

BASE FILE

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
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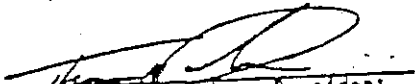
When recorded mail to:

Tempe Gardens Townhouse Corp
P. O. Box 27301
Tempe AZ 85282

AMENDMENT TO THE DECLARATION OF RESTRICTIONS
OF
TEMPE GARDENS TOWNHOUSE CORPORATION

IT IS HEREBY STATED AND DECLARED that said Declaration of Restrictions as presently of record in Docket 4997, Pages 594-606 thereof of the records of the County Recorder of Maricopa County, Arizona, as amended in said records in Docket 5004, Pages 293-294 thereof shall be and the same is hereby amended in the following manner, to-wit:

- 1) The following shall be added to Restriction #5:
"All dogs and cats must have an identification tag and collar."
- 2) The second paragraph following paragraph 9(c)(5) shall be amended as follows:
"An annual report shall be prepared for the year ending June 30, 1964, and on or before June 30th of each year thereafter. The Board of Directors shall meet with the Manager and/or the management corporation on the first Thursday of August each year to discuss the annual report and to set the rate for the subsequent year."
- 3) Restriction #20 shall be deleted in its entirety.


Thomas M. Donahue, President


Floyd J. Baribeau, Manager

STATE OF ARIZONA
County of Maricopa

ss:
On this, the 1 day of October, 1991, before me, the undersigned, a Notary Public in and for the said State, personally appeared Thomas M. Donahue and Floyd L. Baribeau who acknowledged themselves to be the President and Manager respectively, of Tempe Gardens Townhouse Corporation, and they being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as such officers.

WITNESS my hand and official seal.


NOTARY PUBLIC

My commission expires:
June 19, 1993

BASE FILE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL AMENDED DECLARATION OF RESTRICTIONS, RECORDED IN DOCKET 5004 COMMENCING AT PAGE 293-294 OF THE RECORDS OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA.

UNION TITLE COMPANY, Trustee
By /s/ Marlon A. Hakes

AMENDED DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That UNION TITLE COMPANY, an Arizona corporation, as Trustee, being the owner of the following described real property:
Tract "A", TEMPE GARDENS UNIT ONE, book 100, page 46, Maricopa County Records, Tract "B", TEMPE GARDENS UNIT TWO, Book 102, page 22, Maricopa County Records, Tract "C", "D" & "E", TEMPE GARDENS UNIT THREE, Book 103, page 33, Maricopa County Records;
according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 105 of Maps, pages 23 through 28 thereof; and desiring to establish the nature of the use and enjoyment thereof, did cause to be executed on the 8th day of April, 1964, a certain Declaration of Restrictions in which there were set forth certain covenants, stipulations and restrictions, which instrument was recorded in the records of the County Recorder of Maricopa County, State of Arizona in Docket 4997, commencing at page 594 thereof; and

WHEREAS, said UNION TITLE COMPANY, as Trustee, is desirous of amending said Declaration of Restrictions in the manner set forth hereinafter;

IT IS HEREBY STATED AND DECLARED that said Declaration of Restrictions as presently of record shall be and the same is hereby amended in the following manner, to-wit:

1. The following sentence on page 1 shall be deleted in its entirety:
"This declaration hereby establishes a plan for the individual ownership of real property estates consisting of an area of cubic space and the improvements contained therein, together with an undivided 1/116th interest in the real property described above and all of the remaining property, both real and personal, which is hereinafter defined and referred to as the 'common elements.'"
2. There shall be substituted for and in lieu of the above deleted sentence on page 1 the following:

"This declaration hereby establishes a plan for the individual ownership of real property estates consisting of an area of cubic space and the improvements contained therein, together with an undivided 1/169th interest in the real property described above and all of the remaining property, both real and personal, which is hereinafter defined and referred to as the 'common elements.'"

In all other respects the Declaration of Restrictions as recorded in Docket 4997, commencing at page 594 thereof, shall remain in full force and effect.

