

Courtesy of:

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**Title Security Agency
of Arizona**

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PREPARED FOR:

Agent: Leslie

Office: Foothills Properties 6262 N Swan Rd

FILE

Pima County Recorder's Office
 Recorder's Office
 Pima County, Arizona
 No. 1191
 Book 32-57
 Date: 1974 FEB 26 AM 8 22
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Page	Book

AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDED DECLARATION, made on the date hereinafter set forth by STEWART TITLE & TRUST OF TUCSON, as Trustee under Trust No. 1191, hereinafter referred to as "Declarant."

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the County of Pima, State of Arizona, which is more particularly described as:

EL MIRADOR TOWNHOUSES, lots 1 through 41, according to the official map or plat thereof of record in the office of the Pima County Recorder in Docket Book 25, at page 90 thereof on December 27, 1973.

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities of said community, to create an agency to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant shall cause to be incorporated under and by virtue of the laws of the State of Arizona, a non-profit corporation known as EL MIRADOR TOWNHOUSE ASSOCIATION, for the purpose of exercising the functions aforesaid and to which shall inure all of the rights and benefits of an owner of the property in addition to those specifically provided herein or in its Articles of Incorporation.

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ACCORDANCE WITH RECORDING
 WITHOUT FILE LIABILITY

WHEREAS, Declarant had caused to be recorded on December 27, 1973, at Book 4670, Pages 319-335 in the office of the County Recorder, Pima County, Arizona, the Declaration Of Covenants, Conditions And Restrictions; and

WHEREAS, pursuant to Article XIV, Section 3 of that Declaration, amendments are allowed if deemed advisable and if approved pursuant to that section;

NOW THEREFORE, Declarant hereby declares this Amended Declaration and states that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to EL MIRADOR TOWNHOUSE ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot and improvements thereon which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" refers to Lot 41 and shall mean all real property shown on the recorded subdivision plat of EL MIRADOR TOWNHOUSES which is intended for the common use and enjoyment of the owners and shall not include the area within the boundaries of the respective numbered dwelling units.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Dwelling Unit" shall mean and refer to any portion of a building situated upon the properties designated and intended for use and occupancy as a residence by a single family.

Section 7. "Declarant" shall mean and refer to STEWART TITLE & TRUST OF TUCSON, as Trustee, its successors and assigns.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

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(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting right and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to Common Properties. Declarant may retain legal title to the common area until such time as it determines, within its discretion, that it has completed all improvements thereon, at which time legal title to the common area shall be conveyed to the Association.

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ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Each and every lot owner within the subdivision shall be a member of the Association which will accept all responsibility for the control, maintenance, safety and liability of the private streets, roads, drainageways and common areas within the subdivision. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) Within two (2) years from the date of this Declaration.

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ARTICLE IV

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation Of Assessment. The owner of any dwelling unit built and ready for occupancy covenants and agrees to pay to the Association or Declarant:

(1) Annual Assessments or charges, and

(2) Special Assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be charged on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Area, and of the dwelling units situated upon the properties.

Section 3. Maximum Annual Assessment. Until the first day of the month immediately following the conveyance of the common area to the Association, the maximum annual assessment shall be FIVE

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HUNDRED FORTY DOLLARS (\$540.00). The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. From and after the first day of the month following the conveyance of the common area to the Association, each dwelling unit shall be subject to an annual assessment in an amount to be determined in the following manner:

(1) Such dwelling units' proportionate share of the actual cost to the Association of all the following: taxes on common areas, repairs of all common areas and dwelling unit walls, excluding party walls, all insurance premiums pursuant to Article XIII, common area water bills, common area water meters, replacement and maintenance of all facilities located on said common areas including, but not limited to, roads and walk ways, and all other charges required by this Declaration;

(2) Such dwelling 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, including the cost of management fees and the purchase of tools and equipment;

(3) Such dwelling 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, liability, and all other hazard insurance premiums as hereinafter provided;

(4) Such dwelling 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.

