

DECLARATION OF ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS FOR
TUBAC VALLEY COUNTRY CLUB ESTATES

KNOW ALL MEN BY THESE PRESENTS:

That TUBAC VALLEY COUNTRY CLUB, INC., an Arizona corporation, and TUBAC VALLEY PROPERTY OWNERS' ASSOCIATION, an Arizona corporation, being the owners of the following described premises:

TUBAC VALLEY COUNTRY CLUB ESTATES, a Subdivision of parts of Sections 5, 6, 7 and 8, Township 21 South, Range 13 East, Gila and Salt River Base and Meridian, Santa Cruz County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Santa Cruz County, Arizona, in Book 2 of Maps and Plats at Page 62 thereof.

DO HEREBY DECLARE AND ESTABLISH the following general plan for the improvement, development, ownership, use and sale of said property and each and every part thereof, as above described, and the manner, provisions, conditions, restrictions and covenants upon and subject to which said property and each and every lot thereof shall henceforth be used, improved, occupied, owned, sold and conveyed, which plan includes the provisions, restrictions, covenants and servitudes created in the Articles of Incorporation of Tubac Valley Property Owners' Association, of record in the office of the County Recorder of Santa Cruz County, Arizona, in Book 4 of Arts at Page 446 thereof, which are hereby incorporated by reference in this declaration, and all of which shall be binding upon and inure to the benefit of the owner and future owners of said lots and all thereof and all of which shall apply to and bind the respective successors in interest of the present owners and future owners of said lots and all thereof, and all of which provisions, conditions, restrictions, and covenants are, and each of them is, impressed and imposed upon each and every parcel of said property as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements, as follows, to-wit:

SECTION 1 - GENERAL STATE OF INTENT OF RESTRICTIONS

1. It is the intent of this declaration to establish a plan of development which will produce in Tubac Valley Country Club Estates a community of homes in harmony with Mexican and Spanish Colonial architectural style located in a natural unspoiled setting in the Tubac Valley, together with the amenities ordinarily associated with the highest type of suburban residential development.

2. The intent of this Declaration as expressed in Paragraph 1 of this Section shall serve as a guide in the interpretation of this Declaration and all such interpretation shall be consistent with this statement of intent.

SECTION 2 - SUPERVISING ARCHITECT, ADMINISTRATION COMMITTEE

1. The Tubac Valley Country Club, Inc., or its successors, shall appoint a Supervising Architect who shall be a registered architect. The term of service of the Supervising Architect shall be at the pleasure of the Tubac Valley Country Club, Inc.

It shall be the duty of the Supervising Architect to review all drawings, specifications and color schemes submitted as hereinafter provided and to approve or disapprove same on the basis of their compliance or non-compliance with the provisions of this Declaration. The Supervising Architect shall also perform such other duties as are specifically set forth in this Declaration. The decisions of the Supervising Architect shall be final.

2. The Tubac Valley Country Club, Inc., or its successors, shall appoint an Architectural Committee consisting of not less than three nor more than seven persons, each of whom shall be a member of the Tubac Valley Country Club. It shall be the duty of the Architectural Committee to enforce all decisions of the Supervising Architect and to enforce all other provisions of this declaration which are not specifically the responsibility of the Supervising Architect. Said Committee shall hear complaints, gather evidence, hold hearings, enforce compliance, and in general exercise the rights of the Undersigned in the enforcement of the provisions of this Declaration. The Architectural Committee shall also perform such other duties as are specifically set forth in this Declaration.

SECTION 3 - DEFINITIONS

1. Architect or Registered Architect shall mean a person who is registered as an Architect in the State of Arizona, in accordance with the Code of the State Board of Technical Registration for Architects, Engineers, Geologists, Land Surveyors and Assayers (Arizona Revised Statutes, Title 32) as the same may be amended from time to time.

2. Buildable Area shall mean that portion of any lot upon which a building may be built as defined in Section 4, Paragraph 13.

3. Building shall mean any structure which has a roof or other covering supported by walls or columns.

4. Outside Wall shall mean any wall which is visible from neighboring lots, streets, or fairways, and which is not a wall of any building.

5. Plans shall mean drawings, plot plan, specifications, and color schedule as more specifically described in Section 8.

6. Site Improvement shall mean any wall (except an outside wall), walkway, terrace, paving, planting box, bench, or any other structure (except a building) which is constructed for the purpose of increasing the pleasant and beneficial use of any lot.

