



2006-04655

Page 1 of 3

Requested By: SOUTHERN ARIZONA TITLE INSURANCE

Suzanne Sainz

Santa Cruz County Recorder

03-21-2006 12:08 PM Recording Fee \$14.00



0604655

WHEN RECORDED, MAIL TO:

First American Title

1880 E. River Road #120

Tucson, Arizona 85718

Attn: Builder Services Dept.

CERTIFICATE OF FIRST AMENDEDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TUBAC RIO CRUZ, LOTS 1 THROUGH 21

**CERTIFICATE OF FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TUBAC RIO CRUZ, LOTS 1 THROUGH 21**

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Tubac Rio Cruz, Lots 1 through 21 (the "Declaration") was recorded on January 20, 2004, in Docket 1025 at page 510 *et seq.*, office of the Santa Gus County Recorder; and

WHEREAS, the Declarant desires to amend the Declaration, in accordance with Section 10.3 thereof.

NOW, THEREFORE, the Declaration hereby is amended as follows:

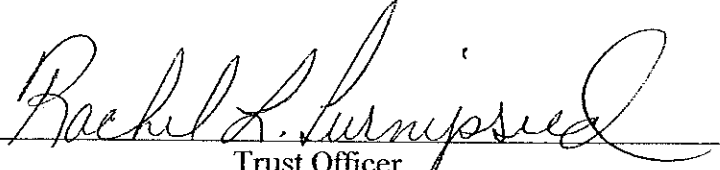
DELETE: Section 5.5, Final of Paragraph 1: ~~The primary residence on a Lot shall a minimum of two thousand (2,000) square feet.~~

REPLACE WITH: The primary residence on a Lot shall be a minimum of two thousand five hundred (2,500) square feet.

Except as specifically amended herein, all terms and conditions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the foregoing amendment to the Declaration shall become effective upon recordation.

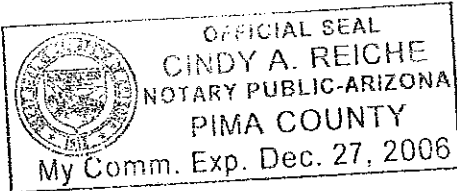
FIRST AMERICAN TITLE INSURANCE COMPANY, a
California corporation, as Trustee under Trust #4940 only and
not otherwise.

By: 
Trust Officer

County of ~~Santa Cruz~~)

~~2003~~ The foregoing instrument was acknowledged before me this 15 day of ~~October~~, 2006, by RACHEL L. TURNIPSEED, Trust Officer for First American Title Insurance Company, a California corporation, as Trustee under Trust #4940 only and not otherwise.

Notary Public



When Recorded, Return to:
Goldschmidt Law Firm
4558 N. First Avenue, Suite 150
Tucson, Arizona 85718-5607



INSTRUMENT #0400704
OFFICIAL RECORDS OF
SANTA CRUZ COUNTY
SUZANNE SAINZ
COUNTY RECORDER
REQUEST OF :
SANTA CRUZ CO. BD. SUPERVISORS
DATE: 01/20/04 TIME: 4.50
FEE: 37.00
DOCK 1025 PAGE 510 PAGES: 28



0400704

DECLARATION

MICROFILMED/INDEXED

OF

COVENANTS, CONDITIONS AND

RESTRICTIONS

FOR

TUBAC RIO CRUZ

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUBAC RIO CRUZ

THIS DECLARATION is made on this 20th day of January, 2004 by FIRST AMERICAN TITLE TRUST, an Arizona corporation, under Trust No. 4940 (herein referred to as "Declarant").

WITNESSETH:

Declarant is the Owner of the following described real property:

Lots 1 through 21 and Common Area as shown on the Plat of Tubac Rio Cruz, a subdivision in Santa Cruz County, Arizona as recorded in Book 4 of Maps and Plats, at Pages 101 through (3 SHEETS) in the records of the Santa Cruz County, Arizona Recorder (the "Property" or "Properties").

Declarant intends by this Declaration to impose upon the Property covenants, condition, restrictions and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration, which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Property, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and shall be enforceable by the Association or by any Lot Owner.

ARTICLE I. DEFINITIONS

Section 1.1. "Articles" means the Articles of Incorporation of the Association, as amended from time to time.

- Section 1.2. "Association" means and refers to Tubac Rio Cruz Homeowners Association, Inc., an Arizona non-profit corporation, its successors and assigns.
- Section 1.3. "Board" means the Board of Directors of the Association.
- Section 1.4. "Bylaws" means the Bylaws of the Association as amended from time to time.
- Section 1.5. "Common Area" means all real property and improvements owned and maintained by the Association.
- Section 1.6. "Community Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Rules, and the Design Guidelines, all as amended from time to time.
- Section 1.7. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Tubac Rio Cruz, as amended from time to time.
- Section 1.8. "Design Guidelines" means the procedures, standards, and guidelines adopted by the Architectural Review Committee pursuant to Article VI, as amended or supplemented from time to time.
- Section 1.9. "Development Period" shall terminate upon conveyance of the last Lot from Declarant to an Owner or such earlier date as Declarant shall state by written notice to the Association.
- Section 1.10. "Improvement" means (a) any residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (c) any road, driveway or parking area; (d) any trees, plants, shrubs, grass or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, and (f) any other structure of any type, kind or nature.
- Section 1.11. "Lot" means a parcel of land within the Property (whether improved or unimproved) intended for independent ownership and use and designated as a "lot" on a Plat and any Improvement situated thereon. The minimum Lot size shall be 4.1 acres, and no Lot shall be subdivided. Additionally, horses or other similar ranch animals shall not be kept on any Lot.
- Section 1.12. "Member" means and refers to every person or entity who holds membership in the Association by virtue of being a record Owner of fee simple title to any portion of the Property.