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(5) Each dwelling unit's pro-rata share shall be 1/40th of the total amount determined under subparagraphs 1, 2, 3 and 4 above. In the event the actual number of dwelling units constructed is not 40, the denominator in the fraction "1/40" shall, wherever it appears in this declaration, be changed to reflect the correct number of dwelling units.

Should at any time the Board of Directors determine that the maximum annual assessment be increased more than three percent (3%) above the annual assessment for the previous year, a vote of two-thirds (2/3) of each class of membership who are voting in person or by proxy is required.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or replacement of damaged or destroyed common elements or townhouses where the owner or owners thereof have failed to replace or rebuild pursuant to Article IX herein, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meetings called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members via first class mail not less than

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fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessment
Subsequent To Conveyance of Common Areas: Due Dates. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action.

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at law against the owner personally obligated to pay the same, or foreclose the debt as a lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

After the original buildings, fences, walls or other structures have been built upon a Lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated

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committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

PARTY WALLS

The rights and duties of the owners of any lots within this townhouse project with respect to party walls shall be governed by the following:

(a) Each wall which is constructed as part of the original construction of the townhouse multi-family structure, any part of which is placed on the dividing line between separate townhouse units, and is shared by two (2) owners, 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) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any owner to call for a larger contribution from the adjoining owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) In the event any such party wall is damaged or destroyed through the negligent or willful act of one adjoining

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owner, or any of his guests, tenants, licensees, 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.

(d) 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, tenants, licensees, 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.

(e) The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) 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 (5) days, then by any Judge of the Superior Court of Pima County, Arizona. A determination of the matter signed by any two of the three

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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 personal 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.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot and to each dwelling unit which is subject to assessment, as follows:

(1) Periodic exterior painting, including all labor, shall be performed pursuant to resolutions of the Board of Directors of the Association.

(2) Repair of gutters, downspouts, building surfaces, walkways, decorative Spanish tile, and the trimming of trees, shrubs, and grass shall be provided pursuant to resolutions of the Board of Directors of the Association.

Such exterior maintenance shall not include any glass surfaces, nor the roof of any individual dwelling unit, the repair of which shall be the responsibility of the individual owner.

ARTICLE VIII

INTERIOR AND OTHER MAINTENANCE

Each owner shall be responsible for the upkeep and maintenance of the interior of his dwelling unit and for the upkeep and maintenance

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of individual patios, all other areas, features or parts of his dwelling unit and property not otherwise maintained by the Association. All fixtures and equipment installed within a dwelling unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a dwelling unit, shall be maintained and kept in repair by the owner thereof. Termite control shall be the responsibility of the owner. An owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other dwelling units of their owners.

ARTICLE IX

DAMAGE OR DESTRUCTION OF PROPERTY

In the event any common element is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, such owner does hereby irrevocably authorize the Association to repair said damaged element and the Association shall so repair said damaged element in a good workmanlike manner in substantial conformance with the original plans and specifications. The owner shall then repay the Association in the amount actually expended for such repairs.

In the event any dwelling unit is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, such owner shall, within sixty (60) days from the date of the occurrence of the damage or destruction, enter into a binding bona fide contract for the repair and rebuilding the exterior of said dwelling unit and any damage to adjacent dwelling

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units or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said dwelling units. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the dwelling unit and adjacent property within a reasonable time, not to exceed six (6) months from the date of occurrence of the damage or destruction, the Association by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such dwelling unit and/or adjacent property in a good workmanlike manner in conformance with the original plans and specifications of the dwelling units. The owner shall then repay the Association in the amount actually expended for such repairs.

Each dwelling unit owner further agrees that these charges for repairs to dwelling units or common elements, if not paid within thirty (30) days after completion of the work, shall be delinquent and shall become a lien upon said owner's lot and dwelling unit and shall continue to be such lien until fully paid. Said lien shall be subordinate to any first mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of five percent (5%) per annum. The amount of principal and interest owed by said owner to the Association shall be a debt, and shall be collectable by any lawful procedure allowed by the laws of the State of Arizona.

