

*financed*  
~~DECLARATION~~  
of  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
TUCSON MEDICAL PARK SOUTH

*18-2-27-77*  
*and revised lot*

This declaration is made by the undersigned hereinafter referred to "declarants".

RECITALS:

1. Declarants are the "lessees" in an indenture of lease dated September 15, 1977, wherein Tucson Medical Center, an Arizona corporation, is lessor,
2. Declarants desire to establish for their benefit and for the mutual benefit of all future owners of any interest in or encumbrance upon all or any portion of the property described in said Lease, certain easements and rights-of-way in, over and upon said premises with respect to the proper use, conduct and maintenance thereof, and
3. Declarants desire and intend that sub-lessees, assignees, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in said real property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the development and use of the subject real property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the subject real property.

DECLARATION:

NOW, THEREFORE, declarants as the lessees of the real property described in said Indenture of Lease and also described as follows:

Tucson Medical Park South, a re-subdivision of a subdivision of Pima County, Arizona, according to Book 19 of Maps and Plats at page 43 in the office of the County Recorder of Pima County and which said re-subdivision is according to Book 24 of Maps and Plats at page 51 in the office of the County Records of Pima County.

*Order*  
*BK 19*  
*pg 43*

*5-10-00*  
*re-record 6298/411*

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FOR THE PURPOSES ABOVE SET FORTH HEREBY DECLARE:

1. All of said real property and every building, or portion thereof erected upon the said real property is subject to the following:

(a) Indenture of lease dated September 15, 1977, wherein Tucson Medical Center is lessor and declarants are lessee.

(b) Agreement dated September 15, 1977, between Tucson Medical Center and declarants providing that the property involved herein is subject to architectural control, maintenance of premises, common area operating costs and all other matters in said agreement.

(c) Declaration of establishment of Covenants, Conditions and Restrictions recorded in Book 3224 of Dockets at pages 205 and following in the office of the County Recorder of Pima County.

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(d) Building controls and Construction guidelines issued by Tucson Medical Center relating to approvals, uses and construction requirements of buildings located upon the real property involved herein.

(e) Provisions established by Tucson Medical Park South Association (hereinafter sometimes called the "Association") including but not limited to the collection of pro-rated rents for payment of the lease to Tucson Medical Center, for the collection of monies for operation, maintenance, taxes and upkeep of the premises as the same are created or modified from time to time in the future.

(f) Additional Covenants, Conditions and Restrictions as stated herein.

2. Each person for whom these covenants, conditions and restrictions were created accepts his/her/its interest in all subject real property chargeable with knowledge of the duties, liabilities and protections stated herein or referred to herein by any reference.

3. Definitions of terms used herein appear in Schedule B annexed

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hereto and incorporated herein by this reference.

4. (a) Lots 1 through ~~48~~<sup>41 as amended in Schedule C</sup> shall each be for a medical building or portion hereof to be used as doctor's office(s), and no other business uses or activities of any kind whatsoever shall be permitted or conducted upon said lots.

(b) Lot ~~49~~<sup>42 as amended in Schedule C</sup> shall be for "common areas".

(c) If declarants do not desire a building to be erected on one or more, but not to exceed ~~4~~<sup>41 as amended in Schedule C</sup> lots of said ~~48~~<sup>41</sup> lots, then by supplement hereto, they may declare that said lots (not to exceed 4) may become part of the common area and, if this is hereafter declared, then the common area shall be ~~increased~~<sup>changed</sup> accordingly and the remaining building lots shall be ~~decreased~~<sup>changed</sup> accordingly, and the percentages of actual costs to be paid by the owners of building lots shall be ratably adjusted by said change.

(d) Before construction of any building or improvement is commenced upon any building lot, the plans and specifications thereof must first be approved in writing by Tucson Medical Center or its agent and by the Association or its agent to comply with the following provisions of these covenants and with the applicable provisions of all the various documents listed in paragraph 1 hereof.

5. Each lot shall be maintained free of rubbish, trash or garbage, and the same shall be removed from the premises and not be allowed to accumulate thereon, and garbage cans, incinerators, clothes lines and areas for the storage of equipment shall be kept screened by an adequate planting or fencing so as to conceal the same from adjacent lots and streets.

6. All screening areas, whether fences, hedges or walls, shall be erected or maintained upon the lots in said development in conformity with the original construction as approved by Tucson Medical Park South Association.