Section 1.13. "Mortgage" means any mortgage, deed of trust or other security instrument by which a dwelling Lot or any part thereof is encumbered, and the term "First Mortgagee" means the holder of any mortgage under which the interest of any Owner of a Lot is encumbered, and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

Section 1.14. "Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. In the case of Lots subject to an option agreement, the optioner shall be considered the Owner. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation, or a Lessee. Owner shall include a purchaser under a recorded contract for the conveyance of real property subject to the provisions of A.R.S. §33-741 *et seq.* Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contract which is intended to control the rights and obligations of the parties to the executory contract pending the closing of a sale or purchase transaction. In the case of a Lot subject to a deed of trust pursuant to A.R.S. §33-801 *et seq.*, the Trustor shall be deemed to be the Owner. In the case of a Lot, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

Section 1.15. "Person" means a natural person, corporation, business trust, estate, trust, partnership association, limited liability company, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.16. "Plat" means the plat of Tubac Rio Cruz, Lots 1 through 21, and Common Area as shown, recorded in the office of the Santa Cruz County, Arizona Recorder, and all amendments and corrections thereto.

Section 1.17. "Rules" means the rules adopted by the Board pursuant to Section 2.9.

Section 1.18. "Visible from Neighboring Property" means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot or any street within or adjacent to the Property.

ARTICLE II.
THE TUBAC RIO CRUZ HOMEOWNERS ASSOCIATION

- Section 2.1. Association. The affairs of the Association shall be conducted by the Tubac Rio Cruz Homeowners Association, Inc., a non-profit Arizona corporation.
- Section 2.2. Right of Inspection. Members of the Association and the First Mortgagee of any Lot shall have the right, at reasonable times, by appointment, to inspect the books and records of the Association.
- Section 2.3. Right of Notice. Each First Mortgagee shall, upon request to the Association, be entitled to a written notification from the Association of any default in the performance by the Member/Owner of a Lot encumbered by the Mortgage in favor of such Mortgagee of any obligation under the Community Documents which is not cured within sixty (60) days.
- Section 2.4. Management and Service Contracts. Any agreement with the Association for professional management or other services of the Association shall not exceed three (3) years. Any such agreement shall provide for termination by the Association without cause, and without payment of a termination fee on ninety (90) days or less written notice.
- Section 2.5. Maintenance by Association. Except as otherwise stated herein, the Association shall be responsible for the maintenance, repair and replacement of Common Area and any Improvements thereon.
- Section 2.6. Taxes. The Association shall be responsible for any appropriate ad valorem taxes on the Common Area.
- Section 2.7. Insurance. The Association shall be responsible for obtaining and enforcing liability and property damage insurance on Common Area, as needed in the Board's sole discretion.
- Section 2.8. Liability. No member of the Board of Directors of the Association, the Architectural Review Committee, or any other committee of the Association, no officer, and no manager or employee of the Association shall be personally liable to any Member or Lot Owner or to any other person, or the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors (or any Director), Architectural Review Committee or other committee (or member thereof), managing agent (or employee thereof), any representative or employee of the Association or any committee, committee member or officer; provided however, the limitation set forth in this Section

shall not apply to any person who has failed to act in good faith and has engaged in willful or intentional misconduct.

Section 2.9. Rules. The Board may adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Common Area; (b) minimum standards for the maintenance of Lots; or (c) restrictions on the use of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Rules, the provisions of this Declaration shall prevail. The Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 2.10. Suspension of Voting Rights. The Association may suspend the voting rights of any Member for any period during which any Assessment against his or her Lot remains unpaid and delinquent, and for a period when the Board determines that member is in violation of this Declaration, the Bylaws or the Rules of the Association.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Association, and such Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. Voting Rights. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member until termination of the Class B membership, and each Class A Member shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds the interest required for membership, all such persons shall be Members, but the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot. Notwithstanding the above, Class A Members shall be entitled to vote only on the annual budget until termination of the Development Period, at which time full voting rights shall accrue to all Class A Members.

Class B: The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for every one (1) vote held by a Class A Member. The Class B membership shall cease and be

converted to Class A membership on the earlier to occur of (a) termination of the Development Period; or (b) written notice of termination from the Declarant.

