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TONY 1 OF 38

CERTIFICATE OF AMENDMENT OF THE
DECLARATION OF RESTRICTIONS, ESTABLISHMENT
OF BOARD OF MANAGEMENT AND LIEN RIGHTS
OF
SUN GARDENS

The undersigned President and Secretary of SUN GARDENS HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation hereby certify that at a meeting of the membership of the Association held on May 22, 1996 pursuant to paragraph 27 of the Declaration of Restrictions, Establishment of Board of Management and Lien Rights recorded at Docket 13725 starting at page 26 of the records of the Maricopa County, Arizona Recorder (hereinafter called "Declaration") said membership adopted an amendment to paragraph 13(D) of said Declaration so that said paragraph 13(D) reads in its entirety as indicated on Exhibit A which is attached hereto and by reference incorporated herein. Said President and Secretary further certify that said Declaration governs SUN GARDENS, a subdivision according to Book 212 of Maps, page 19 of the records of the Maricopa County, Arizona Recorder.

THEREFORE, said President and Secretary hereby certify the adoption of said amendment.

DATED this 12 day of JULY, 1996.

SUN GARDENS HOMEOWNERS ASSOCIATION

by Dave K Coester
Dave Coester, President

by Sandra Bear
Sandra Bear, Secretary

STATE OF ARIZONA)
) ss
County of Maricopa)

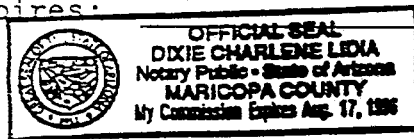
This 12th day of July, 1996, before me the undersigned Notary Public, personally appeared DAVE COESTER, the President of SUN GARDENS HOMEOWNERS ASSOCIATION, a non-profit Arizona corporation, and he as such officer and being authorized to do so executed the foregoing instrument for the purposes therein contained by signing the name of the Association as such officer.

IN WITNESS WHEREOF, I do hereby set my hand and official seal.

Dixie Charlene Lidia
Notary Public

My Commission expires: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

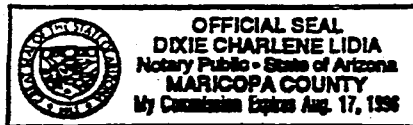


This 12th day of July, 1996, before me the undersigned Notary Public, personally appeared SANDRA BEAR, the Secretary of SUN GARDENS HOMEOWNERS ASSOCIATION, a non-profit Arizona corporation, and she as such officer and being authorized to do so executed the foregoing instrument for the purposes therein contained by signing the name of the Association as such officer.

IN WITNESS WHEREOF, I do hereby set my hand and official seal.

Dixie Charlene Lidia
Notary Public

My Commission expires: _____



AMENDMENT TO
DECLARATION OF RESTRICTIONS, ESTABLISHMENT
OF BOARD OF MANAGEMENT AND LIEN RIGHTS--
SUN GARDENS

Paragraph 13(D) of the "Declaration of Restrictions, Establishment of Board of Management and Lien Rights" for SUN GARDENS, a subdivision of record in the Maricopa County, Arizona Recorder's office in Book 212 of Maps, page 19 (said Declaration having been recorded in Docket 13725 starting at page 26 of the records of the Maricopa County, Arizona Recorder) is amended so that said paragraph 13(D) in its entirety reads:

D. To pay for insurance, utilities and expenses as shall be designated by the Board of Directors. Said Board is further authorized to expend funds and to assess the owners (members) so as to convert to individual water meters so that the owners (members) shall be obligated to pay the Association for their water usage and the Association shall be authorized to bill and collect water payments from the owners (members) in the same manner as monthly assessments. The Association is hereby granted an easement for installation, repair and replacement of water meters, lines and equipment ancillary thereto and for the reading of the meters by its employees, agents or independent contractors.