IN WITNESS WHEREOF, UNION TITLE COMPANY, an Arizona corporation, as Trustee, has hereunto caused its corporate seal to be affixed and the name to be attested by the signature of its duly authorized officers, this 13th day of April, 1964.

UNION TITLE COMPANY
By /s/ John J. Karmelich
Its Senior Trust Officer

ATTEST:
/s/ Marlon A. Hakes
Assistant Secretary

STATE OF ARIZONA)
) ss
County of Maricopa)

On this 13th day of April, 1964, before me, the undersigned Notary Public, personally appeared John J. Karmelich and Marlon A. Hakes, who acknowledged themselves to be the Sr. Trust Officer and Assistant Secretary, respectively, of UNION TITLE COMPANY, an Arizona corporation, and that they, as such officers, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said corporation, as Trustee, by themselves as such officers.

WITNESS my hand and official seal. Marie J. Biller
Notary Public

My commission expires:
9-29-1967

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL DECLARATION OF RESTRICTIONS, RECORDED IN DOCKET 4997, COMMENCING AT PAGE 594 - 606 OF THE RECORDS OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA.

UNION TITLE COMPANY

By /s/ Marlon A. Hakes
Assistant Secretary

DECLARATION OF RESTRICTIONS

THE UNDERSIGNED, owner of that certain real property situated in the State of Arizona, County of Maricopa, known as Tempe Gardens Townhouse, more specifically described as follows:

Tract "A", TEMPE GARDENS UNIT ONE, Book 100, page 46, Maricopa County Records, Tract "B", TEMPE GARDENS UNIT TWO, Book 102, page 22, Maricopa County Records, Tract "C", "D", & "E", TEMPE GARDENS UNIT THREE, Book 103, page 33, Maricopa County Records.

according to the plat thereof of record in the Office of the County Recorder of Maricopa County, Arizona, in Book 105 of Maps, page 23 through 28 thereof, hereby covenants, agrees and declares that all of said property and townhouse units thereon are and will be held, sold and conveyed subject to the following covenants, conditions and restrictions, which are hereby declared to be for the benefit of all of the property described herein, and the owners thereof, their heirs, successors, grantees and assigns. This declaration hereby establishes a plan for the individual ownership of real property estates consisting of an area of cubic space and the improvements contained therein, together with an undivided 1/16th interest in the real property described above and all of the remaining property, both real and personal, which is hereinafter defined and referred to as the "common elements." Said restrictions establish and impose a plan of condominium ownership for the improvement and development of said property described herein and the adoption and establishment of covenants, conditions and restrictions upon said land and upon any and all townhouse units constructed or to be constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any of said townhouses, or property or portion thereof shall be and is subject to the said covenants, conditions and restrictions, as follows:

1. Said premises are hereby restricted to residential dwellings for residential use. All buildings or structures erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than townhouses, being residence units joined together by party walls, shall be built on any parcel where the Builder theretofore programmed and constructed a townhouse. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

2. Each townhouse shall be a separately designated and legally described freehold estate consisting of an area of cubic space and the improvements therein, together with an undivided 1/16th interest in the common elements of said condominium, as designated in that Declaration of Horizontal Regime recorded in Docket 4995, page 598 in the office of the County Recorder of Maricopa County, Arizona. Said freehold estates are herein defined and referred to as "townhouses."

3. The "common elements," shall be as defined in said Declaration of Horizontal Regime referred to in paragraph 2 above, and shall include, but not be limited to the land upon which the townhouses are situated; recreational facilities, community and commercial facilities, if any, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines, and any air space not otherwise specifically conveyed for a townhouse unit.

4. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Builder of a major portion of said townhouses to maintain during the period of construction and sale of said townhouses, upon such portion of the premises as such Builder may choose, such facilities in the sole opinion of said Builder may be reasonably required, convenient or incidental to the construction and sale of said townhouses, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

5. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

6. No advertising signs (except one of not more than five square feet "For Rent" or "For Sale" sign per parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any townhouse or any resident thereof. Further, no business activities of any kind whatever shall be conducted in any building or in any portion of the premises. Provided, further, however, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the Builder, its agents and assigns during the construction and sale period, and of TEMPE GARDENS TOWNHOUSE CORP., a non-profit corporation incorporated or to be incorporated under the laws of the State of Arizona, its successors, and assigns (hereinafter referred to as the Association), in furtherance of its powers and purposes as hereinafter set forth.

7. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring townhouses and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

8. Except in the individual patio areas, no planting or gardening shall be done, and 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 the Association's Board of Directors or their designated representative. The owners of townhouses are hereby prohibited and restricted from using any land or air space outside the exterior building lines and patio enclosures, except as may be allowed by the Association's board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of townhouses of Tempe Gardens Townhouse and is necessary for the protection of said owners.

9. It is anticipated that residential dwelling units will be constructed within the condominium property and the ownership of these individual units shall be evidenced by a deed of an area of cubic space and the improvements therein, together with an undivided 1/169th interest in the common elements as defined above. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements and all exteriors and roofs of the townhouse units, including, but not limited to recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative. The powers, rights and duties of the Association and Board of Directors shall be as follows, and as may be adopted in its Articles of Incorporation and By-Laws not inconsistent herewith:

(a) Membership in the Association, except for membership of the incorporators and the first Board of Directors, shall be limited to record owners of equitable title of townhouses constructed or planned to be constructed on the property described above. An owner of a townhouse shall automatically, upon becoming the owner of a townhouse, be a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.

In the event any such townhouse unit is owned by two or more persons, whether by joint tenancy, tenancy in common, community property or otherwise, the membership as to each townhouse shall be joint and a single membership for such townhouse shall be issued in the names of all, and they shall designate to the Association in writing at the time of issuance, one of their number who shall hold the membership and have the power to vote said membership, and in the absence of such designation and until such designation is made, the Board of Directors of the Association shall make such designation.

(b) The Association, or its duly delegated representative, shall maintain and otherwise manage all property up to the exterior building lines and patio enclosures including, but not limited to the landscaping, parking areas, streets and recreational facilities, roofs, common elements and exteriors of the buildings located upon the above described properties, except windows of townhouse units, and shall maintain and otherwise manage and be responsible for the rubbish removal of all areas within the above described property.

(c) The record owner of equitable title of each townhouse shall be entitled to one membership in the Association, for himself and his family

residing in the townhouse, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, By-Laws, Management Agreement, and these Restrictions, as now in effect or duly adopted and amended. Said owner of each such townhouse, for himself, his heirs, successors and assigns, further covenants that each such townhouse shall be subject to an assessment in an amount to be determined by the Association, in the following manner:

(1) Such townhouse unit's pro-rata share of the actual cost to the Association of all repair and maintenance of common elements and townhouses, including, but not limited to, mowing grass, caring for the grounds, sprinkler system, swimming pool, recreational buildings, roofs, exterior walls of the townhouses, carports, including their roofs, and other charges required by this Declaration of Restrictions;

(2) Such townhouse unit's pro-rata share of the actual cost to the Association of such recreational facilities as may from time to time be provided by the Association;

(3) Such townhouse unit's pro-rata share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein, including fire and other hazard insurance premiums as hereinafter provided, and a liability insurance premium for a liability insurance policy in the face amount of not less than \$500,000.00, which policy, in addition to public liability, shall cover repair and construction work to all of the assets and property owned by or to be maintained by the Association. The disposition of liability insurance proceeds shall be made upon majority vote of the Board of Directors but in all events shall be used to and for the purpose of the Association;

(4) Such townhouse unit's pro-rata share of such additional sum as the Board of Directors of the Association shall determine to be necessary to meet the primary purposes of the Association;

(5) Each townhouse unit's pro-rata share shall be 1/169th of the total amount determined under sub-paragraphs (1), (2), (3) and (4) above.