ARTICLE IV.
COVENANT FOR ASSESSMENTS

- Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Owner of each Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges; and (b) special assessments, such as assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, reasonable late fees as determined by the Board, costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, late fees, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessments fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
- Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to perform all obligations of the Association or reasonably related thereto, including maintenance of Common Area or easements serving the Association. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis, in regular installments, as the Board of Directors shall determine.
- Section 4.3. Annual Assessments. All assessments may be, from time to time, specifically determined and authorized by the Board of Directors.
- Section 4.4. Computation of Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year, and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year, and a reserve fund for deferred expenditures or deferred maintenance, as the Board shall determine. A copy of the budget showing the amount of the assessment to be levied against Lots for the following year shall be delivered to each Member at the annual meeting. The budget, and any assessments, shall become effective unless disapproved at the meeting by a vote of at least a majority of the total Association votes. In the event the membership disapproves the proposed budget, or if the Board

fails, for any reason, to determine the budget for the succeeding year, then and until such time as the budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4.5. Declarant Assessment Obligation. Notwithstanding anything to the contrary stated herein, the provisions of this Declaration regarding payment of assessments shall not apply to any unoccupied Lot owned by the Declarant. As used herein, "unoccupied" mean a Lot which is not occupied as a residence. In consideration of the foregoing, the Declarant agrees that if, during its Class B membership, the total assessments levied are insufficient to meet the operating expenses of the Association, the Declarant shall pay the deficiency. After Declarant's Class B membership ceases, the Declarant shall not be required to pay a deficiency, and Lots owned by Declarant shall be assessed at twenty-five percent (25%) of the normal assessment rate.

Section 4.6. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction and non-periodic repair or replacement of a capital improvement, or any other necessary expense incidental to the purposes of the Association as determined by the Board of Directors; provided, that any such assessment shall have the assent of two-thirds (2/3) of the votes of all Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.7. One-Time Membership Fee. At the close of escrow of each initial purchase of a Lot from the Declarant, and for all subsequent resales, the Owner shall pay to the Association a one-time membership fee. This will be a non-refundable fee in an amount to be determined by the Board, but not to exceed \$100. This fee will be used to establish an operating fund and reserve account for the benefit of the Association. The one-time membership fee shall be payable in addition to the annual assessment amount to be paid by such Owner as provided in Section 4.1. Notwithstanding anything to the contrary herein, the Declarant shall not be required to pay the one-time membership fee.

Section 4.8. Notice and Quorum for Any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 shall be sent to all Members not less than ten (10) days, nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Membership shall constitute a quorum. If the

required quorum is not present, another meeting may be called subject to the same notice requirement, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.9. Uniform Rate of Assessment. Except as otherwise stated in Section 4 of this Article, both annual and special assessments must be fixed at a uniform rate for all Lots subject to assessment, and may be collected on a monthly basis or prepaid on a quarterly, semiannual or annual basis, as determined by the Board.

Section 4.10. Date of Commencement of Assessment. The assessments provided for herein shall commence as to each Lot on the day following the conveyance of a Lot, on a pro-rata basis for the month, and collected quarterly, semiannually or annually, in advance, as determined by the Board, at close of escrow.

Section 4.11. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and other reasonable monthly late fees as determined by the Board. The Association may bring an action at law against the Owner personally obligated to pay any assessment, or foreclose the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her Lot.

Section 4.12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due, or from the lien thereof. A violation of these restrictive covenants, or any one or more of them, shall not affect the lien of any mortgage now of record, or which may hereafter be placed of record upon Lots or any part thereof.

Section 4.13. Transfer Fees. The Board may authorize transfer fees and disclosure fees for the purpose of deferring the costs of labor and materials used for executing governing documents. The Board and/or managing agent may collect these fees.

ARTICLE V.
ARCHITECTURAL CONTROL

Section 5.1. Architectural Review Committee ("ARC"). Except for Improvements constructed by Declarant, no Improvement of any kind, including landscaping, shall be commenced, erected, or maintained upon a Lot, nor shall any exterior addition to or change or alteration of any Improvement be made upon a Lot until the detailed plans and specifications, showing the nature, kind, shape, style, height, materials, color and location of the same has been submitted to and approved, in writing, by the Architectural Review Committee. The Declarant or agent designated by Declarant shall act as the initial Architectural Review Committee. The Architectural Review Committee may, at its sole discretion, hire the services of experts of its choice who need not be members of the Association. After (a) termination of the Development period, or (b) resignation of Declarant as Architectural Review Committee, the Board of Directors of the Association shall act as the Architectural Review Committee, or may appoint an Architectural Review Committee. The Architectural Review Committee shall have the exclusive right, exercisable in its sole discretion, to promulgate written guidelines, rules, regulations and restrictions (hereinafter "Design Guidelines") concerning any construction, change or alteration to be made on or concerning any Improvement, including landscaping, on Lots. The Architectural Review Committee shall have the right to amend such Design Guidelines so promulgated, or waive any Design Guidelines, provided that in no event shall any waiver be effective unless in writing and signed on behalf of the Architectural Review Committee by a person duly authorized to sign such waiver. Further, no such waiver shall be deemed a waiver of the right to enforce the covenants and restrictions contained in this Declaration, or the right to enforce the Design Guidelines promulgated by the Architectural Review Committee in the future as to others. The Design Guidelines shall carry the same force and effect as this recorded Declaration, and may be enforced through the same procedures as set forth in this Declaration.

