

66179

M110564r 688

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

TRANSAMERICA TITLE COMPANY, an Arizona corporation; as Trustee, (hereinafter referred to as "Declarant"), being the bare legal title holder of all of the real property described in Article I hereof and acting at the direction of KAISER AETNA, a California general partnership, (hereinafter referred to as "Developer"), and desiring to establish the nature of the use and enjoyment thereof, hereby declares that all of the property described in Article I hereof is held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, covenants and reservations, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of said property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of said property and every part thereof. All of the limitations, restrictions and covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the property described in Article I hereof or any part thereof, and shall inure to the benefit of all of the property described in Article I hereof and the future owners of said real property.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION

The property subject to this Declaration is known as
and is more particularly described as:

ARTICLE II

BASIC RESTRICTIONS

A. USE OF PROPERTY. No building shall be erected, constructed, altered or maintained on any of said lots other than a residence for a single family (including guests and household servants) with customary and suitable outbuildings as permitted by law and the Architectural and Planning Board, hereinafter sometimes called the "Board".

B. LOCATION OF STRUCTURES. Construction of any and every nature shall be confined to and take place only within the building limits of each building site. The location and design of swimming pools, covered gazebos, and other outbuildings, as well as the main structures upon each of the building sites must be approved in writing by the Board prior to any construction or preparation for construction thereon.

C. RESUBDIVISION OF LOTS. None of the above-described lots shall be resubdivided or split into lots of a lesser size than the size of the original lot without the written consent of Declarant first had and obtained.

D. CHANGING GRADES, SLOPES AND DRAINAGE. No change in the established grade or elevation of said lots, and no change in the established slope or ratio of the cuts and fills, which alters established drainage patterns shall be permitted without the prior written consent of the Board and without the prior written approval of the Mesa City Engineering. For the purpose hereof, established drainage patterns are defined as the drainage patterns existing at the time the grading of said property was completed in conformity with the grading plan heretofore approved by the City of Mesa. No drainage shall be allowed to drain over any banks.

Declarant hereby reserves the right to make any and all cuts and fills on said property and on the building sites included therein, and to do such grading as in its judgment may be necessary to grade streets and lots designated or delineated upon said Map of said property or any part thereof.

Each of the owners of the lots covenants to permit free access by Declarant and owners of adjacent lots to slopes or drainageways located on his property when such access is required for the maintenance or permanent stabilization of said slopes, or maintenance of the drainage facilities or

for the protection and use of property other than the lot on which the slope or drainageway is located.

E. WELLS, DERRICKS AND MINES. No wells for the production of, or from which there is produced water, oil or gas shall be operated upon any lot; nor shall any machinery, appliance or structure be placed, operated or maintained hereon for use in connection with any trading, manufacturing or repairing business. No mining or quarrying operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any lot.

F. NUISANCE AND NON-CONFORMITY. No noxious or offensive trade or activity shall be carried on upon said property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the owners or occupants of said property, including, but not limited to, the storage of any materials which might create an insect pest control problem, or the ill-maintenance of any plant or landscape materials.

1. Livestock. No farm animals, livestock, poultry or fish of any kind shall be raised, bred or kept on said real property, except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes or in unreasonable quantities, and provided that they do not become a nuisance to the owners or occupants of said property. Pets must be kept within lot areas or on leash or tether when out of lot areas.

2. Temporary Structures. No tents, shacks, trailers, basements, garage or outbuilding shall at any time be used on any lot as a residence, either temporarily or permanently; nor shall any residence of a temporary character be constructed, placed or erected on any lot.

3. Signs. No signs of any kind, or other advertising device of any character, for any purpose or use whatsoever, shall be erected, posted, pasted, painted, displayed or maintained on said property, except that (a) on any one lot or building site one sign, not larger than eighteen (18) by twenty-four (24) inches, advertising the property for sale or lease, may be erected and maintained; (b) Declarant or its agents may erect and maintain

on said property such signs and other advertising devices as it may deem necessary or proper in connection with the conduct of its operations for the development, improvement, subdivision or sale of said property.

