

STATE OF ARIZONA

COUNTY OF PIMA

Whitman say

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I hereby certify that the within instrument was filed for record in Pima County, State of Arizona

Book 5168

Page 438-446

MAY 03 1978 8:22 AM

DATE

By *Grace S. ...*

County Recorder

Witness

DECLARATION

This DECLARATION made this 28 day of April 1978 by the undersigned, hereinafter called the Grantor.

WITNESSETH:

WHEREAS, Grantor is the owner of the real property described in Article I of this Declaration, and is desirous of subjecting the real property described in Article I to the conditions, covenants, restrictions, reservations and easements hereinafter set forth, each and all of which is and are for the benefit of Catalina Foothills Estates No. 5 as recorded in Book 14 of Maps and Plats at page 22, Catalina Foothills Estates No. 6 as recorded in Book 16 of Maps and Plats at page 36, in the office of the County Recorder of Pima County, Arizona, the property described in Article I of this Declaration, and those portions of Sections 8 and 9, Township 13 South, Range 14 East, G. & S. B. & M., Pima County, Arizona not included in Catalina Foothills Estates No. 5 and No. 6 or in the property described in Article I of this Declaration, and for each owner thereof, and shall inure to the benefit of, be binding on and pass with said property, and each and every parcel thereof, and any owner thereof;

NOW, THEREFORE, Grantor does hereby declare that the real property described in and referred to in Article I hereof is and shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, reservations and easements hereinafter set forth.

ARTICLE I

As used herein, the following terms shall mean:

“Approving agent” shall mean a person duly appointed by Grantor.

“Detached single-family dwelling” or “single-family dwelling” shall mean a building and structures customarily appurtenant thereto, erected and maintained in conformance with the requirements of this Declaration for private residential purposes and designed for occupancy by a single family. It shall not mean any flat, apartment, multi-family dwelling or duplex, lodging house, rooming house, hotel, hospital or sanatorium even though intended for residential purposes.

“Outbuilding” shall mean an enclosed, covered structure or ramada not directly attached to a single-family dwelling to which it is appurtenant.

“Residential building site” and “building site”, as well as “lot” shall mean the property described on Exhibit A.

“Grantor” and “reversionary owner” shall mean all of the undersigned collectively.

“Owner” shall mean the Grantor and each person or entity who is or becomes the owner of the fee or equitable title in a building site, or who has purchased a building site under a contract pursuant to the provisions of any recorded instrument, which site is located within the property legally described in Article I of this Declaration, and any site located within the other property described above, as determined by the Grantor. Such ownership will be deemed to have vested upon delivery of a duly executed deed or contract to the grantee or vendee. The legal title retained by a vendor selling under a contract and the legal title transferred to a trustee under a deed of trust shall not qualify the legal title holder as an owner. The transfer of ownership as above defined, (whether by sale, forfeiture, foreclosure, or otherwise) will work an automatic transfer of ownership to the new owner.

The real property which is, and shall be, conveyed, transferred, occupied and sold subject to the conditions, covenants, restrictions, reservations and easements with respect to the various portions thereof set forth in the various clauses and sections of this Declaration is located in the County of Pima, State of Arizona, and is more particularly described as follows, to wit:

SEE ATTACHED EXHIBIT A

No property other than that described in this Declaration shall be deemed subject to this Declaration, provided, however, that these conditions, covenants, restrictions, reservations and easements are for the benefit of said above described property and also of the property described in the first paragraph of this Declaration presently owned by Grantor.

ARTICLE II

- 1 No structure or improvements whatsoever except public utility facilities shall be erected, placed or permitted to remain on any portion of the above described land which does not constitute a building site.**
- 2. No structures shall be erected, altered, placed or permitted to remain on any building site subject to this Declaration other than one first-class detached single-family dwelling, for private use, a private garage, patio walls, swimming pool, guest house, servants’ quarters and other outbuildings and**

improvements incidental to residential use of the premises, including public utility facilities. No kitchen facilities shall be installed or maintained in any building on any lot other than one kitchen in the principal residence. A garage shall be constructed on every building site before the residence constructed thereon is occupied. All garages shall be maintained as such unless Grantor approves its use for some other purpose.