Section 5.2. Approval Process. Any Owner or potential purchaser of a Lot may, prior to submitting any plans to the Architectural Review Committee for approval, request in writing of the Committee a copy of the current Design Guidelines. In the event the Board or its designated Architectural Review Committee fails to approve or disapprove submitted plans within thirty (30) days after the plans have been submitted, it shall be presumed that the Board disapproves said plans, and no construction, change or alteration shall be permitted. The plans submitted to the Architectural Review Committee shall be submitted in duplicate and shall be sealed by a registered architect, if

required by the Architectural Review Committee. Application for approval of plans shall be accompanied by the payment of a fee, if designated in the Design Guidelines, for the purpose of defraying expenses of the Architectural Review Committee in connection with the review. Approval of plans and specifications for any Lot shall be in the sole discretion of the Architectural Review Committee.

Section 5.3. Occupancy. No Lot shall be occupied until construction of a residence has been completed pursuant to plans approved by the Architectural Review Committee, and a certificate of occupancy is issued by the appropriate governmental agency.

Section 5.4. Completion of Construction. Construction of a residence on a Lot shall be completed within eighteen (18) months from "start" thereof unless a waiver and extension of time is issued by the Architectural Review Committee. This includes landscaping and revegetating the Lot. For the purposes of this Section, "Start" mean the date of issuance of a building permit.

Section 5.5. Design Guidelines. Each Lot and dwelling Lot to be constructed thereon shall be subject to the Design Guidelines regarding setbacks, building envelopes, exterior color, compatibility with natural topography of Lot, impact on neighboring Lots, and other criteria. The primary residence on a Lot shall a minimum of two thousand (2,000) square feet.

Notwithstanding minimum setback requirements of Santa Cruz County, the Architectural Review Committee shall have the authority to prescribe setback requirements (not less than Santa Cruz County minimums), as the Committee shall deem appropriate for the particular Lot and the residence to be constructed thereon, and the Architectural Review Committee shall also have the right to approve the building site, orientation and location of residence thereon.

Section 5.6. ARC Fees. The Architectural Review Committee shall have the right and privilege to require a fee equal to its actual cost of administration, for review of plans and expenses of expert advice in connection with said review.

Section 5.7. ARC Refundable and Non-Refundable Deposits. The Architectural Review Committee shall have the right to require refundable and non-refundable deposits, in an amount to be determined by the Board. The initial refundable deposit shall be an amount to be determined by the Board. The initial refundable deposit shall be One Thousand Dollars (\$1,000), and the initial non-refundable deposit shall be Five Hundred Dollars (\$500).

Section 5.8. Liability. The Architectural Review Committee and agents employed by it shall not be liable in damages to anyone or to any Owner or Owners of Property subject to this Declaration by reason of mistaken judgment, negligence or nonfeasance 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 Architectural Review Committee, and any person acquiring Ownership in any portion of the Property, waives all claims for any such damages.

Section 5.9. Right to Grant Variances. The Architectural Review Committee or its duly appointed agent for such purpose shall have the right to grant variances as to any of the provisions of the Design Guidelines, or to waive any such provisions as it shall, in its sole discretion, determine upon good cause shown. Any such variance or waiver so granted shall be in writing and shall be made prior to the time that the subject matter set forth in the written variance or waiver is acted upon or implemented unless otherwise expressly stated in such written variance or waiver. Any such variance or waiver so granted as to any particular subject matter shall not constitute a similar or dissimilar variance or waiver as to any other matter affecting the same Lot or any other Lot. Any such variance or waiver set forth in writing by the Architectural Review Committee, or its duly appointed agent, shall be specific to that Lot only, and shall not be applied to any other Lot.

Section 5.10. Nonconforming Architectural Improvements. In the event that, upon the proposed completion date set forth in the construction schedule, the architectural improvements do not conform to the plans submitted to and approved by the Architectural Review Committee, the Committee shall give written notice to the Owner of the Property upon which such architectural improvements have been made. Such notice shall specify the nature of the nonconformity of the architectural improvements and shall grant the Owner a hearing before the Architectural Review Committee.

If, within 60 days of the mailing or delivery of the written notice, the Owner has not corrected the nonconformity of the architectural improvements, then the Architectural Review Committee shall have the right and an easement to direct its agents, employees or contractors to enter upon the said Owner's Property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's architectural improvements into conformity with the plans submitted to and approved by the Architectural Review Committee.

All costs incurred by the Association in the course of the Architectural Review Committee's efforts to bring nonconforming architectural

improvements into conformity with the approved plans, including costs of labor, materials and associated administrative costs reasonably incurred by the Association in connection therewith, shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided for herein.