7. Structure shall mean any constructed thing which is attached to or has location on the ground.

SECTION 4 - USES PERMITTED AND PROHIBITED

1. Each and every lot shall be used for single, private, one-family residence purposes only, and no structure whatever shall be placed or maintained thereon other than one first-class, private, one-family residence, together with garage, cabana, ramada, covered walkway, storage building, building housing necessary equipment, terrace, wall, fence or archway.

Nothing contained herein shall be so construed as to prevent the construction on any lot of one guest house, either attached to or separated from the main residence already constructed thereon provided said guest house shall be for and used only for non-paying guests and constructed so as to conform architecturally to the main building. This shall be the only detached building allowed.

2. No business of any nature shall be conducted on any lot, and no structure intended or adapted for business purposes, and no apartment house, double house, flat building, lodging house, rooming house, hotel, hospital, or sanitarium shall be erected, placed, permitted, or maintained on any lot. "Business" for the purpose of this Declaration shall include all professional use.

3. No portion of any lot, building, or improvement may be rented or leased to others by the owner; however, nothing in this paragraph shall be construed as preventing the renting or leasing of an entire lot, together with its improvements.

4. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected upon any part of said property, and no residence placed or erected on any lot shall be occupied in any manner at any time, prior to its being fully completed in accordance with approved drawings (as hereinafter provided) nor shall any residence, when completed, be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth, provided, however, that during the actual construction or alteration of a building on any lot, a temporary building for storage of materials or equipment may be erected and maintained for a period not exceeding twelve months by the person doing such work. The work of constructing, altering, or remodeling any building on any lot shall be prosecuted diligently from commencement until the completion thereof.

No work or construction of any kind shall take place on any lot in advance of the start of construction of the principal residence building.

5. No building or structure of any nature shall be moved from outside said property to any lot without the specific approval of the Supervising Architect and without meeting all other requirements of this Declaration, including the requirement for approval of drawings, as hereinafter provided.

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

7. No billboards, advertising signs, or other signs of any character shall be erected, placed, permitted, or maintained on any lot or on any building or structure erected thereon, except that one sign not exceeding two square feet, bearing only the name and address of the occupant, may be erected on each lot. The design of such sign shall be subject to the approval of the Supervising Architect. Further exception is made for one sign not exceeding five square feet advertising that a completed residence is for sale.

8. The location of all tanks, coolers, air-conditioning equipment, other equipment, wood piles, stored materials of any kind, clothes lines, or service for utility areas shall be walled in or kept screened by other approved means in such a manner as to conceal them permanently from the view of the neighboring lots, streets or golf course, subject to approval of the Supervising Architect. No elevated tanks of any kind shall be erected, placed or permitted upon any part of said property. Specific exception is made for television antennas provided they are reasonably inconspicuous and have been approved by the Supervising Architect.

9. Every house trailer, camping trailer, other trailer, boat, truck, or similar thing which is stored on any lot shall be kept under roof and walled in sufficiently to conceal it from the view of roads, streets, or neighboring lots. No house trailer or other vehicle intended for human occupancy shall be so occupied while located on any lot.

10. 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 otherwise. No noxious or offensive activity or condition shall be permitted upon any lot nor shall anything be done, placed or stored thereon which may be or become an annoyance or nuisance to the neighborhood or occasion any noise or odor which will disturb the peace, quiet, comfort, or serenity of the occupants of surrounding properties.

11. No livestock or poultry shall be kept on the premises but nothing herein shall be construed as prohibiting the keeping of ordinary domestic pets upon said property.

12. No building, wall, or other structure of any kind, except as provided in Section 6 of this Declaration, shall be constructed on any road or easement shown on plat of said subdivision of record in the Office of the County Recorder of Santa Cruz County, Arizona.

13. Except as provided in Section 6 of this Declaration, no building or other structure shall be constructed on any lot outside of the "Building Setback Line" as the same is shown on the plat of said subdivision of record in the Office of the County Recorder of Santa Cruz County, Arizona; nor shall any building or other structure be constructed on any lot within twenty-five feet of any lot line for which no "Building Setback Line" is shown on said plat.

14. No lot shall be resubdivided except for the purpose of combining each resubdivided portion with not less than one full adjoining lot under a single ownership. Such lot and portions of lots shall, for the purpose of this Declaration, be considered a single lot.

Two or more adjoining lots under single ownership may, for the purposes of this Declaration, be considered a single lot, at the discretion of the owner, provided no construction has taken place on the lots which would not conform to the requirements of this Declaration when such lots are considered as a single lot.