JUNE 26, 1979

PROP RSTR (PR)

DECLARATION OF RESTRICTIONS, ESTABLISHMENT
OF
BOARD OF MANAGEMENT AND LIEN RIGHTS



KNOW ALL MEN BY THESE PRESENTS:

That AMERICAN GROWTH INC., an Arizona corporation, being the owner of all the following described premises situated in Maricopa County, Arizona, to-wit:

SUN GARDENS, a subdivision of record in the Maricopa County Recorder's Office in Book 212 of Maps, page 19.

and desiring to establish the nature of the use and enjoyment thereof, for the purposes of joint management among the grantees thereof, as to the units thereon and the surrounding premises and areas and other buildings does hereby declare said property, subject to the following expressed conditions and stipulations as to the use and enjoyment thereof, and as to the establishment of a perpetual lien for the enforcement thereof, as follows:

1. No buildings except multi-family residential dwellings, storage buildings and carports for use in connection with such dwellings shall be erected, maintained, or permitted on said lots or portions thereof. No dwellings shall be used except as a multi-family dwelling. A multi-family residential dwelling shall consist of two or more single-family residential units. No more than one (1) single family residential unit shall be erected, maintained, or permitted on any lot. No buildings or appurtenances thereto shall be erected, maintained, or permitted on any tract or portion thereof.

2. No building or appurtenance thereto shall be permitted to extend beyond the lot line of the lot on which such building or appurtenance is erected.

3. No house trailer or camper, and no temporary or permanent building of any nature detached from the dwellings shall be built, erected, placed, or maintained on the project

other than storage buildings and covered carports. No house trailer or camper shall be permitted to remain on any lot, or remain parked adjacent thereto, for a period in excess of forty-eight (48) hours.

4. No store, office, or other place of business of any kind, and no hospital, sanatorium, or other place for the care or treatment of the physically or mentally ill, nor any theater, saloon, or other place of entertainment shall be erected or permitted upon said tracts, and no business of any kind or character whatsoever shall be conducted in or from the buildings located on said tracts or from said tracts.

5. No swine, horses, cows or other livestock, and no chickens, ducks, turkeys, or other poultry shall ever be kept upon said lots or tracts. All dogs and cats, shall be confined to their owners' lot and shall not be permitted to run free.

6. No solid wall, fence, or hedge shall be erected or maintained nearer to the front property line than the walls, attached open porch, carport, or balcony of the dwelling erected on said tracts. No side or rear wall or fence, other than the wall of a building constructed on said tracts, shall be more than six (6) feet in height. Landscaping shall be planned for any units bordering a golf course so as to avoid undue obstruction of the view of a golf course from said units.

7. No prefabricated building or structure of any nature whatsoever, permanent or temporary, shall be moved or placed upon or assembled or otherwise maintained on said tracts, provided, however, that a temporary office, tool shed, saw shed, lumber shed and sales office may be maintained upon said tracts by any building contractor for the purpose of erecting and selling dwellings on said tracts, but such temporary structures shall be removed upon completion of construction or of selling of dwellings, whichever later occurs.

8. All clothes lines, equipment, service yards, wood piles or storage piles shall be kept screened by adequate planting so as to conceal them from view of neighboring lots or streets. All rubbish, trash and garbage shall be removed from the tract and will not be allowed to accumulate or be burned thereon.

9. Each residential unit shall be a separately designated and legally described freehold estate consisting of a parcel and the improvements thereon.

The Sun Gardens Home Owners Association, an Arizona non-profit corporation, which has been, or will be, formed, whose membership will consist of the owners of the units of Sun Gardens, is granted title to the Tract A and all common elements of Sun Gardens, the subdivision of record. There shall be granted to the grantees of every unit, their invitees, the developer and others authorized by the Board of Directors of Sun Gardens Home Owners Association, hereinafter called "Board of Directors," the right of ingress and egress to all units across the common elements. There shall also be an easement for the use and enjoyment of all the common area subject to reasonable rules of use as promulgated by the Board of Directors.

A. That, in order to promote and maintain efficiency and cooperation for the full enjoyment of any of the grantees of the units on the above property, the Board of Directors shall have the following functions and be governed as follows:

B. The Board of Directors shall consist of not less than three (3) Directors who shall choose a chairman from among them. American Growth Inc. shall act as the Board of Directors until sixty percent (60%) of the units of the above property have been sold.