The amount to be pro-rated among the members of the Association pursuant to paragraphs 9(c)(1), 9(c)(2), 9(c)(3), 9(c)(4), and 9(c)(5) above shall be established annually by the Board of Directors. Said amount shall be established after the Board of Directors has met with the management corporation, as hereinafter provided, and has examined the annual report to be prepared by said management corporation, and the annual audit prepared by a Certified Public Accountant.

An annual report shall be prepared for the year ending June 30, 1964, and on or before June 30th of each year thereafter. The Board of Directors shall meet with the management corporation on the first Thursday of August of each year to discuss the annual report and to set the rate for the subsequent year.

Each townhouse owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges directly to the management corporation, or to such other party or parties as directed by the Association's Board of Directors.

Each townhouse owner further agrees that these charges if not paid within twenty (20) days after the first of each month shall become a lien upon said owner's townhouse and percentage ownership of the common elements and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of the first mortgagee.

Each such owner, by his acceptance of a deed to a townhouse, 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 Association or its agents the right and power to bring all actions against such owner for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such owner hereby expressly grants to the Association a power of sale in connection with said lien.

No owner of a townhouse may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his townhouse.

(d) Each owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all management agreements shall be available to each owner.

Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of three-fourths (3/4) of the members of the Association. In no event shall such management agreement be cancelled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement.

It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of the term of any prior management contract. Any and all management agreements shall be made with a responsible party or parties having considerable experience with the management of a project of this type.

(e) The membership in the Association held by a record owner of equitable title of a townhouse shall not be transferred, pledged or alienated in any way, except upon the sale of such townhouse and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner of any townhouse should fail or refuse to transfer the membership registered in his name to the purchaser of such townhouse, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

(f) No exterior additions, or alterations to any building nor changes in fences, hedges, walls and other structures 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 of the Association, 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.

(g) The Association's Board of Directors shall have the right and power 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 interests of the Association and the Townhouse Project. Any such construction, improvements or additions shall be authorized by an affirmative vote of three-fourths (3/4) of the Board of Directors at a duly called meeting at which a quorum is present.

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

Each townhouse 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 townhouse 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 Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Each such owner, by his acceptance of a deed to a townhouse, 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 Association 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 Association a power of sale in connection with said lien.

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

11. The rights and duties of the owners of townhouses within this condominium project with respect to party walls shall be governed by the following:

(a) Each wall, including patio walls, which is constructed as a part of the original construction of the townhouse multi-family structure, any part of which is placed on the dividing line between separate residence units, shall constitute a party wall. With respect to any 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, the 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 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 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 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 townhouse 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 the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

(f) 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.

12. The common elements shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the common elements.

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

14. The Board of Directors, or its duly authorized agent, shall obtain insurance for all the buildings, including all townhouses, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all common elements. Premiums for such insurance shall be common expenses. Such insurance coverage shall be written in the name of the Board of Directors as trustee for each of the townhouse owners in the same proportions as their undivided interest in the common elements. Nothing contained herein shall prejudice the right of each owner to insure his own townhouse for his own benefit. It shall be the individual responsibility of each owner to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction to the property by fire or other casualty, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all townhouse owners of the damaged building to make up any deficiency, except that the special assessment shall be levied against all townhouse owners to make up any deficiency for repair or rebuilding of the common elements not a physical part of a townhouse unit. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners as their interests may then appear. Such payments shall be made to all such owners and their mortgagees in proportion to their undivided interests. The assessments shall be levied against said townhouse owners in the same proportion as their undivided interest in the common elements.

15. Each townhouse 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, so long as it stands, shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, the owners of townhouses agree that minor encroachments of parts of the adjacent townhouse units or common elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

16. There is hereby created a blanket easement upon, across, over and under the above described premises for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said townhouses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said premises except as initially programmed and approved by the major builder of said premises or thereafter approved by said builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