The combining of lots or portions of lots under the provisions of this Paragraph shall not operate to void the "Building Setback Lines" shown on the plat of record.

Once a lot has been combined with another lot or portion of a lot, the parcel thus created shall never be divided or made smaller without the approval of the Supervising Architect.

15. Anything to the contrary notwithstanding, Parcels C, D, and E as shown on the plat of record shall be forever set aside for use only for park purposes for the benefit of the residents of Tubac Valley Country Club Estates, and at no time shall any building or structure be constructed thereon for any purpose not consistent with the intended use of these parcels as expressed herein.

16. No construction work of any kind shall commence on any lot until all requirements of this Declaration for approval of plans have been met.

SECTION 5 - REQUIREMENTS FOR BUILDING

1. Every building, wall or structure constructed on any lot shall be of a design which is in close harmony with Mexican or Spanish Colonial architectural style. The design of every such building, wall or structure shall also be in harmony with the site and with adjoining structures. The Supervising Architect shall be the sole judge of whether or not a proposed design complies with the intent of this Paragraph. All buildings on one lot shall be of similar design, materials and construction.

2. Every residence shall contain not less than one thousand two hundred gross square feet of enclosed living space exclusive of any garage, cabana, storage building, equipment building or any detached building or structure.

3. All regularly habitable spaces, exclusive of guest houses, shall be placed under a common roof.

4. No residence shall have its highest floor level more than two feet above the highest natural grade elevation within the buildable area of any lot as set forth in Section 4, Paragraph 13.

5. Each building shall be of the following materials: burned adobe, natural adobe with bitumen added, mortar-washed adobe, mortar-washed brick, matched unpainted used brick, or cement stucco on masonry.

6. All porches, carports, ramadas, breezeways or similar structures which do not fall within the principal enclosing walls of a building shall comply with other provisions of this Section.

7. Every garage opening visible from neighboring lots, roads, or golf course shall be equipped with full-closing door which shall be kept closed except when in active use. This requirement shall not apply to carports so long as the general requirements of Section 4, Paragraph 10 are met. The interior of any garage or other space which is visible from neighboring lots, roads, or golf course shall be finished. Such spaces shall not be used for storage unless the stored items are kept in closed cabinets or otherwise suitably concealed.

8. No paint colors other than adobe, natural lime, white or pastels shall be used on the exterior of any building. Exposed timber may be painted, glazed, or stained in any approved color. The foregoing limitations on color shall not apply to entrance doors or to door and window frames. The Supervising Architect shall be the sole judge of the suitability of the exact hue of those colors which are limited by this Paragraph.

SECTION 6 - REQUIREMENTS FOR EXTERIOR APPURTENANCES

1. An outside wall may be constructed on any location on any lot which is not within an easement shown on the plat of record. No outside wall or other structure shall be constructed in a manner which will interfere with the natural surface drainage outside the buildable area of any lot. Except for gateways and chimneys, no part of any outside wall shall be higher than seven feet above natural grade. Special exceptions of height may be made by the Supervising Architect at his own discretion for walls which traverse terrain where the natural slope is greater than four inches per foot measured parallel to the wall. Every outside wall shall be built of the approved materials listed in Paragraph 5 of Section 5 hereof. Gates shall be of timber or wrought iron.
2. Signs shall be constructed only as provided in Section 4, Paragraph 7, and shall be constructed only of wood, brass, copper, steel, or one of the outside wall materials listed in Paragraph 1 of this Section.
3. Mailboxes shall be so designed as to be in harmony with the site and the general surroundings. The design shall be subject to the approval of the Supervising Architect. Materials used shall be limited to those listed for signs in Paragraph 2 of this Section.
4. All utility services (including electrical power, telephone, gas, sewer, and water) shall be run underground from the service connection to each building site. All gas meters, electric meters, electrical service equipment, and similar devices shall be so located as to be obscured from any neighboring lot, road, or golf course fairway, green or tee.
5. No person, utility, agency, company, or corporation shall construct, place or install on any easement, street, or road, any building, structure, transformer, equipment, pole, curb, sidewalk, sign, or device of any kind (except as specifically provided in this Declaration) unless and until authorization has first been obtained in writing from the Architectural Committee. The design and color of any such work shall be subject to the approval of the Supervising Architect. Such work shall be obscured from view if the Supervising Architect so specifies. All such work shall be designed and constructed with due regard for maintenance of drainageways.
6. Such exterior appurtenances shall be painted as approved by the Supervising Architect.
7. All driveways shall be surfaced to prevent dust and be so maintained.

SECTION 7 - PLANTINGS AND LOT DEVELOPMENT

1. The native growth on any property shall not be destroyed, removed, or disturbed in any way prior to the start of construction of work which meets all the requirements of this Declaration, and has been formally approved by the Supervising Architect.

2. No native growth shall at any time be removed from outside the buildable area of any lot except for the construction and maintenance of roads, driveways, parking areas, walkways, utilities, other approved construction, drainageways, and the improvement of such areas as are totally enclosed by an outside wall. Exception is made for Lots 1 - 36, inclusive, 175 - 191 inclusive, 203-215 inclusive, in that all native growth between the rear of the principal residence and the lot line adjoining the golf course may be removed provided the area is attractively landscaped and maintained and if it is not so maintained the undersigned, or their successors, shall have the right to so maintain it at the owner's expense.

3. No planting of any kind shall be done in roads, streets or easements except as specifically authorized by the Architectural Committee. Planting on that part of any lot where native growth is required to be maintained by Paragraph 2 of this Section shall be in harmony with the nature of the native desert growth.

4. Anything to the contrary notwithstanding, property owners may remove native growth which is dead, unhealthy, detrimental to the remaining growth, or otherwise undesirable for the maintenance of a healthy and attractive desert growth. However, nothing shall be done which will change the general character of those areas where native growth is required to be maintained.

SECTION 8 - REQUIREMENTS FOR APPROVALS

1. The plans for every residence, building, ramada, cabana, breezeway or other structure which is roofed or enclosed shall be prepared by a registered architect.

2. Preliminary dimensioned scale drawings showing design and layout shall be submitted for approval before completion of working drawings, details, and specifications. After approval of the design and intent is obtained final plans, including plot plan, shall then be completed and submitted for approval prior to construction.

3. Plans required for approval shall be submitted in duplicate to the Supervising Architect, who shall review them and indicate his approval or disapproval in writing within twenty days. One copy of the plans and the written approval or disapproval shall be returned to the applicant and the other copy shall be retained in the files of Tubac Valley Country Club, Inc.

4. The first submittal of plans for approval for any lot shall be accompanied by a fee payable to Tubac Valley Country Club, Inc. No further fee will be required for subsequent submittals for the same lot.

5. The undersigned or the Supervising Architect or the Architectural Committee by their approval or disapproval of plans shall incur no liability for errors or mistakes in judgment, failure to perform contracts, or for any other cause. Any owner by acquiring title to any lot or anyone by submitting plans for approval waives claim for any such damages sustained.

SECTION 9 - GENERAL PROVISIONS

1. The undersigned hereby reserve the right to remove sand and gravel from any and all easements upon said property for road construction, maintenance and repairs and an easement over, upon and through said easements for the purpose of ingress and egress to obtain such sand and gravel is hereby reserved to the undersigned.

2. At such time as any owner or owners of any lot or lots shall propose to sell, assign, transfer or otherwise convey the same to another owner, he shall submit to the undersigned a statement of intention to sell. The statement shall be in writing and shall be mailed by certified mail to each of the undersigned and shall contain the names and addresses of the proposed seller and purchaser together with a statement of the price and terms of the proposed conveyance or assignment. The said statement shall be construed as an option to the undersigned, their successors or assigns, and they or either or them shall have the right to exercise the option within ten days after the date of mailing of said statement by mailing to the seller at the address shown thereon a written notice of exercise of the option and to purchase the interest of the selling party at the same price and on the same terms as set forth in said statement. A person who desires to convey and assign any such lot or lots and who have given notice thereof pursuant to the foregoing may make such conveyance, sale or assignment only if the undersigned, their successors or assigns have not exercised their option to purchase within the said ten day period and such party may then make his conveyance and assignment only to the same person and on the same terms and at the same price as was specified in said statement.

3. No lot or lots within such property shall be sold, transferred, assigned or conveyed unless and until the purchaser, transferee, assignee or grantee shall have agreed in writing to accept the rights, duties, obligations and privileges of membership in Tubac Valley Property Owners' Association and the failure of any lot owner or owners to maintain an active membership in good standing in said association shall constitute a breach of the provisions hereof and entitle the undersigned, their successors or assigns, or any lot owner or owners of said property to enforce the provisions of these restrictions in connection with such breach as herein set out.