C. When sixty percent (60%) of the units on the above property have been sold, at which time such Board shall thereupon cause an election to be held among the owners of such units, who shall elect a new Board of three (3) members from among the owners of all the units. Thereafter, annual elections shall be held for the purpose of electing a Board of Directors under such rules and regulations as shall be adopted by such Board, or fifty-one percent (51%) of the owners of such units. The Directors so elected shall serve for a term of one year, without pay. The Directors shall have the right to substitute or appoint new members to the Board of Directors from time to time in the event one or more of the Directors shall become unable or unwilling to continue to serve in such capacity, or is no longer a resident of said property.

D. For the purpose of voting, each unit shall constitute one voting unit, it being understood that the owners of each unit shall be entitled to one (1) vote among them regardless of the number of grantees who may own such unit.

E. A majority vote of the Directors shall entitle said Board to carry out action on behalf of the owners of the units.

10. The "common elements" shall be defined as Tract A including, but not limited to, land not otherwise specifically conveyed with individual units, community and commercial facilities, if any, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits, and other public utility lines. No building shall be constructed on any part of the common elements, except common laundry facilities, restrooms, storage buildings, and covered carports.

11. No exterior additions, or alterations to any building, nor changes in fences, hedges, walls and other structures including, but not limited to color thereof, shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same, shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by an architectural committee composed of the Board of Directors, or by a representative designated by the Board of Directors. The members of such committee shall not be entitled to compensation for services performed pursuant to this paragraph. No such additions or alterations shall be permitted by any owner until the Board of Directors has been established.

12. There is granted to the other Unit owners in the same building, to-wit, units numbered 1, 2, and 4, an easement for parking purposes on the ground floor underneath unit number 3 on that area as indicated on the plat of Sun Gardens as recorded in the office of the Maricopa County Recorder. Likewise, there is an easement granted on the ground floor for parking as is indicated on the plat underneath the other upstairs units similarly situated as unit 3, to-wit, those units numbered as follows: 7, 11, 15, 19, 23, 27, 31, 35, 39, 43, 47, 51, 53, 57, 61, 65, 69, 73, and 77. Said easement shall not interfere with and shall

be in subordination to the use of the unit and structure located off the ground and above the parking easement. The easement shall be a maximum of 20.33 feet deep, 10.7 feet wide, and 6.8 feet high. The owner or owners of each unit shall also have the exclusive right to occupy, use and possess the parking space designated with the applicable unit, as shown on the plat of record of Sun Gardens. The use and occupancy of both parking easements is declared to be appurtenant to each unit and may not be severed therefrom.

13. The Board of Directors shall have the following rights and powers:

- A. To levy monthly assessments, payable in advance, against each residential unit.
- B. To use and expend the assessments collected to maintain, care for and preserve the common elements, buildings, grounds and improvements (other than interior of the buildings).
- C. To pay taxes and assessments levied and assessed against real property, and such equipment and tools, supplies, and other personal property as are owned by the Board of Directors for the common benefit of all unit owners.
- D. To pay for water, insurance, sewerage and other utilities and expenses as shall be designated by the Board.
- E. To enter into and upon the units when necessary, and at as little inconvenience to the owners of the units concerned as possible, in connection with the duties of the Board outlined herein.
- F. To repair and replace facilities, machinery and equipment as is necessary and convenient, in the discretion of the Board.
- G. To provide for the construction of additional recreational and other common facilities, from time to time, as in their discretion appears to be in the best interest of the owners and the project. Any such construction, improvements or additions shall be authorized by a majority vote of the Board of Directors at a duly called meeting at which a quorum is present.

H. To insure, and keep insured, all buildings and improvements on the property, and the owners thereof, against loss from fire or other casualty, and to purchase same and such other insurance as the Board may deem advisable. Such insurance may, at the discretion of the Board, be taken in the name of the Board for the benefit of all the unit owners, or in such other manner as the Board may deem advisable. In the event any of such insurance proceeds are insufficient to repair or replace loss or damage, to levy an additional assessment in proportionate amounts as to each unit that is damaged to cover such deficiency.

I. To collect delinquent assessments by suit or otherwise, and to enjoin or seek damages from the owners of the units for violations of the covenants herein contained on the part of the owners to be performed, or for violation of the rules hereinafter referred to.