3. The native growth of said property, including cacti, mesquite and Palo Verde trees, shall not be destroyed or removed from any lot by the lot owner, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, detached single-family dwellings and necessary garage and other outbuildings related to said residence and walled-in service yard and patio, unless written permission is first obtained from the Grantor. No private road or driveway shall be constructed under the authority given until the person or persons desiring to construct such private road or driveway has submitted to the approving agent as mentioned in paragraph 4 hereof two sets of plans showing the location, course and width of said private road or driveway and the approval of the approving agent to the construction of such private road or driveway has been obtained in accordance with the provisions of said paragraph 4 relative to the construction of other improvements upon said property. In the event such growth is removed or destroyed without such approval, Grantor may require the replanting or replacement of same, the cost thereof to be borne by the lot owner.
4. All building plans, specifications and plot plans, including exterior color scheme, for any building, wall or structure to be erected on or moved upon or to any part of said property, the proposed location thereof on any building site and any changes after approval thereof and any remodeling, reconstruction, alterations or additions to any building or other structure on any building site in said property, shall be subject to the approval in writing of an approving agent appointed from time to time by the Grantor as its representative authorized for such purpose. Before beginning the construction of any building, wall, coping or other structure whatsoever, or remodeling, or reconstructing or altering said structure on any building site, the person or persons desiring to erect or construct or modify the same shall submit to the approving agent two complete sets of building plans and specifications, plot plans, including exterior color scheme, for the building, wall, coping or other structure so desired to be erected, constructed or modified and no structure of any kind, the plans, elevations, and specifications of which have not received the written approval of said approving agent and which do not comply fully with such approved plans and specifications, shall be erected, placed or maintained upon any building site. The location of such improvements to be approved by the approving agent shall be staked on the site prior to such approval. Approval of such plans and specifications shall be evidenced by the written endorsement of approving agent made on said plans and specifications, a copy thereof to be delivered by said approving agent to the

owner or owners of the building site upon which said prospective building or other structure is proposed to be erected, or to his agent or representative, prior to beginning said construction. One set of said plans and specifications shall be delivered to the Grantor to be kept permanently by it. No changes or deviations in or from said plans and specifications as approved by said approving agent insofar as the exterior of the proposed structure is concerned, shall be made without the written approval of said approving agent first had. There shall be no changes of exteriors or roofs permitted unless written permission is given by the approving agent. The Grantor shall not be responsible for any structural defects in said plans or specifications, nor in any building or structure erected according to such plans and specifications. Sewage systems and swimming pools are included within the meaning of the term structure.

5. Said approving agent shall have the right and privilege to disapprove any and all plans and specifications submitted to him as aforesaid, for any one or more of the following reasons, to wit:
 - a. If said plans and specifications are not in exact accordance with each and every provision of this Declaration.
 - b. If, in the opinion of said approving agent, the architectural design of the proposed building or other structure as shown by said plans, specifications and plot plans, including exterior color scheme, or the location of any structure, be not in harmony with the general surroundings, or with the buildings or structures, or proposed buildings or structures on any building site subject to these covenants, or if the location or arrangement of any sewage system would endanger or interfere with any public or utility facilities or improvements. The decision of said approving agent upon said subject shall be final.
 - c. That the plans and specifications submitted are not in detail or incomplete.
 - d. That the roof is of either a material or style different than that specified by the approving agent. No white, light colored or reflective roofs shall be permitted without express approval by the approving agent.
 - e. That the plans and specifications do not include a garage.
6. The Grantor shall not be liable in damages to anyone so submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or non-feasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve any such plans; anyone submitting plans to the Grantor

for approval, by the submitting of such plans, and any owner by acquiring title to any of the property covered hereby, waives his claim for any such damages.

7. No lot or portion thereof shall be used in whole or in part for the storage or dumping of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might unreasonably disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.
8. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or on any building erected thereon, other than a name plate of the occupant of any residence upon which his professional title may also be added, and provided no such sign or name plate shall exceed a size of one square foot. Such signs must be of a uniform shape as designated by the approving agent. Provided, however, that permission is hereby granted for the erection and maintenance of not more than one signboard on each building site during the course of construction of a new single-family dwelling and upon its completion, during the course of its initial sale, which signboard shall not exceed five square feet. Such sign shall not include any name other than the contractor's name. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Grantor from erecting, placing or maintaining sign structures and offices as may be determined necessary by Grantor to promote sale and development of lots within the subdivision.
9. All driveways and roads shall be treated and maintained with a minimum of a two-shot bituminous surface treatment to prevent dust.
10. All exterior lights must be so located as not to be directed toward surrounds in properties or public right-of-way.
11. All mail boxes and mail box standards shall be of a uniform shape, size, color, lettering and design as designated by the approving agent and purchased from Grantor at Grantor's cost, in order that the area be strictly uniform in appearance with respect thereto.
12. All cooling and heating equipment shall be concealed. No evaporative cooler, air conditioning equipment, heating equipment, cooling or heating ducts or other equipment shall be placed, installed or maintained on the roof or wall of any building or structure, except that certain solar heating or cooling devices may be placed on roofs which completely conceal the same and are in no way detrimental to other properties within the subdivision. Specific prior written approval by the approving agent or Grantor is required before placement of

such devices. If not obtained, said devices shall be immediately removed by the owner at his expense.

