

RECORDED~BY: NTS

DOCKET: 9057

PAGE: 515

NO. OF PAGES: 11

SEQUENCE: 91069017

W
SUBDIVISION COORDINATION

06/11/91

REST 08:48:00

TUCSON

AZ 85701

PICKUP

TOTAL \$ 14.00

DECLARATION OF ESTABLISHMENT OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
SHADOW VIEW ESTATES

KNOW ALL MEN BY THESE PRESENTS

That FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation not in its corporate capacity, but acting solely as Trustee under Trust No. 4380, hereinafter referred to as the Declarant, is the owner of the following described real estate (The "Properties") situated in the County of Pima, State of Arizona:

Lots 1 through 85, Block "A" and Common Area "A" of SHADOW VIEW ESTATES, according to the plat of record in the office of the County Recorder of Pima County, Arizona, recorded in Book 43 of Maps, page 96.

That Declarant does hereby establish a general plan for the improvement, development, ownership, use and sale of the Properties and establishes the following conditions, restrictions and covenants to which the Properties shall be subject, all of which shall be binding upon and inure to the benefit of the present and future Owners thereof, and which shall be impressed and imposed upon each part of said Properties as a servitude in favor of each and every part thereof.

No provisions contained herein shall be construed to prevent or limit Developer's right to complete development of the Property and construction of Improvements thereon, nor Developer's right at any time to maintain model homes, construction, sales or leasing offices or similar facilities on the Property nor Developer's right to post signs incidental to construction, sale or leasing, nor Developer's right to do anything that it may, In its sole discretion, deem necessary and proper for the full development of the Property.

ARTICLE I
DEFINITIONS

Section 1. “Declarant” shall mean and refer to FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, not in its corporate capacity, but acting solely as Trustee under Trust #4380, its successors and assigns.

Section 2. “Developer” shall mean VISION HOLDING CORPORATION, an Arizona corporation, its successors and assigns.

Section 3. “Fully constructed” shall be deemed to be the date on which all approvals required by Pima County, Arizona have been given.

Section 4. “Lot” shall mean the numbered plots of land shown on the Plat (without regard to whether a structure has been constructed thereon), unless otherwise defined herein.

Section 5. “Mortgage” shall include not only mortgages but also Deeds of Trust, and the term “Mortgagee” shall include a beneficiary under a Deed of Trust.

Section 6 “Owner” shall mean and refer to the recorded Owner, whether one or more persons, of the fee simple title to any Lot which is part of the Properties, but excluding persons holding an interest merely as security for the performance of an obligation.

Section 7 “Person” shall include a corporation, company, partnership, firm, association or society, as well as a natural person.

Section 8. “Plat” shall mean the map or plat of the Properties of record in the office of the County Recorder of Pima County, Arizona, in Book 43 of Maps and Plats at Page 96 thereof.

Section 9. “Properties” shall mean and refer to that certain real property hereinbefore described.

Section 10. “The Association” shall mean and refer to the SHADOW VIEW HOMEOWNERS ASSOCIATION, an Arizona non—profit corporation, its successors and assigns.

Section 11. “Common Area” shall mean all real property (including any 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 the real property depicted as Common Area on the recorded map or plat of SHADOW VIEW ESTATES.

ARTICLE II SCOPE OF AGREEMENT

This Agreement covers all of the rights and duties of the Owners of Lots In the Properties.

ARTICLE III
EASEMENTS

SECTION 1. Each Lot shall be subject to an easement for encroachments created by the original construction, settling and overhangs as determined by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist.

Section 2. Easements for drainage and for installation and maintenance of utilities 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 drainage or with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

ARTICLE IV
OWNER'S RESPONSIBILITIES

Each Owner shall be responsible for his or her Lot's utility costs, all taxes assessed against said Lot and residence, and appliance repairs, including appliances within his or her own residence, and roof maintenance and repairs for such residence. In addition, each Owner shall be responsible for all exterior maintenance or repairs for buildings, fences, walls, trees, shrubs, grass, walks and other exterior items on his or her Lot. If a roof must be repaired or replaced, it shall conform to the same architectural design and style as the original roof.

No Owner shall erect any structure on his or her Lot or make any Improvement to his or her residence without first obtaining the approval of a majority of the Board of Directors of the Association. Said approval is also required prior to the painting of exterior portions of any structures on any Lot, including fences, unless said painting will not result in any change whatsoever in the appearance of said structure or fence.

To the extent required by Arizona law, each Owner shall be responsible for and pay for all damage caused to any Owner's property by the Owner, guests, family, pets or employees.

ARTICLE V
COMMON WALLS

Section 1. General Rules of Law to Apply. Each patio wall built as a part of the original construction upon the Properties and placed in the dividing line between Lots shall constitute a common wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply hereto.

9057

517

3

Section 2. Sharing of Repair and Maintenance. The cost of ordinary repair and

maintenance of a common patio wall shall be shared equally by the Owners of the Lots which are divided by the wall.