Section 5.11. Color and Building Materials. Without limiting the foregoing, no color changes or any changes in the original building structure, composition or products shall be permitted without approval of the Architectural Review Committee. All exterior surfaces, when maintained, shall be painted with paint of the same finish, color and hue as the original paint utilized in painting the same by the Declarant, unless the Architectural Review Committee authorizes the use of another paint, in accordance with the provisions herein.

ARTICLE VI. MAINTENANCE

Section 6.1. Landscaping. The general scheme and type of landscaping shall be as provided in the Design Guidelines, which shall contain a list of approved and prohibited plants and trees. No living plants, shrubs or trees shall be placed or maintained upon any unenclosed patio or yard area on the Property, or any Lot, unless a detailed landscaping plan shall have been first approved by the Architectural Review Committee as meeting the criteria for approved and prohibited plants and trees as stated in the Design Guidelines. Lot Owners shall provide and maintain all landscaping on their individual Lots, and shall maintain their Lots free of weeds, debris or other materials which are not in keeping with the Design Guidelines. The Association shall be responsible for maintenance of any landscaping on Common Area. The native growth on the Property, including cacti and native trees, shall not be destroyed or removed from any portion of the Property except as may be necessary for permitted and approved Improvements.

Section 6.2. Removal of Natural Growth. If any natural desert growth is removed or destroyed without the approval of the Architectural Review Committee, and where not necessary for construction of approved Improvements, the Architectural Review Committee may require the replacement of same. If the Owner fails to replace the specified vegetation, the Board of Directors may contract with a licensed contractor to undertake the replacement, and the cost incurred shall be added as an additional assessment to be paid by the responsible Owner, and said cost shall become due with the next assessment

payment, or as otherwise determined by the Architectural Review Committee.

Section 6.3. Association Right of Entry. The Association has the right, at any time, to enter upon and maintain landscaping and natural growth on any Lot when the Board of Directors of the Association determines that such maintenance is required, and the Owner of such Lot has failed to perform the maintenance after written notice and demand from the Association. The cost of such action by the Association may be added to the assessment obligation at the discretion of the Board of Directors, and such cost shall be calculated by adding actual cost of maintenance and repair, plus an additional one-third of such actual cost for administrative costs of the Association.

ARTICLE VII. USE RESTRICTIONS

Section 7.1. Single-Family Use. All Lots are hereby restricted to single-family residential use, and customary accessory improvements or other improvements as the Architectural Review Committee shall deem appropriate. All buildings or structures erected upon the Property shall be of new construction, and no buildings or structures shall be moved from other locations onto any Lot, and no subsequent buildings or structures other than single-family residential Lots shall be built on any Lot. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding or storage shed shall be placed on any Lot as a residence or for any other purpose, either temporarily or permanently, except upon prior written consent of the Architectural Review Committee. No structure of a temporary nature shall be used for living purposes during construction of a residence. No prefabricated residences shall be placed on the Property. Guesthouses shall be allowed upon a Lot with the prior written consent of the Architectural Review Committee and in accordance with the Design Guidelines.

Section 7.2. Business Activities. The following applies with respect to business activities within the Property.

7.2.1. Criteria for Home Business. No trade or business may be conducted in or from any Lot or in or from any residence, except that the Owner, Lessee or other resident of a residence may conduct a business activity within the residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity

does not involve any person conducting business on any Lot may conduct business activities within the Lot so long as (d) such business who does not reside on the Lot or door-to-door solicitation of any other residents within the Property; (e) the existence or operation of the business does not require customers or delivery trucks to visit the Lot; and (f) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the Owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

7.2.2 Pertinent Definitions. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally-accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this Section.

Section 7.3. Rights of Declarant. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant to maintain such signs, construction equipment, and sales facilities on the Property as may be reasonably required, in the sole opinion of the Declarant, for the sale of Lots or homes, including without limitation, a business office, storage area, construction yard, signs, model homes and sales offices. Declarant per shall have the right to assign these rights to any successor or assign.

Section 7.4. Animals and Livestock. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, that dogs, cats or other household pets (in a reasonable number as determined by the Board of Directors of the Association) may be kept, provided they are not kept, bred or maintained for any commercial purposes, and provided they are not, in the opinion of the Board of Directors, a nuisance.

Section 7.5. Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the Property or to the occupants of such other Lots. Woodpiles or other material shall be stored in a manner so as not to be attractive to native rodents, snakes and other animals, and to minimize the

potential danger from fires. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the Property or to its occupants.

Section 7.6. Noise. No exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot so as to create a nuisance in the Property.

Section 7.7. Construction. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and adjacent areas of the Property shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and any other building materials will be piled only in such areas as may be approved by the Architectural Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of Improvements may be kept only in areas approved by the Architectural Review Committee, which may also require screening of the storage areas. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.

