

WHEN RECORDED MAIL TO:

T. C. D. ENTERPRISES NO. II  
 Villa Del Monte  
 3634 North 28th Place  
 Phoenix, Arizona 85016

DKT 9216 PAGE 903

PIONEER NATIONAL TITLE INS. CO.

VILLA DEL MONTE'  
 (A 40-Unit Sub-Lot Development)

02-R MISC.

25919

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That T C D ENTERPRISES, an Arizona corporation, being the owner of the following described real property, situate within the County of Maricopa, State of Arizona, to-wit: Lots 1 to 40 inclusive and Tracts A, B, C, D, E and F, VILLA DEL MONTE', according to Book 144 of Maps, page 32, records of Maricopa County, Arizona, being a subdivision of:

The South one-third (1/3) of Lot 13,  
 ORANGEDALE TRACT, according to Book 1 of Maps,  
 page 35, records of Maricopa County, Arizona

and desiring to establish the nature of the use and enjoyment thereof, hereby declares that the following express covenants, restrictions, reservations and conditions shall attach to the said real property and every lot or tract thereof and shall constitute covenants running with the land:

1. Said premises are hereby restricted to high-class dwellings or apartments for residential use, and no business activities of any kind whatsoever shall be conducted upon said premises.
2. All buildings or structures erected on said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises.
3. No livestock or poultry shall be kept on the premises other than household pets, and no store, office or other place of business of any kind and no hospital, sanitarium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theatre, saloon or other place of entertainment shall ever be erected or permitted upon the premises, or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence.
4. No advertising signs, billboards, unsightly objects or nuisance shall be erected, placed or permitted to remain on any of said lots, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the holder of any lot in the subdivision. From and after the date upon which a deed to Villa Del Monte' Association, Inc. of the common areas of said Villa Del Monte', a 40-unit sub-lot development, is recorded in accordance with the following paragraph 7, then not more than one "For Sale" or "For Rent" sign may be placed on any lot, provided such sign is not larger than two feet square. Prior to such time advertising signs (of any size) may be maintained by T C D Enterprises, or its agents.
5. All clothes lines, equipment, garbage cans, incinerators, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring lots and streets. All rubbish, trash, or garbage shall be removed from the premises and shall not be allowed to accumulate thereon.

DKT 9216 12:04

6. No fences, hedges, or walls shall be erected or maintained upon said premises, except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by Villa Del Monte' Association, Inc. in the manner set forth in paragraph 7 hereof.

7. It is anticipated that residential dwelling units will be constructed on the said sub-lot development, and that the ownership of individual units shall be evidenced by a deed to the lot upon which each such unit is situated. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of commonly used areas, including a recreational area, shall be taken through the Villa Del Monte' Association, Inc., a corporation organized under the laws of the State of Arizona. Until such time as ninety per cent (90%) of the subdivided lots in these subdivisions have been conveyed by T C D Enterprises to the purchasers thereof, all right, discretion, power and authority herein granted to Villa Del Monte' Association, Inc. shall belong to T C D Enterprises. Upon the sale of 90% of such lots, T C D Enterprises shall convey to Villa Del Monte' Association, Inc. common areas (as evidenced by the recording of a deed from T C D Enterprises) and thereafter the rights and obligations respecting Villa Del Monte' Association, Inc. shall be as follows:

(a) One (1) share of the capital stock of Villa Del Monte' Association, Inc. shall be issued to the owner of record of each lot. The term "owner of record" shall include a purchaser having the right to possession under a recorded agreement of sale. In the event any such lot is owned by two or more persons, a single share of stock shall be issued in the names of all and they shall designate to the Association in writing one of the number who shall have the power to vote said share. No shares shall be issued to any other person or persons.

(b) Villa Del Monte' Association, Inc. shall hold title to the common areas of said sub-lot development and such other areas as may be acquired by it and be set aside and maintained for the use, enjoyment or convenience of the owners of lots in the sub-lot development.

(c) Villa Del Monte' Association, Inc. shall maintain and otherwise manage the landscaping and any swimming pool or other recreational facilities located upon commonly owned lands in said sub-lot development and shall pay all real estate taxes which may be assessed against and levied upon said lands. Such Association shall also be empowered to maintain and operate a street lighting system either directly or under contract with the City of Phoenix or through other means. Such Association shall contribute to the maintenance of, and real estate taxes imposed upon said common areas, as shown by the official map thereof, in proportion as the number of lots covered by these restrictions bears to the whole number of lots having the benefit of use of such common areas. Such contribution shall be made by payment to Villa Del Monte' Association, Inc., an Arizona corporation.

