

# *Sun City Carolina Lakes*

## The “Governing Documents” Explained

### Version 5.5

Welcome! This document contains a summary of the “governing documents” of Sun City Carolina Lakes. It was compiled on a purely voluntary basis by individuals who have made every effort to ensure the accuracy and reliability of the information provided herein. Notwithstanding that effort, this information is being provided “as is” and without any express or implied warranty, promise or representation of any kind. **The authors of this publication shall have no responsibility or liability for the accuracy, content, completeness, legality, or reliability of the information included or referred to herein.** Readers and other users of this information are cautioned to read the original document(s) themselves and obtain independent advice from qualified professionals before drawing any conclusions or inferences from the information provided. **The authors expressly disclaim any liability for any loss or damage of any kind (whether direct, indirect, consequential or otherwise) that may result from the use of or reliance on any of the information provided herein.**

The governing documents of Sun City Carolina Lakes Community Association (“SCCLCA”) consist generally of the Declaration of Covenants, Conditions, & Restrictions (“CC&Rs”) and its amendments and supplements; the Articles of Incorporation; the By-Laws of the SCCLCA; the Rules and Regulations; the policies passed by the Board in board meetings and noticed in minutes and the minutes themselves. Sometime during the sales process, each buyer is supposed to receive these documents, and the buyer is solely responsible for reading and understanding the documents and their implications.

A buyer of a house never previously occupied should receive their copy from the developer. South Carolina law is very broad and general in its definition of the governing documents, leaving much open to interpretation. A recent South Carolina Law called the Residential Property Disclosure Act now requires the owner of an existing residential property subject to a homeowners association to provide a written statement to a prospective buyer, answering several questions having to do with the Association. Our CC&Rs also require a seller to provide the buyer with a copy of the “Declaration and any Supplemental or Local Area Declaration applicable to the Dwelling Unit transferred before the sale is closed or the transfer is finalized.”<sup>1</sup> These documents bind all future buyers, as the documents run with the deed, not with the owner.

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<sup>1</sup> Declaration of Covenants, Conditions, & Restrictions, Sun City Carolina Lakes, Article 17, paragraph 17.8.

At the time of closing of a buyer's contract to purchase, he or she signs an understanding and agreement to comply with the terms.

## History

Pulte Home Corporation acquired the property for the Sun City Carolina Lakes development from several previous owners in various transactions during 2004–2006. Pulte negotiated with the County of Lancaster to obtain a special set of zoning regulations called a Planned Development District (“PDD”). The purpose of that agreement was to set in ordinance a variety of special rules guiding how the project would be built and to provide Pulte flexibility to make a limited set of changes as circumstances changed over time. The original ordinance, #631, was passed on August 2, 2004. It was modified with the acquisition of Turkey Point through Ordinance #691, which was passed on January 9, 2005.

The next major event was the establishment of the “Sun City Carolina Lakes Improvement District.” An improvement district is a legal entity created to enable the County to issue bonds on the public financial markets<sup>2</sup>. The bonds allowed the County to obtain funds to pay for part of the costs of the infrastructure (roads, sewers, etc.). Although the County of Lancaster issued the bonds, the buyers/owners of the dwelling units agree to be responsible for paying the principal and interest on those bonds when they sign the closing statements. Owners pay the principal and interest on these bonds through a special assessment that appears in the lower right corner of their yearly tax bills. It is not a Lancaster County tax.

Next, Pulte established the SCCLCA through a filing of Articles of Incorporation as a nonprofit corporation with the South Carolina Secretary of State on February 10, 2006. They also created the Corporation By-laws of the corporation on 2/14/2006. These by-laws list a number of rules of this nonprofit corporation relating to membership, meetings, a board of directors, accounting, reserve requirements, enforcement, officers, committees, and miscellaneous items. Cross-references within these documents refer to some of the same or similar items in the CC&Rs, as noted below.