13. Bermuda grass, except that of a variety recognized to be pollen free and approved in writing by the reversionary owner, shall not be grown on any lot.
14. All trees and other vegetation planted on any of said property shall be kept trimmed to a height which will not materially interfere with the principal views from neighboring building sites (over such vegetation) and of surrounding landscapes.
15. No derrick or other structure designed for use in boring for oil or natural gas or radio or television transmission towers or radio or television receiving towers shall be erected, placed or permitted upon any part of said property, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon product or substance be produced or extracted therefrom. Television receiving antennae shall not be included in the meaning of this paragraph; however, such antennae exceeding ten feet above the roof line of the house shall be subject to approval by the approving agent.
16. No elevated tanks of any kind shall be erected, placed or permitted upon any part of said property. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled in sufficiently to conceal them from the view from neighboring or other lots or roads or streets. All clothes lines, equipment and mechanical equipment shall be walled in, and wood piles, storage piles and construction materials shall be concealed at all times, so that none may be viewed from any point beyond the building site on which they are located. Trash or rubbish containers shall remain concealed from view of adjoining lots and shall not be placed along street rights-of-way.
17. Said property and the whole thereof shall be used for single-family dwelling purposes only; no business of any nature nor any so-called home occupations shall be conducted thereon. Rental of any guest house is prohibited; the occupancy thereof shall be limited to members of the owner's family, guests or servants. This shall not be construed as preventing the leasing or renting of an entire lot, together with the improvements thereon.
18. Any single-family dwelling, garage, building, swimming pool, wall, coping or other structure erected or placed upon any such building site and every part thereof, including overhangs, shall be located not closer to any property line of said building site than thirty (30) feet. Any wall or coping may not exceed six (6) feet in height. Any plantings used to form a hedge shall be subject to the same setback requirements and height limitations as apply to a wall or coping. In determining the height of such wall, coping or hedge, the average ground level shall be used. However, exemptions from setback and height

requirements for any structure or hedge may be granted by the approving agent when in its sole judgment such exemptions would not be detrimental to any other lot.

19. Said property shall be subject to any and all rights or privileges which the City of Tucson or the County of Pima, Arizona, may have acquired through dedication or the filing or recording of maps or plats of said property, as authorized by law. No condition, restriction or privilege or act performed hereunder shall be in conflict with any applicable City or County Zoning law. Where the setback requirements set forth herein differ from applicable City of Tucson or County of Pima setback requirements, the more restrictive setback requirements shall prevail.
20. No garage or other building or structure shall be erected or permitted on any building site on said property until the construction and completion of a single-family dwelling thereon, except a single-family dwelling and the necessary outbuildings, garages or other structures related thereto may be simultaneously constructed; provided, however, that nothing herein contained shall be construed to prevent the incorporation and construction of a garage in and as a part of such dwelling house.
21. No temporary house, dwelling, garage, outbuilding, house trailer, commercial vehicle or equipment, construction or like equipment, tent, or other structure shall be placed or erected upon any of said property. Boats, campers, other trailers, recreational and similar vehicles or equipment shall not be placed upon any of said property unless stored within an enclosed structure approved by Grantor. No residence placed or erected on any building site shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed as herein required, nor shall any residence when completed be in any manner occupied until made to comply with the approved plans, and all other conditions and restrictions herein set forth. The work of constructing, altering or remodeling any single-family dwelling, garage, building or other structure on any part of said property shall be prosecuted diligently from the commencement thereof until the completion thereof. Any single-family dwelling, garage, building or other structure damaged by fire or other casualty shall be repaired, replaced or removed within six months from the time of such damage; provided, that the Grantor may extend such time when in Grantor's opinion conditions warrant same.
22. No tennis court shall be constructed or permitted upon any part of said property; however, the approving agent may waive this restriction when in its sole judgment such waiver would not be detrimental to any other lot.
23. No animals, birds or fowl of any kind other than customary domesticated household pets belonging to the household of the premises shall be kept or maintained on any part of the real property subject to this Declaration. In no

event, however, are more than two dogs and/or cats more than ten weeks old permitted. *The Grantor shall have the right to order the removal from any lot of any animals, birds, or fowl which may be objectionable to any of the residents on adjacent property. The owner of such animals, birds or fowl must immediately remove the same from the premises upon receipt of notice from Grantor.*

