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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF SANTA CRUZ

**TUBAC VALLEY PROPERTY
OWNERS ASSOCIATION, INC., an
Arizona non-profit corporation**

Plaintiff,

vs.

**ESPLENDOR'S HOME BUILDING,
LLC, an Arizona limited liability
company,**

Defendant.

CASE NO:

**VERIFIED COMPLAINT AND
PETITION FOR INJUNCTIVE
RELIEF**

(Breach of Contract; Injunctive Relief)

**Assigned to:
Hon.**

Plaintiff, Tubac Valley Property Owners Association, Inc. (the "Association"), an Arizona non-profit corporation, by and through its counsel undersigned, and for its cause of action against Defendant, Esplendor's Home Building, LLC ("Defendant"), hereby states, alleges, and complains as follows:

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GENERAL ALLEGATIONS

1. Plaintiff is an Arizona non-profit corporation and was formed as a property owners' association for Tubac Valley Country Club Estates ("Tubac Valley"). Plaintiff has the responsibility for maintaining the harmony and integrity of the community that it governs, and enforcing the recorded covenants, conditions, and restrictions that apply to the Lots within Tubac Valley.

2. Defendant is an Arizona limited liability company in good standing and has caused an event to occur in the State of Arizona out of which the claims in this Complaint arose.

3. Defendant is the record owner of the real property located at 9 Calle Diaz, Tubac, AZ 85646 (the "Subject Property"), which is legally described as follows:

Lot 92 of TUBAC VALLEY COUNTRY CLUB ESTATES a subdivision of 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 42 thereof.

4. Title to the Subject Property is vested in Defendant by that certain Deed recorded on June 19, 2020 at Sequence No. 2020-03539 in the office of the County Recorder, Santa Cruz County, Arizona.

5. Defendant took title to the Subject Property subject to the *Declaration of Establishment of Conditions and Restrictions for Tubac Valley Country Club Estates*

1 recorded on August 15, 1960 at Docket 24, Pages 575-585, in the office of the Santa
2 Cruz County Recorder, Arizona, and as duly amended (hereinafter referred to as,
3 the "Declaration"). A copy of the Declaration is attached hereto, as Exhibit "A," and
4 is incorporated herein by this reference.
5

6 6. Section 1 of the Declaration establishes the intent of the Declaration "to
7 establish a plan of development" for Tubac Valley Country Club Estates.
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9 7. The Declaration was prepared and recorded at the direction of Tubac
10 Valley Country Club, Inc., an Arizona corporation (the "Declarant"), and the
11 Association, being the owners of Tubac Valley Country Club Estates subdivision.
12 The Association is the successor in interest to the Declarant and assignee of the
13 various rights, powers, and duties assigned by the Declarant in the Declaration.
14

15 8. Section 2, paragraph 2, of the Declaration generally establishes the
16 Architectural Committee and its duties and responsibilities, and states in pertinent
17 part:
18

19 *It shall be the duty of the Architectural Committee to enforce all decisions of*
20 *the Supervising Architect and to enforce all other provisions of this declaration*
21 *which are not specifically the responsibility of the Supervising Architect. Said*
22 *Committee shall hear complaints, gather evidence, hold hearings, enforce*
23 *compliance, and in general exercise the rights of the Undersigned in the*
24 *enforcement of the provisions of this Declaration. The Architectural*
25 *Committee shall also perform such other duties as are specifically set forth in*
26 *this Declaration.*

1 9. The Association, as successor to and assignee of the Declarant under
2 the Declaration and through its Board of Directors, has the authority to appoint the
3 Architectural Committee, and the Architectural Committee serves at the will of the
4 Association's Board of Directors.
5

6 10. Enforcement of the general plan for improvement and development
7 established by the Declaration is germane to the Association's organizational
8 purpose.
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10 11. The Association has the authority to enforce the contractual provisions
11 of the Declaration.
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13 12. The Association has a legitimate interest in ensuring that the Lots
14 within Tubac Valley are developed in compliance with the Declaration and is the
15 proper entity to bring this legal action.
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17 13. All acts complained of herein occurred in Santa Cruz County, Arizona.

18 14. This Court has jurisdiction pursuant to Article VI, §14 of the Arizona
19 Constitution and A.R.S. §12-123.
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21 15. Venue is proper in Santa Cruz County, Arizona pursuant to A.R.S. §12-
22 401.