J. To protect and defend the property from loss and damage by suit or otherwise.

K. To employ and dismiss workmen, maids, janitors, gardeners, lawyers, accountants and any others necessary to carry out the rights and powers herein granted and to purchase supplies and equipment, to enter into contracts and generally to have the powers of an apartment house manager in connection with the matters hereinbefore set forth, except that the Board, nor any officer elected thereby, may not encumber or dispose of the interest of any owner except in order to satisfy a judgment against such owner for violation of the owner's covenants imposed by these restrictions.

L. To make reasonable rules and to amend the same from time to time, and such rules and amendments shall be binding upon the owners when the owners of a majority of the units have approved them in writing. A copy of such rules and all amendments shall be delivered to each unit.

M. To create an assessment fund into which the Board shall place all sums collected by assessments or otherwise, the assessment fund to be used and expended for the purposes herein set forth.

N. To render to the owners semi-annual statements of receipts and expenditures.

O. To appoint officers and agents to carry out the business of the Board.

P. To enter into or renew agreements with persons or firms to manage the units and carry out the rights and powers herein granted to the Board.

14. In the event any common area or common element (exclusive of any party wall), carport, common laundry facility, or storage facility is damaged or destroyed through the negligent or culpable act of an owner or any guests, agents, or members of his family, such owner does hereby irrevocably authorize the Board of Directors to repair said damaged area or element, resident's unit, carport, or storage facility, and the Board shall so repair such said damaged area or element, unit, carport, or storage facility. The owner shall then repay the Board of Directors in the amount actually expended for said repairs.

A. Each unit owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall become a lien upon said owner's residence unit and percentage ownership of the common elements and shall continue to be such lien until fully paid. The amount owed by said owner to the Board shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

B. Each such owner, by his acceptance of a deed to a residence unit, which such deed shall recite that it is subject to the covenants, conditions and restrictions herein set forth in this instrument, hereby expressly vests in the Board or its agents the right and power to bring all actions against such owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such owner hereby expressly grants to the Board a power of sale in connection with said lien.

C. In the event of a dispute between an owner and the Board of Directors with respect to the cause of damage or to the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the owner addressed to the Board, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Board. If no such rules have

been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board and one chosen by the owner. These two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the owner and the Board, 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.

D. No lien as provided for in this Declaration shall be effective as against a bona fide purchaser unless a notice and claim of lien has been duly recorded in the office of the county recorder.

15. There is hereby created on behalf of any bona fide utility or its designee, a blanket easement upon, across, over and under the above described premises for ingress, egress, and for the purpose of replacing, repairing and maintaining all utilities, including but not limited to water and electricity. By virtue of this easement, it shall be expressly permitted for the providing electricity company to erect and maintain the necessary telephone poles and other necessary equipment on said property and to affix and maintain electrical wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the residential units.

16. The responsibility for maintenance of electricity, plumbing and other utilities shall remain with the owners of the units in the same manner as is normal and customary with owners of single family residences.

17. Each lot and the common elements adjacent thereto shall be subject to an easement for encroachments, created by construction, settling and overhangs as designed or constructed by the original builder. A valid easement for said encroachments and for the maintenance of same shall remain so long as the structure shall or does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the owners of the units agree that minor encroachments of parts of the adjacent residential

units or common elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

18. An initial assessment is hereby levied against each residential unit covered by these restrictions in a sum equal to six (6) times the estimated monthly assessment rate established by American Growth, Inc. for each such residential unit immediately preceding the time of the initial sale thereof. The said initial assessment shall be paid by the initial purchaser of each residential unit on the above described property of the Board of Directors through escrow at the closing thereof; provided, however, neither this initial assessment, nor any other assessment thereafter made, nor any lien established to assure collection thereof shall apply to the undersigned or to American Growth, Inc. but shall apply only to the purchasers of said residential units and their successors. In addition to the initial assessment provided for herein, American Growth, Inc. will collect a monthly assessment in the amount so estimated by it, from each purchaser of a residential unit commencing with the first full month following closing. American Growth, Inc. shall collect and use a monthly assessment which shall include, but not be limited to, charges for insurance, water, sewer, and in some instances, garden maintenance, to help defray such expenses until sixty percent (60%) of the units are sold and a Board of Directors is elected pursuant to paragraph 9.C hereof.