Each such owner, by his acceptance of a deed to a lot and dwelling unit hereby expressly vests in the Association or its agent the right and power to bring all actions against such owner for the collection of such charged and to enforce the aforesaid lien by all

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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.

Nothing contained in this Article IX shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

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, one chosen by the owner, and 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 Pima 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 personal 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.

ARTICLE X

USE RESTRICTIONS

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Section 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 one townhouse, being a dwelling unit joined together by party walls, shall be built on any parcel where the builder theretofore programmed and constructed a townhouse. No dwelling unit may be divided and shall be occupied by only one family. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 2. 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 as 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 offices.

Section 3. 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 purposes.

Section 4. 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

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or permitted to remain on the premises, nor shall the premises be used 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 the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 5. 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 and trash shall be placed in the individual dwelling unit's receptacle which has been provided. All clotheslines shall be confined to patio areas.

Section 6. 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 in accordance with architectural control provisions in Article V herein.

Section 7. All equipment, boats and boat transporters, towed and self propelled, mobile or motor homes, camping trailers and campers shall be kept within the confines of the homeowners' dwelling unit and shall not be kept in the common parking areas.

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Said parking areas are for the convenience of guests of homeowners on a temporary basis. The Association shall promulgate rules for their use.

Section 8. There shall be no truck or automobile repairs or storage or parking of junk automobiles or trucks (as same as customarily defined) on any residential sites in said real property.

Section 9. The Association Architectural Control Committee, its successors or assigns, shall determine the location, color, size, design, lettering and all other particulars of all mail and paper delivery boxes and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

Section 10. The native growth on each lot and the Common Area shall not be destroyed or removed by any of the lot owners unless written permission be first had and obtained from the Architectural Control Committee.

Section 11. The common elements shall remain undivided, and shall at all times be owned by the Association or its successors, 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.

Section 12. Without prior written approval and the authorization of the Board of Directors, 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

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or systems be utilized and require any such exterior antenna.

ARTICLE XI

SALE, TRANSFER, CONVEYANCE, LEASE OR SUBLEASE

In the event of resale or renting or leasing of said dwelling unit, the Declarant, so long as there are any unsold dwelling units, and the Association thereafter shall have the option to purchase, rent, or lease same on the same conditions as offered by said dwelling unit owner to any third person. Any attempt to resell or rent or lease said dwelling unit without prior offer to the Association shall be wholly null and void and shall confer no title and interest whatsoever upon the intended purchaser, tenant, or lessee.

Should an owner wish to sell, lease or rent the dwelling unit, or any part thereof, he shall, before making or accepting any offer to sell, purchase, lease or rent said unit, deliver to the Declarant or to the Association written notice of his intent to sell, lease or rent, which notice shall contain the terms of the offer he has received which he wishes to accept, or the terms of the offer which he is prepared to make, and the name and the address of the prospective purchaser or tenant. The owner or the Association shall, within fifteen (15) days after the receipt of said notice, either consent to the transaction specified in said notice, or, by written notice to be delivered to owner's unit, designate one or more persons then homeowners, or any other person or persons of satisfactory credit, who are willing to purchase, lease or rent such interest upon the notice within twenty (20) days after the giving of the said notice. The owner shall then accept such offer or withdraw or reject the offer specified in his notice to the Declarant of the Association.

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Failure of the Declarant or the Association to designate such person or persons within the fifteen (15) day period, or failure of such person or persons to make such offer within such twenty (20) day period, shall be deemed consent by the Declarant or the Association to the transaction specified in owner's notice, and owner shall be free to make or accept the offer specified in his notice, and sell, lease or rent, as provided in said notice. The subleasing or sub-renting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the owner under these covenants shall continue, notwithstanding the fact that he may have leased or rented said interest as provided herein.

This right of first refusal shall not be used to discriminate against purchasers by reason of race, creed, sex, color or national origin.

Notwithstanding any provision of this declaration of restrictive covenants to the contrary, the provisions of this Article XI shall not apply to nor be enforced by any person with respect to:

(a) A sale, transfer or conveyance of any unit in said subdivision to any person pursuant to a judgment or a foreclosure of a mortgage by an institutional lender, bank and savings and loan, upon such unit; or

(b) A sale, transfer or conveyance of any parcel in said subdivision to any person by an institutional lender which has acquired title through or by virtue of foreclosure by it of a mortgage of record upon such unit or a deed in lieu of foreclosure; or

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(c) A transfer or conveyance by Stewart Title & Trust of Tucson when acting for the beneficiaries of Trust 1191, or

(d) Any sale, transfer, conveyance, lease or sublease either as an initial sale, transfer, conveyance, lease or sublease or any sale, transfer, conveyance, lease or sublease after re-acquisition of the property upon foreclosure, repossession, repurchase or any other re-acquisition by Stewart Title & Trust of Tucson for the beneficiaries of Trust No. 1191; or any other lender as described above.

The respective units shall not be rented by the homeowners thereof for transient or hotel purposes, which shall be defined as follows:

(a) Rental for any period less than ninety (90) days; or

(b) Any rental if the occupants of the unit are provided customary hotel service such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service.

Other than the foregoing limitations, the homeowners of the respective units shall have the absolute right to lease same, provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the by-laws of the Association.

In a voluntary conveyance of a unit the Grantee of the unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's rights to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee

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shall be entitled to a statement from the President of the Association setting forth the amount of the said unpaid assessment against the Grantor due to the Association and such Grantee shall not be liable for, any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.

ARTICLE XII

EASEMENTS

There is hereby created a blanket easement upon, across, over and under the common area 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. This easement shall in no way affect any other recorded easements on said premises.

Each townhouse and the common elements 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

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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. Notwithstanding any provision herein to the contrary, any encroachment, permitted herein shall not exceed one foot.

ARTICLE XIII

INSURANCE

The Association, or its duly authorized agent, shall have the authority to, and shall obtain, fire insurance with extended coverage, vandalism, and malicious mischief endorsement thereon insuring all of the buildings upon the property, including all dwelling units, for one hundred percent (100%) of their replacement value at the time of the purchase of said policy with an eighty percent (80%) average clause or the residential form equivalent thereof. The owners of each individual dwelling unit shall be named insured on said policy to the extent of their interest. The agent writing such policy shall provide each owner with a certificate of insurance evidencing each owner's insurance under said policy and the amount thereof, including specifically the amount of coverage on the individual dwelling unit owned by each owner. Any owner who is not satisfied with the amount of coverage upon his individual dwelling unit may request the agent, in writing, to increase the amount of said coverage at his own expense.

The Association shall also obtain a broad form public liability policy with limits of not less than \$500,000.00 covering

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all common areas and naming each of the individual owners thereon as their interest may appear as named insureds, insuring the Association and all owners against loss for damage or injury caused by the negligence of the Association, its agents, licensees or invitees.

Premiums for all such insurance referred to above shall be common expenses and shall be collected on a pro-rata basis pursuant to Article IV, Section 3. All payments made by the insurer due to losses under the fire, extended coverage, vandalism and malicious mischief coverage provided for herein shall be payable to the Association only, if common areas are involved, or to the Association and the individual owner involved jointly, if said loss is to an individual dwelling unit.

The Association shall not be responsible for any insurance upon the contents of any individual dwelling unit but shall carry such comparable insurance as is necessary to insure the contents of any buildings or improvements upon any of the common areas. The premium for this insurance shall be paid for by the Association.

The Association shall not be under any duty whatsoever to carry any additional insurance coverage beyond that expressly provided for in this Article. The Board of Directors, however, may carry such additional insurance for the benefit of the Association as it determines to be reasonable and necessary.

In addition to the insurance provided by this Article, any owner may purchase additional insurance, at his own expense, to insure his own lot, dwelling unit, the contents thereof or any form of liability insurance he deems advisable from any source he selects.

BOOK 4711 PAGE 80

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Association shall, upon receipt of said insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the properties as is necessary to return them to the condition in which they were found prior to said loss. All such insurance proceeds shall be deposited in a separate trust account and a strict accounting shall be made of all funds to all persons interested therein. The Association shall contract with a licensed contractor for the repair, reconstruction or rebuilding.

In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding the damaged property to the same condition as prior to the loss, the Association may levy a special assessment against the owner of the individual dwelling unit or units damaged. If the damaged property is located on the common areas owned by the Association, a special levy may be assessed against all owners.

In the event the insurance proceeds exceed the cost to repair and reconstruct an individual dwelling unit, such excess shall be paid over to the respective owners and any interested mortgagees, contract vendors, trustees or other security holders as their interest may appear. Any such surplus resulting from the repair of any of the common properties or areas shall be placed in the general fund of the Association to be applied as determined by the Board of Directors.

As long as any dwelling units remain unsold, the insurance policy procured by the Association pursuant to the terms hereof shall be maintained by the Association and the insurance companies and supplies issuing same shall be approved by the Board of Directors.

ARTICLE XIV

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

In addition to any costs allowed by the court in an enforcement action brought hereunder, the prevailing party therein shall have a right to collect reasonable attorney's fees.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the twenty (20) years period by an instrument signed by not less than seventy percent (70%) of the lot owners, and thereafter by not less than seventy-five percent (75%) of the lot owners. Any amendment must be recorded.

WITNESS WHEREOF, the undersigned, being the Declarant,
has hereunto set its hand and seal this 22nd day of
February, 1974.

STEWART TITLE TRUST OF TUCSON
as Trustee under Trust 11913 as Trustee
only and not Declarant in its corporate
capacity

By [Signature]
Trust Officer

STATE OF ARIZONA)
County of Pima) ss

On this 22nd day of February, 1974, before me,
the undersigned Notary Public, personally appeared [Signature]
[Signature] Trust Officer of STEWARD TITLE & TRUST OF TUCSON,
an Arizona corporation, and that such officer being authorized so to
do, executed the within instrument for the purposes therein contained
by signing the name of said corporation, as Trustee, by himself as
such officer.

WITNESS my hand and official seal.

[Signature]
Notary Public



STATE OF ARIZONA
County of Pima
I hereby certify that the within and to be recorded
Book 4750 Page 401-402
Date: 1974 APR 22 PM 2:21
By Bartholomew
Deputy Recorder

SECOND AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS **FILE COPY**

This amended declaration, made on the date hereinafter set forth by STEWART TITLE & TRUST OF TUCSON, as Trustee under Trust No. 1191, hereinafter referred to as "Declarant."

W I T N E S S E T H :

WHEREAS, Declarant has caused to be recorded on December 27, 1973, at Book 4670, Pages 319 through 335 in the Office of the County Recorder, Pima County, Arizona, the Declaration Of Covenants, Conditions And Restrictions; and

WHEREAS, Declarant has caused to be recorded on February 26, 1974, at Book 4711, Pages 32 through 58 in the Office of the County Recorder, Pima County, Arizona, the Amended Declaration Of Covenants, Conditions And Restrictions; and

WHEREAS, pursuant to Article XIV, Section 3 of that Declaration and Amended Declaration, amendments are allowed if deemed advisable and if approved pursuant to that Section;

NOW, THEREFORE, Declarant hereby declares that this Second Amended Declaration incorporates by reference within it the Amended Declaration referred to above and recorded on February 26, 1974, and hereby makes the following modification and amendment to Article IV, Section 3(1) which shall read as follows:

Such dwelling unit's proportionate share of the actual cost to the association of all the following: taxes on common areas, repairs of all common areas and dwelling unit walls, excluding party walls, all

BOOK 4750 PAGE 401

ASSOCIATION RECORDING
WITHIN TIME LIMITATION

X

insurance premiums pursuant to Article
XIII, all water bills, all water meters,
replacement and maintenance of all
facilities located on said common areas
including, but not limited to, roads and
walkways, and all other charges required
by this Declaration;

IN WITNESS WHEREOF the undersigned, being the Declarant
herein, has hereunto set its hand and seal this 19th day of April,
1974.

STEWART TITLE & TRUST OF TUCSON
as Trustee under Trust No. 1191,
as Trustee only and not Declarant
in its corporate capacity

By *Wanda Trainor*
Trust Officer

STATE OF ARIZONA)
County of Pima) ss

This instrument was acknowledged before me this 19th
day of April, 1974, by *Wanda Trainor*, a Trust Officer
of STEWART TITLE & TRUST OF TUCSON.

Charles E. Moore
Notary Public

My Commission Expires:

6-16-74

4750 402

I hereby certify that the within file. *38832*
 Book *4761* Page *714-715*
 1974 MAR 7 PM 4 09
 Date
Stewart Title & Trust of Tucson
 THIRD AMENDED DECLARATION OF *20*

COVENANTS, CONDITIONS AND RESTRICTIONS

FILE COPY

This amended declaration, made on the date hereinafter set forth by STEWART TITLE & TRUST OF TUCSON, as Trustee under Trust No. 1191, hereinafter referred to as "Declarant."

W I T N E S S E T H :

WHEREAS, Declarant has caused to be recorded on December 27, 1973, at Book 4670, Pages 319 through 335 in the Office of the County Recorder, Pima County, Arizona, the Declaration Of Covenants, Conditions And Restrictions; and

WHEREAS, Declarant has caused to be recorded on February 26, 1974, at Book 4711, Pages 32 through 58 in the Office of the County Recorder, Pima County, Arizona, the Amended Declaration Of Covenants, Conditions And Restrictions; and

WHEREAS, Declarant has caused to be recorded on April 22, 1974, at Book 4750, Pages 401 through 402 in the Office of the County Recorder, Pima County, Arizona, the Second Amended Declaration Of Covenants, Conditions And Restrictions; and

WHEREAS, pursuant to Article XIV, Section 3 of that Declaration and Amended Declaration, amendments are allowed if deemed advisable and if approved pursuant to that Section;

NOW, THEREFORE, Declarant hereby declares that this Third Amended Declaration incorporates by reference within it the Amended Declaration referred to above and recorded on February 26, 1974, and the Second Amended Declaration referred to above and recorded on April 22, 1974, and hereby makes the following modification and amendment to Article IV, Section 3 which shall read as follows:

BOOK *4761* PAGE *714*

Maximum Annual Assessment. Until the first day of the month immediately following the conveyance of the common area to the Association, the maximum annual assessment shall be Seven Hundred Twenty Dollars (\$720.00).

IN WITNESS WHEREOF the undersigned, being the Declarant herein, has hereunto set its hand and seal this 7th day of May, 1974.

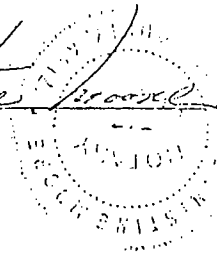
STEWART TITLE & TRUST OF TUCSON
as Trustee under Trust No. 1191,
as Trustee only and not Declarant
in its corporate capacity

By *Wanda Thompson*
Trust Officer

STATE OF ARIZONA)
) ss
County of Pima)

This instrument was acknowledged before me this 7th day of May, 1974, by *Wanda Thompson*, a Trust Officer of STEWART TITLE & TRUST OF TUCSON.

Charles Lee Brown
Notary Public



My Commission Expires:
6-16-74

BOOK 4781 PAGE 715

COUNTY OF PIMA
Witness my Hand and Official Seal.

IDA No. 587111

1974 SEP 19 PM 2 34

STEWART TITLE & TRUST of Tucson

Book	Page	

By *Bertha S. [Signature]*

FOURTH AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FILE COPY

This Amended Declaration, made on the date hereinafter set forth by STEWART TITLE AND TRUST OF TUCSON, as Trustee under Trust No. 1191, hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANT has caused the following Declaration Of Covenants, Conditions and Restrictions and amendments thereto to be recorded in the Office of the County Recorder, Pima County, Arizona:

Original Declaration recorded December 27, 1973, at Book 4670, Pages 319-335.