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COUNT ONE
BREACH OF CONTRACT
(Improvement of Lots)

16. Plaintiff repleads and incorporates the allegations set forth in the foregoing paragraphs as though fully set forth herein.

17. Section 4 of the Declaration generally establishes the Lot Owners' duties and obligations, as well as particular restrictions applicable to the structures and other improvements which may be erected on Lots in Tubac Valley.

18. Section 4, Paragraph 4 of the Declaration states, in pertinent part:

*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.** (emphasis supplied)*

19. In or around May 2020, Defendant began construction of a single-family residence on the Subject Property.

20. As of date of the filing of this Complaint, the construction initiated by Defendant remains unfinished and has not progressed in a meaningful fashion for at least several months. Among other things, Defendant has yet to complete most

1 exterior finishes of the residence (including the installation of roof tiles), necessary
2 grading and drainage work on the Subject Property, and landscape restoration as
3 required by the Declaration.
4

5 21. On March 6, 2023, the Association, through the Architectural
6 Committee, sent Defendant a written Notice of Violation (the "First Notice")
7 advising that the Subject Property was in violation of Section 4, Paragraph 4 of the
8 Declaration and notifying Defendant of the fines that would be imposed for
9 Defendant's continued failure to diligently prosecute construction of the residence
10 to completion. The First Notice also set a hearing for April 4, 2023 at which
11 Defendant could respond to or contest the Association's allegations before the
12 imposition of fines.
13
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15 22. Defendant appeared at the hearing held April 4, 2023 and agreed to
16 submit a detailed Construction Completion Schedule to the Association with all
17 additional drawings required by the Declaration. At the hearing, Defendant stated
18 the goal of finishing all remaining construction no later than July 2023.
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21 23. Based on these representations by Defendant, the Association agreed
22 to temporarily suspend daily fines and other penalties described in the First Notice.
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24 24. On April 6 and April 17, 2023, Defendant provided the Association
25 with Construction Completion Schedules as agreed upon at the April 4 hearing.
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1 However, these documents did not include all elements requested by the
2 Association and lacked significant detail regarding most phases of the project.

3
4 25. Between April 4 and May 23, 2023, no construction progress was
5 observed at the Subject Property despite Defendant's representations and multiple
6 attempts by the Association to obtain a status update.

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8 26. On or about May 23, 2023, the Association, through the Architectural
9 Committee, sent Defendant a letter detailing the lack of construction progress and
10 Defendant's failure to abide by the conditions agreed upon at the April 4 hearing
11 (the "Second Notice"). In addition, the Association advised Defendant that it was
12 imposing daily fines retroactive to the date of the First Notice due to Defendant's
13 chronic and continued failure to diligently prosecute construction, and that the
14 Association would pursue legal action if the outstanding violations were not
15 promptly corrected.
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18 27. As of the date of the filing of this Complaint, despite multiple written
19 notices and the passage of approximately six (6) months, Defendant has failed
20 and/or refused to diligently resume and complete construction of the residence on
21 the Subject Property.
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23 28. Defendant is in breach of the Declaration.

24 29. The Association has been harmed by Defendant's breach.
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1 30. In accordance with its power to enforce compliance with the
2 Declaration, the Association, through the Architectural Committee, has imposed
3 on Defendant a daily fine of \$100 beginning March 6, 2023 and continuing
4 thereafter for each day Defendant's violation of the Declaration remains uncured;
5 the Association is entitled to recover these fines from Defendant as part of a
6 judgment entered in this action.
7

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9 31. Section 9, Paragraph 6 of the Declaration further provides as follows:

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

16 32. The Association has employed an attorney to bring and prosecute this
17 action; therefore, the Association, if it prevails in this action, is entitled to an award
18 of a reasonable sum as and for attorneys' fees incurred, as well as court costs,
19 incurred in this action.

20 33. This action arises under contract; therefore, pursuant to A.R.S. §§ 12-
21 341 and 12-341.01, the Association, if it is the successful party in this action, is
22 entitled to recover all costs expended and incurred in the action, as well as
23 reasonable attorneys' fees.
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COUNT TWO
INJUNCTIVE RELIEF

34. Plaintiff repleads and incorporates the allegations set forth in the foregoing paragraphs as though fully set forth herein.