4. Poles, Masts and Antennas. No facilities, including poles and wires, for the transmission of electricity, telephone messages, television or radio, except as specifically provided herein, and the like shall be placed or maintained above the surface of the ground of any lot. If at the time of occupancy of the house constructed on any lot there is available underground television antenna connection cable, then no outside television or radio pole or antenna shall be constructed, erected or maintained on any building or on any lot located in such a manner as to be visible from the outside of any such building except by and with the prior written consent of the Board. Such prior written consent for television antenna shall not be required in the event said television antenna cable is not available for connection at the date of occupancy of the house constructed on the lot; however, no such antenna for a private dwelling shall be higher than ten feet (10') above the highest point of the house. Upon the written demand of the Board, and after availability of underground television antenna connection cable, any private antenna shall be promptly removed.

5. Upkeep of Real Property. Each lot owner covenants to keep, maintain, water, plant and replant all areas, slopes, banks, rights of way, and set-back areas located on his lot so as to prevent erosion and to present an attractive, clean, sightly and wholesome appearance at all times.

6. Vending of Liquor or Beverages. No liquor or alcoholic beverages of any kind shall be sold on said property.

7. Drying Yards. No utility area or drying yard shall be constructed or maintained on the property unless a plan therefore shall be first submitted to the Board and the latter shall determine in writing that such plan appropriately provides for screening said area or yard from exterior view.

8. Storage of Materials, Junk, Trash and Manure. The storage of or accumulation of junk, trash, manure and other offensive or noxious materials is specifically prohibited. No burning shall be permitted except in fireplaces or barbecues. No trash containers are to be visible from the street at any time except on days on which trash is collected.

9. Storage of Cars, Trailers, Campers, Boats, Etc. No. *Backyard to*
house trailer, living trailer, camper, motor home, boat or boat trailer of any type shall be parked on any building site, either temporarily or permanently; provided, however, this sentence shall not apply to streets in front of building sites, driveways or enclosed sideyards. Motor vehicles classed by manufacturer's rating as exceeding three quarters of a ton shall not be parked on any lot front yard or garage or on any building site where visible from the street. No painting, repairing, or mechanical work, other than customary maintenance work, and minor emergency repairs, shall be done on any building site except in enclosed areas approved by the Board in writing, which areas shall be sufficiently screened from the street and adjacent lots to eliminate any possibility of a nuisance being created by storage of such items or activities involving such items.

G. TREES, SHRUBS, WITHIN SET-BACKS AND EASEMENTS. The Board hereby reserves the right to enter upon any of the lots at any time to inspect and control the plants, trees and seed thereon and also to inspect for and control insect pests. This right shall be exercised in the following manner: If, after notice to the owners from the Board of the existence of infected plants, tree diseased, or of insect pests, the owner fails or neglects to take such measures for the eradication or control of the same as the Board may deem necessary for the protection of the community, the Board may thereupon enter thereon and, at the expense of the owner thereof, destroy or remove infected or diseased plants and/or trees, and/or spray the same, and/or take such other measures as may be deemed necessary in the opinion of the Board to protect the community from the spread of such infection and/or pests; and the Board or any officer or agent thereof, or designee described in Article VIII hereof, shall not thereby be deemed guilty of or liable for any manner or trespass.

H. EASEMENTS AND RIGHTS OF WAY. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by owner of the lot, except for those improvements for which a public authority or utility company is responsible.

There is an easement across certain lots within this subdivision twelve (12) feet wide from the front property line, which easement is dedicated by the Developer for public utility and sidewalk purposes. Where such easement exists, Developer shall install certain sprinkler systems and landscaping at its' sole discretion. Each Owner agrees, by the acceptance of his deed, to landscape the front yard to the extent the Developer has not done so and to maintain the landscaping within the front yard at the Owner's own cost and expense, except for those areas for which a public authority or utility company is or may be responsible.