17. The covenants, restrictions, reservations, and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any townhouse on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association moneys in pursuance thereof, and also may be enforced by the owner of any townhouse or any one or more of said parties. Any breach of said covenants, restrictions, reservations and conditions shall be binding upon and effective

against any owner of said premises, other than one whose title thereto is acquired by foreclosure of a mortgage and the Sheriff's sale. Any purchaser who acquires title, except through foreclosure of a mortgage and a Sheriff's sale, shall take title to said premises subject to the lien hereof for all said charges pursuant to paragraph 9 and paragraph 10 that have accrued up to the time of said mortgage foreclosure, and subject to the lien hereof for all said charges that shall accrue subsequent to the mortgage foreclosure, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated, or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage. All instruments of conveyance of any interest of all or any part of said townhouses shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein as fully as though the terms and conditions of this instrument were therein set forth in full. 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. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

18. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs or section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last surviving incorporator of Tempe Gardens Townhouse Corp., or twenty-one (21) years after the death of the last survivor of all of said incorporators' children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

19. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

20. Any owner who desires to sell, lease or rent his townhouse shall, prior to accepting any offer to purchase, lease or rent, give to the Board of Directors written notice of the terms and amount of such offer, including the name and address of the offeror. If, within fifteen (15) days after service of such notice by owner, any member or group of members of the Association submits to the Board of Directors an identical firm and binding offer to purchase, lease or rent, the owner shall accept the offer of said member or group of members of the Association in preference to the original offer described in the notice to the Board of Directors, and in the event more than one (1) member or group of members of the Association submits an identical firm and binding offer to the Board of Directors within said fifteen (15) day period, the owner may, at his discretion, accept any one of such offers. If no identical offer from a member or group of members of the Association is submitted within said fifteen (15) day period, the Board shall, upon request of the owner, execute an affidavit stating that the owner has complied with the provisions hereof. Such affidavit shall contain the information that the Board of Directors has been duly elected, that a particular townhouse has been offered for sale or lease, identifying the same, and that the proper notice to sell has been served by the owner and that the fifteen (15) day period has passed and that no member or group of members of the Association submitted an identical firm and binding offer within the time allowed herein. Such affidavit shall be deemed conclusive evidence of the truth of the facts therein recited.

If no member or group of members of the Association submits an identical firm and binding offer within said fifteen (15) day period, the selling owner may, at the expiration of said fifteen (15) day period and at any time within sixty (60) days after the expiration of said period, accept the offer described in said notice.

The provisions of this paragraph shall not be applicable or be enforceable by the Board or by any person with respect to:

a. A sale, transfer or conveyance of any unit to any person, pursuant to a judgment of foreclosure of a mortgage of record.

b. An original sale of any unit by Declarant, or by major builder of said townhouses.

c. Any rental, with or without a written lease, for a term of less than one (1) year; provided that any subsequent lease to the same person or persons, organization, association or corporation, directly or indirectly, shall not be exempt from the provisions of this Article.

d. A transfer of title by testamentary disposition or intestate succession.

21. No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the premises, nor upon any structure situated upon said real property, other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

22. These covenants, restrictions, reservations and conditions shall remain in full force and effect for a period of thirty-five (35) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then owners of not less than three-quarters (3/4) of the townhouse units on said property, which said instrument shall be recorded in the office of the Recorder for the County of Maricopa, State of Arizona, within ninety (90) days prior to the expiration of the initial affective period hereof or any ten year extension.

DATED this 8th day of April, 1964.

UNION TITLE COMPANY, as Trustee

By /s/ John J. Karmelich
Its Senior Trust Officer

ATTEST:

/s/ Marlon A. Hakes
Assistant Secretary

STATE OF ARIZONA)
) ss
County of Maricopa)

On this 8th day of April, 1964, before me, the undersigned Notary Public, personally appeared John J. Karmelich and Marlon A. Hakes, who acknowledged themselves to be the Senior Trust Officer and Assistant Secretary, respectively, of UNION TITLE COMPANY, an Arizona corporation, and that they, as such officers, being authorized so to do, executed the within instrument for the purposes therein contained, by signing the name of said corporation, as Trustee, by themselves as such officers.

WITNESS my hand and official seal.