## Covenants, Conditions, & Restrictions

Pulte then “declared” the Declaration of Covenants, Conditions, & Restrictions into existence by creating the 79-page CC&Rs and filing it with the Lancaster County Register's office on May 16, 2006. In so doing, Pulte, in the person of its regional corporate officer, became the “declarant.” The reader should understand the following distinctions:

- The Articles of Incorporation and the By-Laws establish and dictate the framework of governance of the SCCLCA – the Association. The documents address the powers and processes of governing the association.
- The CC&Rs establish and dictate the responsibilities of the owners and the SCCLCA to each other and the detailed conditions and restrictions included in those responsibilities.
- The CC&Rs represent a civil contract between the SCCLCA and the purchaser. When an owner buys a property here, they are agreeing to the terms and conditions of this contract.

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<sup>2</sup> Passed in Ordinance #677, final reading 10/3/2005

Thus, in order to understand what each party can and cannot do, it is often necessary to understand all three documents and how they interact with each other.

Three of the most important powers contained in these documents are those of the declarant. In overly simple language, the declarant has unilateral power to—

1. Change the governing documents (Note: the Board of Directors is not empowered to change the documents during the control period.<sup>3</sup>)
2. Appoint and remove the members of the Board of Directors of the SCCLCA at any time without cause
3. Veto any action of the Board within 10 days of such action

Pulte may, and has, amended the original declaration through amendments. Amendments are just that. They replace the language and rules of the original CC&Rs but do not change the specific words in the original document itself. Instead, they are a separate, stand alone document with language that has the effect of superseding the original language. This means that when reading the original document, the reader must consult all amendments to be certain no later amendment has changed the original wording. As of the date of this document, there are six amendments recorded with the Lancaster County Register's office.

As of May 16, 2006, Pulte had begun the legal and physical development of SCCL. The original version of the CC&Rs also established Neighborhoods A-1, B, and D. Here is how it now works beyond the original CC&Rs:

- Pulte owns all the property. It creates detailed engineering plans for development of a specific area of the property. These plans contain a great deal of engineering specifications covering layout, ground contours, all types of drainage, utilities, streets, lots for sale, environmental restrictions, names, and much more. Pulte submits these plans to the County and the South Carolina Department of Health and Environment Control (“DHEC”) for review (and approval where required) by the following:
  - Department of Public Works
  - Lancaster County Water & Sewer District
  - South Carolina Department of Health and Environmental Control
  - Lancaster County Natural Gas Authority
  - County Planning Department
  - Duke Energy and York Electric Cooperative

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<sup>3</sup> The control period is defined in the CC&Rs as “The end of the development period, the expiration of 20 years from the date of recording [the CC&Rs] or the date designated in a written notice recorded by the Declarant in the Public Records as being the end of the Declarant Control Period.” The Development period ends “...when the declarant no longer holds or controls title to any portion of the real estate...”

- Comporium
- Other parties affected by the development of land into a neighborhood

Plans must comply with the PDD restrictions and the development standards agreed to by Pulte with the various authorities that will eventually use or own the services.

- Pulte begins “clearing and grubbing” the property almost always before the plans are approved. They may proceed with actual development work without approval of the plans, but the authorities will not inspect and approve the physical work without a plan they have approved. Thus, if Pulte does something on the property that later is not approved, Pulte could be forced to redo the work.
- As an outgrowth of the plans, Pulte’s engineer develops a detailed map which defines the individual lots, the public right-of-way, private roads or limited common area (where applicable), and the remaining common open space. When the plans are approved, the County “OK’s” this map or “plat” as it becomes known, for filing with the Register’s Office. The engineer signs and seals<sup>4</sup> the plat certifying its accuracy and an authorized officer of Pulte signs a statement on it that to the best of his knowledge, the plan is accurate and complies with all laws and regulations applicable to the property and that he has the authority to sign. The engineer then files this plan with the county register of deeds and it becomes an approved “sub-division” plat. A copy of this approved Plat then goes to the Assessor where parcel numbers are assigned for eventually recording of deeds to individual owners.
- NOTE WELL: the plat is ‘granted’ by the surveyor/engineer to Pulte and it becomes a go-forward basis for all definition of property boundaries. The surveyor’s certification does NOT accrue to future owners. Each buyer of each property should receive a deed based on their own survey of their property themselves. In the case of mortgaged property, a title insurance company will not issue title insurance without obtaining a separate survey.
- Pulte then records a supplement to the CC&Rs which refers to the Plat. Unlike amendments that modify the CC&Rs, supplements extend the CC&Rs. The supplement “annexes” the new property (formerly termed “pod”; now called “neighborhood”) into “the properties” and subjects it to the rules of the CC&Rs. Importantly, the supplement defines the services that the SCCLCA will provide to purchasers of the individual dwelling units. A warning appears in almost all the supplements that the Board of Directors of the SCCLCA may change the services provided to this neighborhood at its discretion anytime in the future.
- Shortly later (often simultaneously), Pulte grants to the SCCLCA a warranty deed of common area. This document refers to the plat and “grants” or transfers title to the relevant components (common area or limited common area) described in the deed. As a general statement, the way this works is that Pulte grants to the SCCLCA ‘all the property on the referenced plat except the individual lots for sale, any streets that will be deeded to the county, and “all areas labeled for future development.”’ Thus, the property deeded to SCCLCA is identified by starting with the entire plat and “subtracting” all the lots, streets,