Each owner, by the acceptance of his deed, agrees that if he makes demand upon the Salt River Valley Water Users' Association for delivery of irrigation water to his lot, the owner shall secure and furnish the Salt River Valley Water Users' Association with the rights of way necessary therefor, and shall pay or bear the full cost and expense to construct, install and re-establish delivery facilities for such delivery to such lot, at his sole cost and expense, and at no cost and expense to Declarant or to the developer of the subdivision.

ARTICLE III

ALTERATIONS, ADDITIONS, REMODELING, REDECORATION
OF EXTERIOR PORTIONS OF STRUCTURE

No alterations in the exterior design or color of any structure, including additions, shall be made without the prior written approval of the Board. The materials used for any such approved alteration must harmonize and compliment the original building or buildings and must be approved by the Board in writing prior to such alteration. No approval is required to repaint or restain any structure with the same color scheme as previously used and approved.

ARTICLE IV

ARCHITECTURAL AND PLANNING BOARD

A. PURPOSE AND FUNCTIONS. The purpose of the Architectural and Planning Board is to achieve and maintain the aesthetic goals of the Declarant. The function of the Board is to enforce the restrictions herein by the review of plans and specifications submitted for approval, and by inspection of actual construction and progress to insure conformity with the plans and specifications as approved. It is not the intent of the Declarant to deprive the individual owner from having a home of unique design, but to protect the community as a whole, and the individuals comprising the same, from the undesirable construction. In this connection, in the case of hardship, or other good reason, exceptions to any of the restrictions contained in any portion of this Declaration may be made by the Board at any time after proper application therefore in writing.

B. BOARD MEMBERS, ORGANIZATION AND TERM. The Architectural and Planning Board shall consist of:

Robert C. Gibbs	5130 North Central Avenue, Phoenix, Arizona 85012
Robert Landis	5130 North Central Avenue, Phoenix, Arizona 85012
Michael Embry	5130 North central Avenue, Phoenix, Arizona 85012

Such persons shall be subject to removal by Developer at any time. Vacancies shall be filled by Developer or if Developer fails to act within ninety (90) days after such vacancy occurs, then, as to such vacancy, by the majority of the owners of the lots other than Developer into which portions or

all of the real property described in Article I has been subdivided for single family residential purposes at the time of said vacancy. Any written notice of appointment or removal duly executed by Developer may be filed with the County Recorder of Maricopa County and such recordation shall impart notice to all persons of the matters set forth therein. The term of each member of the Board unless earlier terminated as hereinabove stated, shall be three (3) years which can be extended for additional three (3) year terms at the discretion and option of the Developer.

The Developer may at any time relieve itself of the obligation of appointing and maintaining said Board by filing in the Recorder's Office of the County of Maricopa, State of Arizona, a notice stating that Developer has surrendered the powers of appointment and maintenance of said Board, and upon the recording of such notice, even if not specified therein, said powers and obligations shall immediately vest in the majority of the owners of lots in the property described in Article I hereof.

C. ACTION BY BOARD. The three (3) Board members shall work as a panel, first reviewing plans and specifications submitted as hereinafter stated individually, and then subsequently discussing said plans and specifications jointly. A written approval of two (2) members of the Board will constitute approval of said preliminary or final submittals as the case may be, or if no notice of rejection is received after thirty (30) days from the date of receipt of said submittals, such inaction shall be deemed to be approval. All decisions of the Board shall be final. The written approval or notice of rejection of the Board may be recorded in the Office of the County Recorder of Maricopa County, and shall be conclusive evidence of such approval or rejection.

Final acceptance of the completed structure, maintenance or repair shall be in writing signed by two (2) members of the Board, and it may be recorded in which case such recordation shall be conclusive evidence of such final acceptance. If no such final acceptance is given or recorded, or if no notice of non-compliance is recorded in the Office of the County Recorder of Maricopa County by or on behalf of the Board within sixty (60) days after receipt by the Board and Declarant of a copy of the duly recorded notice

of completion of the construction, maintenance or repair of any structure upon the building site, then such failure to give or record such acceptance or to file a notice of non-compliance shall be deemed conclusive evidence of final acceptance of the structure by said Board.