/s/ Marie J. Bliler
Notary Public

My commission expires:

9-29-67

BASE FILEDECLARATION OF HORIZONTAL REGIME

UNION TITLE COMPANY, an Arizona corporation, as Trustee, hereinafter referred to as "Grantor," does hereby state:

I

That Grantor as Trustee owns the property described as TEMPE GARDENS TOWNHOUSE, according to the maps of record in the office of the County Recorder of Maricopa County, Arizona, in Book 105 of Maps, at pages 23 through 28 thereof, more specifically described as follows:

Tract "A", TEMPE GARDENS UNIT ONE, Book 100, page 46, Maricopa County Records,
Tract "B", TEMPE GARDENS UNIT TWO, Book 102, page 22, Maricopa County Records,
Tract "C", "D", & "E", TEMPE GARDENS UNIT THREE, Book 103, page 33, Maricopa County Records.

II

That on said premises shall be developed Condominium Project known as TEMPE GARDENS TOWNHOUSE, in accordance with the above referred to recorded maps.

III

That the Grantor desires to establish the nature of the use and enjoyment of the afore-described property and does therefore submit this property to the Horizontal Property Regime pursuant to Chapter 4.1, Article 1, Sections 33-551 to 33-561, inclusive, Arizona Revised Statutes, and does further declare said property subject to the following express conditions as to the use thereof:

BASE FILE

1. The entire Horizontal Property Regime shall be composed of one hundred sixty-nine (169) individual townhouse units, contained within twenty-five (25) multi-unit buildings. Each of said buildings shall be composed of consecutively numbered townhouse units, including patios and carports.

2. Each individual townhouse unit shall be a separately designated and legally described freehold estate, consisting of an area of cubic space and the improvements therein, together with an undivided 1/169 interest in the common elements of said Condominium.

3. This Condominium Project shall be composed of one hundred sixty-nine (169) individual townhouse units, constructed on the corresponding numbered lots 1 through 169 of TEMPE GARDENS TOWNHOUSE, according to the recorded plat referred to in paragraph 1 above.

4. Said townhouse units 1 through 169 inclusive shall include the air space, and improvements within the air space, that lies between the planes having elevations as indicated on the Profile of Vertical Details and accompanying Profile Elevation Schedule, as described on the maps referred to in paragraph 1 above.

All reference to vertical dimension made in this document or on the recorded maps referred to above, shall be based upon elevation 1172.00 (U.S.G.S. Datum), which is the elevation of a bench mark described as follows: X on irrigation structure NW corner Mill Avenue and Southern Avenue.

5. The common elements of which each unit shall bear a 1/169 interest shall include the land upon which the townhouse is situate, all recreational facilities, community and commercial facilities, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines, the foundations of the individual townhouse units below the appropriate elevation as contained on the above referred to maps, any air space not otherwise specifically conveyed for a townhouse unit, and all other devices and premises designed for common use and enjoyment by more than the owner or owners of a single townhouse unit.

IN WITNESS WHEREOF, UNION TITLE COMPANY, an Arizona corporation, as Trustee, has hereunto caused its corporate seal to be affixed and the name to be attested by the signature of its duly authorized officers, this 6th day of April, 1964.

UNION TITLE COMPANY, Trustee

ATTEST

By John H. Kinnel
Its Senior Trust Officer

Wanda Blaine
Assistant Secretary

STATE OF ARIZONA)
County of Maricopa) SS

On this 6th day of April, 1966, before me, the undersigned Notary Public, personally appeared JOHN J. KARMELOCH, and MARION A. PAKES, who acknowledged themselves to be the Senior Trust Officer and Assistant Secretary, respectively, of UNION TITLE COMPANY, an Arizona corporation, and that they, as such officers, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said corporation, as Trustee, by themselves as such officers.

WITNESS my hand and official seal.

