMPANY, an Arizona corporation, as Trustee, and by  
PIONEER NATIONAL TRUST COMPANY OF ARIZONA, an Arizona  
corporation, as Trustee, hereinafter referred to as "Grantor",  
superseding DECLARATION OF HORIZONTAL PROPERTY REGIME recorded  
in Docket 9515, at page 784, records of Maricopa County, Arizona.

Copy Request  
July Receipt  
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WITNESSETH:

WHEREAS, Grantor owns certain real property situate  
in Maricopa County, Arizona, more particularly described as  
follows:

Lots 1 - 84, inclusive, SUN-AIR  
ESTATES, UNIT I, according to plat  
of record in Book 151 of Maps, Page  
9, records of Maricopa County, Arizona.

WHEREAS, said property will be improved by construction  
thereon of apartment buildings and apartment units; and

WHEREAS, said Grantor establishes by this declaration  
a condominium project to be known as SUN-AIR ESTATES, UNIT I,  
for the individual ownership of the real property estates  
consisting of the area or space contained in each of the  
apartment units in said apartment buildings, and the co-ownership  
by the individual and separate owners thereof, as tenants in  
common, of all of the remaining real property which is herein-  
after defined and referred to herein as the "common areas and  
facilities"; and

WHEREAS, the owners of the apartment units will  
constitute an Association of owners known as the SUN-AIR ESTATES

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UNIT I ASSOCIATION, hereinafter referred to as "Association", and will have the responsibility of administering the condominium project, establishing and collecting monthly assessments, and arranging for the management of the condominium project;

NOW, THEREFORE, said Grantor hereby makes the following declaration as to divisions, covenants, restrictions, limitations, conditions, and uses to which the above described real property and improvements thereon may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantor, their heirs and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

A. Grantor hereby submits the above described real property to the Horizontal Property Regime pursuant to Sections 33-551 to 33-561, inclusive, Arizona Revised Statutes, to be known as the SUN-AIR ESTATES, UNIT I.

B. Grantor hereby covenants and agrees that said real property shall be divided into the following separate freehold estates:

1. The one hundred fifty-eight (158) separately designated and legally described freehold estates consisting of the spaces or areas, being the area or space contained within each of the one hundred fifty-eight (158) apartment units in said apartment buildings constructed on said property, said spaces including living area, patio area, and storage area, and being defined and referred to herein as "apartment spaces", and being designated as A and B on each lot within the above described real property.
2. Subject to the provisions of B(3) hereof, a freehold estate consisting of the remaining portion of the real



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property is described and referred to herein as the "common areas and facilities".

3. Grantor reserves the right to relocate and to establish additional apartment spaces within the common areas and facilities on Lots 41, 42, 43, 44 and 56 of the above described real property.

C. The one hundred fifty-eight (158) individual apartment spaces hereby established are more particularly described on the condominium plat which is attached hereto and made a part hereof, as Exhibit "A". The apartment spaces shown on Lots 42 and 43 shall not be deemed a part of this Declaration, the right having been reserved to relocate and establish other apartment spaces within said lots.

The cubic content space of each apartment space and the restricted common areas and facilities, with reference to their location <sup>Unofficial Document</sup> on the land, is fully set forth and described in the condominium plat referred to above. All references to vertical dimensions made in this Declaration or on the condominium plat shall be based upon elevation 1117.23 feet, which is the elevation of a benchmark located on a brass cap in the handhole at the North quarter corner of Section 28 T3N R1E.

The individual apartment spaces may be described and conveyed as follows:

Apartment Spaces A or B, Lots 1 - 84 inclusive, SUN-AIR ESTATES, UNIT I, according to the Declaration of Horizontal Regime recorded in Docket 9515, pages 784 et seq, records of Maricopa County, Arizona.

D. For the purpose of this Declaration, the ownership of each apartment space shall include an undivided interest in the common areas and facilities, and each apartment space, together with the undivided interest, is defined and hereinafter referred to as "family unit". The undivided

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interest in the common areas and facilities, which shall be conveyed with each respective apartment space, is one-hundred and fifth-eighth (1/158), provided, however, that if additional apartment spaces are established, then the undivided interest shall be a fraction in which the numerator is one (1) and the denominator is the total number of apartment spaces finally established within the condominium project.

The undivided interests in the common areas and facilities and the fee titles to the respective apartment spaces conveyed therewith shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective apartment space even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the apartment space.

Unofficial Document

E. A portion of the common areas and facilities is hereby set aside and allocated for the restricted use of the respective apartment spaces and said spaces shall be known as "restricted common areas and facilities". The restricted common areas and facilities so allocated are the following:

- a) The driveways shown as A-1 and B-1 on the attached condominium plat are allocated to the respective owners of apartment spaces A and B within each lot.
- b) The common areas and facilities, excepting the driveways, within each lot of the condominium project are allocated to the exclusive use of the owners of apartment spaces within said lot.

F. There is hereby created a blanket easement upon, across, over and under the common areas and facilities for ingress, egress, installation, replacing, repairing and maintaining all existing utilities including, but not limited to, water, sewers, gas, telephones and electricity.