Dkt 9216 Page 905

(d) The owners of record of each lot in said sub-lot development shall pay to Villa Del Monte' Association, Inc. within ten (10) days of receipt of invoice the sum of Thirty (\$30.00) Dollars per month for his pro rata share of:

" (i) The actual cost to Villa Del Monte Association, Inc. of all repair and maintenance and the payment of taxes required by paragraph 7(c) hereof;

" (ii) The actual cost to the Association of such recreational facilities as may be from time to time provided by said Association; and

" (iii) Such sum as the Board of Directors of Villa Del Monte' Association, Inc. shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, and the payment of taxes required by paragraph 7(d)(i).

" The aggregate of items 7(d)(i), (ii) and (iii) above, shall not exceed Three Hundred and Sixty (\$350.00) Dollars per unit per year, except with the written consent of the record owners of seventy-five per cent (75%) of the lots in such subdivisions, which said consents shall be submitted to the Association during the calendar year in which such excess is to be collected. Invoices may be submitted monthly or at such other regular intervals as may be fixed by the Association. In the event any such invoice is not paid within thirty (30) days from the date the same is deposited in the United States mails addressed to such lot owner, the amount of such invoice shall be and become a lien on the said lot upon the Association causing to be filed in the Office of the Recorder of Maricopa County an affidavit of the non-payment of such invoice in the form of a materialman's lien and posting a copy of same upon said lot within ninety (90) days from the date of mailing such invoice. Such lien shall be foreclosed in the manner provided by Arizona law for the foreclosure of materialman's liens."

(e) In the event the owner of any lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of Villa Del Monte' Association, Inc., the Association, through its agents and employees, shall have the right to enter upon such lot and to repair, maintain, rehabilitate and restore the premises and the exterior of any improvements situated thereon, and the cost thereof shall be charged against the owner of said lot by invoice in the manner set forth in paragraph 7(d) hereof and made a lien on said lot and foreclosed as therein set forth.

(f) The Board of Directors of Villa Del Monte' Association, Inc. shall have the power to approve or disapprove any and all changes in occupancy or ownership of lots in the

DKT 9216 PAGE 906

sub-lot development and of the sale, transfer, conveyance, lease or sublease of such lots. The said Board shall be given notice in writing of any intended sale, transfer, conveyance, lease, or sublease, together with an application on a form prescribed by the Board and completed by the proposed transferee or lessee. The Board shall have fifteen (15) days after receiving such notice to approve or disapprove the same and within said fifteen (15) day period the Association shall have the option to purchase, lease or sublease said lot, as the case may be, on the same terms of sale, lease or sublease as those upon which the owner of said lot proposes to sell, lease or sublease. Villa Del Monte' Association, Inc. may assign this option to T C D Enterprises, an Arizona corporation, or to the owner of record of any lot on said sub-lot development, but not otherwise. In the event the Board shall neither approve or disapprove the proposed transfer or lease within the said fifteen day period, the same shall be deemed to be approved. In the event the Board shall disapprove such proposed transfer or lease but shall fail to exercise the option to purchase, lease or sublease within the said fifteen day period, the proposed transfer or lease shall be valid only upon compliance with the provisions of paragraph (g) (iii) below.

(g) No sale, transfer, conveyance, lease or sublease shall be considered valid until there shall be filed in the office of the County Recorder of Maricopa County and incorporated in the instrument of sale, transfer, conveyance, lease or sublease by reference to one of the following:

(i) A certificate of approval by the Board of such sale, transfer, conveyance, lease or sublease; or

(ii) An affidavit of the owner that notice has been given to the Board in accordance with paragraph (f) above and that the Board has failed to approve or disapprove such sale, transfer, conveyance, lease or sublease, within fifteen (15) days from the receipt of such notice; or

(iii) A certificate of approval of such sale, transfer, conveyance, lease or sublease executed by the owners of record of one-half of the lots in said subdivision.

(h) The capital stock of Villa Del Monte' Association, Inc. held by any owner of a lot in said sub-lot development shall not be transferred, pledged or alienated in any way except upon the sale of such lot and then only to the purchaser of such lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books of the corporation. In the event the owner of any lot should fail or refuse to transfer the share registered in his name to the purchaser of such lot, Villa Del Monte' Association, Inc. shall have the right to record the

DKT 9216 PAGE 907

transfer upon the books of the corporation and issue a new certificate to the purchaser and thereupon the old certificate outstanding in the name of the seller shall be null and void as though the same had been surrendered.