4. 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 or lots in said property, however, his title thereto may be acquired until January 1st, 1990, on which date the said conditions and restrictions shall terminate and end and thereafter be of no further legal or equitable effect on 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 land in said subdivision shall be written instrument duly recorded declare a termination of the same. Although the conditions, restrictions and covenants may expire as aforesaid, any and all right to suit at law or in equity for breach of said conditions or restrictions committed or suffered prior to said expiration shall be absolute.

5. Upon a breach of any of the provisions, conditions, restrictions or covenants hereby established, the undersigned, their successors or assigns or any lot owner in said property, may enjoin or remedy by other appropriate proceedings at law or equity the breach of any of the conditions, provisions, restrictions or covenants herein contained and running with the land or any continuance of such breach of the same.

6. Should the undersigned, their successors or assigns, or any individual lot owner employ counsel to enforce any of the foregoing provisions, restrictions, conditions or covenants, by reason of any breach of the same, all costs incurred in enforcing these restrictions, including a reasonable attorney's fee for said counsel, shall be paid by the owner of such lot or lots committing said breach.

7. The breach of any of the foregoing provisions, conditions, restrictions, or covenants 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, restrictions, conditions and covenants shall be binding and effective against any such mortgagee or trustee or owner thereof whose title thereto or whose grantor's title is or was acquired by foreclosure, trustee's sale or otherwise.

8. The delay or omission on the part of the undersigned, their successors or assigns or the owners of any other lots in said property, in exercising any rights, power or remedies herein provided in the event of the breach of any of the provisions, conditions, restrictions, covenants or reservations herein contained shall not be construed as a waiver thereof or acquiescence therein and no right of action shall accrue nor shall any action be brought or maintained by any one whatsoever against the undersigned, their successors or assigns or the owner or owners of any individual lot on account of their failure to bring any action on account of any breach of said provisions, conditions, restrictions, or covenants therefore imposing restrictions herein which may be enforceable by the undersigned, their successors or assigns or the owner of any lot or lots herein.

9. In the event 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 effect, modify, change, abrogate or nullify any of said conditions and restrictions not so specifically declared to be void but all remaining restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

10. In the event the provisions hereof are declared void by any court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then and in that event said term 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.

The above restrictions were recorded on August 15, 1960, Docket No. 24, Pages 575 through 582, by the Santa Cruz County Recorder.

**FIRST AMENDMENT TO DECLARATION OF ESTABLISHMENT
OF CONDITIONS AND RESTRICTIONS FOR
TUBAC VALLEY COUNTRY CLUB ESTATES**

WHEREAS, the Declaration of Establishment of Conditions and Restrictions for Tubac Valley Country Club Estates (the "Declaration") was recorded on August 15, 1960 in Docket 24, pages 575-572, office of the Santa Cruz County Recorder; and

WHEREAS, the Declaration contains no provision setting forth lot owners' rights to amend the Declaration; and

WHEREAS, the Restatement Third, Property (Servitudes) §6.10(1)(b) provides that, unless the Declaration specifies a different number, owners in a common-interest community, like Tubac Valley Country Club Estates, have the power to amend the Declaration if the amendment is approved by lot owners holding two-thirds (2/3rds) of the voting power in the subdivision; and

WHEREAS, Arizona courts generally follow the Restatement whenever applicable; and

WHEREAS, owners of at least two-thirds (2/3rds) of the lots in Tubac Valley Country Club Estates approved the addition of an amendment provision to the Declaration.

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

ADD PARAGRAPH 4(A):

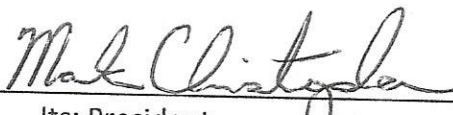
This Declaration may be amended at any time by the affirmative vote of owners of at least two-thirds (2/3rds) of the lots, casting one vote per lot. Any amendment to this Declaration shall be evidenced by a written document signed by the President and Secretary of the Association, attesting that the requisite number of owners consented to such amendment. The Amendment shall become effective when filed with the Santa Cruz County Recorder's Office.

IN WITNESS WHEREOF, the undersigned certify that lot owners holding at least 2/3rds of the voting power in Tubac Valley Country Club Estates approved the foregoing First Amendment to Declaration of Establishment of Conditions and Restrictions for Tubac Valley Country Club Estates on

July 2, 2018.

TUBAC VALLEY PROPERTY OWNERS' ASSOCIATION,
an Arizona non-profit corporation

By:


Its: President