Section 3. Destruction by Fire and Other Casualty. If a common patio wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and is hereby granted a permanent access easement for such restoration. The Owners of the Lots which are divided by the wall shall share equally in the cost of such restoration.

Section 4. Negligent Damage. Notwithstanding any other provisions of this Article, an Owner who, by his negligence or willful act, causes destruction or damage to a common wall shall bear the whole cost of repair.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribute 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. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one (1) arbitrator and the two (2) arbitrators shall choose a third (3rd) arbitrator, and the dispute shall be decided by a majority of all of the arbitrators.

Section 7. Private Agreement. Private agreements between Owners may not modify the provisions of this Article.

ARTICLE VI USE RESTRICTIONS

SECTION 1. Land Use and Building Type.

a. All Lots shall be used for residential purposes only, and no structure shall be erected, altered, placed or permitted on any of the Lots other than one detached single family dwelling not more than exceed two (2) stories in height and a private garage for not more than four (4) cars.

b. No business of any nature shall be conducted on said Lots.

Section 2. No Temporary Buildings or Trailers.

a. Except for one low—profile boat and/or trailer either of which not projecting to a height greater than the trailer, utility trailer, motor home, tent, unattached garage, camper, boat, storage shed, or outbuilding of any kind shall be placed or erected upon any part of the Properties, and no residence placed or erected on any Lot shall be occupied in any manner at any time prior to its being completed in accordance with approved plans, as hereinafter provided, nor shall any residence, when completed, be in any manner occupied until made to comply with all requirements, conditions and restrictions set forth herein; provided that, during the actual construction or alteration of a building or buildings on any Lot, necessary temporary buildings for storage of materials, etc., may be erected and maintained by the person doing such work. Nothing contained herein shall preclude Developer from occupying and maintaining a temporary sales office or a model home office and/or construction office on any Lot.

Section 3. Derricks, Tanks, Heating and Cooling.

a. No structure designed for use in boring for water, oil or natural gas shall be erected, placed or permitted upon any part of the Properties, nor shall any water, oil, natural gas, petroleum, asphaltum or hydrocarbon products or substances be produced or extracted therefrom.

b. No elevated tanks of any kind shall be erected, placed or permitted upon any part of the Properties and any tanks for use in connection with any residence constructed on Properties, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled in to conceal them from the neighboring Lots, roads or streets. All evaporative coolers, air conditioning units, heating equipment and solar devices shall be installed only as approved by the Board of Directors of the Association. Installation of such equipment by the Developer shall function as a model for future additions which the Board of Directors may be asked to approve.

c. No television, radio, microwave and/or all other antennae, satellite dishes, and/or transmitters shall be installed on homes which have pitched (tiled) roofs. Installation of low—profile antennae which do not project above the parapet wall of homes with “flats roofs (i.e. built—up type), may be permitted as approved by the Board of Directors of the Association.

d. Ground installation of television, radio, microwave and/or all other antennae, satellite dishes, and/or transmitters shall be permitted, subject to the prior approval of the Board of Directors, provided such antennae, satellite dish and/or transmitter does not project to height greater than the masonry wall enclosure of the dwelling.

Section 4. Rubbish and Garbage. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious otherwise. No obnoxious or offensive activity shall be carried on upon any Lot, no shall anything be done, placed or stored thereon which may become an annoyance or nuisance to neighborhood or occasion any noise or odor which will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Properties. All equipment for the storage or disposal of garbage or other waste shall be kept in a clean and sanitary condition. No trash or garbage container shall be kept at any time in view of any other Lot or street, except that it may be put by the street on the days of garbage or trash collection.

Section 5. Animals. No cattle, sheep, goats, pigs, rabbits, poultry or other livestock shall be bred, raised or kept on the Properties, nor shall dogs, cats or other animals be kept in kennels or similar enclosures on the Properties. This restriction shall not be construed, however, as prohibiting the keeping of ordinary domestic pets as long as such pets are kept confined in the single family residence and fenced yard.

Section 6. Resubdivision. No Lot or Lots shall be resubdivided except for the purpose of combining the resubdivided portions with another adjoining Lot or Lots, provided that no additional Lot is created thereby. Any resubdivision shall comply with state law and county ordinance.

Section 7. Noise. No Owner shall engage in any activity or permit any activity to occur on the Properties which shall result in unusual, loud or obtrusive noise or sounds.

Section 8. Landscaping. No shrubs, trees or obstructions of any kind shall be placed on corner Lots in such places as to cause a traffic hazard. Any landscaping, trees or bushes visible from the street shall be either of a desert or arid variety and shall be harmonious with that planted by Developer. No air—pollinated bermuda grass shall be planted on any lot. Non—allergenic hybrid-type grass may be planted only in completely enclosed rear yards. Fruit bearing citrus trees and/or arid variety palm trees will be permitted only in completely enclosed rear yards.

Section 9. Vehicle Storage. There shall be no automobile repairs or storage or parking of dead or junk automobiles or trucks, as the same are customarily defined, on any Lot; nor shall there be any storage of trailers or parking of recreational vehicles on any Lot, except that a trailer, recreational vehicle, car or truck may be stored completely in a garage.