7. The sub-letting of any ~~Lots 1 through 48~~<sup>41 as amended in Schedule C</sup> inclusive, in Tucson Medical Park South shall be evidenced by sub-leases to the several lots. As sub-lessee of one lot such person is entitled to

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an undivided <sup>41</sup>1/48th interest as a sub-lessee in lot 49 as the common areas as shown on the recorded map or plat of this re-subdivision and to one membership share in Tucson Medical Park South Association, an Arizona non-profit corporation. There shall be one membership share to be issued by the said Association for each building lot, which may only be issued to and owned only by the named sub-lessee(s) of a building lot in Tucson Medical Park South. Upon any sale of sublessee's interest in a building lot included within Tucson Medical Park South, the outstanding membership share in the Association shall be automatically transferred to the assignee, transferee, or buyer from said sub-lessee of said building lot. The individual <sup>41</sup>1/48th (or <sup>as changed</sup> ~~less~~ as per Declaration 4 (d) above) interest as a sub-lessee in the common area shall include all improvements in the common area such as, but not limited to, streets, curbs, sidewalks, entryways, gas, water and sewer-service lines. Tucson Medical Park South Association, an Arizona nonprofit corporation, shall be responsible for the maintenance and upkeep of the property and improvements held in common.

8. Tucson Medical Park South Association shall do all things necessary for the general benefit and welfare of the sub-lessor and the sub-lessee in Tucson Medical Park South and shall manage and maintain said development in accordance with its By-Laws, its Articles of Incorporation, provisions of these and other applicable Deed Restrictions and any amendments thereto.

9. Tucson Medical Park South Association shall have the power and be required to levy monthly assessments. Tucson Medical Park South Association shall have the authority and power to collect delinquent assessments by action at law or otherwise from the person or persons holding the membership share for each lot. Payment shall be due on the first day of each month after completion of any building erected on any lot and shall become delinquent ten days thereafter, if not fully paid. All delinquent assessments shall bear interest at the rate of 8 percent per annum from the date on

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which they become delinquent. In the event it shall become necessary for the Tucson Medical Park South Association to employ attorneys to collect delinquent assessments, whether by foreclosure of the lien created hereafter or otherwise, the delinquent person(s) holding said membership share for each lot shall pay, in addition to the assessment and interest accrued thereon, a reasonable attorney's fee and all other costs, fees and expenses incurred by Tucson Medical Park South Association as a result of the delinquency.

10. The person or persons lawfully owning the membership share for each building lot 1 through <sup>41 as amended in Schedule C</sup> 48 in Tucson Medical Park South, per Declaration 7 above, shall pay to Tucson Medical Park South Association within ten days from receipt of notice and invoice the payment for his/her/its share of costs as provided herein. The amounts to be billed shall be calculated by a determination of <sup>the</sup> what percentage of the square footage of <sup>on</sup> a building <sup>lot</sup> of each membership share ~~own~~ as divided by the total square footage of all buildings to be built upon all of the <sup>41 as amended in Schedule C</sup> ~~48~~ (or less) lots and said percentage thus calculated shall be applied to all the actual costs to Tucson Medical Park South Association for:

- (1) All rentals, taxes, assessments, insurance and any other expenses required by the Indenture of Lease dated September 15, 1977, wherein Tucson Medical Center is lessor and declarants are lessee.
- (2) All payments required by the Agreement dated September 15, 1977, between Tucson Medical Center and declarants providing for payment of maintenance costs, common area operating costs and all other costs provided in said agreement.
- (3) All expenses and costs of the operation of the Association including losses on uncollectible accounts thereof and all water used in the common area, garbage pickup service for each lot, gardening maintenance service, repairs and maintenance of

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utility service lines held in common, insurance premiums, repair and maintenance, real property taxes and any other costs in said areas held in common.

(4) All real property tax bills received from the Pima County Assessor will be apportioned ratably as received, provided, however, that the personal property taxes due from a sub-lessee will remain the responsibility of the sub-lessee.

11. When the construction of the total of ~~22000~~ <sup>square</sup> square footage of the buildings to be constructed has been fully completed a final schedule showing the percentage of the foregoing expenses as applied to each lot shall be prepared by the declarants and recorded as <sup>an amended</sup> Schedule A hereof.

12. (a) The Tucson Medical Park South Association shall collect the real property taxes for the land from the sub-lessees in the appropriate percentage computations described herein and may charge for said real property taxes on a semi-annual basis or on monthly bases as the Association may determine from time to time.

