

FLECHA CAIDA RANCH ESTATES NO. 5

NON-OFFICIAL RETYPED VERSION

Original Recorded in Docket 1231, pages 312 - 316

**DECLARATION OF ESTABLISHMENT OF CONDITIONS, RESERVATIONS AND RESTRICTIONS FOR
FLECHA CAIDA RANCH ESTATES NO. 5**

KNOW ALL MEN BY THESE PRESENTS:

That ARIZONA LAND TITLE & TRUST COMPANY, an Arizona corporation, as Trustee, under the provisions of Trust Agreement No. 5243-T, hereinafter referred to as the Owner, being the Owner of all that certain tract of land situated in the County of Pima, State of Arizona, described as follows, to-wit:

ALL of FLECHA CAIDA RANCH ESTATES NO. 5, a subdivision of Pima County, Arizona, according to the Map or Plat thereof of record in the office of the County Recorder of Pima County, Arizona in Book 12 of Maps and Plats at Page 100.

does hereby declare:

That it has established and does hereby establish a general plan for the improvement of said property and does hereby establish the provisions, conditions, restrictions and covenants upon and subject o which all lots and portions of lots in said property shall be improved or sold and conveyed by them as owners thereof; each and all of said provisions, conditions, restrictions and covenants is and are for the benefit of each owner of land in said property or any interest therein and shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors of said property and shall apply to and bind the respective successors in interest of the present owner thereof; said provisions, conditions, restrictions and covenants are and each thereof is imposed upon said land therein as the dominant tenement or tenements, as follows:

1. Said property and the whole thereof shall be used for private residential purposes only; no building or structure intended for or adopted to business purposes and no apartment house, double house, flat building, lodging house, rooming house, hospital, sanitorium or doctor's office, shall be erected, placed, permitted or maintained on said property or on any part thereof.

2. No improvement or structure whatever, other than one first class private dwelling house, patio walls, swimming pool and customary outbuilding, including but not limited to a private stable, garage, carport, servants quarter or guest house, may be erected, placed or maintained on any lot in said property.

3. The native growth of said property shall not be permitted to be destroyed or removed except as approved in writing by the reversionary owner hereinafter named. In the event such growth is removed, except as stated above, the reversionary owner my require the replanting or replacement of same, the cost thereof to be borne by lot owner.

4. No elevated tanks of any kind shall be erected, placed or permitted upon any part of said property, provided, that nothing herein shall prevent the reversionary owner, his heirs an assigns, from erecting, placing or permitting the placing of tanks and other water system apparatus on said property for the use of the water company serving said property. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of fuels must be

buried or walled sufficiently to conceal them from the view from neighboring lots, roads or streets. All clotheslines, garbage cans, equipment, wood piles or storage piles shall be wall in to conceal them from the view of neighboring lots, roads or streets.

5. No building, structure, fence, hedge, outbuilding, etc., shall be located closer than forty feet from any lot or property line.

6. All electrical service and telephone lines from the utility company pole line shall be placed underground and no outside electrical lines shall be placed overhead; provided that this requirement may be waived by the reversionary owner, his heirs and assigns; provided, however, that one such waiver shall not constitute a waiver as to other lots or lines. No exposed or exterior radio transmission and/or receiving antennas shall be erected, placed or maintained on any part of said property; television antennas shall be included in such restriction.

7. One horse will be allowed for every 36,000 square feet of lot area, with a minimum of two horses per lot regardless of lot size. Ponies and like equine animals are included in the term "horses". Two pets of the customary household variety (including birds) may be kept on any lot in said property; provided, however, that the provisions hereof shall not be deemed to permit the keeping of domestic fowl.

8. No lot shall be used in whole or in part for the storage 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 disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

9. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon of this subdivision except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the lot owner on request by the reversionary owner shall be permitted; no other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the reversionary owner, his heirs and assigns only when in his discretion the same is necessary to promote sale and development of the area.

10. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of said property, nor shall any oil, natural gas, petroleum, asphaltum or hydrocarbon products or substance be produced or extracted therefrom.

11. The said first class private dwelling house erected upon any such lot shall be constructed of stucco masonry or burnt adobe or clay brick with either a gravel, shake or mission tile roof; no white or light colored roofs shall be permitted. No evaporative cooler shall be placed, installed or maintained on the roof of any building or structure; all coolers shall be concealed. Rental of any guest house is prohibited, the occupancy thereof being limited to either guests or servants.

12. No residence place or erected on said property shall be occupied in any manner while in the course of construction, or at any time prior to its being fully completed as herein required. No garage or out building shall be placed, erected, or maintained upon any part of said property except for use in connection with a residence already constructed or under construction at the time that such garage or other out building is placed or erected upon the property. Nothing herein shall be construed to prevent the incorporation and construction of a garage as part of such dwelling house.

13. No single family private dwelling house placed or erected upon any such lot 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, the requirements herein and all other conditions and restrictions herein set forth; all construction shall be completed within six months from the start thereof; provided, that the reversionary owner may extend such time when in his opinion conditions warrant same. No temporary house dwelling, garage, outbuilding, trailer-home or other structure shall be placed or erected upon any lot.