The actions or inactions of the Board or its agents, which said Board is exercising its discretion in enforcing this Declaration in good faith, shall not be a basis for damages to any owner herein or any other person, nor shall any such actions or inactions by Declarant or the Board or any member of the Board or their officers or agents, individually or collectively, constitute a cause of action for damages or equitable relief to any owner herein or any other person. Declarant, its successors or assigns, or the Board, or any member of the Board, or their officers or agents, all acting singularly or together, shall not be responsible for any loss or damages, or be liable in any other way for any errors or defects, either latent or patent, in the plans and specifications submitted for approval, or any building or structure erected in accordance with such plans and specifications.

D. INSPECTION AND CONFORMITY TO PLANS. During and after completion of construction, Declarant or any agent or any member of the Board may, from time to time, at any reasonable hour or hours, with reasonable notice, enter into and inspect any property subject to this Declaration as to compliance with the approved submittals. Deviations shall be diligently guarded against, and all such deviations or non-conformities set forth in any notice of non-compliance issued by the Board shall be corrected prior to final acceptance as set forth below. Declarant, the Board or any agent or officer thereof, acting in good faith, shall not be deemed guilty of, or become liable for any manner of trespass for such entry or inspection.

E. ENFORCEMENT OF BOARD RULINGS. In the event of the failure of any owner of a lot to comply with any notice of non-compliance or directive or order from the Board, then in such event, the Board or Declarant shall have the right and authority, after reasonable notice, to perform the subject matter of such directive or order, and the cost of the performance thereof shall be charged to such owner and may be recovered by the Board or Declarant in an action at law against such owner.

In addition, this Declaration shall be deemed to vest the Board or Declarant with the right to bring a proceeding in equity to enforce the general and specific intent of this Declaration as follows:

If written notice to the Board of steps to correct any non-compliance is not given within fifteen (15) days, or if the non-compliance is not thereafter cured within a reasonable time from the date notice of such non-compliance is given by the Board to the owner of the building site whose act or omission constitutes such non-compliance, the Board or Declarant may record such notice of non-compliance and thereafter file a proceeding in equity to restrain said non-compliance or attempted non-compliance.

ARTICLE V

SCOPE AND DURATION

All the foregoing covenants and restrictions are imposed upon said property for the direct benefit thereof and of the owners thereof and the remainder of the real property described in Article I, and the owners thereof, as a part of a general plan of improvement, development, building, occupation, and maintenance; and shall run with the land and shall be binding upon all of the owners of said property and all persons claiming under them, and continue to be in full force and effect for a period of thirty (30) years from the date that this Declaration is recorded. After said thirty (30) year period, the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by three-fourths (3/4ths) of the then owners of record of said property has been recorded, agreeing to amend this Declaration in whole or in part or to terminate said Declaration.

ARTICLE VI

AMENDMENTS

These restrictions may be amended at any time, and from time to time, by an instrument in writing signed by three-fourths (3/4ths) of the then owners of record of said property, which said written instrument shall become effective upon its recording in the Office of the County Recorder of Maricopa, State of Arizona.

ARTICLE VII

BREACH

A. The covenants hereby established shall operate as covenants running with the land; and further Declarant and/or the owner of any of the real property described in Article I, including any bona fide purchaser under contract, in the event of a breach of any said restrictions and covenants or a continuance of any such breach may by appropriate legal proceedings take steps to enjoin, abate or remedy the same. It is hereby agreed that damages are not an adequate remedy for such breach.

B. Every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable and may be exercised by Declarant, the Board, or the owner of any of the real property described in Article I.

C. The remedies herein provided for breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any building site; provided, however, that any subsequent owner of such property shall be bound by said covenants, whether such owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the covenants which occurred prior to such acquisition of title but shall be bound by said covenants.

ARTICLE VIII

RIGHT TO ENFORCE

The provisions contained in this Declaration shall inure to the benefit of and be enforceable by Declarant, its successors, assigns, or the owner of any of the real property described in Article I, and each of their legal representatives, heirs, successors or assigns, and the failure to enforce any of such covenants or restrictions herein contained shall in no event be deemed to be a waiver of the right to do so thereafter. In any

legal proceeding commenced by anyone entitled to enforce or restrain a violation of this declaration, or any provision thereof, the losing party or parties shall pay the attorney's fees of the winning party or parties in such amount as may be fixed by the Court in such proceeding.

