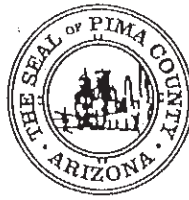


F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: DSC  
DEPUTY RECORDER  
1212 RO0C



DOCKET: 11020  
PAGE: 561  
NO. OF PAGES: 43  
SEQUENCE: 19990660198  
04/07/1999  
REST 12:02

W  
TUCSON CITY CLERK  
PICK UP

PICKUP

AMOUNT PAID \$ 47.00

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MONTE VISTA

1 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

2 FOR

3 MONTE VISTA

4 THIS DECLARATION is made this 12th day of March, 1999, by FIDELITY NATIONAL  
5 TITLE AGENCY, INC., an Arizona Corporation, as Trustee under Trust Number 10,949  
6 hereafter referred to as the "Declarant."

7 RECITALS

8 Declarant is the owner of real property located in Pima County, Arizona which  
9 is described as Lots 1 through 58 and Common Areas A and B of MONTE VISTA, as  
10 shown on the Plat of Record on Book 52 of Maps and Plats at Page 26.  
11 Declarant desires to develop this property as a residential community; and desires  
12 that all the real estate to be developed will be subject to the easements, covenants,  
13 conditions and restrictions, as set forth in this Declaration.

14 Declarant states that the real property shall be held, sold and conveyed  
15 subject to the following easements, covenants conditions and restrictions, all of  
16 which are for the purpose of enhancing and protecting the value, desirability and  
17 attractiveness of the property. These easements, covenants, conditions and  
18 restrictions shall run with the property and shall be binding upon all parties having  
19 or acquiring any right, title or interest in the described properties or any part  
20 thereof, and shall inure to the benefit of each such party.

21 ARTICLE I

22 DEFINITIONS

23 1.1. "Annual Assessments" are those assessments which are levied by the  
24 Association and used to promote the recreation, health, safety and welfare of the  
25 Members, their families and guests, for the improvement of the Common Areas and

1 for all other purposes set forth in the Articles, Bylaws, this Declaration and all  
2 applicable laws.

3 1.2. "Architectural Review Committee" refers to the Committee established  
4 by the Board of Directors pursuant to Article VII of this Declaration.

5 1.3. "Articles" refers to the Articles of Incorporation of the Association and any  
6 amendments which have been filed in the Office of the Arizona Corporation  
7 Commission.

8 1.4. "Assessment Lien" means a lien against any Lot arising out of the non-  
9 payment of Annual Assessments, or any other sums due to the Association, including  
10 late fees, interest, fines, attorneys' fees and any other collection costs.

11 1.5. "Association" means MONTE VISTA HOMEOWNERS ASSOCIATION INC., its  
12 successors and assigns.

13 1.6. "Board" means the Board of Directors of the Association.

14 1.7. "Bylaws" refer to the Bylaws of the Association, as may be amended from  
15 time to time.

16 1.8. "Common Areas" refers to the real property which is designated as  
17 Common Areas on the Plat and owned by the Association for the common use and  
18 enjoyment of the Owners.

19 1.09. "Declarant" refers to Fidelity National Title Agency, Inc., as trustee under  
20 Trust No. 10,949, its successors and assigns.

21 1.10. "Dwelling Unit", and "Lot" are synonymous and refer to the plot of land  
22 shown upon the recorded Plat of the subdivision and all improvements located on  
23 the Lot. A Lot does not include the Common Areas.

1.11. "Governing Documents" refers to this Declaration, the Articles of Incorporation, the Bylaws of the Association and any Rules and Regulations promulgated by the Board of Directors.

1.12. "Guidelines" means those rules and regulations adopted, amended and supplemented by the Review Committee pursuant to Article VII of this Declaration.

1.13. "Member" means the Owner of a Lot who is entitled to membership in the Association, who has the privilege of using and enjoying the Common Areas, and who has a duty to pay assessments for these privileges, as further set forth in this Declaration.

1.14. "Mortgage" refers to any mortgage, deed of trust or other security instrument by which a Lot or any part of a Lot is encumbered.

1.15. "Owner" means the record owner, whether one or more persons, of the fee simple title to any Lot which is part of MONTE VISTA including a buyer under a contract for the sale of real estate, but excluding any person who holds an interest merely as security for the performance of an obligation.

1.16. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person.

1.17. "Plat" refers to the map of record in the Office of the Pima County Recorder in Book 52 at Page 26 and designated as MONTE VISTA, Lots 1 through 58 and Common Areas A and B.

1.18. "Properties" and "Project" mean the real property described in the Plat and also known as the "subdivision".

1.19. "Rules and Regulations" means those policies and procedures adopted by the Board of Directors which govern the conduct and actions of owners, tenants, visitors, and guests on Lots and the Common Areas not otherwise covered in this

140106 010004

1 Declaration. Rules and Regulations, when adopted by the Board of Directors, have  
2 the same force and effect as the Restrictions set forth in this Declaration.

3 1.20. "Visible from Neighboring Lots" means, with respect to any given object  
4 that such object is or would be visible to a person six feet tall, standing at ground  
5 level on any part of a neighboring property; provided, however, that an object is  
6 not considered as being Visible from Neighboring Lots if the object is visible to a  
7 person six feet (6') tall, standing at ground level on any part of the neighboring Lot  
8 only because the object is seen through a wrought iron fence and would not be  
9 visible if the fence were solid, rather than wrought iron.

## 10 ARTICLE II

### 11 MEMBERSHIP

12 2.1. Every person who is an Owner of a Lot is a Member of the Association and  
13 is subject to assessment by the Association. Membership is appurtenant to and may  
14 not be separated from ownership of a Lot. Only persons who own Lots are Members  
15 of the Association.

16 2.2. Membership shall not be transferred, pledged, or alienated in any way  
17 except upon the transfer of ownership of any Lot and then Membership shall only  
18 be transferred to the transferee. Any attempt to make a prohibited transfer shall  
19 be void. Any transfer of ownership of a Lot shall operate to automatically transfer  
20 the membership in the Association to the new Owner.

## 21 ARTICLE III

### 22 VOTING RIGHTS

23 3.1. Declarant. Declarant is a Member of the Association for so long as it holds  
24 a Class A or Class B Membership.