(i) No building, fence, wall or other structure shall be commenced, erected or maintained, until the plans and specifications, showing the nature, kind, shape, height, materials, floor plans location and approximate cost of such structure shall have been submitted to and approved by the Board of Directors of Villa Del Monte Association, Inc., and a copy thereof, as finally approved, lodged permanently with said Board. The Board shall have the right to refuse to approve any such plans or specifications or grading plans, which are not suitable or desirable, in its opinion, for aesthetic, or any other reasons, and in so passing upon such plans, specifications and grading plans, it shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure shall be subject to the prior approval of the Board.

8. The rights and duties of the owners of lots within this sub-lot development with respect to party wall shall be governed by the following:

(a) Each wall which is constructed as a part of the original construction on the subdivided property and any part of which is placed on the dividing line between separate lots in such subdivisions shall constitute a party wall and with respect to such wall each of the adjoining owners shall assume the burdens and be entitled to the benefits of these restrictive covenants and, to the extent not inconsistent herewith, general rules of law regarding party walls shall be applied thereto.

(b) In the event any such party wall is damaged or destroyed through the act of one adjoining owner or any of his acts, is negligent or otherwise culpable, so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then the first of such owners shall forthwith proceed to rebuild or repair the same as to 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 agent, 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.

Dkt 9216 Page 908

(d) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to, or rebuild his residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.

(e) 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 Villa Del Monte' Association, Inc., 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 arbitrators, one chosen by each of the owners and the third by the two so chosen, or if they cannot agree within five days then by any judge of the Maricopa County Superior Court. A determination of the matter signed by any two shall be binding upon all parties and persons.

(f) These covenants shall remain in full force and effect until modified or abrogated as to any particular party wall by the agreement of all persons then having an interest therein.

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

9. The covenants, restrictions, reservations, and conditions contained herein shall run with the land and shall be binding upon all said subdivisions after the date on which this instrument has been recorded. These covenants, restrictions, reservations and conditions may be enforced by the owner of any lots in said subdivisions. Villa Del Monte' Association, Inc. and T C D Enterprises, or any one or more of said individuals and corporations; provided, however, that any breach of said covenants, restrictions, reservations and conditions, or any right of re-entry by reason thereof, shall not defeat or affect the lien of any mortgage, or deed of trust made in good faith and for value upon said land, but except as hereinafter provided each and all of said covenants, restrictions, reservations, and conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise and provided, also, that the breach of any of said covenants, restrictions, reservations, and conditions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such deed of trust or mortgage. All instruments of conveyance of any interest in all or any part of said subdivisions shall contain reference to this instrument and shall be subject to the

DKT 9216 PAGE 909

covenants, restrictions, reservations, and conditions herein as fully as though the terms and conditions of this instrument were therein set forth, in full; provided, however, that the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not.

10. Notwithstanding any provisions of this declaration of restrictive covenants to the contrary:

(a) The provisions of paragraphs 7(f), (g) and (h) shall not apply to nor be enforced by any person with respect to:

(i) A sale, transfer, or conveyance of any parcel in said subdivision to any person pursuant to a judgment of foreclosure of a mortgage of record by an institutional lender upon such lot, or

(ii) A sale, transfer, conveyance or lease of any parcel in said sub-lot development to any person by an institutional lender which has acquired title through or by virtue of foreclosure by it of a mortgage of record upon such parcel; or

(iii) A transfer, lease or conveyance by Villa Del Monte' Association, Inc. or by T C D Enterprises.

(b) No deed, mortgage, or encumbrance of any kind whatsoever upon said common areas, or upon any of the improvements thereon shall be valid unless there shall be endorsed upon the instrument of transfer or encumbrance a written approval by all of the owners or holders of record of institutional mortgages upon any of the other lots in this sub-lot development. An institutional mortgage shall be understood to mean a mortgage given to secure a debt due to a regularly organized bank, insurance company, savings and loan association, or other corporation, or association regularly engaged in the making of mortgage loans.

11. Invalidation of any one of these covenants, restrictions, reservations or conditions by judgment or court order shall in no wise affect the validity of any of the other provisions and the same shall remain in full force and effect.

12. These covenants, restrictions, reservations, and conditions shall remain in full force and effect for a period of ten (10) years from the date hereof. Thereafter they shall be deemed to have been renewed for successive terms of five (5) years, unless revoked or amended by an instrument in writing executed and acknowledged by the owners of not less than three-fourths (3/4th) of the lots in this sub-lot development, which said instrument shall be recorded in the office of the Recorder of Maricopa County, Arizona, within ninety (90)