24. a. All electrical service and telephone lines from the utility company shall be placed underground and no outside electrical and telephone lines shall be placed overhead. This requirement may be waived by the Grantor; provided, however, that one such waiver shall not constitute a waiver as to other lots or lines. Service to the individual building site of such lines shall be taken from the point assigned by the approving agent.

b. Where sewer, if any, water or other public utility facilities have been installed to or near the property line of a particular lot, for the purpose of providing service to that lot, the service connection to service an improvement on that lot shall be made at and from the installed facility or point assigned by the approving agent only.

25. An easement upon and over the ten-foot perimeter of any lot is hereby reserved to the Grantor for utility purposes, with access thereto for installing, repairing and maintaining all facilities necessary for such purposes. The Grantor may assign any portion of such easement rights to any other person or persons for the purposes specified, but all of such utilities shall be installed in such a manner as not to disturb or change existing structures.

26. No motor driven two-wheel or three-wheel vehicles (including but not limited to motorcycles, motor driven bicycles and mini-bikes) shall be kept or operated on any part of the property subject to these restrictions if such vehicle or the operation of such vehicle is disturbing to the owner or owners of any neighboring or nearby property for whose benefit these restrictions are created. Grantor shall have the right to order the removal of and/or cessation of operation of any such vehicles which are objectionable as provided in the preceding sentence. Upon receipt of a written order to remove and/or to cease operation of any such vehicles, the owner of the property upon which such vehicle is located or being operated shall promptly comply with such order.

ARTICLE III

1. Any or all of the provisions, conditions, covenants, restrictions and reservations herein are subject to waiver by the Grantor.
2. Grantor shall have the right, from time to time, to make any changes it desires in these conditions and restrictions which it deems beneficial to the owners of the majority of the lots in Catalina Foothills Estates No. 5 as recorded in Book

14 at page 22 of Maps and Plats in the office of the County Recorder of Pima County, Arizona.

3. In the event that any one or more of the conditions, restrictions and covenants herein set forth and contained or any changes made therein shall be declared for any reason, by any court of competent jurisdiction, to be null and void, such judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of said conditions, restrictions and covenants not so expressly held to be void, but all the remaining conditions, restrictions and covenants not so declared to be void shall continue unimpaired and in full force and effect.
4. In the event it is held by any court of competent jurisdiction that the period specified in paragraph 1 of Article IV is in violation of the rule against perpetuities in Arizona, then and in such event the period specified in said paragraph shall thereupon be automatically modified so that the period specified therein is not more than twenty-one years from the date of this Declaration.

ARTICLE IV

- 1 All of the aforesaid conditions and restrictions shall continue and remain in full force and effect at all times as against the owner of any portion of said property, however his title thereto may be acquired, until the commencement of the calendar year 1989, and shall be automatically continued thereafter for successive periods of ten years each; provided the holders of record title of 51% of the front feet of the building sites covered by that certain Declaration recorded in Docket Book 1459 at page 99 in office of the County Recorder of Pima County, Arizona may be executing and acknowledging an appropriate agreement or agreements in writing for such purpose and recording the same at any time at least one year prior to January 1, 1989, release all of the land covered by this Declaration from any one or more of the restrictions herein or may change or modify any one or more of said restrictions or may release any of the property covered by this Declaration from any one or more of said restrictions, said release, change or modification to be effective January 2, 1989.

During each successive ten year period January 1, 1989, the same percentage of record title holders shall have the same power to release, change or modify said restrictions as to any property then covered by said restrictions by executing, acknowledging and recording an appropriate agreement or agreements at least one year prior to expiration of said ten year period, said release, change or modification to be effective at expiration of said ten year period.