Marion A. Pakes
Notary Public

My commission expires:
9-29-67

67213

CG-MISC

STATE OF ARIZONA
County of Maricopa

I hereby certify that this instrument was recorded at

UNION TITLE COMPANY

APR 7 1966

593,598,600

By *[Signature]*
CLIFF COOPER

By *[Signature]*
Deputy Recorder

325

DECLARATION OF HORIZONTAL REGIME

UNION TITLE COMPANY, an Arizona corporation, as Trustee, hereinafter referred to as "Grantor," does hereby state:

I

That Grantor as Trustee owns the property described as TEMPE GARDENS TOWNHOUSE, according to the maps of record in the office of the County Recorder of Maricopa County, Arizona, in Book 105 of Maps, at pages 23 through 28 thereof, more specifically described as follows:

Tract "A", TEMPE GARDENS UNIT ONE, Book 100, page 46, Maricopa County Records,
 Tract "B", TEMPE GARDENS UNIT TWO, Book 102, page 22, Maricopa County Records,
 Tract "C", TEMPE GARDENS UNIT THREE, Book 103, page 33, Maricopa County Records.

II

That on said premises shall be developed a Condominium Project known as TEMPE GARDENS TOWNHOUSE, in accordance with the above referred to recorded maps.

III

That the Grantor desires to establish the nature of the use and enjoyment of the afore-described property and does therefore submit this property to the Horizontal Property Regime pursuant to Chapter 4.1, Article 1, Sections 33-551 to 33-561, inclusive, Arizona Revised Statutes, and does further declare said property subject to the following express conditions as to the use thereof:

1. The entire Horizontal Property Regime shall be composed of one hundred sixty-nine (169) individual townhouse units, contained within twenty-five (25) multi-unit buildings. Each of said buildings shall be composed of consecutively numbered townhouse units, including patios and carports.

2. Each individual townhouse unit shall be a separately designated and legally described freehold estate, consisting of an area of cubic space and the improvements therein, together with an undivided 1/169 interest in the common elements of said Condominium.

3. This Condominium Project shall be composed of one hundred sixty-nine (169) individual townhouse units, constructed on the corresponding numbered lots 1 through 169 of TEMPE GARDENS TOWNHOUSE, according to the recorded plat referred to in paragraph 1 above.

4. Said townhouse units 1 through 169 inclusive shall include the air space, and improvements within the air space, that lies between the planes having elevations as indicated on the Profile of Vertical Details and accompanying Profile Elevation Schedule, as described on the maps referred to in paragraph 1 above.

All reference to vertical dimension made in this document or on the recorded maps referred to above, shall be based upon elevation 1172.99 (U.S.G.S. Datum), which is the elevation of a bench mark described as follows: X on irrigation structure NW corner Mill Avenue and Southern Avenue.

5. The common elements of which each unit shall bear a 1/169 interest shall include the land upon which the townhouse is situate, all recreational facilities, community and commercial facilities, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines, the foundations of the individual townhouse units below the appropriate elevation as contained on the above referred to maps, any air space not otherwise specifically conveyed for a townhouse unit, and all other devices and premises designed for common use and enjoyment by more than the owner or owners of a single townhouse unit.

IN WITNESS WHEREOF, UNION TITLE COMPANY, an Arizona corporation, as Trustee, has hereunto caused its corporate seal to be affixed and the name to be attested by the signature of its duly authorized officers, this 6th day of April, 1964.

STATE OF ARIZONA }
County of Maricopa } SS

On this 6th day of April, 1964, before me, the undersigned Notary Public, personally appeared JOHN J. KARMELOICH, and MARION A. PAKIS, who acknowledged themselves to be the Senior Trust Officer and Assistant Secretary, respectively, of UNION TITLE COMPANY, an Arizona corporation, and that they, as such officers, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said corporation, as Trustee, by themselves as such officers.

WITNESS my hand and official seal.

Marion A. Pakis
Notary Public

My commission expires:

9-29-67

67213

06-MISC

STATE OF ARIZONA
County of Maricopa

I hereby certify that the within instrument was filed and recorded as requested.

UNION TITLE COMPANY

APR 7 1964

in book 4995

on page 578, 579, 600

Witness my hand and official seal this day and year first.