35. Section 9, Paragraph 5 of the Declaration states that the Association *“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.”*

36. The Association has given Defendant several notices and opportunities to correct the violations over a period of several months.

37. The Association has treated Defendant fairly and has acted reasonably in the exercise of its discretionary design-control and enforcement powers.

38. The Association’s damages because of Defendant’s breach are continuing and will continue unabated absent immediate injunctive relief requiring Defendant’s compliance with the Declaration.

39. The Association has suffered and will continue to suffer irreparable harm so long as Defendant’s breach continues.

40. The Association has no adequate or speedy remedy at law, and is therefore entitled to equitable injunctive relief to abate Defendant’s breach and continuing violation of the Declaration.

1 **WHEREFORE**, Plaintiff prays for relief and/or judgment against Defendant
2 as to Counts One and Two, as follows:

3 A. For an injunction requiring Defendant to submit the following items
4 to the Association within seven (7) days of the date of an injunctive order:

5 i. A comprehensive construction schedule detailing all remaining
6 phases of the project, including exterior finishes, grading/drainage work, and
7 landscaping.
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9 ii. Plans and drawings for the necessary landscaping, grading, and
10 drainage work to be completed on the Subject Property;
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12 B. For an injunction requiring Defendant to complete all construction on
13 the Subject Property within sixty (60) days following submission of the
14 construction schedule and required plans and drawings identified above; and
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16 C. For further appropriate orders that in the event Defendant fails or
17 refuses to correct the violations of the Declaration after entry of any Judgment in
18 this matter, the partially constructed improvements on the Subject Property be
19 razed subject to the obligation for submission of plans and specifications for a
20 residence and associated improvements on the Subject Property to the Association
21 in the future for appropriate review approval in accordance with the Declaration,
22 or, alternatively, that a judicial master be appointed pursuant to Rule 53 of the
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1 Arizona Rules of Civil Procedure to guide and monitor the completion of
2 construction under the oversight of the Court, and that all costs and expenses
3 associated with such appointment shall be the obligation of the Defendant to pay;
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5 D. For a monetary judgment in the amount of \$100 multiplied by the
6 number of days between March 6, 2023 and the date judgment is entered by the
7 Court, such amount representing the total fines owed to the Association by
8 Defendant for its ongoing violation of the Declaration.
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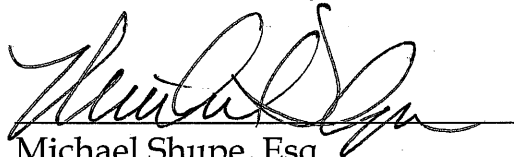
10 E. For Plaintiff's reasonable attorneys' fees and taxable costs incurred in
11 this matter, pursuant to A.R.S. §§ 12-341 and 12-341.01, and the Declaration;
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13 F. For post-judgment interest on all amounts awarded by the Court
14 pursuant to A.R.S. §44-1201(B) from the date of Judgment until the Judgment is
15 paid in full;
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17 G. For such other and further relief as this Court may deem proper.

18 **RESPECTFULLY SUBMITTED** this 31st day of August, 2023.
19

20 **GOLDSCHMIDT | SHUPE, PLLC**

21 
22 Michael Shupe, Esq.
23 Attorney for Plaintiff
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VERIFICATION

STATE OF ARIZONA)
) ss:
COUNTY OF PIMA)

Steven Page, being first duly sworn upon his oath, deposes and says:

1. That he is the President of the Tubac Valley Property Owners Association, Inc., and is authorized to make this verification on behalf of the Association.

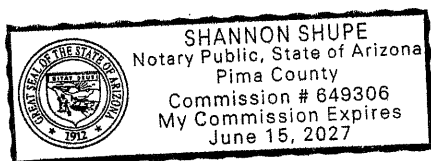
2. That he has read the foregoing Complaint, and the facts stated therein are true to his knowledge, except such matters as are stated to be upon information and belief and, as to those matters, he believes them to be true.

DATED this 31st day of August, 2023.

Tubac Valley Property Owners Association,
Inc.

Steven Page, President

ACKNOWLEDGED, SUBSCRIBED, AND SWORN before me this 31st day of August, 2023, by Steven Page as President of the Tubac Valley Property Owners Association, Inc.




Notary Public