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<sup>4</sup> Places his seal of authority with his license number issued by the state of South Carolina

and future development land. This process winds up deeding a very complex, irregularly lined piece of property. This deed conveys liability associated with the property to the SCCLCA. It also removes the property from Pulte's taxable property roll and places it on the SCCLCA's tax record.

As of the date of this document, Pulte has deeded all of the common area property in the entire community to the HOA.

## **The Carriage Homes at Sun City Carolina Lakes**

As if the foregoing isn't complicated enough, one of the neighborhoods in this development is called The Carriage Homes. The Carriage Homes at Sun City Carolina Lakes is a completely separate legal entity (corporation) established by Pulte in a completely separate master deed dated April 19, 2007. The master deed both brought that entity into existence and deeded the common property surrounding the Carriage Homes to the SCCLCA (note: NOT to the Carriage Homes.) This entity is known as a Horizontal Property Regime under South Carolina Law and it came into existence for two purposes:

1. To own title to the physical buildings of the Carriage Homes as a "common interest property", i.e. a legal entity that owns the buildings that in turn contain the condominium units.
2. To set up a legal governance framework defining how this common interest property is to be managed and the rules binding upon the Carriage Home unit owners and the Carriage Homes Association, as described below.

Here is a simplified description:

Some prospective buyers want to live in an active adult community and take advantage of its amenities, but they do not want to own and maintain a detached house and property. Pulte offered the Carriage Homes as an alternative for these buyers. The Carriage Homes is a condominium property in which individual buyers buy and take title to the "innards" of a unit. Innards basically consist of the units from the inside paint line inward. (The actual definition is much wordier.)

A separate governing body, known as the Carriage Homes Association at Sun City Carolina Lakes ("CHA"), was formed to manage the common interest part of the Carriage Homes physical property. The CHA owns the building slabs, walls, utility service lines, and plumbing inside a building, as well as the roofs of the structures from the inside paint line outward to the footprint of the buildings. Only the SCCLCA may perform the maintenance and repairs upon the building structure or the windows. However, the CHA is responsible for the costs of insuring, maintaining, and replacing the building structures. Individual owners are responsible for the costs of insuring, maintaining, and replacing the innards of their units including the windows. Thus, the CHA incurs monthly and yearly expenses for these purposes, and it can and does impose monthly dues on the individual owners to cover these costs.

Therefore, the Carriage Home owners pay monthly dues to the SCCLCA to cover the expenses of operating the amenities and for use of the common areas, and they also pay a separate monthly amount to cover CHA expenses. The CHA has a completely separate set of

financial statements in which the income, expenses, and balances pertaining to these items are recorded.

To be clear, the CHA is a separate legal entity and is not a subsidiary of the SCCLCA. It is owned proportionately by each of those unit owners. It has its own Board of Directors. However, as long as Pulte owns any units (currently four), the three members of the Board are controlled by the Declarant: Pulte in the person of Jon Cherry.