Section 7.8. Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 7.9. Signage. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on a Lot (except as stated in Section 7.10), nor shall the Property be used in any way or for any purpose which may endanger the health or safety, or unreasonably disturb the Owner of any Lot or any resident thereof. However, the foregoing covenants shall not apply to the business activities, signs and billboards, or the construction and maintenance of buildings, if any, of the Declarant, its agents and assigns, during the construction and sale period, nor to signs required by legal proceeding under state law. It is herein expressly permitted, for purposes of resale, one sign per Lot, the style and size of which must be approved by the Architectural Committee. No other sign of any kind or design shall be allowed without prior written approval from the Architectural Review Committee.

Section 7.10. Declarant's Signs and Sign Easement. The foregoing covenants shall not apply to the signs and billboards, if any, of the Declarant. Any areas on the Property owned by Declarant may be designated by Declarant as a "sign

easement," and shall be used for purposes of erecting and maintaining such signs as Declarant shall determine, and a valid easement for such purposes is hereby declared to exist for the benefit of Declarant during the Development Period.

Section 7.11. Screening. All equipment, including but not limited to utility meters and heating and cooling equipment, garbage cans, service yards, woodpiles or storage piles, shall be kept screened to the satisfaction of the Architectural Review Committee by adequate planting or approved structural enclosure so as to conceal them from the view of neighboring properties. All rubbish, trash or garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. No rubbish, trash, garbage or landscaping trimmings shall be deposited outside the perimeter wall of any Lot.

Section 7.12. Trash and Recycling Receptacles. In no event shall trash, trash containers or recycling bins be maintained so as to be visible from the street or from any other Lot, except to make such available for trash pickup, if such service is available, and then only for the shortest reasonable time necessary to accomplish collection. If trash and recycling collection services are unavailable, it is Owner's responsibility to properly dispose of such materials.

Section 7.13. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot, unless authorized by the Board of Directors.

Section 7.14. Building Maintenance. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair, and adequately painted or otherwise finished.

Section 7.15. No Roof-Mounted Equipment. No apparatus, including, without limitation, utility meters, evaporative coolers and heating and cooling units, shall be placed on the roof of any Lot. Locations for all such equipment must be approved by the Architectural Review Committee in its sole discretion, and, also at its discretion, any such equipment must be screened from view of neighboring properties.

Section 7.16. Antennas and Satellite Dishes. Without prior written approval of the Architectural Review Committee, no exterior television or radio antennas, satellite dishes or other reception device of any sort shall be placed, allowed

or maintained upon any Lot. Small satellite dishes (~2 foot diameter) for television reception are permitted.

Section 7.17. Mineral Exploration. No Lot or any portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind without prior written approval of the Architectural Review Committee and Board of Directors.

Section 7.18. Recreational Vehicles. Boats, campers, trucks, trailers, motor homes and recreational vehicles shall not be stored or parked upon a Lot unless completely concealed within an enclosed structure that has been approved by the Architectural Review Committee. Under no circumstances shall a boat, camper, etc., be parked on the street. The requirement of this Section shall not include vehicles of an Owner or Owner's guests when said Owner has been issued a temporary waiver in writing by the Board of Directors.

Section 7.19. Garage Doors and Garage Conversions. Garage doors shall be kept closed at all times, except as may be reasonably necessary for ingress, egress and normal day-to-day activities which require the utilization of the garage. Garages may not, under any circumstances, be converted into any type of living quarters (i.e., bedrooms, sun porch, family room, etc.).

Section 7.20. Vehicle Repair. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in the Property. No inoperable vehicle may be stored or parked on any such Lot or street so as to be Visible from Neighboring Property; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or repairs used exclusively in connection with construction as approved by the Architectural Review Committee.

Section 7.21. Parking and Bicycle Storage. On-street parking will be restricted as much as possible. Vehicles of all Owners, tenants, residents, and of their employees, guests and invitees, shall be kept in garages or parked on residential driveways of the Owner wherever and whenever such facilities are sufficient to accommodate the reasonable number of vehicles at a Lot. Guest vehicles which do not fit in garages and driveways shall be parked in front of the Owner's Lot, or as close as possible thereto. Additionally, all bicycles, motorcycles, and so forth shall be stored in garages or backyards so as not to be visible from the street or neighboring properties.

Section 7.22. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Review

Committee, any member of the Board, or any authorized representative of either of them, shall have the right, in their official capacity, to enter upon and inspect any Lot and the improvements thereon, except for the interior portions of any completed residence. This will be done for the purpose of ascertaining compliance with the provisions of this Declaration and Design Guidelines, and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 7.23. Drainageways. Drainageways shall conform to the requirements of all lawful public authorities, including the Santa Cruz County Engineer, to the full extent of the authority given to such agency by law. No established drainage on the Property shall be altered in any way except upon approval of Santa Cruz County and the Architectural Review Committee.

Section 7.24. Re-subdivision. No Lot subject to this Declaration shall be re-subdivided, except as approved by the Architectural Review Committee and Santa Cruz County.

Section 7.25. Utilities. No lines, wires or other devices for the communication, reception or transmission of microwaves or electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot, unless the same shall be contained in conduits or cables installed and maintained underground, or concealed in, under or on buildings or other structures, unless approved by the Architectural Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures as approved by the Architectural Review Committee.