Amended Declaration recorded February 26, 1974, at Book 4711, Pages 32-58.

Second Amended Declaration recorded April 22, 1974, at Book 4750, Pages 401-402.

Third Amended Declaration recorded May 7, 1974, at Book 4761, Pages 714-715; and

WHEREAS, pursuant to Article XIV, Section 3 of that original Declaration and all amendments thereto, amendments are allowed if deemed advisable and if approved pursuant to that Section;

NOW, THEREFORE, DECLARANT hereby declares that this Fourth Amended Declaration incorporates by reference within it all prior Declarations and amendments thereto listed above, and hereby makes the following modifications and amendments:

RECORDED WITHOUT TITLE LIABILITY

2

The first sentence of the second paragraph of Article XII is hereby amended to read as follows:

"Each townhouse and the common elements shall be subject to an airspace easement for encroachments created by construction, settling, overhangs, patios and balconies as designed or constructed by the original builder."

Section 4, Article I is hereby amended to read as follows:

"'Common Area' refers to Lot 41 and shall mean all real property shown on the recorded subdivision plat of EL MIRADOR TOWNHOUSES which is intended for the common use and enjoyment of the owners and shall not include the area within the boundaries of the respective numbered dwelling units, except that portion of Lot 41 beginning at the Northeast corner of Lot 27 proceeding thence North 89°57'27" East for 4 feet, thence South 0°2'33" East for 58 feet; thence South 89°57'27" West for 4 feet, thence North 0°2'33" West for 58 feet to point of beginning, which is hereby made a part of Lot 27 of said EL MIRADOR TOWNHOUSES."

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein, has hereunto set its hand and seal this 19th day of September, 1974.

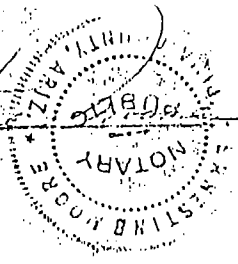
STEWART TITLE AND TRUST OF TUCSON
as Trustee under Trust No. 1191,
as Trustee only and not Declarant
in its corporate capacity

By *Donald Dannerfelser*
Trust Officer

STATE OF ARIZONA)
County of Pima) ss

This instrument was acknowledged before me this 19th
day of September, 1974, by Wanda D. [Signature] a Trust
Officer of STEWART TITLE AND TRUST OF TUCSON.

[Signature]
Notary Public



My Commission Expires:

6-16-78

Indexed	Pages	Plotted

JUCE BE DADO
County Recorder

Book 6207 Page 884-885
Date: FEB 4 1980 - 2 20 PM
Request of: Paul Present

By: *Debra Sanders*
Deputy

Fee: 3.00

FORM 4-13 5055 E. Broadway Suite 4220 Tucson 85711

FIFTH AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FILE COPY

This Amended Declaration, made on the date hereinafter set forth by EL MIRADOR TOWNHOUSE ASSOCIATION, it's successors and assigns, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant has caused to be recorded on December 27, 1973, at Book 4670, Pages 319 through 335 in the Office of the County Recorder, Pima County, Arizona, the Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, Declarant has caused to be recorded on February 26, 1974, at Book 4711, Pages 32 through 58 in the Office of the County Recorder, Pima County, Arizona, the Amended Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, Declarant has caused to be recorded on April 22, 1974, at Book 4750, Pages 401 through 402 in the Office of the County Recorder, Pima County, Arizona, the Second Amended Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, Declarant has caused to be recorded on May 7, 1974, at Book 4761, Pages 714 through 715 in the Office of the County Recorder, Pima County, Arizona, the Third Amended Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, Declarant has caused to be recorded on September 19, 1974, at Book 4855, Pages 415 through 417 in the Office of the County Recorder, Pima County, Arizona, the Fourth Amended Declaration of Covenants, Conditions and Restrictions; and

WHEREAS, pursuant to Article IV, Section 3 of that Declaration and Amended Declarations, that should at any time the