Any right reserved by Declarant herein is also hereby reserved to Declarant's successors or any entity designed by Declarant in writing including the Board, into which portions or all of the real property described in Article I have been subdivided for single family residential purposes at the time of such designation and is in existence. Such designation may be recorded in the Office of the County Recorder of Maricopa County.

ARTICLE IX

SEVERABILITY

In the event that any of the provisions of this Declaration are held to be invalid or unlawful by a final judgment of a Court of competent jurisdiction, such invalidity or illegality shall not affect the validity of any of the other provisions hereof.

ARTICLE X

PROTECTION FOR MORTGAGEES AND TITLE INSURANCE COMPANIES

Mortgage Protection.

(a) The lien created hereunder upon the lots shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by, any recorded first mortgage or deed of trust (meaning a mortgage or deed of trust with first priority over other mortgages or deeds of trust upon such interest made in good faith and for value); provided, however, that after the foreclosure of any such mortgage or deed of trust, the lien hereof shall attach to the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser of an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage or deed of trust recorded prior to recordation of such amendment who does not join in the execution thereof;

(c) By subordination agreement executed by a majority of the lots and by holders of all first mortgages of records against the lots, the benefits of (a) and (b) above may be extended to mortgages or deeds of trust not otherwise entitled thereto; and

(d) Upon request of any Owner, the Association will furnish, for a reasonable fee, not to exceed Fifteen Dollars (\$15.00) for the benefit of any prospective purchaser or present or prospective encumbrances of such parcel, a statement showing all amounts then due which are secured by such lien, which statement shall be conclusive as to any such purchaser or encumbrancer relying thereon in good faith.

ARTICLE XI

PARK PLACE ASSOCIATION

The owner of each lot within that portion of the real property described in Article I agrees by the acceptance of a deed, to abide by the rules, regulations and assessments of the Park Place Association, Inc., an Arizona corporation, or such other applicable association, and recognizes that non-payment of any dues or assessments levied by the Park Place Association or other applicable association is a lien against each lot as provided in the Declaration of Covenants, Conditions and Restrictions of the Park Place Association or other applicable associations as recorded in the books and records of Maricopa County, Arizona, Books , pages

ARTICLE XII

SINGULAR INCLUDES PLURAL

The singular shall include the plural, and the masculine the feminine whenever the context herein so requires.

97394

ARIZONA CORPORATION COMMISSION
INCORPORATING DIVISION
FILED

JUL 15 1974

At 3:50 P.M. at request of
Johnson, Tucker, Jessen & Dake, P.A.
Address 29 Luhrs Arcade
Phoenix, Arizona 85003
By Kay A. Rogers
George M. Dempsey, SECRETARY

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the with-
in instrument was filed and re-
corded at request of *Johnson, Tucker, et al*

JUL 15 1974 -4 80

in Docket: 10740
on page 1307-1311

Witness my hand and official
seal the day and year aforesaid.

Paul A. Muston

County Recorder

By *J. Zimmerman*
Deputy Recorder

4.50

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On MARCH 20, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert C. Quinn, known to me to be the Trust Officer of TRANSAMERICA TITLE COMPANY, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument, pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

(SEAL)

6-11-77

Risilla Ann Bennett

Notary Public in and for
said County and State

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On March 12, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert C. Gibbs, known to me to be the duly authorized agent of KAISER AETNA, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

(SEAL) My Commission Expires Dec. 27, 1978

Mary Edwards

Notary Public in and for
said County and State

I do hereby certify that the within named instrument was recorded, at request of TRANSAMERICA TITLE
MAR 20 1974 - 9 10 Docket 10564 Page 88-703 Records of Maricopa Co., Arizona
WITNESS my hand and official seal the day and year aforesaid.
PAUL H. MARSTON, Maricopa County Recorder, By K. T. A. [Signature] Deputy