2. When at least seventy-five per cent of the lots covered by the Declaration as recorded in Docket Book 1459 at page 99 in the office of the County Recorder of Pima County, Arizona have been sold by the Grantor, as shown by the record of

the office of the County Recorder of Pima County, Arizona, said Grantor may at its sole option form, or cause to be formed, under the laws of the State of Arizona, a non-profit home owners corporation, providing for the issuance of membership for each building site thereby and herein restricted. When such corporation has been organized by filing and recording the articles of incorporation, Grantor may at its sole option at any time thereafter assign all of its authority to pass on plans and specifications of dwellings and other improvements to be constructed on any building site subject to this Declaration together with any or all of its other rights, including its right to enforce, transfer or assign those rights or any one or more of them at any time and upon such assignment being made by the Grantor to such new corporations such new corporations may at its sole option and at any time thereafter exercise, transfer or assign such rights, or any one or more of them.

3. A breach of any of the conditions, covenants, restrictions and reservations hereby established shall cause the title to the building site upon which said breach occurs to revert to the Grantor, as the owner of such reversionary rights herein provided for and the owner of such reversionary rights shall have the right to immediate re-entry upon such real estate in the event of any such breach. Said provisions, conditions, covenants, restrictions and reservations shall be covenants running with the land and breach of any thereof or the continuance of any such breach may be enjoined or remedied by appropriate proceedings by the owner of such reversionary rights or by any owner of any property for whose benefit these restrictions have been established, but by no other person.
4. An owner who permits the breach of any of these conditions, restrictions and covenants by persons over whom he or she exercises either direct or indirect control shall be given ten (10) days written notice, by first class mail sent to his last known address or personal service, to remedy said breach. If such breach is not remedied as provided, a Notice of Violation of Covenants shall be recorded in the office of the Pima County Recorder and shall be removed subsequent to compliance. This Notice may place a cloud on the title to the property which may limit on owner's ability to convey full legal title to said property. Nothing in this paragraph shall be construed to limit any other remedy available at law or equity for breach of these covenants.
5. The breach of any of the foregoing conditions, covenants, restrictions or reservations or any re-entry by reason of such breach, shall not affect or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any lot or lots or portions of lots described herein, but said conditions, covenants, restrictions and reservations shall be binding upon and effective against any party acquiring title to any such property, whose title thereto or whose grantor's title is or was acquired by foreclosure, trustee's sale or otherwise.
6. Although the provisions, conditions, covenants, restrictions and reservations may be modified or terminated as provided hereto, any and all reversions for breach of

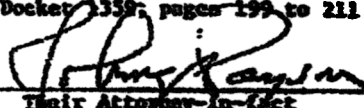
said provisions, conditions, covenants, restrictions and reservations committed or suffered prior to said expiration shall be absolute.

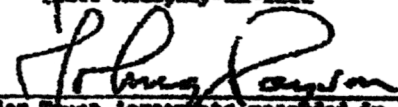
7. In the event Grantor incurs attorney's fees, court costs or other expenses in enforcing Grantor's rights under this Declaration, said costs and expenses shall be paid by the owner, trustee or owner of any interest in any of the property hereinabove described committing or permitting the breach giving rise to such costs and expenses, and the Grantor shall have a lien upon said property to secure payment of all such amounts.
8. No delay or omission on the part of the Grantor or the owner of any property for whose benefit these restrictions have been established in exercising any right, power or remedy herein provided shall be construed as a waiver thereof or acquiescence in any breach hereof; and no right of action shall accrue nor shall any action be brought or maintained by anyone on account of any breach hereof or for imposing restrictions herein which may be unenforceable.

IN WITNESS WHEREOF, we have hereunto subscribed our names the day and year first above written.

ROBERT F. SNOWDEN and JOHN G. PAYSON, as Trustees under Trust Agreements recorded in Docket 1896, pages 143 to 165 inclusive; ROBERT F. SNOWDEN and JOHN G. PAYSON, as Trustees under Trust Agreement recorded in Docket 1896, pages 131 to 142 inclusive, as amended; ROBERT F. SNOWDEN, as Trustee under Trust Agreement recorded in Docket 1359, pages 169 to 174 inclusive; ROBERT C. MURPHY, as Trustee under Trust Agreement recorded in Docket 1359, pages 187 to 192 inclusive; BARRICK W. GROOM, as Trustee under Trust Agreements recorded in Docket 1338, pages 199 to 211 inclusive

By _____


Their Attorney-in-fact


Trustee under Trust Agreements recorded in Docket 4277, pages 692 to 696 inclusive; Docket 4562, pages 389 to 409 inclusive; Docket 1359, pages 212 to 217 inclusive, as amended; Docket 1359, pages 193 to 198 inclusive, as amended; Docket 1359, pages 218 to 224 inclusive, as amended.

RETYPE FOR READABILITY 5 OCTOBER 2005
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