(b) The taxes imposed upon a building owned by a sub-lessee shall be paid by each respective sub-lessee to the Pima County Treasurer at least 20 days before the due date for payment to said Treasurer and the Association shall be notified in writing by each sub-lessee of said payment having been made.

13. It is the intention hereof that each sub-lessee pay his/her/its specific debts and the appropriate percentage of debts chargeable against all sub-lessees. To carry out this intention and to protect all subleases from the results of any failure to perform the duties owed Tucson Medical Center under the Indenture of Lease and under the Agreement it is intended that the Association collect from the sub-lessees and pay Tucson Medical Association and the Pima County Treasurer all sums required to be paid by, to, or on behalf of the Tucson Medical Center.

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In the event any assessment, levy or charge, as provided herein shall not be paid by a sub-lessee within 20 days from the date it becomes delinquent, the amount of such assessment shall be and become a lien upon the lot or lots and membership share or shares against which such assessment is levied. Said lien may be foreclosed in the manner provided by Statute for the foreclosure of materialmen's liens but shall be secondary to any first mortgage or first deed of trust as described herein.

Any such lien created against any of the lots within the re-subdivision:

a. Shall be subject and subordinate to and shall not effect the rights of any recorded first realty mortgage or first deed of trust upon any of said lots made in good faith and for value, whether now existing or made and recorded at any time hereafter, and

b. If the mortgagee or holder of a first mortgage or first deed of trust of record or any assignee of a said mortgage or deed of trust obtains title to any lot as a result of foreclosure of the said mortgage or deed of trust such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessment by the Tucson Medical Park South Association chargeable to such lot which became due prior to acquisition of title to such lot by such acquirer. After acquisition of title such acquirer shall thereafter pay the share of said expenses or assessments chargeable to such lot.

14. Upon failure of any owner of an interest in a lot to maintain the premises and the improvements thereon in a manner satisfactory to the Association, the Association through its agents and employees, is herewith granted the right to enter upon such parcel and to make such reasonable repairs, maintenance, rehabilitation or restoration of the premises and the exterior of any improvements located thereon as may be necessary in the

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opinion of the Association, or as required by Tucson Medical Center and the cost thereof shall be charged against the owner of an interest in said lot by invoice in the same manner hereinabove set forth for all other costs per Declaration No. 10 above.

15. No subsequent additions, alterations, or improvements, fences, walls, or other structure to those originally constructed upon any lot shall be commenced, erected or maintained on any lot until the plans and specifications for the same showing all construction details, including shape, color, finish, height, width, length, materials, floor plans, site location and estimated cost, shall have been first submitted to and approved by both Tucson Medical Center and by the Board of Directors of the Association and a copy thereof, as finally approved shall be included in the minutes of said Board of Directors of the Association. Said Board shall have the right to deny approval of any plans or specifications which are not, in its sole discretion suitable or desirable for aesthetic or any other reasons.

16. Party Walls.

(a) Each wall which is built as a part of the original construction of a building and placed contiguous to or upon the dividing line between two lots shall be a party wall and the general rules of law regarding party walls and as provided herein shall apply thereto.

(b) Each said wall must be masonry and must be built at least to the said dividing line but shall be deemed to be a party wall for the benefit of the adjoining lot owner if for any reason it does not reach said dividing line. If hollow masonry units are used for a party wall, then such masonry shall be filled with an insulating material as constructed.

(c) Each lot owner shall be and is hereby granted the right to construct on the adjoining lot or lots one-half of either or both bearing wall(s) of his building and one-half of any patio wall, but such one-half may not exceed five inches into either

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adjoining lot or lots.

(d) Each lot owner must place a finished wall material of at least one-half inches in thickness on furring strips on his side of the said party wall and must comply with the conditions of the approval for construction as provided in paragraph 15 hereof.

(e) All costs of reasonable repair and maintenance of a party wall shall be equally shared by the owners who make use of the wall.

(f) If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owner thereafter makes use of the wall he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willfull acts or omissions. However, the rules set forth in this paragraph shall not be applicable to every instance of usage of a party wall and a lot owner who merely uses the party wall previously constructed by another has no obligation merely from such use to pay for any portion of the same.