The property surrounding the Carriage Homes (i.e., outside the footprint of the buildings) is designated in the supplement as common area, owned and maintained by the SCCLCA, not the Carriage Homes Association. The supplement also designated the streets as limited common area.

In the original governing documents, the costs of maintenance and reserves of the limited common area were the responsibility of the neighborhood. Thus, the CHA (and through it, the owners) were originally responsible for the costs of maintenance and reserves on these limited common area streets, but the Board of Directors changed the allocation of those costs in September, 2013. Policy #2013.09.04 now designates them as SCCLCA costs. The Board based its authority to change the assignment of these costs on the last sentence of Paragraph 6 (a) of the supplement.

The neighborhood itself (called C-1) was created in the CC&Rs, Supplement No. 6, filed with the county on April 19, 2007, and later revised on May 21, 2007.

## **Other Covenants and Restrictions**

The declaration of CC&Rs described above is directly between an owner and the SCCLCA.

Several other covenants upon the community as a whole are less important to an individual owner, but they restrict what the SCCLCA or individual owners may or may not do. Among these covenants are the following:

- Two separate buy co-equal covenants with the Army Corps of Engineers and South Carolina Department of Health & Environmental Control regarding waters and restricted areas on the property; Basis is the Clean Waters Act enforced by the Federal EPA and South Carolina DHEC.
- A conservation agreement on a 100 foot deep strip of land along the banks of the Catawba River in what became the sub-divisions of Phase 7, the “Turkey Point Amenities”, and Pod J in perpetuity. This easement restricts what can and cannot be done on that strip and subjects those actions to the control of the Katawba Valley Land Trust.
- A “Catawba River Protection Zone” of 250’ from the river bank all along the river.
- A covenant in the deed with the Golf Course restricting in perpetuity the future use of the land to only a golf course;
- Easements with utility providers;
- Deeds of the public rights-of-way to Lancaster County. These deeds contain agreements, signed by the HOA, that the HOA is and will be forever responsible for maintenance and

replacement of many components of the property (e.g., storm water infrastructure, sidewalks, etc.)

- A development agreement with Lancaster County and related parties that spells out the agreements regarding development of the community. It also contains warranties to the county regarding the condition of the property containing the streets when streets are turned over to the county.

## **Rules and Regulations for SCCL**

Another element of the governing documents is called the “Rules and Regulations for SCCL” manual. The authors have no first-hand knowledge of the source of this document but it deals with many of the same topics as in the CC&Rs and the By-Laws.

As of this writing, the SCCL website discloses a version dated April 15, 2012. The document appears on the home page, down the left side, in a folder named legal documents.

## **Design Guidelines**

The CC&Rs, Article IX, contain provisions that describe “broad and sweeping, extremely wide range of activities regulated hereby.”<sup>5</sup> In short, the article contains many restrictions on what owners may and may not do in the community. Among these restrictions is changing the outside appearance of a unit. A separate document entitled “Design Guidelines” states these restrictions in more detail. The most recent version is identified in the “Table of Contents and Index” document available through the Informed Owners OR on the Sun City website, Community Home page, down the left side in the “Legal” folder, titled “Design Guidelines – Revised April 28, 2014. Any owner who considers changing any visible feature of his or her unit should become familiar with these design guidelines.

## **Chartered Clubs**

A document entitled “Sun City Carolina Lakes Chartered Club Operating Manual” also appears on the homepage of the SCCL website. This 30-page, five-chapter document contains procedures, rules, and regulations governing clubs. It will have to be read and understood in the context of all the other preceding documents during the transition study.

## **Policy Statements**

In addition to the preceding governing documents, the SCCL Board of Directors has passed policies. The policies are legal declarations that are binding in contract law based on the authority granted to the Board in the CC&Rs. The Board uses policies to enact new rules not covered by the CC&Rs. The description of each policy we were able to locate is included in the “SCCLCA Table of Contents & Index” document in a chapter titled “Policies”.

A complete set of all documents related to the Association is available in digital format upon request.

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<sup>5</sup>Declaration of Covenants, Conditions, & Restrictions, Sun City Carolina Lakes, Article IX, Page 44, 5/16/2006