19. That for the purpose of enforcing these presents, the Board of Directors and its successors are hereby granted a lien against the interest of any grantee of any unit, his heirs, executors, administrators or assigns to secure the faithful performance of each and every term and condition set forth herein, and in the event of non-performance or default by any such grantee, the lien against the interest of such grantee in said unit may be foreclosed by the Board of Directors in the same manner as a realty mortgage and that any redemption thereafter shall, nevertheless, be subject to the lien herein created as to other or future events or non-performance or default; provided, however, it is specifically understood and agreed that any lien herein created or which at any time accrues by virtue of the provisions hereof, and the terms hereof, shall at all times be subordinate and

inferior to the lien and the terms and conditions of any bona fide mortgage in which a lender is the mortgagee, whether such mortgage be now in existence or be hereafter made and placed against all or any portion of the described premises and the improvements thereon. It is the intention that the lien herein created shall be secondary and subordinate to any such bona fide mortgage lien regardless of the time such mortgage lien is placed or recorded.

20. All lots and structures thereon are subject to an easement for the repair, maintenance and use of utility lines of all kinds, including but not limited to, sewer, water, gas, telephone, electric and T.V. lines. Said lot and structure may be disturbed for such period and extent as is reasonably necessary to maintain, repair or install necessary utility lines. However, the property so disturbed shall be restored to its original state by the party altering or disturbing the property.

21. A. That all dividing walls now or hereafter constructed between any two (2) units on the above property shall be considered party walls, and shall be deemed to belong to the respective common owners as tenants in common, and shall be used for the common purpose of the units separated thereby. The preservation and structural repair of any one of said party walls, except for interior decoration, shall be the joint duty and obligation of the persons using the particular party wall. No structural changes in any of one said party walls shall be undertaken without the prior written consent and approval of the Board of Directors and each of the users of the particular party wall.

B. 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 of such party 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.

C. 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.

D. In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Board of Directors, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by each of the owners and the third by the two so chosen, or if they cannot agree 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 arbitrators shall be binding upon all parties involved in the subject dispute. The cost of arbitration shall be shared equally by the two owners involved in the dispute.

E. These covenants shall be binding upon the heirs and assigns of any owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an owner.

22. The right of partition or to seek partition shall not be available to any person, partnership, association, or corporation owning any interest of any kind whatsoever in and to all of any portion of the above-described premises.

23. That any and all prior restrictions on said property be, and the same are hereby ratified, approved, and confirmed.

24. The Board of Directors may, but shall not be obligated to, enforce these restrictions upon receipt of a written request from the owner or owners of one or more of the lots covered hereby. The Association shall have the right to enforce these restrictions in its own name on behalf of the owner or owners who submitted the request to the Association.

25. Any holder of a mortgage which comes into possession of the residential unit covered by that mortgage pursuant to the remedies provided in the mortgage, foreclosure of the mortgage or deed (or assignment) in lieu of

foreclosure, shall take the property free of any claims for unpaid assessments or charges against the mortgaged unit which accrued prior to the time such holder comes into possession of the residential unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all units including the mortgaged residential unit.)

26. If any residential unit has a holder of a first mortgage pursuant thereto, said mortgagee shall have the right to examine the books and records of the Board of Directors.

27. The Board of Directors shall provide a comprehensive policy of public liability covering all common areas and public ways. Such insurance shall contain a "Severability of Interest" which shall preclude the insurer from denying the claim of any residential unit owner provided herein because of the negligent acts of the Board of Directors of other residential unit owner.

The foregoing restrictions and covenants run with the land and shall be binding on all persons owning real property therein 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. These restrictions and covenants may be amended, in whole or in part, at any time by a majority vote of the then owners of lots within the property herein concerned. 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 thereof, each and all of such restrictive covenants shall be valid and binding upon the respective grantees. Violation of any one or more of such covenants 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 tracts or any part thereof. The violator of any provision of these restrictions will pay all costs incurred in connection with any legal or court proceedings necessary to correct or prevent such violation.

Should any of these restrictive covenants be invalidated by law, regulation or court decree, such