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G. Grantor, their heirs and assigns, by this declaration, and all future owners of the family units, by their acceptance of their deeds, covenant and agree as follows:

1. The common areas and facilities shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.
2. The apartment spaces shall be occupied and used by the respective owners only as a private dwelling.
3. The owner of the respective apartment spaces shall not be deemed to own the undecorated and/or furnished surfaces of the perimeter walls, floors, and ceilings surrounding his respective apartment space, nor shall said owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective apartment spaces which are utilized for or serve more than one apartment space except as tenants in common with the other family unit owners. Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective apartment space, and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings.
4. The owners of the respective apartment spaces agree that if any portion of the common areas and facilities encroaches upon the apartment spaces, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any apartment building is partially or totally destroyed, and then rebuilt, the owners of apartment spaces agree that minor encroachment of parts of the common areas and facilities due to construction shall be permitted and that valid easement for said encroachment and the maintenance thereof shall exist.

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5. The owner of a family unit shall automatically, upon becoming the owner of a family unit, be a member of the Association and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.
  6. The owners of family units covenant and agree that the administration of the condominium shall be in accordance with the provisions of this Declaration and the Articles and By-Laws of the Association, and the Declaration of Restrictions of record at Docket 9515 at Page 781.
  7. Each owner, tenant or occupant of a family unit shall comply with the provisions of this Declaration, and the Articles and By-Laws of the Association, the Declaration of Restrictions, and the decisions and resolutions of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages or for injunctive relief.
  8. This Declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages covering the family units unanimously agree to such revocation or amendment by duly recorded instruments.
  9. No owner of a family unit may exempt himself from liability for his contributions towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his family unit.
- H. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any family unit shall constitute a lien on such family unit prior to all other liens except only (1) tax liens on the family unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by suit by the Manager or Board of Directors of the Association, acting on behalf of the owners of the family



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units, in like manner as a mortgage of real property. In any such foreclosure the family unit owner shall be required to pay a reasonable rental for the family unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Manager or Board of Directors of the Association, acting on behalf of the owners of the family units, shall have power to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same.

I. Where the mortgagee of a first mortgage of record or other purchaser of a family unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his <sup>Legal Document</sup> successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units excluding such acquirer, his successor and assigns. As used in this Declaration, the term "mortgage" shall include "deed of trust", and "mortgagee" shall include the "beneficiary" under a deed of trust.

J. The respective family units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants of the family unit are provided customary hotel services. Other than the foregoing obligations, the owners of the respective family units shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions



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contained in this Declaration and further subject to the Articles and By-Laws of the Association.

K. It shall be the responsibility of each of the respective owners of apartment units to obtain fire insurance and liability insurance on the apartment units and the respective common elements and facilities which are owned or occupied by such owners.

L. In a voluntary conveyance of a family unit, the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the <sup>Financial Document</sup> Manager of the Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the family unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amounts therein set forth.

M. The rights and duties of the owners of apartment units with respect to party walls shall be governed by the following:

1. Each wall which is constructed as a part of the original construction of the apartment buildings, any part of which is placed on the dividing line between separate apartment units, shall constitute a party wall.
2. In the event any such party wall is damaged or destroyed through the act of one adjoining owner, or any of his guests or agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining owner of the full use and enjoyment

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of such wall, then the first of such owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining owner.

3. In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, guests or family (including ordinary wear and tear and deterioration from lapse of time) then in such event both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

4. Any owner proposing to modify, make additions to or rebuild his apartment unit in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.

5. In the event of a dispute between owners with respect to the repair or rebuilding of a <sup>particular</sup> ~~particular~~ <sup>document</sup> ~~document~~ or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one (1) chosen by each of the owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

N. As long as Grantor, its successors and assigns, own one or more of the family units established and described herein, it shall be subject to the provisions of this Declaration.



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IN WITNESS WHEREOF, this Declaration has been executed by Grantor as of the date and year first above written.

APPROVED: FIRST NATIONAL BANK OF ARIZONA, as Mortgagee

MINNESOTA TITLE COMPANY, an Arizona corporation, as Trustee

By [Signature]  
Title President

By [Signature]  
Title Trust Officer

PIONEER NATIONAL TRUST COMPANY OF ARIZONA, an Arizona corporation, as Trustee

By [Signature]  
Title Trust Officer

STATE OF ARIZONA )  
County of Maricopa ) ss

The foregoing instrument was acknowledged before me this 18th day of July, 1972, by Marion A. Hakes as Trust Officer of MINNESOTA TITLE COMPANY, an Arizona corporation, on behalf of said corporation.

[Signature]  
Notary Public

My Commission Expires: May 23, 1975

STATE OF ARIZONA )  
County of Maricopa ) ss

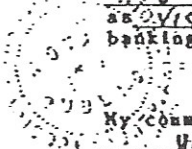
The foregoing instrument was acknowledged before me this 19th day of July, 1972, by GLENN A. BAGWELL as Trust Officer of PIONEER NATIONAL TRUST COMPANY OF ARIZONA, an Arizona corporation, on behalf of said corporation.

[Signature]  
Notary Public

My Commission Expires: 3-11-75

STATE OF ARIZONA )  
County of Maricopa ) ss

The foregoing instrument was acknowledged before me, this 18 day of July, 1972, by H.E. LUNOQUIST as Vice-President of FIRST NATIONAL BANK OF ARIZONA, a national banking association, on behalf of said corporation.



[Signature]  
Notary Public

My Commission Expires: Feb. 9, 1975