Section 10. Signs, Nuisance. No signs (except “for Rent” and “For Sale” signs), billboards, unsightly objects or a nuisance shall be created, placed or permitted on any of the said Lots, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the builder of any Lot, except that the subdivider may erect a billboard or other sign on Lots during the development of the subdivision.

Section 11. Surface Water Retention. Certain water may be retained upon each Lot pursuant to the plat, plans and/or specifications for the Properties and provisions for such retention on Lots may not be disturbed without the prior written approval of Pima County and the Federal Housing Administration.

Section 12. Minimum Dwelling Area. No dwelling house having a living area of fewer than 1700 square feet per unit (including the walls proper of the house, but exclusive of open porches, pergolas, attached garages, or other similar extensions or projection) shall be erected, permitted or maintained on any of said Lots.

ARTICLE VII
MODELS AND SALES OFFICE

The Declarant or Developer may designate certain Lots as “Models”, and shall have the right to transfer the designation of a model from one Lot to another within the Properties. The Models may be leased or rented by the Declarant or the Developer, or may be sold to persons who will lease the Property to the Developer for his continuing unlimited use as a Model Home. Project sales offices may be erected on a Lot in the subdivision by the Developer or its approved broker.

ARTICLE VIII
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 any recreational facility which may be 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 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 of the Association, 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 IX MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

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 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:

(1) When title to 75% of the Lots in the subdivision has been transferred from the Declarant, or

(2) January 1, 1995

ARTICLE X COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, and the Declarant for each Lot owned within the Properties, hereby covenants, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements as hereinafter defined, 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 against which

each such assessment is made. Each such 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 to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area. Said assessments shall also be used for the payment of all ad valorem taxes imposed on the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance for the first Lot to an Owner, the maximum annual assessment shall be the sum of \$114.00.

a. 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 each year in accordance with the National Consumer Price Index (Bureau of Labor Statistics, United States Department of Labor, United States) for all urban consumers, all items, or a comparable index if said index is no longer published, or in any amount necessary to cover charges due by the Association for taxes and insurance regarding the Common Area owned by the Association, without a vote of the membership.

b. 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 the 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, including fixtures and personal property 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 Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 above shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Except as otherwise provided In Section 1 above, 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 applicable Lots 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 12% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. 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.

ARTICLE XI
GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, Developer, Association, or any Owner shall have the right to enforce, by any proceeding at law or In equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration.

All reasonable attorney’s fees and costs incurred by the Association in enforcing the provisions of this Declaration are the responsibility and obligation of the offending Owner, and if not paid when due, shall become a charge upon the land of the Owner violating said provisions and shall be continuing lien upon the property. All such attorney’s fees and costs shall also be the personal obligation of the person who was the Owner of the property at the time of the violation.

No delays or omissions on the part of the Developer or Declarant, its successors, the Association, or any Owner, in exercising their right of enforcement hereunder shall be construed as a waiver of any breach of any of the restrictions and covenants herein contained or acquiescence in any breach hereof and no right of action shall accrue against the Developer or Declarant, its successors, the Association, or any Owner for their neglect or refusal to exercise such right of enforcement, nor shall any right of action accrue against the Declarant or Developer for including herein provisions, conditions, restrictions, or covenants which may be unenforceable.

No breach of the foregoing provisions, conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure or by deed in lieu of foreclosure for any breach occurring after such acquisition.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this 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 ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) 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. 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 additional Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. Army Corps of Engineers Permit. All conditions relative to the Property contained in that document known as Permit 91-225-RD in the official records of the U.S. Army Corps of Engineers, Los Angeles District, will be observed. No alterations or additions to the improvements will be made to Waters of the United States or their adjacent wetlands on the Property, if any, unless expressly authorized by the U.S. Army Corps of Engineers Regulatory Branch. All covenants imposed by this section shall be binding on all successors and assigns of the Owner.

Section 7. Compliance. All covenants, conditions, provisions and restrictions contained herein or any amendment thereto, are subject to any and all applicable governmental statutes, ordinances, rules and regulations, and the guidelines, rules and regulations of the Federal Housing Administration and the Veterans' Administration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 24th day of April 1991.

Declarant

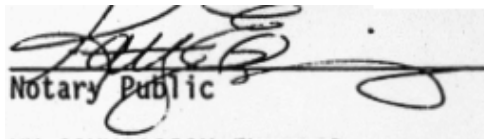
FIRST AMERICAN TITLE INSURANCE COMPANY,
a California corp., as Trustee under Trust
4380 and not personally:

Brigitte Echave Trust Officer

STATE OF ARIZONA)
)
COUNTY OF PIMA)

ON this, the 25th day of April, 1991, before me, the undersigned officer Brigitte Echave, personally appeared and acknowledged herself to be the Trust Officer of First American Title Insurance Company trustee under trust No. 4380 and that she as such officer of the company being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as officer.

In witness whereof, I have hereunto set my hand and official seal.


Notary Public

MY COMMISSION
EXPIRES:

