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CHICAGO TITLE AGENCY OF ARIZONA

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

PROP RSTR (PM)

THE SOUTHERN AVENUE PARTNERSHIP, an Arizona Partnership, as the owner of that certain real property situated within the County of Maricopa, State of Arizona, and more particularly described as follows:

Lots A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2,  
E, F, G-1, G-2, H-1, H-2, I-1, I-2, J-1, J-2,  
K-1, K-2, L-1, L-2, M-1, and M-2, SOUTHERN  
AVENUE GARDEN OFFICES, a Subdivision and  
Planned Area Development, as recorded in Book  
221, of Maps, Page 20, Maricopa County  
Recorder's Office, Maricopa County, Arizona.

desiring to establish a general plan for the improvement, development, use and enjoyment thereof, do hereby declare that said property shall be held, sold and conveyed subject to the following express covenants, conditions, easements, reservations and restrictions (hereinafter collectively referred to as the "Declaration" or "Restrictions"), all of which shall run with the land and be binding upon the said property and all parties having or acquiring any right, title or interest in or to said property, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1.1: "Board" shall mean the Architectural Control Board provided for in Article III hereof.

Section 1.2: "Declarant" shall mean The Southern Avenue Partnership and any of its successors and assigns to whom it hereafter specifically assigns all of its rights as Declarant hereunder by recorded instrument.

Section 1.3: "Lot" shall mean the separately numbered lots on the Plat, together with any improvements thereon.

Section 1.4: "Owner" shall mean the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) in any Lot which is part of the Property. An Owner does not include a person or entity who holds an interest in a Lot merely as security for the performance of an obligation.

Section 1.5: "Plat" shall mean and refer to the recorded plat for the property.

Section 1.6: "Property" or "Development" shall mean all real property described above, unless otherwise limited.

Section 1.7: "Unit" shall mean and refer to a building constructed upon a separately designated Lot.

ARTICLE II  
USE RESTRICTIONS

Section 2.1: Use. All of the Lots in the Development shall be limited in use to those uses permitted under the zoning ordinance of the City of Tempe, Arizona.

Section 2.2: Building Size. The total area and location of any structure shall not exceed that area permitted by the Plat and the City of Tempe ordinances governing the Development.

Section 2.3: Construction. All Units and structures on the Lots shall be of new construction and no buildings or structures shall be moved from any other location onto any of the Lots.

Section 2.4: Temporary Structures. No structures of a temporary character shall be permitted on the Property.

Section 2.5: Business or Offensive Activities. No noxious or offensive activity may be carried on or permitted on any part of the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Development nor shall any part of the Property be used for residential purposes.

Section 2.6: Signs. All signs shall conform to the ordinances of the City of Tempe, Arizona.

Section 2.7: Outside Lighting. Except as may be initially installed by Declarant, no spotlights, floodlights or similar type high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot.

Section 2.8: Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property or any part thereof.

Section 2.9: Vehicles & Equipment Storage and Parking. Except for those vehicles belonging to persons doing work on the Property during business hours, no vehicles, equipment, or items of personal property shall be stored, kept or parked on any lot, unless kept, parked, or stored in buildings, or in other areas which are screened from view of other lots or of the public by fencing or planting approved by the Board.

Section 2.10: Trash, Unsightly Items. Owners of Lots, whether vacant or occupied, shall be responsible for keeping their Lots free of all weeds, trash, garbage, and other rubbish. All trash containers, equipment, service areas, woodpiles, storage piles and storage areas shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring lots and streets. No incinerators shall be permitted on the Property or any part thereof.

Section 2.11: Antennas. No radio, television or other antennas of any kind or nature shall be placed and maintained upon any Lot or the Premises or any part thereof (or the improvements located thereon) unless approved in writing by the Board pursuant to Article III hereof.

Section 2.12: Subdividing. None of the Lots shall be resubdivided into smaller Lots or conveyed or encumbered in less than the full original dimensions as shown on the Plat of this Development.

Section 2.13: Declarant Exempt. Notwithstanding anything contained herein to the contrary or otherwise, none of the use restrictions contained in this Article II nor any other restriction contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, or its employees, agents and subcontractors or parties designated by it in connection with the construction, completion, sale or leasing of the Units and Lots.

Section 2.14: Grading. No Lot may be landscaped or regarded in such a manner as to cause the drainage characteristics of the Lot to differ significantly from any governmentally approved drainage plan.

Section 2.15: Fences and Walls. Fences and walls shall be in conformance with applicable zoning ordinances and any other public ordinance pertaining thereto, and in no event shall any fences or walls be erected closer to the front lot line than the front of the Unit thereon, except that walls with a maximum height of three (3) feet or less may be constructed if approved by the Board.

### ARTICLE III

#### ARCHITECTURAL CONTROL

Section 3.1: Architectural Control Board. The Architectural Control Board for the development (the "Board") shall be composed of three lot owners, provided, however, that until such time as Declarant has conveyed title (legal and equitable) of all Lots in the Development, Declarant shall possess all authority given to the Architectural Control Board hereunder, unless Declarant sooner elects to terminate such authority by written notice to all Lot owners. At such time as Declarant's exclusive authority over Architectural Control terminates, Declarant shall cause to be recorded in legally proper form a designation of the first owner-controlled Board, the three members of which shall be selected by Declarant in its sole discretion.

A majority of the Board members may from time to time designate a representative to act in its behalf. Any member of the Board may be removed by a majority of the Board with or without cause. Upon the death, resignation, disqualification or removal of any member of the Board, the remaining members shall have full authority to designate successors by majority vote. Neither the members of the Board nor its designated representative shall be entitled to any compensation for services rendered pursuant to these Restrictions. The Board may charge any owner seeking its approval a reasonable fee to cover the costs of professional services, if needed in connection with the review of plans or other documents submitted for approval by an owner. Any decision of the Board shall be by majority vote and shall be in writing.

Section 3.2: Submission of Plans for Original Construction. Except as set forth herein, no landscaping, building, fence, wall, antenna, tower, awning or structure of any kind or character shall be commenced, erected, placed or maintained on any Lot unless and until plans and specifications showing the location, kind, material, approximate cost, area, height, color, shape and design thereof shall have been first submitted to and approved by the Board as set forth in this Article. Any Board approvals under these Restrictions shall be subject to all applicable zoning ordinance requirements. After such plans and specifications have been submitted to the Board, the Board shall have thirty (30) days to approve or disapprove the same. The failure of the Board to reject in writing the plans and specifications submitted to it within thirty (30) days after the same were submitted shall constitute approval of said plans and specifications; provided, however, that the building, structure or other improvement to be built or placed on the Lot shall be governed by all of the Restrictions in this Declaration, and each such building, structure, or other improvement shall be in harmony with existing buildings, structures and improvements within the Development. The Board shall have the right to deny approval of any plans or specifications which, in its reasonable opinion, are not suitable or desirable for aesthetic or any other reasons. In this regard, the Board shall have the right to take into consideration all matters mentioned above (i.e., location, kind, material, etc.), as well as the effect any proposed building, structure or improvement may have upon the site where it is to be constructed or placed, the suitability thereof with respect to the surrounding area, and the effect (including, but not limited to, harmony of external design and location) upon adjacent Lots and the Development as a whole.

The Restrictions and controls set forth in this Section shall not be applicable to Declarant with respect to any original construction or landscaping undertaken by Declarant within the Development.

Section 3.3: Replacements, Additions, Alterations. All subsequent exterior additions, changes, alterations or redecorating (including, but not limited to, painting of exterior surfaces) of any building, fence, wall, landscaping, antenna, tower or structure of any kind or character, or general landscaping of a Lot, shall be subject to the prior approval of the Board under the same conditions set forth in Section 3.2 above.

#### ARTICLE IV

##### MAINTENANCE OF PRIVATE ROADWAY EASEMENTS

Section 4.1: The board shall serve as agent for the Property Owners with respect to the Private Roadways hereafter constructed upon the Private Roadway Easements as shown on the Plat, and it shall be the duty and obligation of the Board to provide for the maintenance of the Private Roadways.

Section 4.2: The Board shall have the same power and authority with respect to repair and maintenance of the Private Roadways as an individual owner of such roadways would have including, without limitation, the power and authority to:

- (a) Enter into contracts and agreements to provide for the general repair, maintenance and cleaning of the same;
- (b) Make or cause to be made all repairs, replacements and improvements to the same including, resurfacing or stripping;
- (c) Take out and maintain for the benefit of the Property Owners and the Board, with respect thereto policies of insurance against damage or loss by reason of bodily injury or death to any person or the destruction or damage to the property of any person occurring thereon or due in any way to the state of repair or maintenance thereof in the amount of \$500,000 for injury to or death of any one person, \$1,000,000 for injury to or death of any number of persons in any single accident or occurrence, and \$200,000 with respect to property damage or destruction.

Section 4.3: Notwithstanding anything herein to the contrary, the Board shall not be responsible for the injury or death of any person or the damage or destruction of property resulting from the condition or state of repair of the Private Roadways.

Section 4.4: Each Owner shall pay to the Board its proportionate part of the costs and expenses of repairing and maintaining the Private Roadways and all other private improvements located within, and upon such Private Roadways, within thirty (30) days of the receipt of a written statement from the Board setting forth the costs and expenses incurred by the Board since the last statement, and such Owner's proportionate part thereof. In the event any Owner should fail to reimburse the Board for its proportionate part of such costs and expenses within such thirty (30) day period, the Owner failing to make such required payments (the "Defaulting Owner") as well as all Owners making their required payments shall be given notice of the failure of such Defaulting Owner to make such required payments. If the Defaulting Owner fails to make such payments within fifteen (15) days of the receipt of such notice, those Owners who have made their required payment may advance to the Board the amount(s) due the Agent from the Owner(s) failing to make such payments and the Board shall have a lien on the Lot(s) owned by the Owner failing to make such payment

in the amount of such required payment; all costs and expenses incurred in collecting such payment, including reasonable attorneys' fees; and interest on such amounts at the highest lawful contract rate from the date such funds were advanced until the date repaid, and such lien shall be subject to foreclosure in the same manner as a real estate mortgage, to the extent permitted by law.

Notwithstanding anything herein or provided by law to the contrary, the lien, and rights to lien, granted the Board herein shall at all times and without further action of the Owners be junior, subordinate and inferior to the interest of a mortgagee, the beneficiary of a deed of trust, or the holder of any other consensual lien or security interest granted to any third party by an Owner for the purpose of securing the payment of money, provided that such lien rights as they relate to payments due after any such mortgage, deed of trust or other consensual lien has been extinguished by payoff, sheriffs or trustees sale, conveyance in lieu of foreclosure or by any other means, shall be fully effective and enforceable against any Lot previously covered thereby. The holder of a mortgage, the beneficiary of a deed of trust, or the holder of any other consensual security interest in any portion of the Property which may be subject to the lien referred to in Section 4.4 above (a "Secured Party") shall receive notice of the failure of any such Owner to make the required payments, upon providing each Owner with written notice of its security interest, a description of the property subject to such security interest, and such Secured Party shall have the right, but not the obligation, to make the payments required of such Defaulting Owner within the fifteen (15) day period which the Defaulting Owner is otherwise permitted to make such payments before the imposition of the lien referred to in Section 4.4 above.

Section 4.5: Each Lot and its Owner shall bear the costs and expenses of repairing and maintaining the Private Roadways in equal shares of one-twentyfourth for each Lot owned.

Section 4.6: For purposes of this Agreement, majority action shall mean any action taken or any inaction authorized in writing by those property owners required to reimburse the agent for 50% or more of the cost and expenses of repairing or maintaining the Private Roadways.

Section 4.7: The Board may cause a non-profit corporation to be formed under the laws of the State of Arizona (the "Corporation") for the purpose of (a) maintaining, repairing, replacing and improving the Private Roadways, and (b) serving as the Architectural Control Board under Article IV above. In the event the Corporation is formed for such purposes, each Owner shall be a member of the Corporation, and such membership shall continue until such time as such Owner's ownership of a portion of the Property ceases for any reason, at which time its membership in the Corporation shall also terminate. Ownership of a Lot in the Property shall be the sole criteria for membership in the Corporation and such membership shall be appurtenant to and shall not be separated from the ownership of a parcel of the Property. Membership in the Corporation shall not be transferred, pledged or hypothecated in any manner except by transfer or assignment of ownership in a Lot in the Property owned by such Owner, and any other attempted transfer or assignment shall be null and void and of no force and effect. Owners shall be entitled to one vote as members of the Corporation for each Lot owned. The affairs of the Corporation shall be governed by its Board of Directors who shall consist of three (3) individuals who shall be elected annually by the membership of the Corporation. Such Board of Directors shall have such power and authority as may be conferred upon them by the Corporation's Articles of Incorporation and Bylaws adopted by the members, as the same may be amended from time to time. The Corporation shall succeed to the rights of the Board hereunder, including the right of lien against a Defaulting Owner as set forth in Paragraph 4.4 of this Agreement.

## ARTICLE V

GENERAL PROVISIONS

Section 5.1: Duration of Restrictions. These Restrictions shall run with, bind and burden the Property, and shall be binding upon each Owner and his heirs, executors, administrators, successors and assigns and all other persons claiming an interest in and to said Property for a period of thirty (30) years from the date these Restrictions are recorded. After said date, these Restrictions, as amended from time to time (unless terminated as provided in Section 5.3 hereof), shall be automatically extended for successive periods of ten(10) years each.

Section 5.2: Restrictions Binding Without Reference. All instruments of conveyance or transfer of any interest of all or any part of the Property may contain the Restrictions herein set forth by reference to this Declaration. However, the Restrictions contained herein shall be binding in accordance with their provisions upon all persons affected by the terms and conditions of these Restrictions regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance.

Section 5.3: Amendment or Termination of Restrictions. These Restrictions may be amended or rescinded at any time during the initial thirty-year term or during any extensions thereof, by recording in the office of the County Recorder of the county in which the Development is located, an instrument in writing reciting such amendments or rescissions executed by Owners owning a majority of the Lots in the Development: provided, however, that the holders of all first mortgages, and the beneficiaries of all first trust deeds of record against the Lots shall have consented in writing to such amendment or rescission.

Anything to the contrary herein notwithstanding, until such time as deeds to all of the Lots have been delivered by Declarant to the purchasers thereof, Declarant reserves the right to amend this Declaration; provided that (1) notice of such intent shall first be given to the City Attorney of the City of Tempe, Arizona, and (2) any such amendment shall be consented to in writing by the holders of all first mortgages, and the beneficiaries under all first trust deeds then of record with respect to one or more of the Lots.

Any change, modification or rescission under the provisions of this Section 5.3 shall be effective upon the recording of such instrument.

Section 5.4: Enforcement. These Restrictions may be enforced by the Board, the Declarant, the Corporation (if hereafter formed), and any Owner of any Lot within the Development. Violation of any one or more of the Restrictions may be restrained or enforced by any court of competent jurisdiction and/or damages may be awarded against any such violator. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event any such person employs an attorney and prevails in such actions, the Owner against whom the action is brought shall pay all attorneys' fees and costs incurred in conjunction with such action.

Section 5.5: Non-Waiver Provision. The waiver of, or failure to enforce any breach or violation of any restriction contained in this Declaration shall not be deemed a permanent waiver of the right to enforce, or an abandonment of the particular restriction or any of these Restrictions; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of such restriction or any of these Restrictions.



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Section 5.6: Severability. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of these Restrictions or any part hereof.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the 13<sup>th</sup> day of January, ~~1980~~ 1983.

THE SOUTHERN AVENUE PARTNERSHIP

BY [Signature]

Its Shirley [Signature]

APPROVED AS TO FORM:

[Signature]  
for David R. Merkel  
City Attorney  
City of Tempe, Arizona  
Date: January 13, 1983

STATE OF ARIZONA )  
County of Maricopa ) ss.

On this, the 13<sup>th</sup> day of January, ~~1980~~ 1983, before me, the undersigned Notary Public, personally appeared TOM R. PECK known to me to be the General Partner of THE SOUTHERN AVENUE PARTNERSHIP, and acknowledged that he, as such officer, being duly authorized so to do, executed the foregoing instrument for and on behalf of the corporation.

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

[Signature]  
Notary Public

My Commission expires:

February 22, 1985