25 3.2. Voting Classes. The Association has two classes of voting Members:

1           3.2.1. Class A. Class A Members are all of the Owners except the  
2 Declarant (until the conversion of Declarant's Class B Membership to Class A  
3 Membership as provided below). Subject to the authority of the Board to suspend  
4 an Owner's voting rights in accordance with the provisions of this Declaration, a Class  
5 A Member has one vote for each Lot owned. The vote for each Lot shall be exercised  
6 as the Owners agree, but in no event may there be more than one (1) vote cast for  
7 any one (1) Lot owned.

8           3.2.2. Class B. The Class B Member is the Declarant. The Class B Member  
9 is entitled to three (3) votes of each Lot it owns until it has sold 75% of the Lots, at  
10 which time it will be entitled to one (1) vote for each Lot it owns. The Class B  
11 Membership shall terminate upon the happening of the first of the following events:

- 12           a.     the date which is one hundred twenty (120) days after the date  
13                     that 75% of the Lots have been sold and closed escrow; ; or  
14           b.     the date which is seven (7) years after the date this Declaration  
15                     is recorded; or  
16           c.     120 days after the Declarant relinquishes its Class B votes by  
17                     providing written notice to the Association.

18           3.3. Right to Vote. No change in the ownership of a Lot is effective for voting  
19 purposes until the Board receives written notice of such change together with  
20 satisfactory evidence of the transfer. The vote for each Member must be cast as a  
21 single unit. Fractional votes are not allowed. In the event that a Lot is owned by  
22 more than one (1) Person and such Owners are unable to agree on how their vote  
23 or votes shall be cast, they shall not be entitled to vote on the matter in question.  
24 If any Owner exercises his/her vote on any matter, it will be conclusively presumed  
25 that the Owner is acting with the authority and consent of the all other Owners of

1 the Lot unless an objection is made to the Board, in writing, at or prior to the time  
2 the vote is cast. If more than one Person votes or attempts to exercise the vote for  
3 a particular Lot all of those votes shall be void.

4 3.4. Members' Rights. Each Member has all of the rights, duties and  
5 obligations set forth in this Declaration, the Articles, the Bylaws and the Association  
6 Rules.

7 3.5. Suspension of Voting Rights. The right of any Member to vote shall be  
8 automatically suspended during any period where any assessment, or other sum due  
9 to the Association (including any attorneys' fees or other costs incurred by the  
10 Association in connection with the Lot) is unpaid and delinquent. The Association  
11 may suspend the voting rights of any Member for a period specified by the Board  
12 when, in the Board's discretion, such Member is in violation of these Covenants, the  
13 Bylaws and/or the Rules and Regulations of the Association.

#### 14 ARTICLE IV

#### 15 PROPERTY RIGHTS

16 4.1. Member's Easements of Enjoyment. Every Owner has the right and an  
17 easement to enjoy the Common Areas and such easement shall be appurtenant to  
18 and is conveyed with the title to each Lot. Such right and easement of enjoyment  
19 is subject to the following provisions:

- 20 a. The right of the Association to adopt Bylaws and reasonable Rules  
21 and Regulations governing the use of the Lots and the Common Areas,  
22 as well as the Owners' conduct on the Lots or Common Areas, and  
23 governing the payment and collection of assessments from the Owners  
and penalties for failure to pay these assessments.

1 b. The right of the Association to limit the number of guests of  
2 Owners and residents.

3 c. The right of the Association, in accordance with its Articles and  
4 Bylaws, to borrow money for the purpose of improving and  
5 maintaining the Common Areas and, if necessary, to mortgage the  
6 Property, but the rights of any mortgagee in the Properties shall be  
7 subordinate to the rights of the Owners.

8 d. The right of the Association to mortgage the Common Areas or  
9 to dedicate or transfer all or any part of the Common Areas for such  
10 purposes and subject to such conditions as may be agreed to by the  
11 Members. No dedication or transfer of the Common Area is effective  
12 unless approved by at least two-thirds (2/3) of the Owners [with one (1)  
13 vote per Lot].

14 e. The right of the Association to enter into such agreements and  
15 take any action which is reasonably necessary and convenient to  
16 accomplish the Association's obligations and to operate and maintain  
17 the Common Areas.

18 4.2. Delegation of Use. Any Owner may delegate his/her right to use the  
19 Common Areas to the members of his/her family, his/her tenants or contract  
20 purchasers who reside on a Lot, provided that such delegation is made in  
21 accordance with the Association's Governing Documents.

22 4.3. Common Areas. Ownership of the Common Areas is vested in the  
23 Association, subject to the easements created in Article V. The Common Areas shall  
24 be deeded to the Association by the Declarant on or before the date the first Lot  
25 is conveyed to an Owner. The Common Areas shall be conveyed to the Association



1 free and clear of all liens and encumbrances. Common Areas are for the common  
2 use and enjoyment of the Members of the Association.

3 ARTICLE V

4 EASEMENTS AND LICENSES

5 5.1. Easements for Encroachments. Each Lot and the Common Areas are  
6 subject to an easement for encroachments created by the original construction of  
7 the improvements on any Lot, settling and overhangs, and for any party walls which  
8 are part of the original construction. A valid easement for those encroachments and  
9 for the maintenance of such shall continue for so long as the encroachments exist.  
10 This easement does not cover any improvements constructed by a Lot Owner after  
11 the original sale of that Lot by the Declarant.

12 5.2. Easement Over Common Areas. A blanket easement is created upon,  
13 across, over and under all of the Common Areas for the use and enjoyment of all the  
14 Members, their guests, invitees, licensees and tenants, subject to reasonable  
15 regulations of the Association, and for ingress, egress, installation, replacing,  
16 repairing and maintaining all utilities, including, but not limited to, water, sewer,  
17 gas, telephones and electricity. Any conveyance or encumbrance of any of the  
18 Common Areas shall be subject to an Owner's easement for ingress or egress to  
19 his/her Lot.

20 5.3. Drainage Easement. A drainage easement is created upon, across, over  
21 and under each Lot for the benefit of all other Lots.

22 5.4. Utility Easements. The Association has an easement over any Lot on which  
23 a utility easement is located (as reflected on the Plat) for the purpose of performing  
24 any of its obligations required by the Association's Governing Documents.

25 5.5. Declarant's Easements.

10/10/2010 10:10:10 AM



1 maintenance; for the payment of all expenses and charges which are the  
2 responsibility of the Association; and for all other purposes set forth in the  
3 Association's Governing Documents.

4 6.3. Annual Assessment.

5 6.3.1. Annual Assessment. The Board of Directors is vested with full  
6 authority and absolute discretion to determine the amount of the annual  
7 assessments, based upon the operating budget of the Association, including  
8 appropriate reserves, provided, however, that the amount of the annual assessment  
9 may not increase more than the maximum amount set forth in Planned  
10 Communities Act, A.R.S. §33-1803 without the approval of a majority of the members  
11 of the Association or in compliance such any other voting requirement which may  
12 be set forth in the statute, as amended from time to time.

13 6.3.2. Notification to Owners of Annual Assessments. The Board shall  
14 provide notice to the Owners of any change to the amount of the Annual  
15 Assessment at least thirty (30) days prior to January 1 of each year. The Board of  
16 Directors may determine that the Annual Assessment is payable in equal monthly  
17 installments or on any other periodic basis.

18 6.4. Special Assessments. In addition to the Regular Assessments the Board  
19 of Directors may levy Special Assessments for any of the following purposes: (1)  
20 constructing capital improvements; (2) correcting an inadequacy in the current  
21 operating account; (3) defraying, in whole or in part, the cost of any construction,  
22 reconstruction, unexpected repair or replacement of improvements in the Common  
23 Areas; or (4) paying for such other matters as the Board may deem appropriate for  
24 the Properties. Special Assessments shall be due on the date established by the  
25 Board of Directors at the time the Assessment is levied.

1           6.5.   Uniform Rate of Assessment.

2           6.5.1. Except as otherwise provided in this Declaration, all Assessments  
3 must be set at a uniform rate for all Lots (regardless of whether the Lot is improved  
4 or not improved).

5           6.5.2. For so long as the Declarant is a Class B Member, it shall not be  
6 obligated to pay assessments on any Lots which it owns. The Declarant shall be  
7 obligated to pay to the Association any sums which are necessary to fund any deficit  
8 in the operating account. The deficit shall be determined on a monthly basis by  
9 applying the assessments collected from the Members to the operating expenses  
10 of the Association. The Declarant shall pay to the Association an amount equal to  
11 the balance of the monthly expenses which cannot be paid because of insufficient  
12 funds in the operating account.

13           6.6.   Due Dates for Annual Assessments. Each Owner shall begin making  
14 his/her payment of the Annual Assessments on the first day of the month following  
15 the conveyance of a Lot to that Owner. This amount shall be adjusted according to  
16 the number of months remaining in the calendar year.

17           6.7.   Reimbursement Assessments. The Association shall levy a  
18 Reimbursement Assessment against any Owner if a failure to comply with the  
19 Association's Governing Documents has (1) necessitated an expenditure of money by  
20 the Association to bring the Owner or his/her Lot into compliance, including any  
21 attorney's fees which may have been incurred by the Association; or (2) resulted in  
22 the imposition of a fine or penalty by the Board of Directors, after the Board has  
23 provided the Owner with notice of the violation and has given the Owner an  
24 opportunity for a hearing. Reimbursement Assessments may be enforced in the  
25 same manner as Annual Assessments.





1 percentage rate to be established by the Board, at such time as the  
2 assessment is delinquent; and

3 e. Other. Any other additional costs which the Association may incur  
4 in the process of collecting delinquent assessments or other sums due  
5 to the Association.

6 6.10. Application of Payments. All payments received by the Association  
7 shall be applied first to the principal amount due which includes the late charges  
8 and any collection costs and attorneys' fees incurred by the Association, and then  
9 to any interest which has accrued on these sums.

10 6.11. Statement of Assessment Lien. Upon written request from any Owner,  
11 the Owner's agent, or the lienholder, the Association shall furnish the person who  
12 made the request with a written certificate, in a recordable form, signed by an  
13 officer or authorized agent of the Association stating the amount of any assessment  
14 which is due and any additional charges secured by the lien upon his/her Lot. The  
15 Board of Directors may impose a reasonable charge for the issuance of that  
16 certificate.

17 6.12. No Exemption of Owner. No Owner is exempt from liability for the  
18 payment of assessments because he/she does not use or enjoy the Common Areas,  
19 or has abandoned his/her Lot, or for any other reason, including any allegation that  
20 the Board of Directors is not performing its obligations under the Association's  
21 Governing Documents.

22 6.13. Subordination of the Lien to Mortgages. The lien for assessments is  
23 subordinate to the lien of any first mortgage or deed of trust against the Lot. The  
24 sale or transfer of any Lot does not affect the assessment lien. However, the sale or  
25 transfer of any Lot pursuant to a mortgage foreclosure, or any proceeding in lieu

UNCLERIFIED



1 thereof, extinguishes the lien for such assessments but only as to those payments  
2 which became due prior to such sale or transfer. No sale or transfer of any Lot shall  
3 relieve the Lot from liability for any assessments which become due before the sale  
4 or transfer, or from the lien for assessments.

5 6.14. Mortgage Protection and Additional Assessment as Common Expense.

6 Notwithstanding and prevailing over any other provision of the Association's  
7 Governing Documents, the following provisions shall apply to and benefit each  
8 holder of a mortgage upon a Lot (the "mortgagee"):

9 a. The mortgagee shall not be personally liable for the payment of any  
10 assessment, nor for the observation or performance of any covenant,  
11 restriction, regulation, rule, article or bylaw, except for those matters  
12 which are enforceable by injunctive or other equitable actions, and  
13 which do not require the payment of money.

14 b. During the pendency of any proceeding to foreclose any mortgage,  
15 including any period of redemption, the mortgagee (or receiver  
16 appointed in such action) may, but is not required to, exercise any or  
17 all of the rights and privileges of the Owner of the mortgaged Lot,  
18 including but not limited to the exclusion of the Owner's exercise of  
19 such rights and privileges.

20 c. At such time as the mortgagee becomes the record Owner of a Lot,  
21 it shall be subject to all of the terms and conditions of this Declaration,  
22 including but not limited to the obligation to pay for all assessments  
23 and charges accruing thereafter, in the same manner as any Owner.

24 d. The mortgagee, or any other party acquiring title to a mortgaged  
25 Lot through foreclosure suit or through any equivalent proceeding



1 arising from the mortgage, such as, but not limited to, the taking of a  
2 deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free  
3 and clear of any lien authorized by or arising out of any of the  
4 provisions of the Declaration or Bylaws which secured the payment of  
5 any assessment for charges accrued prior to the final conclusion of any  
6 such foreclosure suit or equivalent proceeding, including the expiration  
7 date of any period of redemption.

8 e. Mortgagees are entitled to pay taxes or other charges which are in  
9 default and which may or have become a charge against any Common  
10 Areas owned by the Association, and such mortgagees may pay  
11 overdue premiums on hazard insurance policies, or secure new hazard  
12 insurance coverage on the lapse of a policy, for such Common Areas  
13 and any first mortgagees making such payment may be owed  
14 immediate reimbursement from the Association.

15 f. Nothing in this Declaration shall in any manner be deemed to give  
16 an Owner priority over any rights of a mortgagee of a Lot pursuant to  
17 the terms of such mortgagee's mortgage in the case of a distribution  
18 to an Owner of insurance proceeds or condemnation awards for losses  
19 or to a taking of any Lot or any part of the Common Areas owned by  
20 the Association. Each mortgagee shall be entitled to timely written  
21 notice of such loss or taking.

22 6.15. Reserves.

23 6.15.1. To insure that the Association has adequate funds to pay the  
24 Common Expenses, each Purchaser of a Lot shall pay the Association, immediately  
25 upon becoming the Owner of the Lot, a sum equal to one-sixth (1/6th) of the Annual

1105205

1 Assessment on the Lot. Funds paid to the Association pursuant to this Section may  
2 be used by the Association for the payment of operating expenses or any other  
3 purpose permitted under the Governing Documents. Payments made pursuant to  
4 this Section shall be non-refundable and shall not be considered as an advance  
5 payment of any Assessments levied by the Association pursuant to this Declaration.

6 6.15.2. The reserves which are collected as part of the Regular  
7 Assessments shall be deposited by the Association in a separate bank account to be  
8 held in trust for the purposes for which they are collected. Such reserves shall be  
9 deemed a contribution to the capital account of the Association by the Owners and  
10 once paid, no Owner shall be entitled to any reimbursement of those funds. The  
11 Board is only responsible for providing for such reserves as the Board in good faith  
12 deems reasonable, and no Member of the Board is liable to any Owner or to the  
13 Association if the amount in the reserve account proves to be inadequate.

14 6.16. Fines and Penalties. If any Owner, his/her family or any licensee, invitee,  
15 tenant or lessee violates the Association's Governing Documents, the Board may levy  
16 a fine upon the Owner of the Lot for each violation. However, for each day that a  
17 violation continues after written notice to cease has been mailed, it shall be  
18 considered a separate violation and subject to the imposition of the fine. The Board  
19 shall establish a procedure by which it imposes such penalties, including notice of  
20 the violation and the right to a hearing if requested by an Owner. Any fines  
21 imposed by the Board which are not paid within fifteen (15) days after notice shall  
22 become a lien on the Owner's Lot. Any fine which is not timely paid will be collected  
23 in the same manner as delinquent assessments, including the imposition of late fees  
24 and interest.

11/15/2011 10:00 AM

1           6.17. Enforcement Procedures

2           6.17.1. Demand. Written demand to cease and desist from an alleged  
3 violation shall be served upon the alleged violator specifying: (a) the alleged  
4 violation; (b) the action required to abate the violation and either a time period, of  
5 not less than ten (10) days, during which the violation is a continuing one, or a  
6 statement that any further violation of the same rule may result in the imposition  
7 of sanctions after notice and hearing if the violation is not continuing.

8           6.17.2. Continuing Violations. For the purposes of this Section, each day  
9 a violation continues after notice to cease has been given by the Board to the Owner  
10 shall constitute a separate violation.

11           6.17.3. Notice. Within one (1) month of such notice, if the violations  
12 continue past the period allowed in the notice for abatement without penalty, or  
13 if the same rule is subsequently violated, the Board shall serve the violator with  
14 written notice of a hearing to be held by the Board in executive session. The notice  
15 shall contain: (a) the nature of the alleged violation; (b) the time and place of the  
16 hearing, which time shall be not less than ten (10) days from the giving of notice; (c)  
17 an invitation to attend the hearing and produce any statement, evidence, and  
18 witnesses on his or her behalf; and (d) the proposed sanction to be imposed, which  
19 may include the imposition of a fine of not more than One Hundred Fifty and No/100  
20 Dollars (\$150.00) for any one violation.

21           6.17.4. Hearing. The hearing shall be held in executive session pursuant  
22 to this notice thereby affording the Member a reasonable opportunity to be heard.  
23 Prior to the effectiveness of any sanction hereunder, proof of notice and the  
24 invitation to be heard shall be placed in the minutes of the meeting. Such proof  
25 shall be deemed adequate if a copy of the notice together with a statement of the

1 date and manner of delivery is entered into the minutes by the officer or director  
2 who delivered such notice.

3 ARTICLE VII

4 ARCHITECTURAL REVIEW COMMITTEE

5 7.1. Landscaping Restrictions.

6 7.1.1. General Requirements. Except as expressly provided for in this  
7 Declaration or as approved by the Architectural Review Committee, landscaping on  
8 the Lots shall comply with the provisions of Architectural Guidelines developed by  
9 the Architectural Review Committee.

10 7.1.2. Approval by the Architectural Review Committee. No exterior  
11 trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon  
12 any Lot except as originally installed by the Declarant unless such landscaping is in  
13 compliance with plans and specifications which have been submitted to and  
14 approved by the Architectural Review Committee in accordance with the Guidelines.

15 7.1.3. Restrictions Applicable to All Lots. All Lots, except that portion  
16 of the Lot which is enclosed by a wall around the rear yard, shall be landscaped in  
17 a manner and using plants and soil which have been approved by the Architectural  
18 Review Committee.

19 7.2 Power and Duties. The Architectural Review Committee has all of the  
20 powers, authority and duties conferred upon it by the Association's Governing  
21 Documents. It is the duty of the Architectural Review Committee to consider and  
22 act upon all proposals or plans submitted to it, to adopt the Guidelines, to perform  
23 any other duties delegated to it by the Board, and to carry out all other duties  
24 imposed upon it by this Declaration and/or any Rules adopted by the Board.

1 7.3 Organization of the Architectural Review Committee. The Architectural  
2 Review Committee shall be organized as follows:

3 7.3.1. Committee Composition. The Architectural Review Committee  
4 shall consist of three (3) regular members and one (1) alternate member. The Board  
5 may, in its discretion, increase the number of Members on the Architectural Review  
6 Committee. A Member of the Architectural Review Committee shall be a Member  
7 of the Association, or an officer, agent or employee of Declarant.

8 7.3.2. Alternate Members. In the event any Member of the  
9 Architectural Review Committee is absent or unable to serve on this Committee, the  
10 remaining regular Members, even though less than a quorum, may designate an  
11 alternate Member to act as a substitute for the regular Member of the Architectural  
12 Review Committee so long as any one or more regular Members remain absent or  
disabled.

14 7.3.3. Term of Office. Unless a Member of the Architectural Review  
15 Committee has resigned or been removed, his/her term on the Committee shall be  
16 for a period of one (1) year, or until the appointment of his/her respective successor.  
17 Any new Member appointed to replace a Member who has resigned or has been  
18 removed shall serve for the remainder of that Member's unexpired term. Members  
19 of the Architectural Review Committee who have resigned, been removed or whose  
20 terms have expired may be reappointed.

21 7.3.4. Appointment and Removal. For so long as there is a Class B  
22 Member of the Association, the Declarant has the right to appoint and remove all  
23 of the Members of the Architectural Review Committee. Upon the expiration of  
24 Class B membership, the right to appoint and remove, at any time, and without  
25 cause, all regular and alternate Members of the Architectural Review Committee is

11030101

1 vested solely in the Board upon the vote or written consent of at least fifty one  
2 percent (51%) of the Board Members.

3 7.3.5. Resignations. Any regular or alternate Member of the  
4 Architectural Review Committee may at any time, resign from the Architectural  
5 Review Committee by giving written notice to the Board.

6 7.3.6. Vacancies. The Board shall fill any vacancies on the Architectural  
7 Review Committee. A vacancy on the Architectural Review Committee occurs upon  
8 the death, resignation or removal of any regular or alternate Member.

9 7.4. Meetings and Compensation of the Architectural Review Committee.  
10 The Architectural Review Committee shall meet, when necessary, to perform its  
11 duties. The vote or written consent of a majority of the regular Members (including  
12 any substitute regular Member serving pursuant to Section 7.3.2) shall constitute the  
13 act of the Architectural Review Committee. The Architectural Review Committee  
14 shall keep and maintain a written record of all actions which it takes. Although  
15 Members of the Architectural Review Committee shall not be entitled to  
16 compensation for their services, consultants hired by the Architectural Review  
17 Committee, as authorized by the Board, may be entitled to compensation at the  
18 discretion of the Board.

19 7.5. Guidelines. Subject to the written approval of the Board, the  
20 Architectural Review Committee shall adopt, and may from time to time amend,  
21 supplement and repeal, the Guidelines. The Guidelines shall interpret, implement,  
22 and supplement this Declaration, and shall set forth procedures for the review of  
23 modifications to improvements, construction, and installation of improvements on  
24 any Lot, and the standards for development within the Property. The Guidelines  
25 shall have the same force and effect as the Association Rules.





1 specifications for any alterations, changes or modifications shall be consistent with  
2 the scheme of development.

3 7.8. Waiver. Approval by the Architectural Review Committee of any plans,  
4 drawings or specifications for any work done or proposed, or for any other matter  
5 requiring approval of the Architectural Review Committee, shall not be deemed to  
6 constitute a waiver of any right to withhold approval of any similar plan, drawing,  
7 specification or matter subsequently submitted for approval.

8 7.9. Liability. Neither the Declarant, the Association, the Board or the  
9 Architectural Review Committee (or any Member thereof) shall be liable to the  
10 Association, any Owner or any other party for any damage, loss or prejudice suffered  
11 or claimed on account of:

12 7.9.1. The approval or disapproval of any plans, drawings or  
13 specifications, whether or not defective;

14 7.9.2. The construction or performance of any work, whether or not  
15 pursuant to approved plans, drawings and specifications;

16 7.10. Appeal to Board. Except as provided in this Section, any Owner who has  
17 submitted plans and is not satisfied by a decision of the Architectural Review  
18 Committee may appeal the decision to the Board in accordance with the procedures  
19 established in the Guidelines. The Board of Directors shall review the decision of the  
20 Architectural Review Committee and either approve it, reject it, or modify it. The  
21 decision of the Board shall be final and binding and shall modify the Architectural  
22 Review Committee's decision to the extent specified by the Board.

23 7.11. Fee. The Board may establish a reasonable processing fee to defer the  
24 costs of the Architectural Review Committee in considering any requests for  
25 approvals submitted to the Architectural Review Committee or for appeals to the



1 Board, which fee shall be paid at the time the request for approval or review is  
2 submitted. Such fee shall be paid by the Owner on the terms and within the time  
3 established by the Board. Any fee not paid when required may become a lien  
4 against the Lot and collected in the same manner as assessments.

5 7.12. Inspection. Any Member of the Architectural Review Committee, or any  
6 authorized officer, director, employee or agent of the Association, may at any  
7 reasonable time and without being deemed guilty of trespass, enter on any Lot,  
8 after reasonable notice to the Owner of such Lot, in order to inspect the  
9 improvements constructed or being constructed on such Lot to ascertain that such  
10 improvements have been, or are being built in compliance with the Guidelines,  
11 plans and specifications approved in accordance with this Article and this  
12 Declaration. No improvement may be inhabited until such time as the Architectural  
13 Review Committee has inspected the Lot to determine that the improvements were  
14 constructed according to the approved plans and specifications; that the  
15 improvements have been completed; and that the property is approved to be  
16 inhabited.

17 7.13. Exemption of Declarant. Nothing contained in this Declaration shall  
18 limit the right of the Declarant to complete excavation, grading and construction  
19 of improvements to any property owned by the Declarant within the subdivision;  
20 or to construct any additional improvements which the Declarant deems necessary  
21 in the course of developing the subdivision, including the use of any improvement  
22 as a model home or real estate sales or leasing office.

11011618



1 discretion, take whatever action is appropriate to bring the Lot into compliance, and  
2 charge the cost of such work to the Owner, which shall be collected in the same  
3 manner as the collection of assessments.

4 8.7. Utility Service. Electric power, sewers, and water will be available to the  
5 Lots through private utility companies authorized by the State of Arizona. Neither  
6 the Declarant, the Board of Directors nor the Architectural Review Committee  
7 assumes any responsibility for and does not guaranty the quality or quantity of the  
8 water and electric power to be furnished to the Lot and shall not, in any way, be  
9 liable for any shortage of water or electricity.

10 8.8. Dereliction of Maintenance by Owners.

11 8.8.1. Each Owner is responsible for the payment of all damages  
12 caused by the Owner, his guest, family, lessees, pets or employees to his or any  
13 other Owner's property or to the Common Areas. If any Owner fails to maintain the  
14 Lot in a manner satisfactory to the Association, the Association, through its agents  
15 and employees, after giving ten (10) days written notice to the Owner, is entitled to  
16 enter on the Lot and to make any necessary repairs, maintenance, rehabilitation or  
17 restoration of the Lot, including the exterior of any Dwelling Unit as necessary. The  
18 Association shall provide the Owner with an invoice for the work performed. In the  
19 event such invoice is not paid within ten (10) days of the date of such invoice, the  
20 Association may collect the amount due in the same manner as the collection of  
21 assessments.

22 8.8.2. Nothing contained in this Declaration requires the Association  
23 to charge for, or to collect, assessments for damage caused by an Owner, his guest,  
24 family, lessees, pets or employees to any other Owner's property or to the Common  
25 Areas. Any party whose property is damaged by another Owner's negligence or

11/15/2018 10:10:00 AM

1 willful conduct, may not require the Association to make such repairs, to charge the  
2 offending party or collect such necessary amounts from him/her.

3 ARTICLE IX

4 ASSOCIATION'S RESPONSIBILITIES

5 9.1. Association's Responsibilities. The Association is responsible for the  
6 proper and efficient management of the Association and the Common Areas

7 9.2. Specific Responsibilities of the Association. In addition to any other  
8 responsibilities which the Association may have, it is specifically responsible for the  
9 following:

- 10 a. Maintaining the Common Areas;
- 11 b. Maintaining or replacing, as deemed necessary by the Board of  
12 Directors, the landscaped areas on the Lot which are located  
13 outside of any fences/wall enclosing a private backyard. The  
14 Board of Directors is not responsible for any damage to any Lot  
15 caused by the roots of any vegetation planted and maintained  
16 by the Association.
- 17 c. Providing for such additional maintenance as the Board of  
18 Directors, from time to time, determines to be in the best  
19 interests of the Association;
- 20 d. Paying real estate taxes, assessments and other charges on those  
21 portions of the Common Areas owned by the Association;
- 22 e. Insuring all improvements which the Association is obligated to  
23 maintain, with companies and with such limits as the Association  
24 deems appropriate;

- f. Hiring, firing, supervising, and paying employees and independent contractors providing services to the Association;
- g. Maintaining insurance to protect the Members and the Board of Directors of the Association from any liability for anything which occurs in the Common Areas. The insurance maintained by the Association shall also include Director's and Officer's Liability Insurance;
- h. Maintaining worker's compensation insurance for any employees of the Association, or requiring the use of licensed contractors if required by law.
- i. Purchasing all goods, supplies, labor, and services reasonably necessary for the performance of the obligations set forth in this Declaration;
- j. Enforcing the provisions of this Declaration;
- k. Establishing and maintaining reasonable reserves for the maintenance, repair, and replacement of the improvements for which the Association is responsible and for unforeseen contingencies;
- l. Providing for the payment for any utility services which service the Common Areas and facilities;
- m. Entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Common Areas; and

1 n. Establishing, from time to time, committees to assist it in the  
2 performance of its duties.

3 9.3. Operation of Association. The manner in which the Association carries  
4 out its responsibilities shall be controlled by the Association's Governing Documents.  
5 The payment of assessments to the Association shall not be contingent on the  
6 performance by the Association of any of its obligations.

7 ARTICLE X

8 INSURANCE

9 10.1. The Association shall obtain and maintain in force the insurance set  
10 forth in Section 9.2, subject to the following:

- 11 a. All such insurance shall be written in the name of the  
12 Association.
- 13 b. The insurance coverage obtained and maintained by the  
14 Association shall not be brought into contribution with insurance  
15 purchased by individual Owners or their mortgagees.
- 16 c. The Board may obtain such other insurance which it determines  
17 is necessary or expedient to carry out the Association's functions  
18 as set forth in this Declaration.

19 10.2. Individual Insurance.

20 10.2.1. Each Owner agrees with all other Owners and with the  
21 Association that he/she shall carry insurance in an amount which is sufficient to fully  
22 cover the replacement of any of the improvements on the Lot. Upon the written  
23 request of the Association, the Owner shall furnish proof of such insurance to the  
24 Association in writing. If the Owner does not purchase adequate insurance, the

1 Association is entitled to insure the improvements on the Lot and bill the Owner for  
2 the cost of such insurance.

3 10.2.2. Each individual Owner agrees that in the event of a partial loss  
4 or damage and destruction to the Dwelling Unit which results in less than total  
5 destruction, the Owner shall proceed promptly to repair or reconstruct the  
6 damaged structure in a manner consistent with the original construction.

7 10.2.3. Every policy of insurance obtained by the Owner shall provide,  
8 if available, for the payment of that Lot's share of the assessments to the Association  
9 during the time that the damage for which there are insurance proceeds is being  
10 repaired.

11 ARTICLE XI

12 USE RESTRICTIONS

13 11.1. Residential Use. All Lots shall be used for single-family residential  
14 purposes only, and no other structures except single-family residences shall be  
15 placed or maintained thereon.

16 11.2. Business Activities. No trade or business may be conducted in or from  
17 any Dwelling Unit, except that an Owner or occupant residing in any Dwelling Unit  
18 may conduct business activities so long as (a) the existence or operation of the  
19 business activity is not apparent or detectable by sight, sound or smell from outside  
20 the Dwelling Unit; (b) the business activity conforms to all zoning requirements for  
21 the Properties; (c) the business activity does not involve any person conducting such  
22 business who does not reside on the Properties or door-to-door solicitation of  
23 residents of the Properties; (d) the existence or operation of the business does not  
24 increase that dwelling's use of Common Area facilities over that standard for a single  
25 family dwelling; (e) the existence or operation of the business does not require

11/15/2016 10:03:11 AM



1 customers or delivery trucks to visit the residence; and (f) the business activity does  
2 not constitute a nuisance, or a hazardous or offensive use, or cause the owners to  
3 violate any other provisions of this Declaration, or threaten the security or safety of  
4 other residents of the Properties, as may be determined in the sole discretion of the  
5 Board.

6 11.3. Leases.

7 11.3.1. An Owner may lease his/her Lot for single-family residential  
8 purposes only.

9 11.3.2. All provisions of the Declaration and of any Rules and  
10 Regulations promulgated by the Association which govern the conduct of Owners  
11 and which provide for sanctions against Owners shall also apply to all occupants of  
12 any Dwelling Unit. The Owner shall provide the tenant with copies of the  
13 Association's governing documents. In the event the Owner fails to do so, the  
14 Association shall provide copies to the tenant and charge the Owner for the cost of  
15 doing so.

16 11.3.3. All leases and subleases shall be in writing and shall specifically  
17 provide:

- 18 a. Such lease is subject in all respects to the provisions of the  
19 Association's Governing Documents.  
20 b. The failure of the lessee to comply with the terms and  
21 conditions of the Association's Governing Documents constitutes  
22 a material default of the lease.

23 11.3.4. Information to be Provided to the Association. In the event  
24 an Owner leases his/her Lot, the Owner shall give the Association, in writing, the  
25 name of the lessee and such other information as the Board may reasonably require.



11.3.5. Voidable Leases. All leases which do not contain these provisions shall be deemed null and void at the option of the Association.

11.4. Sales of Lots. Each Owner shall promptly notify the Board of Directors of any sale or transfer of his/her Lot and shall provide the Board with the name and address of the grantee or transferee and any other information which is reasonably required by the Association. The Association may charge a transfer fee to any subsequent Owner.

11.5. No Temporary Building or Trailers. No temporary house, house trailer, motor home, tent, garage, camper or truck with camper shell, boat or out-building of any kind shall be placed or erected upon any part of the Properties for use as living quarters or for any other reason.

11.6. Heating and Cooling Units. No heating or cooling apparatus shall be added to any Lot which is Visible from Neighboring Properties or from the Common Areas, without the prior written approval of the Architectural Review Committee.

11.7. Signs. No sign of any kind shall be displayed anywhere on the Properties if Visible from Neighboring Properties, unless such sign has been approved by the Board except:

- a. Signs which may be required by legal proceedings;
- b. One (1) sign advertising the Owner's Lot for sale or lease, provided such sign does not exceed five (5) square feet in size, is placed only on the Lot and is removed within two (2) weeks after the offer of sale or lease of the Lot has been accepted and all contingencies have been removed;
- c. Temporary signs indicating an "Open House" for those Properties offered for sale may be placed at appropriate locations in the area to

2025 RELEASE UNDER E.O. 14176

1 properly direct interested parties to the subject property, but only  
2 during those hours in which such property is open for inspection.

3 d. Any signs used by the Declarant in the sale and marketing of the  
4 Lots in the subdivision, provided that the signs are approved by the  
5 Architectural Review Committee.

6 11.8. Rubbish, Garbage, Wood Storage, Unsightly Articles or Nuisances.

7 a. No Lot shall be used in whole or part for the storage of rubbish,  
8 garbage or wood of any character whatsoever nor for the storage of  
9 anything which will cause such Lot to appear in any unclean or untidy  
10 condition or that will be otherwise obnoxious. No storage of any  
11 material is permitted outside the walls of a Dwelling Unit. Wood  
12 storage is allowed only so long as wood piles are fully screened from  
13 neighboring Lots, Dwelling Units, or Common Areas. No unsightly  
14 articles shall be visible from adjoining Lots or from the street. No  
15 Owner shall cause any condition on the Lot which might, in the sole  
16 discretion of the Board, be a nuisance to the other Owners or their  
17 tenants, guests or visitors.

18 b. The Owners of Lots 4, 5, 24, 25, 39, 40, and 41 are required to  
19 place their trash containers on the perimeter streets.

20 c. The Owners of Lots 2, 3, 6, 9, 10, 13, 14, 16, 19, 20, 42 and 43 may  
21 choose to place their trash containers on the perimeter streets,  
22 provided that they make their own access to the perimeter  
23 streets through their fences at their own expense.

24 d. The Owners acknowledge that they will be provided with their  
25 own trash container and recycling container from the City of

10/10/2019 10:10:10 AM

1 Tucson and that such containers shall be placed on the streets in  
2 the locations designated on the attached exhibit.

3 e. The Owners of Lots 6, 9, 10, 13, 14, 16, 19, 20, 26, 28, 29, 32, 33, 34,  
4 35, 38, 42, 47, 48, 54 and 55 are subject to City of Tucson refuse  
5 collection policies as set forth in the initial purchase agreements  
6 with the developer.

7 f. The Association has the right to adopt rules and regulations  
8 concerning refuse collection in accordance with the  
9 requirements of the City of Tucson. Such rules and regulations  
10 shall be binding on each Owner of a Lot and enforced in the  
11 same manner as the provisions of the Declaration.

12 g. The Board has the sole discretion to determine if any activity by  
13 an Owner, his family, invitees or lessees is in violation of this  
14 Section.

15 11.9. Animals. Each Owner of a Lot may keep two generally recognized  
16 house pets on the Lot, provided that they are not kept, bred or maintained for any  
17 commercial purpose. All animals must be kept under leash or controlled at all times  
18 so that they will not interfere with any Owner's use and enjoyment of the Common  
19 Areas, and it shall be the responsibility of all pet Owners to clean up after their pets.  
20 At night all pets must be kept in the Owner's Dwelling Unit, or patio area. No animal  
21 shall be allowed to become a nuisance. The Board in its sole and absolute discretion,  
22 has the right to determine whether, for the purposes of this section, a particular  
23 animal is a generally recognized house or yard pet or whether any pet is a nuisance.  
24 The Board has the power and authority to promulgate rules pertaining to any  
25 animals kept on any Lot.

1           11.10. Noise. No Owner shall engage in any activity or permit any activity to  
2 occur on any Lot or the Common Areas which results in any unusual, loud or  
3 obtrusive noise or sound.

4           11.11. Shrubs, Trees and Grasses.

5                 11.11.1. General Restrictions. No shrubs, trees or obstructions of any  
6 kind shall be placed on any Lot in a place which may cause a traffic hazard. All  
7 vegetation on the Lots shall consist of low water use and low pollen producing  
8 vegetation.

9                 11.11.2. Planting in the Common Areas. The planting and landscaping  
10 in the Common Areas and on those portions of the Lots maintained by the  
11 Association, shall not be destroyed or removed without the consent of the  
12 Architectural Review Committee. If natural growth is removed without such  
13 consent, the Board may require the replanting or replacement of same, the cost of  
14 which shall be borne by the Owner responsible for such removal.

15           11.12. Antennas and Exterior Additions. Subject to the Telecommunications  
16 Act of 1996, no exterior antennas or other devices for the transmission or reception  
17 of television or radio signals, including satellite dishes, shall be erected or  
18 maintained if they are visible to neighboring Lots or from the Common Area. No  
19 exterior devices or additions, other than initially installed by the Declarant, including  
20 solar energy devices, shall be constructed on the exterior of a Dwelling Unit  
21 (including the roof) without the written authorization of the Architectural Review  
22 Committee.

23           11.13. Clotheslines. Clotheslines will be permitted on the Lot, provided that  
24 they are not visible from neighboring Lots or from the Common Areas.

25           11.14. Common Areas.



1 inoperable vehicle (including an unlicensed vehicle) may be stored or parked on any  
2 Lot if it is visible from neighboring lots or is visible from the common areas.

3 11.15.6. The Board has the right to have any vehicle, including, but not  
4 limited to recreational vehicles, automobiles, motorcycles, etc., which is parked in  
5 violation of the governing documents towed away at the sole cost and expense of  
6 the owner of the vehicle. Any expenses incurred by the Association in connection  
7 with the towing of any vehicle shall be paid to the Association by the owner, within  
8 ten days from the date of demand by the Association and if not paid, shall be  
9 collected in the same manner as assessments.

10 11.16. Right of Inspection. Upon notice to the owner and during reasonable  
11 hours, any member of the Board of Directors of the Association, or any authorized  
12 representative, has the right to enter upon and inspect the lot, (except the interior  
13 of dwelling units) for the purpose of ascertaining whether or not the provisions of  
14 this Declaration have been or are being complied with, and such persons shall not  
15 be deemed guilty to trespass by reason of such entry.

16 11.17. Drainage. No person shall interfere with the established drainage  
17 pattern over any lot or the common areas, unless adequate provision is made so  
18 that the drainage conforms, in all respects, to the Pima County and City of Tucson  
19 rules and regulations and any drainage criteria promulgated by the Architectural  
20 Review Committee. "Established drainage" is defined as the drainage which exists at  
21 the time the overall grading of the property is completed, or which is shown on any  
22 grading plans approved by Pima County. No fence, wall or any other structure or  
23 improvement may be constructed along any lot line in such a manner as to obstruct  
24 the natural flow of drainage across the lots and over the common area and the plans

1 for all such improvements must be approved, in writing by the Architectural Review  
2 Committee.

3 11.18. Subdividing of Lots. No Lot may be subdivided or split into two or  
4 more Lots.

5 11.19. Rules and Regulations. The Board of Directors may adopt, amend and  
6 repeal Rules and Regulations pertaining to (1) the management, operation and use  
7 of the Common Areas; (2) minimum standards of maintenance of the Lots; (3) any  
8 other subject within the jurisdiction of the Association; (4) the conduct and actions  
9 of Owners, tenants, guests, visitors on the Lots and Common Areas when such  
10 conduct affects the other Owners or the value, desirability, and aesthetics of the  
11 project; (5) traffic and parking restrictions.

## 12 ARTICLE XII

### 13 GENERAL PROVISIONS

14 12.1. Enforcement. The Association or any Owner, has the right to enforce,  
15 by any proceeding at law or in equity, all restrictions, conditions, covenants,  
16 reservations, liens or charges now or hereafter imposed by the provisions of this  
17 Declaration. This shall include enforcement of Rules and Regulations promulgated  
18 to the Association to carry out its purpose and this Declaration. The prevailing party  
19 in any Court action shall be awarded reasonable attorneys' fees and costs.

20 12.1.1. No delay or omission on the part of the Association or any  
21 Member in exercising its right to enforcement hereunder shall be construed as a  
22 waiver or breach of any of the provisions of the Association's Governing Documents  
23 or an acquiescence in any breach of these Governing Documents and no right of  
24 action shall accrue against the Board of Directors, the Association or any Member for  
25 their neglect or refusal to exercise such right of enforcement.

2025 RELEASE UNDER E.O. 14176



12.1.2. 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.

12.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any others which shall remain in full force and effect.

12.3. Amendment.

12.3.1. This Declaration may be amended upon the approval of two-thirds (2/3) of each Class of Members who are voting, in person or by proxy, at any regular or special meeting called for that purpose. Any amendment to this Declaration shall be in writing signed by the President and Secretary of the Association attesting that the requisite number of votes had been obtained. All amendments become effective when filed with the Pima County Recorder's Office.

12.3.2. For so long as there is a Class B Member of the Association, the following actions require the prior written approval of FHA or VA: amendments to the Declaration; annexation of additional properties; and dedication of any Common Areas.

12.3.3. The Declarant or the Board of Directors may amend this Declaration or the Plat, without obtaining the approval of any Owner, to conform this Declaration or the Plat to the requirement or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local







1 Officer's and Director's Liability Insurance to also include committee members, to  
2 fund this obligation.

3 IN WITNESS WHEREOF, the undersigned Declarant has set its hand and seal this  
4 12th day of March, 1999.

5  
6 FIDELITY NATIONAL TITLE AGENCY, INC., an Arizona Corporation, as  
7 Trustee under Trust Number 10,949, Declarant.

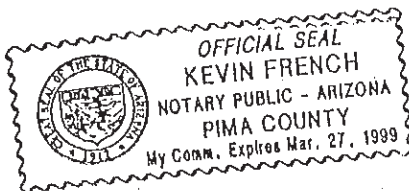
8  
9  
10 By: Suella Swart  
11 Trust Officer

12  
13 State of Arizona )  
14 ) ss:  
15 County of Pima )

16  
17 This instrument was subscribed and sworn before me on this 12th day of  
18 March, 1999 by Suella Swart, Trust Officer, OF FIDELITY NATIONAL TITLE  
19 AGENCY, INC., an Arizona Corporation, as Trustee under Trust Number 10,949  
20 \_\_\_\_\_, Declarant.

21  
22  
23 Kevin French  
24 Notary Public

25  
26 My commission expires:



27  
28  
29  
30  
31  
32  
33 February 16, 1999