14. All plans for the construction of private roads and driveways and all building plans for any building, fence, corral, wall or structure to be erected upon any lot, and the proposed location thereof, and any changes after approval thereof, any remodeling, reconstruction, alteration or addition to any building, road driveway or other structure upon any lot in said property, shall require further the approval in writing of the reversionary owner, their heirs or assigns, or their agent or architect. Before beginning the construction of any road, driveway, building, fence, wall, coping, or other structure whatsoever, or remodeling, reconstructing or altering such road, driveway or structure upon any lot, the person or persons desiring to erect, construct or modify the same shall submit to the reversionary owner, their heirs or assigns, or their agent or architect as directed, two complete sets of road or driveway plans showing the location, course and width of same or two complete sets of building plans and specifications for the building, fence, wall, coping or other structure, as is applicable, 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 reversionary owner, their heirs and assigns, or their agent or architect, and which does not comply fully with such approved plans and specifications, shall be erected, constructed, placed or maintained upon any lot. Approval of such plans and specifications shall be evidenced by the written endorsement made on said plans and specifications, a copy of which shall be delivered to the owner or owners of the lot upon which said prospective building, road, driveway or other structure is contemplated prior to the beginning of said construction. No changes or deviations in or from said plans and specifications as approved shall be made without the written consent being first had. The reversionary owner, their heirs or assigns, their agent or architect shall not be responsible for any structural defects in said plans or specifications or in any building or structure erected according to said plans and specifications. The reversionary owner, their heirs or assigns may waive the setback provisions contained in item numbered five herein.

15. That the reversionary owners, their heirs or assigns, shall determine the location, color, size, design, lettering and all other particulars of all mail or paper delivery boxes and standards and brackets for same in order that the area be strictly uniform in appearance with respect thereto.

16. Nothing herein shall be construed to prevent the reversionary owner, their heirs or assigns, from erecting, placing or maintaining sign structures and offices as may be deemed necessary by him for the operation of the subdivision

17. Drainageways shall conform to the requirements of all lawful public authorities, including the County Engineer of Pima County, State of Arizona, to the full extent of the authority given him by law.

18. Bermuda grass shall not be grown on any lot.

19. No commercial vehicles, construction or like equipment or mobile or stationary trailers of any kind shall be permitted on any lot of the subdivision, unless first approved by reversionary owner and kept in a garage completely enclosed.

20. No lot subject hereof shall be resubdivided.

21. The reversionary owner herein mentioned is John W. Bender and Mary M. Bender, husband and wife, and in the event of the death or inability to act of either of them, his personal representative, heirs and assigns.

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 lot in said property, however, his title thereto may be acquired, until the commencement of the calendar year of 1996, on which date the said conditions and restrictions shall terminate and end, and thereafter be of no further legal or equitable effect of said property or any owner thereof; provided, however, that said conditions and restrictions shall be automatically extended for a period of ten years, and thereafter in successive ten year periods unless on or before the end of one of such extension periods or the base period the owners of a majority of the lots in said subdivision shall by written instrument duly recorded declare a termination of the same. Although the conditions, restrictions and covenants may expire as aforesaid any and all reversions for breach of said conditions or restrictions committed or suffered prior to said expiration shall be absolute.

PROVIDED, that a breach of any of the provisions, conditions, restrictions, and covenants hereby established shall cause the real property upon which said breach occurs to revert to the reversionary owner, their heirs and assigns in interest as the owner of such reversionary rights herein provided for and the owner of such reversionary rights shall have the right of immediate re-entry upon such real property in the event of such breach, and as to each lot owner in said property the said provisions, conditions, restrictions and covenants shall be covenants running with the land and the breach of any thereof or the continuance of any such breach may be enjoined or remedied by appropriate proceedings by the owner of the reversionary rights or by any owner of another lot in said property, but by no other person.

PROVIDED, FURTHER, that should the owner of the reversionary rights employ counsel to enforce any of the foregoing provisions, conditions, restrictions, or covenants, or re-entry by reason of such breach, all costs incurred in enforcing these restrictions, including a reasonable fee for counsel, shall be paid by the owner of such lot or lots, and the owner of such reversionary rights shall have a lien upon such lot or lots to secure payment of all such amounts;

PROVIDED, FURTHER, that the breach of any of the foregoing provisions, conditions, restrictions or covenants or any re-entry by reason of such breach, shall not defeat 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 in said property, but said provisions, conditions, restrictions and covenants shall be binding upon and effective against any such mortgages of trustee or owner thereof, whose title thereto or who grantor's title is or was acquired by foreclosure, trustee's sale or otherwise;

PROVIDED, FURTHER, that no delay or omission on the part of the owner of the reversionary rights or the owners of other lots in said property in exercising any right, power or remedy herein provided, in the event of any breach of the conditions, restrictions, covenants or reservations herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of actions shall accrue nor shall any action be brought or maintained by anyone whatsoever against the owner of the reversionary rights for or on account of their failure to bring any action on account of any breach of said provisions, conditions, restrictions or covenants or for imposing restrictions herein which may be unenforceable by the owner of the reversionary rights.

PROVIDED, FURTHER, that in the event of any one or more of the conditions and restrictions hereinbefore set forth and contained shall be declared for any reason, by a 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 and restrictions not so declared to be void, but all of the remaining restrictions not so expressly held to be void shall continue unimpaired and in full force and effect; and

PROVIDED, FURTHER, that in the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Arizona.

PROVIDED, FURTHER, that said property shall be subject to any and all rights and 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, and provided further, that no conditions, restrictions, or privileges or acts performed shall be in conflict with any County Zoning Ordinance or Law.

ARIZONA LAND TITLE & TRUST COMPANY, an

Arizona Corporation as TRUSTEE No. 5243-T

By: /s/ D. M. Cooper, Trust Officer

Acknowledged on the 8th day of May, 1958 by:

/s/ Jean L. Hinds, Notary Public