ARTICLE VIII. EASEMENTS

Section 8.1. Blanket Easement. There is created a blanket easement upon, across, over and under the Property for installing, replacing, repairing and maintaining all utilities, including but not limited to, water, sewer, gas, telephone, electric and cable television. By virtue of this easement, it shall be expressly permissible for each individual Owner or public service utility company or municipality to erect and maintain the necessary facilities, connections and other necessary equipment or lines in said Property, and to affix and maintain electrical and/or telephone or cable wires, circuits and conduits, or other connections above, across and under the Lots, including the roof and exterior walls of each Lot. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other

utilities may be installed or relocated on the Property except as initially programmed and approved by the Declarant during the Development Period and approved by the Architectural Review committee.

Section 8.2. Encroachment Easement. All Lots shall be, and are hereby declared to be, subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by Declarant, and also by any other original builder which has caused the construction in accordance with plans approved by the Architectural Review Committee, and such action, in the sole opinion of Declarant, is de minimis in nature. A valid easement for said encroachments and for the maintenance of the same, so long as they stand, shall and does exist. Declarant shall have the right to record any notice of such easement as Declarant shall determine.

ARTICLE IX. ENFORCEMENT

Section 9.1. Right of Association to Enforce. The Association or any Member, has the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. This shall include enforcement of Rules and Regulations promulgated by the Association to carry out its purposes and duties under this Declaration. The prevailing party in any Court action shall be awarded reasonable attorneys' fees and costs. Attorney fees for lien enforcement or assessment collection shall be in accordance with Article IV.

9.1.1. Waiver. No delay or omission on the part of the Association in exercising its right to enforcement of this Declaration hereunder shall be construed as a waiver of any breach of any of the restrictions and covenants contained herein or acquiescence in any breach hereof and no right of action shall accrue against the Board of Directors, the Association or any member for their neglect or refusal to exercise such right of enforcement.

9.1.2. Protection of Mortgagee. No breach of the foregoing provisions, conditions, restrictions or covenants shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of the Properties. Such provisions, conditions, restrictions and covenants shall be enforceable against any portion of the Properties acquired by any person through foreclosure for any breach occurring after such acquisition.

Section 9.2. Fines and Penalties. If any Owner, his/her family, or any licensee, invitee, tenant or lessee violates the Community Documents, the Board may levy a

fine upon the Owner of the Dwelling Unit for each violation and/or may suspend the right of such person to use the Common Elements, under such conditions as the Board may specify. However, for each day a violation continues after written notice to cease has been mailed, it shall be considered a separate violation and subject to the imposition of the fine. The Board shall establish a procedure by which it imposes such fines, including the right to a hearing if requested by the Owner. Any fines which remain unpaid for a period of ten (10) days after notice to pay, shall become a lien on the Owner's Unit. Any fine which is not timely paid will be collected in the same manner as delinquent assessments, including the imposition of late fees and interest.

Section 9.3. Enforcement Procedures. Before a fine or penalty is levied, the following enforcement procedure will be followed:

9.3.1. Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation and, (c) if the violation is a continuing one, a time period of not less than ten (10) days, unless the violation constitutes a safety or health hazard, or if the violation is not a continuing one, a statement that any further violation of the same rule may result in the imposition of sanctions after notice and hearing.

9.3.2. Continuing Violations. For the purposes of this Section, each day a violation continues after notice to cease has been given by the Board to the Owner shall constitute a separate violation.

9.3.3. Notice. Within one (1) month of such notice, if the violations continue past the period allowed in the notice for abatement without penalty, or if the same rule is subsequently violated, the Board shall serve the violator with written notice of a hearing to be held by the Board in executive session. Service may be made personally or by first class mail to the violator's address of record. The notice shall contain: (A) the nature of the alleged violation; (B) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of notice; (c) an invitation to attend the hearing and produce any statement, evidence and witnesses on his or her behalf; and (D) the proposed sanctions to be imposed, which may include the imposition of a fine of not more than One Hundred and Fifty and no/100 Dollars (\$150.00) for any one violation. Any fine or penalty imposed hereunder shall be collectible like an assessment, pursuant to Article IV of this Declaration.

9.3.4 Hearing. The hearing shall be held in executive session of the Board of Directors, pursuant to the aforesaid notice, thereby affording the Member

a reasonable opportunity to be heard. Protocol of the hearing will be set by the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered into the minutes by the officer or director who delivered such notice. If the Member does not appear at the hearing, the Board will presume the validity of the Notice of violation and levy a fine or penalty.

Section 9.4. Notice of Violation. The Association shall have the right to record a written notice of a violation by any Lot Owner of any restriction or provision of the Community Documents. The notice shall be executed and acknowledged by an officer or agent of the Association and shall contain substantially the following information: (a) the name of the Lot Owner; (b) the legal description of the Unit against which the notice is being recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being recorded by the Association pursuant to this Declaration; and (E) a statement of the specific steps which must be taken by the Lot Owner to cure the violation. Recordation of a notice of violation shall serve as a notice to the Lot Owner and to any subsequent purchaser of the Unit that there is a violation of the provisions of the Community Documents. If, after the recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the actual violation referred to in the notice has been cured, the Association shall record a notice of compliance which shall state the legal description of the Unit against which the notice of violation was recorded, the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured, or if such be the case, that it did not exist.

Section 9.5. No Obligation to Enforce. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that because of considerations pertaining to the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Community Documents in the future.

Section 9.6. Cumulative Rights and Remedies. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and

the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

Section 9.7. Violation of Law. Each and every provision of this Declaration, as amended from time to time, is subject to any and all applicable federal, state and local governmental rules and regulations, ordinances and subdivision regulations. Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the subdivision is declared to be a violation of the Community Documents and subject to any and all enforcement procedures set forth in such Community Documents.

Section 9.8. Attorney Fees. In the event the Association or any Lot Owner employs an attorney or attorneys to enforce compliance with or recover damages for any violation or noncompliance with the Community Documents, the prevailing party in any such action shall be entitled to recover from the other party his reasonable attorney's fees incurred in the action. Attorney fees for lien enforcement or assessment collection shall be in accordance with Article IV.

ARTICLE X. GENERAL PROVISIONS

Section 10.1. Enforcement. The Association, or any Owner, shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding the above, if there is a dispute as to enforcement of or interpretation of any portion of this Declaration during the Development Period, the Declarant, or its designated agent, shall have sole authority to issue a decision as to the dispute or interpretation. Any such decision shall be final and binding on all Owners of the Property.

Section 10.2. Severability. Invalidity of any one of these covenants or restrictions by judgment of Court Order shall in no way affect any other provision which shall remain in full force and effect.

Section 10.3. Revocation and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns. This Declaration shall not be revoked unless the Owners of seventy-

five percent (75%) of all Lots consent and agree to such revocation by written instrument duly recorded. This Declaration may be amended at any time by the affirmative vote of at least sixty-seven percent (67%) of the Lot Owners. Any amendment adopted by the Lot Owners pursuant to this Section shall be signed by the President or Vice President of the Association and shall become effective upon recordation with the Santa Cruz County Recorder. Any such amendment shall certify that the amendment has been approved as required by this Section.

Notwithstanding the foregoing amendment procedure: (a) the Declarant expressly reserves the right to amend this Declaration at any time prior to the termination of the Development Period, and any such amendment shall be effective whether it applies uniformly or non-uniformly to the Property or any Lot; (b) no amendment shall be effective during the Development Period unless signed by the Declarant; and (c) any such amendment signed by Declarant shall be effective whether or not such amendment shall impact any prior vested right of interest, whether from ownership of any portion of the Property or otherwise.

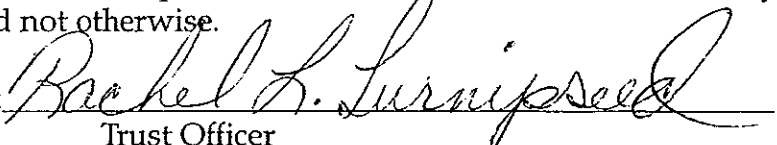
Section 10.4. Disclosure and Transfer Fees. The Board may authorize transfer fees and disclosure fees for the purpose of deferring the costs of labor and materials required to duplicate and distribute governing documents and to process title information. The Board and/or managing agent may collect these fees.

Section 10.5. Interpretation. If there is any conflict among or between this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the Design Guidelines, or the Rules and Regulations of the Association, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such Bylaws, then to the Design Guidelines, and then to such Rules and Regulations.

Section 10.6. Onsite Wastewater Systems. Operation and maintenance of individual onsite wastewater systems shall be the responsibility of respective lot owners, in accordance with A.R.S. 18-5-408.

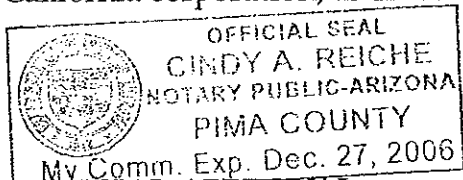
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 20th day of January, 2004.

FIRST AMERICAN TITLE INSURANCE COMPANY, a
California Corporation, as Trustee under Trust #4940 only
and not otherwise.

By: 
Trust Officer

STATE OF ARIZONA)
 : ss.
County of Santa Cruz)

The foregoing instrument was acknowledged before me this 20th day of January, 2004, by Rachel L. Turnipseed, Trust Officer for First American Title Insurance Company, a California corporation, as Trustee under Trust #4940 only and not otherwise.



Cindy A. Reiche
Notary Public

BENEFICIAL APPROVAL.
TUBAC RIO CRUZ L.L.C.

Thomas H. Driscoll
Thomas H. Driscoll

Paul K. Kintner III
Paul K. Kintner III

Paragraph for C C & R's

- . Operation and Maintenance of Individual Onsite Wastewater Systems shall be the responsibility of respective lot owners, in accordance with A.A.R-18-5-408.**