CLIFFORD H. WASS

Recorder

By *Clifford H. Wass*
Deputy Recorder

325

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL DECLARATION OF HORIZONTAL REGIME, RECORDED IN DOCKET 4995, COMMENCING AT PAGE 598 OF THE RECORDS OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA.

UNION TITLE COMPANY, Trustee

By /s/ MARION A. HAKES
Assistant Secretary

DECLARATION OF HORIZONTAL REGIME

UNION TITLE COMPANY, an Arizona corporation, as Trustee, hereinafter referred to as "Grantor," does hereby state:

I

That Grantor as Trustee owns the property described as TEMPE GARDENS TOWNHOUSE, according to the maps of record in the office of the County Recorder of Maricopa County, Arizona, in Book 105 of Maps, at pages 23 through 28 thereof, more specifically described as follows:

Tract "A", TEMPE GARDENS UNIT ONE, Book 100, page 46, Maricopa County Records, Tract "B", TEMPE GARDENS UNIT TWO, Book 102, page 22, Maricopa County Records, Tract "C", "D", & "E", TEMPE GARDENS UNIT THREE, Book 103, page 33, Maricopa County Records.

II

That on said premises shall be developed a Condominium Project known as TEMPE GARDENS TOWNHOUSE, in accordance with the above referred to recorded maps.

III

That the Grantor desires to establish the nature of the use and enjoyment of the afore-described property and does therefore submit this property to the Horizontal Property Regime pursuant to Chapter 4.1, Article 1, Section 33-551 to 33-561, inclusive, Arizona Revised Statutes, and does further declare said property subject to the following express conditions as to the use thereof:

1. The entire Horizontal Property Regime shall be composed of one hundred sixty-nine (169) individual townhouse units, contained within twenty-five (25) multi-unit buildings. Each of said buildings shall be composed of consecutively numbered townhouse units, including patios and carports.
2. Each individual townhouse unit shall be a separately designated and legally described freehold estate, consisting of an area of cubic space and the improvements therein, together with an undivided 1/169 interest in the common elements of said Condominium.
3. This Condominium Project shall be composed of one hundred sixty-nine (169) individual townhouse units, constructed on the corresponding numbered lots 1 through 169 of TEMPE GARDENS TOWNHOUSE, according to the recorded plat referred to in paragraph I above.
4. Said townhouse units 1 through 169 inclusive shall include the air space, and improvements within the air space, that lies between the planes having elevations as indicated on the Profile of Vertical Details and accompanying Profile Elevation Schedule, as described on the maps referred to in paragraph I above.

All reference to vertical dimension made in this document or on the recorded maps referred to above, shall be based upon elevation 1172.99 (U.S.G.S. Datum), which is the elevation of a bench mark described as follows: X on irrigation structure NW corner Mill Avenue and Southern Avenue.

5. The common elements of which each unit shall bear a 1/169 interest shall include the land upon which the townhouse is situated, all recreational facilities, community and commercial facilities, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines, the foundations of the individual townhouse units below the appropriate elevation as contained on the above referred to maps, any air space not otherwise specifically conveyed for a townhouse unit, and all other devices and premises designed for common use and enjoyment by more than the owner or owners of a single townhouse unit.

IN WITNESS WHEREOF, UNION TITLE COMPANY, an Arizona corporation, as Trustee, has hereto caused its corporate seal to be affixed and the name to be attested by the signature of its duly authorized officers, this 6th day of April, 1964.

UNION TITLE COMPANY, Trustee

By John J. Karmelich
Its Senior Trust Officer

ATTEST:

Marion A. Hakes
Assistant Secretary

STATE OF ARIZONA)
) SS
County of Maricopa)

On this 6th day of April, 1964, before me, the undersigned Notary Public, personally appeared John J. Karmelich, and Marion A. Hakes, who acknowledged themselves to be the _____ and Assistant Secretary, respectively, of UNION TITLE COMPANY, an Arizona corporation, and that they, as such officers, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of said corporation; as Trustee, by themselves as such officers.

WITNESS my hand and official seal.

Marie J. Biller
Notary Public

My commission expires:

9-29-67