17. The restrictive covenants, conditions, limitations and agreements herein contained shall run with the land and shall be binding upon all persons holding any interest in or occupying any lot or lots after the date upon which this instrument has been duly recorded. The covenants, restrictions, conditions and reservations herein contained may be enforced by the Tucson Medical Park South Association, by the owner of any interest in any lot in said subdivision or any one or more of said individuals and/or corporations, provided, however, that the violation or breach of any covenant, restriction, reservation and/or condition or any right of reentry by reason thereof, shall not defeat nor affect the lien or any mortgage or deed of trust made in good faith and for value upon said parcel or parcels, and, except as hereinafter

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provided, each and all of said covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of said premises whose title or interest thereto is acquired by foreclosure, trustee's sale, or otherwise and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or remedied by appropriate legal proceedings, notwithstanding the existence of any lien, deed of trust or mortgage instrument. Any and all instruments of conveyance of any interest in all or part of the lot or lots of Tucson Medical Park South shall contain reference to this instrument and shall be subject to the covenants, restrictions, reservations and conditions herein set forth as fully as though said terms and conditions of this instrument were therein set forth in full; provided, however, that the restrictive covenants, terms and conditions of this instrument shall be binding upon all persons affected by the same, whether expressed reference is made to this instrument or not.

18. (a) Each sub-lessee or owner of an interest in a building lot shall be responsible for their own lot's utility costs, appliance repairs, including but not limited to refrigeration units, furnace, water heater and all other appliances within their own building.

(b) Each owner of an interest in a building shall be responsible for the exterior walls, including painting thereof, roof, foundations, plumbing to a common sewer or water line and all other matters related to individual ownership.

(c) Each owner of an interest/shall be responsible and in a building pay for all damage they, their guests, invitees, or employees cause to their or any other owner's property or to the property held in common.

19. Tucson Medical Park South Association shall take and receive from each owner of an interest the monthly and other assessments provided herein and use the same for the purposes hereinabove outlined.

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20. Any owner of an interest in a lot who shall encumber the same for construction or purchase funds for a building thereon shall be deemed to have encumbered their respective undivided <sup>41</sup> (1/48th <sup>as amended in schedule C</sup>) interest in the common area and to have encumbered their respective membership share issued by the Association so that in the event there is a foreclosure sale of the encumbrance of any particular parcel of property, the purchaser at such a sale thereof shall acquire also the undivided <sup>41. or as amended in schedule C</sup> (1/48th interest in the common area and the membership share issued by the Association as a part of its security.

21. The determination invalidity of any one of the agreements, covenants, restrictions, reservations or conditions herein contained by judgment, decree or court order, shall in nowise effect the validity of the remaining provisions of this instrument and the same shall remain in full force and effect.

22. The terms, conditions, reservations, covenants, and restrictions herein contained shall continue in full force and effect for a period of twenty (20) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of five (5) years each unless revoked or amended by an instrument in writing executed and acknowledged by the owners of not less than 75% of the parcels in Tucson Medical Park South, which said instrument shall be recorded within ninety (90) days prior to the expiration of the initial effective period hereof, or any five (5) year extension thereof.

Dated this 17th day of December, 1977.

J. Emery Barker

Louis W. Parrish, Sr.

Jacqueline C. Barker

Jeanne I. Parrish

(TO BE RERECORDED DUE TO SCRIVENER'S ERROR)

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STATE OF ARIZONA )

SS

COUNTY OF PIMA )

The foregoing instrument was acknowledged before me this  
20<sup>th</sup> day of March, 1978, by Louis W.  
Parrish, Sr. and Jeanne I. Parrish, husband and wife.

Bertha Y. Straker  
Notary Public

My commission expires:

9-5-80

STATE OF ARIZONA )

SS

COUNTY OF PIMA )

The foregoing instrument was acknowledged before me this  
20<sup>th</sup> day of March, 1978, by  
J. Emery Barker and Jacqueline C. Barker, husband and wife.

Bertha Y. Straker  
Notary Public

My commission expires:

9-5-80

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Percentage of expenses applied to each lot in  
Tucson Medical Park South.

	LOT NO.	PERCENTAGE
June 4	1	
	2	
	3	
	4	<u>As</u>
5 thru 8	5	
	6	
	7	
	8	
9 thru 17	9	
	10	
	11	
	12	
	13	
	14	
	15	
	16	
	17	
19 - 22	18	
	19	
	20	
	21	
23 - 26	22	
	23	
	24	
27 - 30 and portion of 42	25	described in
	26	Schedule
	27	
1 - 33 and portion of 42	28	as described in
	29	Schedule C
Portion of 34 - 41	30	
	31	
Portion of 34 - 41 and portion of 42	32	as described in schedule C
	33	5754-607